

Opinion No. [29-45]

July 23, 1929

BY: M. A. OTERO, JR., Attorney General

TO: Mr. Carpio Archuleta, Truchas, New Mexico.

LIVESTOCK -- Trespassing on unfenced lands.

OPINION

I am in receipt of your favor of the 17th inst. telling me that a number of people are allowing their animals to graze on a tract of land, of which you are the agent, and you wish to know whether or not you may corral these horses and make the owners pay for the grazing, although, as you say, the said piece of land is not fenced.

In reply thereto will state that section 39 of the General Statutes of 1915 provides that it shall be unlawful for anyone in charge of animals of any kind to permit or allow them to go upon the lands of another for the purpose of grazing or watering thereon without the permission of the owner of the lands, **provided** that the land lines are plainly marked so that one having charge of such animals may clearly see the markings, etc., or that a notice warning trespassers off of such land is posted giving a description thereof by government survey or by metes and bounds. If the owner of such stock intentionally permits them to roam upon the lands of another, he is liable for the damages that they do even though the said land has not been marked, as aforesaid.

Section 49 of the General Statutes of 1915 makes it a crime to allow cattle or horses or burros to run at large during the months from March to October, inclusive, or under any pretext to have them at large on their own ranch during such period unless they are in charge of a herder. Violation of this statute subjects the owner of the stock to a penalty.

Sections 157 to 167, inclusive, of the General Statutes of 1915, with sections 160 and 161 amended by the Laws of 1921, (chapter 114, page 204) cover the matter of taking up estrays. These provisions are too lengthy to quote in full, but section 163 gives the land owner the right to take up any stray and hold the same, after notifying the Cattle Sanitary Board, and keep them until the owner pays for the charges for taking them up, and the same is approved by the Sanitary Board. I do not recommend that you proceed under this particular section of the law because it is rather complicated, but you certainly have the right to do if you choose.

Trusting that the foregoing gives you the information you desire, I am