

OPINION 6

OFFICIAL OPINION NO. 6

January 15, 1952.

Honorable Ora A. Kincaid  
State Representative  
Lebanon, Indiana

Dear Sir:

I have your request for an official opinion on the following:

"I find it necessary to request an Official Opinion of your office concerning the construction of a Statute, being Burns' Statutes, § 16-2104, I believe.

"Some of the local auctioneers have consulted with me due to the fact that I was a member of the Legislature for the purpose of determining if the same laws which apply to a Community Sale Barn also apply to a regular farm auction. That is, as far as the law relates to selling breeding or dairy cattle which have not been tested for brucellosis and tuberculosis within 30 days prior to the sale.

"The law is specific as to Community Sales but in Burns' Statutes, §§ 16-2104 and 16-2105, it refers to Auction Sale Barns. If the word 'Barn' was not included, then I do not believe there would be any doubt but what the law applied to any auction sale. However, a farm sale common to our community, is not made at any barn.

"I do not want to cause anyone a lot of work for no good reason. I do need to know if a farmer can sell on his farm at public auction his breeding and dairy cattle without having the cattle tested for brucellosis and tuberculosis within 30 days prior to the sale. This is the problem for which I need an answer."

Section 16-2104, Burns' Ind. Statutes, 1950 Repl. (Acts 1951, ch. 80, Sec. 553, p. 206), referred to in your request is as follows:

"When any breeding or dairy cattle shall be sold or offered for sale at an auction sale barn, the cattle shall

be accompanied by a statement on a prescribed form, which shall be signed in triplicate by the consignor or seller of the cattle to the owner of the auction sale barn. This statement shall designate when, where and by what veterinarian the cattle was tested for brucellosis and tuberculosis, during the 30 days immediately preceding the date of sale; and the reactions to such tests unless from an accredited herd."

Section 16-2105, Burns' Ind. Statutes, 1950 Repl. (Acts 1951, ch. 80, Sec. 554, p. 206) also referred to in your request is as follows:

"The statement shall be read from the block of the auctioneer when the cattle are offered for sale at a community sale. The records shall be open to inspection, upon demand, by the purchaser of cattle at such auction sale barn or secretary of the board or his agent. The owner or consignee may elect to offer for sale negatively reacting cattle during the 30 days immediately preceding the date of sale, provided that such cattle are accompanied with a statement in triplicate on prescribed forms, signed by a qualified veterinarian and the owner or consignee."

"Community Sale" as defined by section 16-1701, sub-sec. 12, Burns' Ind. Statutes 1950 Repl. (Acts 1951, ch. 80, Sec. 400, p. 206) is as follows:

"(12) 'Community sale' means any sale or exchange of domestic animals held by any person at an established place of business or premises where domestic animals are assembled for sale or exchange and are sold or exchanged at auction or upon a commission basis."

The words "auction" and "sale barn" as used in Sections 16-2104 and 16-2105, *supra*, are not now defined by statute. Their legal definitions have been repealed by Acts 1951, Sec. 903, ch. 80, p. 254.

Therefore, for the purpose of the opinion, we must look to the true meaning of the words, "auction" and "sale barn."

## OPINION 6

The word "auction" is defined as: "a public sale of property to the highest bidder, as where successive increased bids are made." (Webster's New International Dictionary, 2nd Edition). "Sale imports a contract upon a valuable consideration between two or more persons for the transfer of property." (Rodebaugh v. Scanlan, 41 Ind. App. 109 at p. 116, 82 N. E. 544.)

The word "barn" suggests, "a covered building used chiefly for storing grain, hay and other farm products. It is often used for stable." (Webster's New International Dictionary, 2nd Edition.)

Since your request does not specifically state the manner in which the farmer conducts his sale, I am presuming he advertises on a certain date he will publicly sell his personal livestock on his own premises to the highest bidder. Assuming these are the facts and applying the definitions of the words "auction" "sale" and "barn" to the above illustration, I am of the opinion the provisions cited in sections 16-2104 and 16-2105 (*supra*) are not applicable to the individual farmer conducting a public sale of his personal livestock on his own premises. However, this does not mean a farmer may habitually purchase stock for re-sale on his own premises for this would be an evasion of the very intent of the sections hereinabove referred to.

Your attention is called to the provision in the law stating:

"The board (Indiana Livestock Sanitary Board) may by affirmative vote of a majority of its members establish and from time to time amend and repeal reasonable rules in order to protect the health of domestic animals. The rules may concern but shall not be limited to \* \* \*.

"(5) The regulation of the public and private sale of domestic animals in order to prevent the spread of disease." Section 16-1338 Burns' Indiana Statutes 1950 Repl. (Acts 1951, ch. 80, § 158, p. 206.)

According to Regulation 32 (1951), the Indiana Livestock Sanitary Board adopted the following rule:

"All cattle over six (6) months of age to be sold or offered for sale, barter or exchange, must have passed

1952 O. A. G.

a negative test for Brucellosis within thirty (30) days prior to sale, disposal or movement, and must be accompanied by an official health certificate or record of such test, except:

“(1) Cattle from certified Brucellosis free herds and modified certified areas.

“(2) Cattle under twenty-four (24) months of age officially vaccinated with Brucella Abortus Vaccine and accompanied by an approved health certificate.

“(3) Steers and feeder heifers moving under special permit from State Veterinarian.

“(4) Adult vaccinated cattle moving into herds of like status under permit from State Veterinarian.

“(5) Cattle moving for exhibit or show according to Regulations of the Indiana State Livestock Sanitary Board.

“(6) Cattle destined for immediate slaughter.”

It is therefore my opinion the farmer selling his personal livestock at auction on his own premises need not comply with Sections 16-2104 and 16-2105. This does not mean, however, that the farmer may disregard the rules and regulations established by the Indiana Live Stock Board.

---

OFFICIAL OPINION NO. 7

January 18, 1952.

Hon. Otto K. Jensen, State Examiner  
State Board of Accounts  
304 State House  
Indianapolis, Indiana

Dear Mr. Jensen:

I have your request for an official opinion in which you ask a number of questions. You state:

“We have been considerably confused by the provisions of Chapter 253, Acts of 1951 and the method