

Opinion No. [30-30]

June 6, 1930

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

TO: Miss Sarah D. Ulmer, Route 4, Tucumcari, New Mexico.

HERD LAW DISTRICTS -- How disorganized.

OPINION

I have your very interesting letter of the 31st ultimo with further regard to the herd law question which has arisen down there in your locality.

I note that you make reference to an old law passed in 1909 to sustain your point of view about this matter. I accordingly got out the 1909 statutes and find that you are correct, i. e. the law actually was passed providing for the voting in of Herd Law Districts. This Act, chapter 94 of the Laws of 1909, is entitled: "An Act for the establishment of a Herd Law in the counties of Quay and Roosevelt and that portion of the county of Guadalupe lying east of the Pecos and Gallinas Rivers." This Act was approved March 18, 1909, and, on the same date, chapter 138 of the Laws of 1909 was approved, section 1 of which extended the provisions thereof to the County of Curry.

I am unable to trace this Act any further. I find no trace of it or of any part of it or any reference to it in the 1915 Codification, nor in the Codification of 1929. Neither have I been able to find any record of a specific repeal or amendment other than the amendment which added Curry County merely.

The late Frank W. Clancy, as Attorney General, in an opinion rendered July 23, 1913 and published as Opinion No. 1083, used, with reference to Chapter 94, Laws of 1909, the following language:

"This act of 1909 is, to say the least, of doubtful validity as being a local and special law 'regulating townships and county affairs'."

The repealing and saving clause of the Codification of 1915, page 1665, contains the following:

"All acts and parts of acts of a general and permanent nature not contained in this Codification are hereby repealed. . . ."

It would seem that this Act, even if effective when passed and not previously repealed, was repealed by being omitted from the 1915 Codification. It might be further urged that later legislation covering the same subject, chapter 68, Laws of 1923, Article IV, Herd Law Districts, Compilation of 1929, repealed this Act by implication even if it is hidden

away somewhere in the 1915 Codification. As above stated, we are unable to find any reference to it in that Codification.

To sum the whole matter up in a nut-shell, the Legislature of 1909 prescribed a method of organizing a Herd Law District, and also prescribed a method of disorganizing one. Acting in pursuance of this said law, the good people of your District proceeded to organize a Herd Law District.

In 1911 New Mexico came into the Union and a Constitution was adopted which forbid the passage of any local or special law.

In 1915, New Mexico adopted a code, and this code left out the herd law proposition passed in 1909. By the terms of the said code all acts and parts of acts of a general and permanent nature not contained in the codification were expressly repealed. Hence, as I stated above, the said 1909 herd law was knocked out.

In 1923 the Legislature passed an Act (chapter 68, Laws of 1923) prescribing the ways in which a Herd Law District could be organized, and **also** prescribing a method by which these said Districts could be disorganized. Therefore, in looking for ways and means of disorganizing a Herd Law District previously formed, it becomes necessary to consult the said chapter 68 of the Laws of 1923, in other words, the present law on the subject. Incidentally, this said law repeals the 1909 law by implication, even granting for the sake of argument that the said law was not already repealed by being left out of the Code of 1915.

From the foregoing we are very naturally forced to the conclusion, already reached and transmitted to Miss Aber, that to disorganize a Herd Law District one must follow the procedure set forth in the 1923 statutes.

I am sorry not to be able to agree with your conclusions on this matter and, of course, it goes without saying that the situation described by you in your letter is to be regretted. This is just another illustration of the fact, my dear Miss Ulmer, where recourse must be had through the legislature, the law making body of the State.

With kindest personal regards, believe me,