

Opinion No. 16-1809 1/2

May 23, 1916

BY: FRANK W. CLANCY, Attorney General

TO: Mr. W. J. Linwood, Secretary, Cattle Sanitary Board, Albuquerque, New Mexico.

Inspection of cows infected with tuberculosis.

OPINION

{*374} I have received your letter of yesterday in which you say, as to certain dairy cattle found infected with tuberculosis at Roswell, you have found that several of the cows originated in Ohio about three years ago, and in making final arrangements for their appraisal and destruction, you ascertained that while the cows passed the tuberculin test immediately prior to their shipment into the state, they did not have the re-test within ninety days after arrival, as required by statute, and for that reason you have declined to reimburse their owners on account of their being destroyed.

The requirement as to the inspection within three months after arriving in this state is contained in Section 112 of the Codification. I think it imposes a burden upon the owner of cows, but I cannot see that a failure to discharge the duty thus imposed has any relation whatever to the provisions of Section 113 as to appraisal of infected animals which are to be slaughtered, and payment made therefor by the Sanitary Board. The punishment denounced by Section 112 is only for a refusal to have such cattle tested when directed by the authorized veterinarian or inspector appointed by the board, and the argument is strong that there is no duty imposed upon the owner until he is called upon by the proper officer appointed by the board. Section 113, so far as I can see, has no connection with the test required within three months by the first paragraph of Section 112, and the only restriction which prevents the payment of compensation is in the proviso to the effect that no compensation shall be paid to any person who has brought the animals into the state affected with the disease, or from a district in which such disease was known to exist, or who may wilfully conceal the existence of such disease, or by wilful neglect, contribute to the spread of the contagion.

I am unable to see that a mere failure to have the inspection within three months after the cows are brought into the state can stand in the way of making compensation for animals necessarily destroyed.