

Opinion No. 33-694

December 2, 1933

BY: E. K. NEUMANN, Attorney General

TO: Mr. Geo. W. Armijo, Secretary, Sheep Sanitary Board, Albuquerque, New Mexico.

{*97} This is in reply to your letter of December 1, 1933, in which you enclose a copy of letter from Mr. Frank B. Lenzie, Range Supervisor, Winslow, Arizona. Mr. Lenzie states that the Federal Surplus Relief Corporation is purchasing 100,000 sheep from various Navajo jurisdictions, which are to be slaughtered at Denver and Omaha and the meat used for relief purposes. He also states that a part of these animals will be shipped from points in New Mexico, that the animals will be the property of the United States Government at and prior to shipment, and he requests that the brand inspection requirement of this state be waived in so far as these shipments are concerned.

Section 4-1635 of the 1929 Code requires a brand inspection and also a sanitary inspection of sheep which are being exported from this State. The sanitary inspection, however, is not required where the sheep have been inspected by an inspector of the Bureau of Animal Industry. See Section 4-1633, 1929 Code. So far as the brand inspection requirement is concerned it does not appear to me that it applies to the United States Government, since the Statute (Sec. 4-1635) refers to "each person so shipping or driving sheep out of the state."

The failure to comply with Section 4-1635 subjects "any person" to certain fines and penalties. See Section {*98} 4-1632, 1929 Code. This also leads me to believe that said section was not intended to apply to the United States Government.

There are numerous decisions to the effect that "the states cannot interfere with the government of the United States in the exercise of its constitutional powers." Obviously, in the transaction under discussion, the United States Government is exercising rights which it lawfully possesses. In the case of *Alabama vs. United States*, 38 Fed. (2nd) 897 it is held that the United States has the right as a means of carrying into effect its constitutional powers to purchase, possess and sell property without being impeded by the states.

I am therefore of the opinion that in the case mentioned by Mr. Lenzie the brand inspection requirement of this state should not be imposed.

By: QUINCY D. ADAMS,

Asst. Attorney General

[n*](#) 59 C.J. 32 and collected case notes.