

ASSEMBLY AGRICULTURE COMMITTEE MINUTES  
APRIL 14, 1977  
5:00 p.m.

MEMBERS PRESENT: Chairman Hickey  
Mr. Price  
Mr. Polish  
Mr. Serpa  
Mr. Jacobsen  
Mr. Rhoads

MEMBERS ABSENT: Mr. Jeffrey

GUESTS: W. H. Winn, Nevada Mining Association  
Pete Kelley  
S. D. Mastroianni

Chairman Hickey called the meeting to order for the purpose of hearing testimony on AB 694 and SB 229.

Before hearing any testimony on these bills, Mr. Hickey called upon S. D. Mastroianni to present further testimony on AB 501, which deals with the sale of raw milk.

Doc Mastroianni stated that he was a former employee of the State Division of Health, now retired. He stated that they had several problems that they had control of which have cropped up again. Brucellosis is pretty well under control at this time. However, there are other organisms which can infect raw milk. There are your staphylococcus and streptococcus groups. In California two years ago had salmonella dublin which was found in the raw milk and did effect some people. They did not definitely pin point it to any specific herd. They ordered all certified raw milk producers to pasteurize their milk until this disease was cleared.

Mr. Mastroianni stated besides all this, there are no herds in this state large enough to install the proper equipment whereby the milk will come directly out of the cows right into the bottle. This would cost anywhere from 100-150 thousand dollars.

Mr. Hickey stated that the kind of milk that they would have to deal with would be entirely imported.

Mr. Mastroianni stated that there were also problems with imported raw milk. Dairies deliver their milk to a distributor and then have nothing else to do with it. How sure can anyone be that that milk is maintained at 50 degrees.

Mr. Polish stated that they would be in refrigerated trucks which are maintained at this temperature. Mr. Mastroianni stated that this was true, except that these trucks are opened and closed and the temperature does vary.

ASSEMBLY AGRICULTURE COMMITTEE MINUTES

APRIL 14, 1977

Page 2

Mastrianni went on to state that no dairy was big enough in that those cows have to be checked by a vet once a month or more often. They would also have to establish a laboratory. These samples have to be picked up at a minimum of once a week. He added that the certified dairy in California that sells certified raw milk has established their own lab under the jurisdiction of the State Dairy Service.

Mr. Jacobsen inquired whether, if raw milk was authorized, the Division would have to send inspectors to California. Mr. Mastrianni stated that they are presently authorized to go and for a good many years they did go once a year to inspect. However, both California and Utah are pretty close to us as far as the milk regulations are concerned. They would have to inspect raw milk plants at least once a year at the plants expense.

Mr. Jacobsen inquired whether there was any way that they could take care of some of these goat people due to the fact that some people can not tolerate any other type of milk. Mr. Mastrianni stated that there was no herd large enough to take care of this type of equipment.

Mr. Jacobsen stated that testimony showed that goats don't have all these diseases. Mr. Mastrianni stated that they don't have any trouble with brucellosis but they still have staph and strep.

Mr. Hickey inquired whether they could operate without all this equipment. Mr. Mastrianni stated that it would be pretty hard when it is done by hand to make sure that it was pure and without disease.

Mr. Jacobsen inquired whether there was any way through a doctor's orders that they could allow this. Mr. Mastrianni stated that as far as he knows and he did have this request, no doctor would give you such an order.

Mr. Jacobsen inquired why people would want to use this milk and take these chances other than health type people. Mr. Mastrianni stated that they are basically health food people. He stated that he would have to agree that there are some people that can not handle pasteurized milk. He stated that he felt there was enough different formulas offered to make up for this. He added that he felt there wasn't really enough demand most places to make it worth handling.

Mr. Jacobsen inquired if there were any restrictions now on the farmer using his own raw milk or giving his neighbor some. Mr. Mastrianni stated that they would not get into this unless there was a complaint or a health problem was found.

ASSEMBLY AGRICULTURE COMMITTEE MINUTES

APRIL 14, 1977

Page 3

Mr. Serpa stated that in the Fallon area a few years ago you could get a little raw milk from the ranchers but in this day of lawsuits they are very hesitant about giving friends or neighbors any.

Mr. Polish stated that he would rather not have the lone goat herd or rancher who sold a little but would rather just have certified raw milk come into the area like Alta Dena talks about.

Mr. Mastroianni stated that at one time in California there was over 100 certified dairies; now there are maybe 10 or 15 left. There is no such thing as certified raw milk. They have done a very good job. At one time they were forced by the Dairy Service in California to pasteurize their milk.

Mr. Hickey suggested that perhaps they should kill this bill and call for an interim study on this issue.

Mr. Mastroianni stated in the event that they do develop an industry here and get a herd big enough to give us some assurance it might be possible.

AB 694, Regulates wild horses and burros which trespass upon private lands and requires fencing of federal lands in certain circumstances.

Mr. Rhoads, sponsor of the bill, presented the committee with a letter from Frank Daykin regarding this bill. This letter is attached to these minutes as Exhibit A and herewith made a part of this record.

Mr. Rhoads stated that this bill would cover the problem with wild horses in regards to private lands that is not fenced. They have done quite a bit of research in this area by some attorneys and they feel that they have a chance to challenge the federal government. They should be able to require the federal government that they must keep the horses off the private lands by fencing it or pay for the pasture.

Mr. Rhoads added that Frank Daykin claims that some of this is unconstitutional. Mr. Rhoads stated that he had just talked his attorney concerning this letter and this attorney feels that Mr. Daykin is not correct. They feel that they have a good chance to challenge the federal government by this bill.

Mr. Jacobsen inquired whether they might be jeopardizing their cattle rights on federal lands. Mr. Rhoads stated no.

Mr. Hickey stated that there was the problem of going over to the Senate. He stated that he was sure that Daykin would come in at that time and talk about this particular issue. He added that it was awful hard to go against their own legislative counsel.

Mr. Rhoads stated that he feels that even Mr. Daykin sees the worthliness in this to challenge the federal government and find out what will happen. The federal government charges them to run their livestock of federal land, why shouldn't it work in reverse.

Mr. Jacobsen moved for a "do pass" recommendation and Mr. Polish seconded the motion. The motion carried unanimously with Mr. Jeffery and Mr. Serpa absent for this vote.

AB 501. Mr. Price moved for a "indefinite postponement" on AB 501 and Mr. Rhoads seconded the motion. The motion carried with Mr. Polish voting against the motion and Mr. Serpa and Mr. Jeffrey absent.

SB 229. The committee had met early in the day at Chairman Hickey's desk and passed out this bill which was re-referred to Ways and Means.

AB 59, Amends motor fuel advertising requirements. Chairman Hickey announced that this bill had been taken from his desk. Mr. Jacobsen moved that the committee get a new jacket for this bill and be given a "do pass" recommendation. Mr. Price seconded the motion with Mr. Jeffrey and Mr. Serpa absent.

Chairman Hickey announced that the committee had completed its committee work for this session and that he would check with the Senate to see if any additional bills would be coming over for them. If not, Mr. Hickey stated that the committee would stand in adjournment for this session.

Respectfully submitted,

*Sandra Gagnier*

Sandra Gagnier  
Assembly Attache

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April 12, 1977

Assemblyman Dean A. Rhoads  
Assembly Chamber  
Legislative Building  
Carson City, Nevada 89710

Dear Mr. Rhoads:

In your memorandum to the Assembly Agriculture Committee dated March 17, 1977, you requested legislation on three subjects: (1) a prohibition against trespasses of wild horses caused by federal agents; (2) federal civil liability for damages caused by wild horses; and (3) the fencing of federal lands in certain circumstances. Each of these subjects presents problems of constitutionality.

In 1971 Congress enacted the Wild Free-Roaming Horses and Burros Act, 16 U.S.C. 1331, et seq., which protects all unbranded and unclaimed horses and burros on public lands of the United States, including BLM and Forest Service lands. This Act declares that wild free-roaming horses and burros on public lands are ferae naturae, or wild animals and the general law with respect to wild animals is that their ownership is in the government which claims jurisdiction over them, in this case the Federal Government. If possession of a wild animal is forbidden, as in this Act, no person, including the government, may be held liable for damages caused by such animal, unless the animal is first captured and then causes damage while being unlawfully possessed.

The Wild Free-Roaming Horses and Burros Act was construed by the United States Supreme Court in Kleppe v. New Mexico, \_\_\_ U.S. \_\_\_, 96 S.Ct. 2285 (1976), a case which involved entry by the New Mexico Livestock Board onto public land and the removal of wild burros. The court found the Act to be a

Assemblyman Dean A. Rhoads  
April 12, 1977  
Page 2

constitutional exercise of power granted to the Congress in the Property Clause, Art. IV, § 3, cl. 2 of the Constitution.

The court also considered the constitutionality, in light of the Supremacy Clause, Art. VI, para. 2, of certain of New Mexico's estray laws, which are similar in some respects to Nevada's estray laws found in chapter 569 of NRS, and held that " \* \* \* where those state laws conflict with the Wild Free-Roaming Horses and Burros Act, or with other legislation passed pursuant to the Property Clause, the law is clear: the state laws must recede." Kleppe, 96 S.Ct. at 2294.

The court did not rule on the constitutionality of section 4 of the Act, 16 U.S.C. § 1334, which purports to regulate adjacent private lands: "If wild free-roaming horses or burros stray from public lands onto privately owned land, the owners of such land may inform the nearest Federal marshall or agent of the Secretary, who shall arrange to have the animals removed." The court did note, however, that " \* \* \* it is clear that regulations under the Property Clause may have some effect on private lands not otherwise under federal control \* \* \*." Kleppe, 96 S.Ct. at 2295.

The Wild Free-Roaming Horses and Burros Act and the Kleppe case have the following implications with respect to the legislation you requested:

1. Prohibition against trespasses of wild horses caused by federal agents (§ 1 of bill): If federal agents are carrying out any federal law when they cause a trespass, this conflicting state law must yield. In addition, it is doubtful that a federal agent can be held criminally liable for the act of a wild animal.

2. Federal civil liability for damages caused by wild horses (§ 2 of bill): The horses and burros are wild animals, and the Federal Government cannot be held liable for damages caused by them. If these animals become "livestock" (ownership known) or "estrays" (ownership unknown) upon crossing

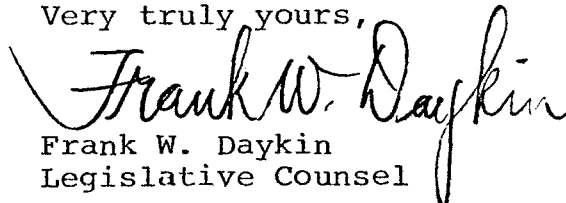
Assemblyman Dean A. Rhoads  
April 12, 1977  
Page 3

the property line onto private land, and become subject to state regulation, it is possible the Federal Government might be made liable for the cost of feed and maintenance of the animals under 16 U.S.C. § 1334, quoted above, since there is no provision for paying for costs under the Act, and state law may fill in the gaps in federal law where there is no congressional intent to preempt state law.

3. Fencing of federal lands (§ 3 of bill): This provision clearly violates federal supremacy over its own lands.

It is the opinion of this office that the provisions you requested to be drafted are unconstitutional, with the possible exception of section 2 of the bill which would allow a property owner to receive agistor's fees for holding a wild horse or burro pending removal by federal agents.

Very truly yours,

  
Frank W. Daykin  
Legislative Counsel

FWD:jll