

Opinion No. 38-2002

July 15, 1938

BY: FRANK H. PATTON, Attorney General

TO: New Mexico State Police Santa Fe, New Mexico. Attention: Mr. A. B. Martinez, Sergeant.

{*250} This is to acknowledge receipt of your letter of July 14, requesting an opinion as to whether or not you have the right to impound stock grazing along a public highway that is fenced upon both sides.

Chapter 173 of the Laws of 1937 is the only applicable statute and any authority to impound livestock must be found in that enactment. The statute merely provides a penalty for the owner of livestock to knowingly permit the same to run at large upon a public highway with a fence upon both sides. There is no authority for impounding the animals. You would, in my opinion, have authority to drive these animals upon the premises of the owner. However, you would have no authority to drive estrays upon the premises of another merely to get them off the highways.

I note your statement that you have been reluctant to institute prosecutions because of the difficulty of proving that the livestock were "knowingly" at large on the highways. My only suggestion is that you might be able to find the owner, apprise him of the fact that they are on the highway, and institute prosecution for subsequent offenses.

By: RICHARD E. MANSON,

Asst. Atty. Gen.