

Opinion No. 53-5680

February 18, 1953

BY: RICHARD H. ROBINSON, Attorney General

TO: Miss Lorraine P. Gutierrez, Secretary Sheep Sanitary Board of New Mexico Box 496 Albuquerque, New Mexico

{*75} Recently you directed a letter to this office concerning the status of certain emergency inspectors or "checkers" who are employed by the Sheep Sanitary Board on a per diem basis and in a variable number, depending upon the seasonal need for their services. You explain that these personnel are employed in addition to the regular district field inspectors provided for by Ch. 188, Laws of 1951. You ask whether, under the existing law, your board must procure bonds to cover these emergency inspectors, as is required in the case of the regular inspectors by § 49-871 N.M.S.A. You state that at the present time they are not being included in the blanket coverage of your regular inspectors.

It is clear from your letter that the checkers you hire on an emergency basis do not have the authority or responsibility of regular field inspectors. There is no requirement, apparently, that they be experienced in the handling of sheep, they need take no examination as must the regular district inspectors, and you state that they handle no funds in the performance of their duties. Their main service, according to your letter, is to check brands and earmarks.

Under these facts and circumstances, it is our opinion that these emergency inspectors, or checkers, are not "inspectors" within the meaning of Ch. 188, Laws of 1951, and that they need not be covered by a bond as must the regular field inspectors under § 10 of the Act. (§ 49-871 N.M.S.A.).

There is an additional factor, however, which we feel should be mentioned. You note in your letter that the appointments of the emergency inspectors are recommended by the regular inspectors, and that the work and performance of duty of the former become the responsibility of the district inspector in whose district they are employed. We note that the bonds given by district inspectors, under § 49-871 N.M.S.A., "shall be conditioned for the faithful performance of his duties under law and under the regulations of the board, and may be sued upon in the name of the state for any person interested." Therefore, it is quite possible that the lack of faithful performance on the part of an "emergency" inspector could make a district inspector liable on his bond. This would be particularly likely, inasmuch as the district inspector recommends the hiring of the "checker" and is responsible for the latter's work.

It is therefore the suggestion of this office that although there is no statutory requirement that an emergency inspector be bonded, it would be prudent to procure bond coverage for these personnel. It should likewise be made clear from the regulations of your board

that whereas a regular inspector shall supervise the work of an emergency inspector or checker, he shall in no sense be completely responsible for the standard of work and conduct of said emergency inspector.

We sincerely hope that this opinion has answered your inquiry on this subject.

By: W. F. Kitts

Assist. Attorney General