

**LETTER OPINION
93-L-325**

November 9, 1993

Robert J. Velure, D.V.M.
Executive Officer and State Veterinarian
North Dakota Board of Animal Health
Judicial Wing, First Floor
600 E Boulevard
Bismarck, ND 58505-0390

Dear Dr. Velure:

Thank you for your letter requesting an opinion on the Board of Animal Health's authority to destroy nontraditional livestock to control and eradicate disease. Specifically, you ask how the indemnification of an owner of the destroyed nontraditional livestock is to be determined and funded. You also ask whether the Board of Animal Health may require the destruction of nontraditional livestock under N.D.C.C. ? 36-01-12, and whether exposed as well as infected nontraditional livestock may be ordered destroyed.

The Board of Animal Health has broad authority to take appropriate actions to control and eradicate contagious and infectious diseases. N.D.C.C. ? 36-01-08 provides in part:

The board shall protect the health of domestic animals and nontraditional livestock of this state, shall determine and employ the most efficient and practical means for the prevention, suppression, control, and eradication of dangerous, contagious, and infectious diseases among the domestic animals and nontraditional livestock of this state.

The Board's authority to control contagious and infectious diseases is more specifically addressed in N.D.C.C. ? 36-01-12 which provides in part:

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Powers of board over contagious and infectious diseases. The board may take such steps as it may deem necessary to control, suppress, and eradicate any and all contagious and infectious diseases among any of the domestic animals and nontraditional livestock of this state.

The Board of Animal Health, therefore, has specific statutory authority to control nontraditional livestock which may be exposed to, or infected with, a contagious or infectious disease in whatever manner it deems necessary, including quarantine or destruction of the animals. The Legislature has provided the Board with broad authority to determine what steps are needed to control disease. In the case of certain diseases, such as tuberculosis and brucellosis, the Legislature has recognized that the destruction of an entire herd may be necessary. N.D.C.C. ?? 36-15-08 and 36-15-08.1. Consequently, it is my opinion that if the Board determines such action is necessary to "control, suppress, or eradicate" contagious and infectious diseases, the Board may require the destruction of nontraditional livestock which are infected or which have been exposed to a disease. The date upon which the animals became infected or exposed is irrelevant. The question of fact to be determined by the Board is whether the destruction of the animals is necessary for the efficient and practical suppression, control, or eradication of a dangerous, contagious, or infectious disease.

If disease control requires the Board to order nontraditional livestock exposed to, or infected with, disease killed, it is my further opinion that the Board may provide indemnification. N.D.C.C. ? 36-01-12.1 provides, in relevant part:

The board of animal health may use any of the moneys appropriated to it for the control of animal diseases

If the Board's resources are not adequate to control disease, N.D.C.C. ? 36-01-19 provides for alternative funding.

In case of any serious outbreak of any contagious, infectious, or epizootic diseases among domestic animals or nontraditional livestock, which cannot be controlled with the funds at the disposal of the board, the board shall notify the governor at once, and the governor thereupon shall call a meeting of the emergency commission, and such commission may authorize money to be drawn from the state treasury to meet the emergency.

N.D.C.C. ? 36-01-19. It is my understanding that the Board has followed the procedure set forth in N.D.C.C. ? 36-01-19 to obtain funds for indemnifying owners of nontraditional livestock ordered destroyed. "An administrative agency's practical construction of a statute is entitled to some weight if it does not contradict clear and unambiguous statutory language. Schaefer v. Job Service North Dakota, 463 N.W.2d 665 (N.D. 1990); Peterson v. Heitkamp, 442 N.W.2d 219 (N.D. 1989); Rocky Mtn. Oil & Gas Ass'n v. Conrad, 405 N.W.2d 279 (N.D. 1987)." NL Indus. Inc. v. State Tax Comm'r, 498 N.W.2d 141, 146 (N.D. 1993). This is particularly true when the Legislature or its committees have been informed of the agency interpretation. Id. at 145. The Board's reliance on N.D.C.C. ? 36-01-19 to authorize the indemnification of owners of nontraditional livestock which it has ordered destroyed is apparent from the 1991 legislative history.¹ See, Hearing on S. 2221 Before

¹In 1991, the North Dakota Legislature expanded the role of the Board of Animal Health to include wildlife, as well as domestic animals, in the Board's authority over contagious and infectious diseases and in the emergency fund in the case of epizootic. 1991 N.D. Sess. Laws ch. 371, ?? 3 and 7. The State Veterinarian testified that the term "captive wildlife" was meant to include all animals other than domestic animals. He further testified that by adding captive wildlife to the statute, these other animals would come under the provisions for emergency funding in case of a disease outbreak. Hearing on S. 2221 Before the House Agriculture Comm. (March 8, 1991) (statement of Dr. Robert Velure, State Veterinarian, State Board of Animal Health). The State Veterinarian also testified that owners of infected captive wildlife would be reimbursed, or indemnified, upon elimination of the infected animals. During the 1993 Legislative Session, "captive wildlife" was changed to "nontraditional livestock." 1991

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the House Agriculture Comm. (March 8, 1991) (testimony of Dr. Robert Velure, State Veterinarian, State Board of Animal Health, in response to Rep. Dennis J. Schimke). See also, Hearing on H. 1196 Before a Subcommittee of the House Natural Resource Comm. (January 31, 1991) (testimony of Dr. Robert Velure, State Veterinarian, State Board of Animal Health, in response to Rep. Jennifer Ring).

The Board of Animal Health is granted authority pursuant to N.D.C.C. ? 36-01-08 to promulgate rules to carry into effect the purposes of N.D.C.C. ch. 36-01 and the duties of title 36. Since the statute does not set forth the manner of determining the indemnification to be paid, a procedure for determining the amount of compensation to be paid the owner of the destroyed animals may be provided by rule.

In summary, it is my opinion that the Legislature has given the Board of Animal Health broad power to control dangerous, contagious, and infectious diseases and broad discretion in determining the methods necessary to do so, including destroying animals which are infected or have been exposed to a disease and providing indemnification to the owners of destroyed animals.

Sincerely,

Heidi Heitkamp
ATTORNEY GENERAL

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