

Opinion No. 53-5842

November 5, 1953

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. C. C. Chase, Jr. District Attorney Third Judicial District Las Cruces, New Mexico

{*261} This is in answer to your request for an opinion upon the following two questions: (1) Can a brand inspector legally assess mileage to the individual who brings about an investigation through his own negligence or failure to comply with the Cattle Sanitary Code? (2) Does the Cattle Sanitary Board have authority to adopt rules and regulations granting to its inspectors the authority to collect mileage from persons causing investigations through their negligence or failure to comply with the Cattle Sanitary Code?

Section 49-929, N.M.S.A., 1941 Comp., states as follows:

"49-929. APPLICATION FOR INSPECTION OF EXPORT CATTLE -- PLACE -- DELAY -- PAYMENT OF EXPENSES. -- Every person, company or corporation, or their or either of their agents, servants, or employees, having in charge cattle destined for transportation by rail or to be driven beyond the limits of this state, may make application to the proper inspector to inspect the brands and ear-marks of any such cattle, stating in such application the time and place, when and where said cattle will be ready for inspection, and it shall be the duty of such inspector, or of some other inspector to be designated by the said sanitary board, to attend at the time and place designated in such application and inspect the said cattle, make the record and give the certificate required by law to the owner of said cattle: Provided, however, that in the case of cattle transported out of this state by rail, the place of inspection shall be at some stock yards, or other convenient place near the proposed point of shipment of said cattle from the state: And provided, further, that if the owner or person in charge of said cattle shall cause any unreasonable delay or loss of time to such inspector, such owner or person in charge of any such cattle shall pay the expenses and salary of such inspector during such delay or loss of time. (Laws 1891, ch. 34, § 6; C.L. 1897, § 212; Code 1915, § 146; C.S. 1929, § 4-1432.)"

It is to be noted that this section applies only to inspection of brands and ear-marks of cattle destined for transportation by rail or driven beyond the limits of this State.

Section 49-930, N.M.S.A., 1941 Comp., (L. 1891, ch. 34, § 7), provides that each inspector of brands and ear-marks shall also inspect hides and slaughter houses and shall also make sworn reports to the Secretary of the Sanitary Board of the result of such inspection, at least once in every thirty days and oftener if the Board shall find it necessary. Under this section any person who hinders or obstructs or attempts to hinder or obstruct any inspector employed by the Board in the performance of his duties shall

be deemed guilty of a misdemeanor and fined. And that any person so arrested shall be turned over to the local officers as soon as possible and such inspector shall not receive any fees nor mileage for the performance of this duty.

Section 49-201 et seq., N.M.S.A., 1941 Comp., (L. 1889, Ch. 106, § 2) (L. 1895, Ch. 29, § 1) (L. 1905, Ch. 49, § 1), sets up the Cattle Sanitary Board and describes {262} its powers and duties. Under § 49-218, N.M.S.A., 1941 Comp., which was L. 1933, Ch. 53, § 1, additional powers of the Board were provided therein. Section 49-927, N.M.S.A., delegates the duty of the Sanitary Board to inspect brands and earmarks of cattle shipped or driven out of this State. L. 1891, Ch. 34, § 3.

"49-927. INSPECTION OF BRANDS AND EAR-MARKS OF EXPORTED CATTLE. -- It shall be the duty of said sanitary board to cause to be inspected the brands and earmarks upon the cattle shipped or driven out of this state, and to cause to be kept and preserved a true and correct record of the result of such inspections, in the office of the secretary of said sanitary board, which record shall set forth the date of the inspection, the place where, and the person by whom made, the name and post-office addresses of the owner, shipper or claimant of the cattle so inspected, and the names and post-office addresses of all persons in charge of such cattle at the time of the inspection, the destination of such cattle, as well as a list of all brands and ear-marks upon the cattle so inspected, and the number and classification of such cattle. (Laws 1891, ch. 34, § 3; C.L. 1897, § 209; Code 1915, § 144; C.S. 1929, § 4-1430.)"

Section 49-935, L. 1951, Ch. 31, § 1, sets the fee to be assessed for inspection of horses, cattle, mules and asses, to be a sum not to exceed ten cents per head as set by the Board for such inspection, and § 49-933, N.M.S.A., makes the shipment of cattle without inspection a felony subject to fine and imprisonment.

The Board in the statute § 49-929, N.M.S.A., providing that when an owner or person in charge of such cattle shall cause any unreasonable delay or loss of time to such inspector the owner shall pay the expenses and salary of such inspector, would presumptively grant the power to the Cattle Sanitary Board to assert such claim against any owner and having such express power they may delegate the assessment of these costs and expenses to duly designated inspectors of the Cattle Sanitary Board. Under § 49-930 the results of such inspection and collections should be reported to the Board as required, and where such charge is unjust or improper, the Board can make a proper adjustment or disposition of the fees and costs collected.

It is to be noted that the above stated charge applies only to inspection of brands and ear-marks of cattle destined for transportation by rail or driven without this State, and not to slaughter house inspections.

It is, therefore, the opinion of this office that the Cattle Sanitary Board, or its duly authorized agent, has the power to assess expenses and salary of its inspector against any owner or person in charge of cattle being shipped or driven without this State who

shall cause any unreasonable delay or loss of time to such inspector in the performance of his duty as brand and ear-mark inspector of such cattle.

By: William J. Torrington

Assist. Attorney General