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1. CATTLE CONDEMNED—FOUND TO BE TUBERCULIN REACTORS—LACK OF FEDERAL FUNDS—FAILURE OF CONGRESS TO MAKE APPROPRIATION FOR FISCAL YEAR BEGINNING JULY 1, 1954—INDEMNIFICATION, OWNERS OF CATTLE—FUNDS EXHAUSTED WITHIN MEANING, SECTION 941.67 RC—RESULT, STATE DEPARTMENT OF AGRICULTURE REQUIRED TO PAY “FEDERAL DEPARTMENT’S SHARE” AFTER SAID DATE.
2. “FEDERAL DEPARTMENT’S SHARE,” SECTION 941.67 RC—SUM PAID BY FEDERAL DEPARTMENT OF AGRICULTURE—BAI ORDER 302—ONE-THIRD OF DIFFERENCE BETWEEN APPRAISED VALUE OF SLAUGHTERED ANIMALS AND GROSS SALVAGE VALUE—NOT TO EXCEED \$35.00 FOR GRADE ANIMALS—\$70.00 FOR PUREBRED ANIMALS.
3. STATE DEPARTMENT OF AGRICULTURE—REQUIRED TO PAY TWO-THIRDS DIFFERENCE BETWEEN APPRAISED VALUE AND VALUE OF GROSS SALVAGE OF ANIMALS CONDEMNED—AFFECTED WITH TUBERCULOSIS—NOT TO EXCEED \$70.00 FOR GRADE ANIMAL AND \$140.00 FOR PUREBRED ANIMAL—EFFECTIVE ON AND AFTER JULY 1, 1954 OR UNTIL A FEDERAL APPROPRIATION.

SYLLABUS:

1. A lack of federal funds through the failure of Congress to make an appropriation for the fiscal year beginning July 1, 1954 for the indemnification of the owners of cattle condemned because found to be tuberculin reactors, is an exhaustion of federal funds within the meaning of Section 941.67, Revised Code, requiring the state department of agriculture to pay the “federal department’s share” after this date.

2. The “federal department’s share” within the meaning of Section 941.67, Revised Code, is the sum paid by the federal department of agriculture under B.A.I. Order 302, amounting to one-third of the difference between the appraised value of slaughtered animals and their gross salvage value but not to exceed \$35.00 for grade animals and \$70.00 for purebred animals.

3. On and after July 1, 1954, or until a federal appropriation, the state department of agriculture will be required to pay two-thirds of the difference between the

appraised value and the value of the gross salvage of animals condemned because found to be affected with tuberculosis but not to exceed \$70.00 for a grade animal and \$140.00 for a purebred animal.

Columbus, Ohio, May 5, 1954

Hon. A. L. Sorensen, Director, Ohio Department of Agriculture
Columbus, Ohio

Dear Sir :

I am in receipt of your letter of recent date requesting my opinion on the administration of Section 941.67, Revised Code, in light of information your office has received to the effect that the United States Department of Agriculture will eliminate all indemnification, on or after July 1, 1954, of owners of cattle condemned on account of tuberculosis. Specifically, your inquiry is directed to the amount of payment the State of Ohio must make for indemnification of condemned tuberculin reactors after this date.

Section 941.67, Revised Code, 1121-10, General Code, is a part of the so-called "Riggs Law," enacted by the legislature March 27, 1925, 111 Ohio Laws, 202, and entitled :

"AN ACT—To provide a means to eradicate tuberculosis among cattle and to protect the public health against the spread of, or contamination from this disease, by the enactment of sections 1121-1 to 1121-25 of the General Code."

This act, in general, provides for the examination of cattle within the state by the state department of agriculture and the quarantine or slaughter of those animals found to be tuberculin reactors. Section 941.64, Revised Code, 1121-8, General Code, provides in pertinent part :

"Cattle which are condemned because of tuberculosis, on a tuberculin test applied by a veterinarian who has first received a special written authorization from the department of agriculture to make such test, shall, when so ordered by the department, be slaughtered in an establishment designated by the department, and the owner thereof shall receive indemnity as provided under the rules of compensation of the department."

Section 941.67, Revised Code, provides :

"For the purpose of indemnification, the value of all cattle reacting to a tuberculin test shall be determined by an appraisal

made by a representative chosen by the owner and a representative chosen by the department of agriculture. In the event of a disagreement as to the amount of the appraisal, a third disinterested person shall be selected, at the owner's expense, by the two to act with them in the appraisal of the cattle.

"After breeding animals are slaughtered following condemnation for tuberculosis, the owner shall be paid two thirds of the difference between the appraised value and the value of the gross salvage, which shall include the sum paid by the United States department of agriculture. In no case shall payment by the state department of agriculture exceed thirty-five dollars for any grade animal, or seventy dollars for any purebred; unless federal funds are exhausted, in which case the state department of agriculture shall also pay the federal department's share.

"Registration, or registration and transfer, papers from the respective herd registry associations must be presented prior to appraisal where compensation is claimed on a purebred basis; or must be applied for and filed with the state department of agriculture within thirty days after appraisal."

Paragraph two, with which we are here concerned, and paragraph three, above, were added to this section by amendment in 1929, 113 Ohio Laws, 641. As originally enacted, this section was limited in scope to the provision, paragraph one, pertaining to selection of appraisers.

It will be seen that by the force of this section the owners of breeding animals condemned after having been found to be tubercular, are to be paid two-thirds of the difference between the appraised value of such animals and their gross salvage value which payment is to include any sum paid by the United States Department of Agriculture. Payments by the state, however, are limited to \$35.00 for grade animals and \$70.00 for purebreds unless federal funds are exhausted.

The expenditure of federal funds by the United States Department of Agriculture for indemnification of owners of cattle slaughtered because found to be affected with the tuberculosis is authorized under 21 U.S.C.A., Section 114 a. It is provided therein:

"The Secretary of Agriculture, either independently or in cooperation with states or political subdivisions thereof, farmer's associations and similar organizations, and individuals, is authorized to control and eradicate tuberculosis and para-tuberculosis of animals, avian tuberculosis, brucellosis of domestic animals, southern cattle ticks, hog cholera and related swine diseases, scabies in sheep and cattle, dourine in horses, scropie and blue

tongue in sheep, incipient or potentially serious minor outbreaks of diseases of animals, and contagious or infectious diseases of animals (such as foot-and-mouth diseases, rinderpest, and contagious pleuropneumonia) which in the opinion of the Secretary constitute an emergency and threaten the livestock industry of the country, including the purchase and destruction of the diseased or exposed animals (including poultry), or the destruction of such animals and the payment of indemnities therefor, in accordance with such regulations as the Secretary may prescribe. As used in this section, the term 'state' includes the District of Columbia and the Territories and possessions of the United States."

Section 129.21 U.S.C.A. further provides in pertinent part :

"The secretary may transfer from other appropriations or funds available to the bureaus, corporations, or agencies of the Department such sums as he may deem necessary, but not to exceed \$2,650,000 for eradication of vesicular exanthema of swine, to be available only in an emergency which threatens the livestock or poultry industry of the country, and any unexpended balances of funds transferred under this head in the next preceding fiscal year shall be merged with such transferred amounts: Provided, that, except for payments made pursuant to sections 111, 112, 113, 114, 115-128, and 130 of this title, the payment for animals may be made on appraisalment based on the meat, egg-production, dairy, or breeding value, but in case of appraisalment based on breeding value no appraisalment of any animal shall exceed three times its meat, egg-production, or dairy value and, except in case of an extraordinary emergency to be determined by the Secretary, the payment by the United States shall not exceed one-half of any such appraisalments, * * *"

Until the present time indemnities have been paid by the federal department of agriculture pursuant to regulations issued by the secretary under authority of the legislation set out above. I have been informed, however, that the United States Department of Agriculture has failed to include in their proposed budget for the fiscal year beginning July 1, 1954, any item for indemnification of owners of cattle destroyed because affected with tuberculosis. Coupled with the possibility that no appropriation will be made for indemnities is the fact that present funds have or will be expended by July 1, 1954. The first question presented, then is whether federal funds will be "exhausted" within the meaning of Section 941.67, Revised Code, requiring the state department of agriculture to pay the federal department's share.

I have no hesitancy in concluding that federal funds will have been "exhausted" within the meaning of this section by July 1, 1954. To "exhaust" means to drain metaphorically; to use or expend wholly, or till the supply comes to an end; to use up. Webster's New International Dictionary, Second Edition. I think it clear that with present funds, secured from prior years' appropriations, being expended at a rate that will deplete them by July 1 of this year, and with no appropriation for the next fiscal year, federal funds will have been "exhausted."

The next, and more difficult, question is what is the "federal department's share" within the meaning of the second paragraph of Section 941.67?

This language of necessity has reference to indemnities paid by the federal department of agriculture under applicable federal law and would seem to assume a sum certain or fixed percentage of value. In this regard Section 941.67 may properly be termed "a reference statute."

The difficulty arises because under federal legislation, Sections 114(a) and 129 of Title 21 U.S.C.A., the amount of individual federal payments is left to the discretion of the secretary of agriculture with the limitation, contained in Section 129, that "except in case of an extraordinary emergency to be determined by the secretary, the payment by the United States shall not exceed one-half of any such appraisements." Actual payments have varied. Under regulation of August 15, 1942, Bureau of Animal Industry Order No. 375 (9 C.F.R. Section 512), payments are currently limited to \$25.00 for grade animals and \$50.00 for purebred animals but not to exceed one-third of the difference between the appraised value of each animal so destroyed and the salvage value thereof. At the time Section 941.67 was amended in 1929 to include the paragraph here under consideration, however, federal regulation, B.A.I. Order 302, provided for payments of \$35.00 for grade animals and \$70.00 for purebreds or one-third of the difference between appraised value and salvage, whichever was lower. Under both regulations federal payments have in no case exceeded that of the state.

The problem may be further narrowed to the question of whether the legislature of Ohio, by the insertion of the second paragraph of Section 941.67, and more particularly the language "federal department's share," had reference to the sums paid under existing federal law or whether

they intended to incorporate, for purposes of determining the federal share, all subsequent amendments to or modifications of the federal laws providing for indemnities? I am inclined to the view that the former was the case.

It is the general rule that legislation which refers to, and incorporates, a specific element in a separate law is not to be taken as adopting prospectively all future alterations in the provisions of the other and separate law unless an intent therefor is expressed or strongly implied. *Gilson Bros. Co. v. Worden-Allen Co.*, 220 Wis. 347, 265 N.W. 217. I can find no such intent in the instant case either express or implied. On the contrary, it is clear that paragraph two, Section 941.67, was patterned after, and designed to be correlative with, the federal regulation then in existence. First a limitation of \$35.00 for grade and \$70.00 for purebred animals, the same limitation contained in B.A.I. Order 302, was placed on indemnity payments by the state. Secondly, it is provided that an owner shall receive two-thirds of the difference between appraised and gross salvage value "which shall include the sum paid by the United States Department of Agriculture." This inclusion resulted in the payment by each government of one-third of such value, for under B.A.I. Order 302 the federal department was authorized to pay one-third. Clearly, here, the legislature of Ohio was thinking in terms of matching indemnities offered under then existing federal regulation.

The above considerations lead me to the conclusion that the legislature of Ohio in employing the language "federal department's share" had reference to the sums paid by the federal department of agriculture under then existing regulation and amounting to one-third of the difference between appraised and gross salvage value but not to exceed \$35.00 for grade animals and \$70.00 for purebred animals.

In specific answer to your question, therefore, it is my opinion that:

1. A lack of federal funds through the failure of Congress to make an appropriation for the fiscal year beginning July 1, 1954 for the indemnification of the owners of cattle condemned because found to be tuberculin reactors, is an exhaustion of federal funds within the meaning of Section 941.67, Revised Code, requiring the state department of agriculture to pay the "federal department's share" after this date.

2. The "federal department's share" within the meaning of Section 941.67, Revised Code, is the sum paid by the federal department of agri-

culture under B.A.I. Order 302, amounting to one-third of the difference between the appraised value of slaughtered animals and their gross salvage value but not to exceed \$35.00 for grade animals and \$70.00 for purebred animals.

3. On and after July 1, 1954, or until a federal appropriation, the state department of agriculture will be required to pay two-thirds of the difference between the appraised value and the value of the gross salvage of animals condemned because found to be affected with tuberculosis but not to exceed \$70.00 for a grade animal and \$140.00 for a purebred animal.

Respectfully,

C. WILLIAM O'NEILL

Attorney General