

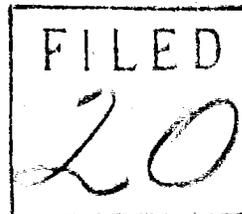
AGRICULTURE \* -  
(Cattle Condemned)

Mode of certification by the State  
Veterinarian for payment of cattle  
condemned on account of reacting to  
the agglutination blood test for  
Bang's disease.

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July 29, 1941 7/30

Mr. H. E. Curry  
State Veterinarian  
Department of Agriculture  
Jefferson City, Missouri



Dear Sir:

This acknowledges receipt of yours of recent date wherein you request an opinion upon the following statement of facts:

"There is enclosed herewith a list of names of citizens of Missouri who have had cattle condemned on account of reacting to the agglutination blood test for Bang's disease under the provisions of Sections 14,208 to 14,213, inclusive, Article 11, Chapter 102, Revised Statutes of Missouri, 1939.

"The Sixty-first General Assembly in House Bill No. 582, Section 34, appropriated the sum of Fifty Thousand Seven Hundred Ninety-three Dollars and Six Cents (\$50,793.06) to be used in the payment of indemnity, in cooperation with the Federal government, for cattle condemned as reacting to the agglutination blood test for Bang's disease, for the period June 15, 1939, to December 31, 1940. No provisions are made for the paying of indemnity to owners of cattle condemned as reactors to the agglutination blood test for Bang's disease from January 1, 1939, as House Bill 667,

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passed by the Sixtieth General Assembly, (Laws of 1939) was not approved until June 15, 1939.

"Section 14,210, Revised Statutes of Missouri, 1939, provides for the appraisal of condemned cattle suffering with Bang's disease and sets forth the procedure to be followed in the certification of such claims for payment. Section 14,212 provides conditions under which indemnity shall be paid.

"The Bang's disease control and eradication program is a Federal project carried on by veterinary inspectors in the employ of the United States Bureau of Animal Industry, and the program has been under the direction of the Inspector in Charge of the United States Bureau of Animal Industry, Jefferson City, Missouri.

"Section 14,210 provides in part:

'The said State Veterinarian shall certify to the Governor the amount to be paid by the State, which amount shall not exceed one-third of the difference between the appraised value of such cattle and the salvage thereof and this shall constitute a legal claim against the State, and the Governor shall approve the same and endorse thereon his order to the State Auditor for the payment thereof, and thereupon the State Auditor shall issue his warrant on the State Treasurer thereof: PROVIDED, however, that in no

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case shall the State pay more than eight and 33/100 dollars (\$8.33) as indemnity on any one head of grade cattle nor more than sixteen and 66/100 dollars (\$16.66) as indemnity on any one head of registered purebred cattle upon which registration certificates are presented at time of appraisal: PROVIDED, that if and when the United States elects to pay in excess of one-third of the total indemnity on cattle condemned on account of Bang's disease, then the Commissioner of Agriculture and the State Veterinarian shall reduce accordingly the amount of indemnity to be paid by the State: PROVIDED, further, that the total amount of the United States indemnity and the State indemnity shall not exceed two-thirds of the difference between the appraised value and the salvage on any one head of grade or registered cattle.'

"In view of the fact that I, as State Veterinarian of Missouri, have not had an opportunity to determine whether provisions 1,2,3, 4,5 and 6 of Section 14,212 have been adhered to and faithfully carried out, I find myself confronted with the problem of certifying to claims in the amount of \$50,793.06 to the Governor and the State Auditor for payment.

"As State Veterinarian, I am anxious to do everything in my power to expedite the payment of the claims in question; therefore, I respectfully request a ruling from your office as to the proper procedure to be followed in bringing this matter to conclusion.

"First, would it be in keeping with the provisions of Sections 14,210 to 14, 212

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for the Inspector in Charge of the United States Bureau of Animal Industry to furnish this office with certification that all claims included in the list furnished to us by the Bureau office are eligible for payment and that he has certified to the Disbursing Officer of the United States Department of Agriculture at Washington, D. C. to that effect. Could I take such certification by the Inspector in Charge as a basis for my certification to the Governor and the State Auditor, as provided for in Section 14,210 that the claims are in order, and, therefore, subject to payment by the State?

"Second, will it, in your opinion, be necessary for me, as State Veterinarian, to receive an affidavit from each owner whose name appears on the list, stating that the provisions in Section 14,212 have been adhered to as to replacements of animals in the herd and that the cleaning and disinfection of premises have been carefully followed?

"Third, may I, as State Veterinarian, certify to the claims as they appear in the list which was furnished to the Chairman of the Appropriation Committee of the Senate and House and upon which they based their action in making the appropriation, or will it be necessary to prepare individual claims for each individual herd?"

Together with your request we find a letter from you to the Chairman of the Appropriations Committee, dated March 4, 1941. In this letter you state that since you

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had received an opinion from the Attorney General's Office, holding that the appropriation of 1939 to your Department for carrying out the provisions of the law pertaining to the condemnation of cattle for Bang's disease, was illegal, that the Department of Agriculture had never initiated any testing on behalf of the State of Missouri.

In your request you intimate that the Bang's Disease Control and Eradication Program is a Federal project and is carried on by the Inspectors in the employ of the United States Bureau of Animal Industry.

Section 14212 R. S. Missouri, 1939, which contains the conditions under which indemnity may be paid to owners of cattle slaughtered as reactors to the agglutination blood test for Bang's Disease, provides as follows:

"Indemnity for animals slaughtered as reactors to the agglutination blood test for Bang's disease shall be paid the owner only under the following conditions: That he sign an agreement with the commission of agriculture or the United States department of agriculture agreeing to permit the application to each animal of his herd of such number of separate tests as the commissioner of agriculture and state veterinarian shall determine to be necessary; that the said owner following each test hereunder will cause to be slaughtered, under State or Federal supervision within 15 days, all cattle in his herd six months of age or over, which, after each test, are designated by the state veterinarian or a representative of the United States department of agriculture, as reacting to the test. All such animals to be slaughtered hereunder, shall until re-

moved from owner's premises, be kept separate and apart from non-reactors; that the said owner will confine additions to his herd, as follows:

- "(1) To cattle from herds officially certified to be free from Bang's disease.
- "(2) To non-pregnant animals from other than Bang's free herds, which must pass the test and then be segregated for at least sixty days, at which time such animals must pass a second test before being added to the herd.
- "(3) To pregnant animals, which after passing the test, must be kept in isolation for at least 60 days after calving without being re-bred, at which time they must pass a second test before being added to the herd.
- "(4) That the said owner at his own expense, after each test and the removal of reactors, clean and disinfect his premises as required by the state veterinarian and with a disinfectant approved by the United States bureau of animal industry.
- "(5) That no abortion vaccine or preparation made from or through the agency of Brucella micro-organisms has been used in any of the cattle to be tested hereunder after they have passed the age of 8 months, and no such products have been used within 18 months in any of the cattle presented for test; that the owner has not acquired cattle for the purpose of entering into this agreement so as to

collect indemnity.

"(6) That there is no substantial evidence that the owner or his agent has in any way been responsible for any attempt unlawfully or improperly to obtain indemnity funds for condemned cattle: Provided, that no indemnity shall be paid by the State on the following: Animals belonging to Institutions maintained by State, county or Municipal governments or the government of the United States; unregistered bulls; purebred cattle one year old and over, unless registration certificates are presented at time of appraisal; animals affected with Bang's disease if such animals became diseased through any willful neglect or scheming on the part of the owner or proprietor; animals brought into this State from outside the state of Missouri unless such animals are accompanied by a health certificate approved by the livestock sanitary official of the state of origin or a health certificated issued by a veterinary inspector of the United States bureau of animal industry, showing that such animal or animals have passed a negative agglutination blood test within thirty days prior to importation into this state: Provided further, that such animal or animals shall have passed at least one official negative agglutination blood test for Bang's disease after being brought into this state, which test shall not have been made until said animal or animals shall have been within the state not less than ninety days."

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It will be noted that under the provisions of this Section the owners of such cattle may enter into the agreement with the Commissioner of Agriculture of the state of Missouri, or the United States Department of Agriculture. In your case, as stated above, all of these agreements have been entered into with the United States Department of Agriculture.

Together with your request you included a list of condemnations of cattle which have been condemned under the provisions of the foregoing Sections. This list also shows the amounts due as indemnity to each claimant by the State and the Federal Department. The Sixty-first General Assembly by House Bill 582, and especially Section 34, thereof, appropriated the sum of \$50,793.06, for indemnity and relief to persons, firms and corporations, for their cattle condemned and slaughtered as reactors to the agglutination blood test for Bang's disease, in cooperation with the United States Bureau of Animal Industry for the period from June 15, 1939, to December 1, 1940. This Section referred to accounts on file in the office of the State Auditor.

It is our understanding from your correspondence, and oral conversation that the accounts referred to in the appropriation act are the same as those which you included with your request. It appears from the correspondence in files that the United States Department of Agriculture is carrying on the project for the Bang's disease control and eradication program and that its Inspectors have been carrying on this program in Missouri for the period for which this appropriation was made. We assume that the Inspectors in carrying on this program have complied with the provisions of Sections 14209, 14210, 14211, 14212, 14213 and 14214 R. S. Missouri, 1939, and that they have informed the owners of all condemned cattle of their rights. We also presume that the United States Department of Animal Industry has the records and information on whether the owners of such cattle, with whom they have made these agreements, have complied with the provisions of Section 14212, supra. Under Section 14210 it is the duty of the State Veterinarian to certify to the Governor the amount to be paid by the State. The State Veterinarian is not to make such certification until he has information or a proper certificate that the owner of the condemned cattle has complied with the provisions of Section 14212, supra.

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Since this program has been carried on by the United States Bureau of Animal Industry, (and we assume proper records have been kept thereof), then a certificate from the United States Bureau of Animal Industry, to the effect that the owners of the condemned cattle have complied with Section 14212, would authorize the State Veterinarian to certify to the Governor the amount to be paid by the State.

In your request you ask whether it would be necessary for you to require an affidavit from each owner whose name appears on the list. We think the statement from the United States Bureau of Animal Industry would be sufficient to authorize the Veterinarian to make the certificate without an affidavit from each owner.

CONCLUSION.

It is the opinion of this Department that you would be in keeping with the provisions of Sections 14210 to 14212 R. S. Missouri, 1939, to require the Inspector in charge of the United States Bureau of Animal Industry to furnish your office with a certification that all claims included in the list, upon which appropriation was made, are eligible for payment, and, that he has certified the same to the disbursing officer of the United States Department of Agriculture; or, you could take the certification by the Inspector in charge, as a basis for your certification to the Governor and State Auditor, that the claims are in order and subject to the payment by the State.

Respectfully submitted

APPROVED:

TYRE W. BURTON  
Assistant Attorney General

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(Acting) Attorney General

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