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PURE BRED CATTLE—DESTROYED WHEN TUBERCULAR—OWNER ENTITLED TO COMPENSATION ALTHOUGH CONTRARY TO SPECIFIC RULE OF DIRECTOR OF AGRICULTURE.

*SYLLABUS:*

*The Director of Agriculture is authorized to compensate the owner for pure bred cattle destroyed by virtue of Sections 1121-1 to 1121-25, inclusive, when such animals are registered in an association which is a registry of accuracy and reliability even though such association is not one of those named in the rules of the board of agriculture.*

COLUMBUS, OHIO, April 26, 1929.

HON. PERRY L. GREEN, *Director of Agriculture, Columbus, Ohio.*

DEAR SIR:—I am in receipt of your letter of March 21, 1929, in which you inquire whether or not the Director of Agriculture has authority to compensate the owner for pure bred cattle destroyed by virtue of Sections 1121-1 to 1121-25, General Code, inclusive, when such pure bred animals have been registered and transferred in registry associations other than those named in the rules of the state board of agriculture.

Sections 1121-1 to 1121-25, inclusive, provide for the eradication of tuberculosis among cattle and to protect the public health against the spread of or contamination from this disease. Section 1121-14 of the General Code provides as follows:

“The state board of agriculture shall have authority to draft and adopt rules for the compensation to owners for tubercular cattle destroyed under the provisions of Sections 1121-1 to 1121-25 of the General Code, which compensation shall be subject to the appropriations made available by the General Assembly, and such rules shall provide for inspection where indemnity has been waived. The Department of Agriculture and all officers and employes thereof shall observe said rules. Said rules may also define any of the terms herein used.”

By virtue of this section the state board of agriculture adopted among other rules, rules 1 and 4, which are as follows:

“Rule 1. Each reacting or tuberculous animal shall be appraised. Payment to the owner or owners thereof shall be two-thirds of the difference between the appraised value and the value of the gross salvage thereof, which shall include the sum paid by the U. S. Department of Agriculture; but in no case shall payment by both the Ohio Department of Agriculture and the United States Department of Agriculture be more than \$140.00 for any pure bred or \$70.00 for any grade animal.

Rule 4. Registration and transfer papers must be presented to appraisers where compensation is claimed on a pure bred basis, prior to the making of said appraisal; provided, however, that where registration and transfer papers are not available, but application has been made for them before beginning the test, such facts may be stated, and the appraisal be made with the understanding that such registration and transfer papers shall be placed on file in the Department of Agriculture within thirty days after the appraisal. Animals will be recognized as pure breeds within the meaning of this agreement only when registered and transferred by the following associations:

The Holstein Friesian Association of America, Brattleboro, Vermont,  
\* \* \* ”

In the case of the *State of Ohio ex rel. Daniel W. Bordner, vs. Charles V. Truax, Director, Department of Agriculture*, No. 107,304, in the Court of Common Pleas, of Franklin County, the court held that the said board of agriculture had exceeded its authority in adopting Rule 4 and that the rule was arbitrary and unfair and not for the public welfare and was therefore unconstitutional and void. This case was an action in mandamus brought against the director of the Department of Agriculture to require him to issue a voucher to relator in payment of a pure bred Holstein cow slaughtered because it was a reactor to tuberculosis.

It appears from the facts in this case that at the time the animal was slaughtered she was not registered in a registry named in Rule 4 of the state board of agriculture but had been registered in another association which was a registry of accuracy and reliability. The court in its opinion rendered in this case said in part as follows:

“The rules authorized to be drafted and adopted by the State Board of Agriculture are rules ‘for the compensation to owners for tubercular cattle destroyed,’ and this authority has been construed by the board to mean the adoption of rules by which a question of fact, to wit: whether such animal destroyed was a pure bred animal when only registered in a particular named registry. The language of this section when read in connection with all other statutes on this subject does not confer such authority upon the board, and by the adoption of the rule providing no animal slaughtered is a pure bred except when registered in a certain registry exceeded the authority conferred upon the board and is void.

If the Legislature intended the board to adopt rules as to what would be a pure bred animal, then it would be the duty of the board and the board could only adopt reasonable rules, and a rule that is arbitrary and unfair and not for the public welfare is likewise void.

The animal in question was a pure bred Holstein cow, and to require its registration in a particular named registry, as this rule requires, is a violation of relator’s constitutional rights in a most pronounced manner and the rule is void.”

The Court of Appeals of Franklin County affirmed the judgment of the Court of Common Pleas in the case of *Bordner vs. Truax, supra*, on September 20, 1928.

I have examined the authorities in Ohio on this subject, and I do not find any other decisions pertaining to the specific question presented by you. In view of this court decision the Director of Agriculture is bound by the ruling of the court that Rule 4 of the board of agriculture is unconstitutional and void. You are, therefore, advised that the Director of Agriculture is authorized to compensate the owner for pure bred cattle destroyed by virtue of Sections 1121-1 to 1121-25, of the General Code, inclusive, when such animals are registered in an association which is a registry of accuracy and reliability even though such association is not one of those named in the rules of the Board of Agriculture.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*