

Opinion No. [29-97]

October 10, 1929

BY: J. A. MILLER, Assistant Attorney General

TO: Mr. Frank Hubbell, Secretary, Sheep Sanitary Board, Albuquerque, New Mexico.

SHEEP SANITARY BOARD -- May indemnify owner for goats destroyed by order of the board.

OPINION

Referring to our conversation of yesterday morning and supplementing an opinion rendered the State Board of Finance on the 26th ult., which opinion I understand you too have had in mind when discussing the method to be employed in determining compensation to be paid for goats found to be infected with Malta Fever, you are advised as follows:

As set forth in the opinion above referred to, we do not find any statute, creating a fund for that specific purpose, by name. There is a fund provided by Section 79 of the Codification of 1915 called Cattle Indemnity Fund. From other sections of that article the word cattle as used in the article is defined to be understood and construed as bovine cattle only. By section 169 of the Codification, it is provided that whenever in the article the word sheep is used it shall be held to include rams and goats. Sheep are not bovine cattle and it is our opinion that the Cattle Indemnity Fund provided for is not available for the purpose of indemnifying the owners for destroyed goats.

We also pointed out that by Section 178 of the Codification of 1915 the powers of the Sheep Sanitary Board are enumerated among them being the power to dictate and prescribe quarantine and sanitary measures as circumstances may require for the prevention of disease and the spread thereof among sheep. It is also provided that the enumeration of special powers conferred shall not be construed to operate as a denial of such other powers as should properly be exercised by the board and in all matters relating and appertaining to the preservation of a healthy condition among sheep and in all matters of sanitation and quarantine the board is given full power to enforce both the provisions enumerated in the article and the rules and regulations prescribed by the board in accordance with the law. We gave it as our opinion that the powers of the board are broad enough to include the destruction of diseased animals when the board found it to be necessary for the prevention of disease and the spread thereof among sheep.

As to the fund available and the method to be employed in assessing damages and amount of compensation to be paid for diseased or infected animals slaughtered by order of the Sheep Sanitary Board, the legislature has not been as specific as in the legislation for the government of the Cattle Sanitary Board. As above pointed out, there

is a fund provided for the use of the Cattle Sanitary Board called Cattle Indemnity Fund and by section 113 of the Codification, specific provision is made for the appointing of appraisers by the board for the appraising of slaughtered animals upon the basis of the actual value of such diseased or infected animals, if they have any value, at the time of slaughter. We do not find a specific provision of like character for the appraisal of sheep which may be destroyed by order of your board for the prevention of disease and the spread thereof among sheep.

It is our opinion that in the absence of specific direction by the legislature, any reasonable and just method of ascertaining the amount of indemnity to be paid might be adopted by the board, and it is suggested that the method prescribed for the Cattle Sanitary Board as set out in Section 113 of the Codification of 1915, which section, by the way, we think supersedes similar provisions provided in Section 94, might well be employed by the board. Our reason for saying that the provisions of Section 94 are superseded by Section 113 is that Section 113 was enacted in 1909, whereas the other section was enacted in 18889 and amended in 1903. The legislature having covered the same subject again in 1909 the effect of such legislation probably is to repeal by implication anything inconsistent in the earlier act.

If you should decide to employ the method suggested by Section 113, it is suggested that you note that the persons to be appointed by the board are to be three in number, to be disinterested persons, that they are to file a sworn certificate of appraisal and that they are to appraise slaughtered animals upon the basis of the actual value, if any, at the time of slaughter.