

June 18, 1949

Livestock Sanitary Board  
107 State Office Building  
Phoenix, Arizona

**LAW LIBRARY**  
**ARIZONA ATTORNEY GENERAL**

Gentlemen:

In reply to Mr. Cavness' letter of June 7, 1949 requesting as it appears, an all out working legal explanation of Chapter 13 of the 1949 Session Laws which is commonly known as the "Brucellosis Law", you are advised as follows:

It appears to us that this law in its entirety seems to have one thought in mind, that of preventing people from selling raw milk to the ultimate consumer without having the animals that produce the milk tested for brucellosis, and not to prevent the sale of dairy cattle generally in the state. With this thought in mind together with an endeavor to read the law in its entirety, we will attempt to answer your questions.

Question No. 1:

"Is there any authorization delegated to the State Veterinarian or the Arizona Livestock Sanitary Board to allow them to designate calves or heifers not yet in production as coming under this Act when "reactor" means a milk producing animal afflicted with Brucellosis as determined by the State Veterinarian?"

It will be noted that this law applies to goats as well as to cows. Goats as we know come into production of milk much younger than cows. Also, reading all of the definitions we have, "calfhood vaccination", "adult vaccination" etc., we find that in these definitions "calfhood vaccination" takes into consideration milk producing animals between the ages of six and eight months while the "adult vaccination" takes in milk producing animals over the age of eight months. It is common knowledge that some goats come into actual production at approximately one year of age and that some dairy cows come into actual production before they reach two years of age. Therefore we say that the State Veterinarian or the State Livestock Sanitary Board has authority to designate female animals over six months of age as "reactors". This appears to us to apply to animals in herds that are producing milk to be sold in

the raw state to the ultimate consumer.

Question No. 2:

"Since a milk producing animal embraces every known breed of the genus Bovine, feminine gender, and since every known breed is sometimes used as dairy cows, though not a popular dairy breed, can there be any legal interpretation, excluding or including any designated breed or breeds under this act which in no place designates dairy breeds?"

Chapter 13, Section 3, 1949 Session Laws reads:

"Sec. 3. Brucellosis test. Dairy cattle or goats from which raw milk or raw milk products are sold to the ultimate consumer in the raw state for human consumption shall be tested annually for Brucellosis; \* \* \*"

Your second question conceivably of course covers all cows and goats but again tests are not required of only those animals that are in herds producing milk to be sold in the raw state for human consumption and especially dairy cattle. Although the term "dairy cattle" is used in this bill, it is an accepted fact that beef breeds such as Angus, Herefords etc., are not considered as dairy breeds or dairy cattle although if one of the beef breeds should get into a herd producing milk to be sold in the raw state to the ultimate consumer, that animal should be tested for brucellosis, but not otherwise.

Your third question:

"Is not the purpose of the law defeated by Section 4 in limiting the time element for the disposition of a 'reactor'?"

If we take this Section just as it is and put perhaps the only interpretation showing on the exact wording, the answer to your question would be "yes", but when we take into consideration the uselessness of the law if that interpretation were placed on it, then we must arrive at the conclusion that the Legislature meant within fifteen days instead of not less than fifteen days. We are of the opinion that the Legislature meant within fifteen days and believe the Courts would sustain that interpretation; therefore we

are writing this opinion with that idea in view that the Legislature meant within fifteen days.

Question No. 4:

"Can a milk producing animal originating in a State designated Brucellosis free herd, in which there were no reactors on the last proceeding test, be sold without test?"

The answer to this question is "yes". You are cited to Section 5 of Chapter 13, supra, which is designated:

"Sec. 5. Sale of animals. Dairy cattle or milk goats except those sold in interstate commerce, sold for slaughter or originating in a state designated Brucellosis free herd or area in which there were no reactors on the last preceding test, shall, within thirty days prior to the sale thereof, pass a negative Brucellosis test. \* \* \*" (Emphasis Supplied).

You will note that there are four exceptions and an animal coming from state designated Brucellosis free herd or area is excepted and may be sold without a Brucellosis test.

Question No. 5:

"Could not the Livestock Sanitary Board control the transfer of stock sold for slaughter by so marking on inspections and charging the purchaser with the responsibility of keeping all such inspection slips for presentation to the inspector in future transactions?"

We believe that this practice suggested in this question would be a very good thing to try at least, and we believe further that Section 5, supra, referring to sale of animals which says "sold for slaughter" would be properly interpreted "immediate slaughter", which would in turn imply a shorter period than would be required to placing the animal out for pasture or fattening purposes. Section 7, Chapter 13, 1949 Session Laws provides:

"Sec. 7. Penalties. A person: 1. offering for sale, trade or other disposition any known Brucellosis reactor except as provided in this Act; \* \* \* shall be guilty of a misdemeanor."

It appears to us that with you designating on these inspection slips the status of the animal as you suggest, and advising the purchaser of his responsibility in respect to such animal and the possible prosecution that, in this way, the sale of Brucellosis reactors can be controlled.

Question No. 6:

"Who shall bear the loss of a condemned animal when a veterinarian inadvertently brands with a "B" on the jaw of vaccinated animals or ones having passed a negative test?"

You are advised that the owner of the animal has his inspection slips and if the animal had been once vaccinated the veterinarian should have been told about it. Then if the veterinarian brands this animal with a "B", he does not do it inadvertently but it would appear deliberate and the veterinarian would be liable individually for his tort. The state is not responsible for the tortious acts of its employees. It appears to us that if the "B" were put on an animal by mistake that the owner should so advise the veterinarian and the veterinarian should adjust the matter by canceling the brand the best he could and by giving the owner a statement to that effect. A veterinarian who, after proper proof, fails to correct his mistake, is alone liable. It is an accepted fact that the milk producing qualities of a cow are not impaired by the brand, but we can readily see where it might lessen the animal's sale value.

This being an opinion of opinions, we hope that we have carried through the original thought and that this matter can be worked out for the betterment of the milk producers and not retard the sale of livestock.

Respectfully,

FRED O. WILSON  
Attorney General

CHAS. ROGERS  
Assistant Attorney General

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