

Opinion No. 40-3636

October 5, 1940

BY: FILO M. SEDILLO, Attorney General

TO: Mr. Sam McCue, Secretary, New Mexico Cattle Sanitary Board, Albuquerque, New Mexico.

{*149} Mr. John Messick, one of your inspectors, called on me yesterday inquiring as to whether your Board may brand estrays with the Board brand prior to their sale under the provisions of Chapter 16 of the New Mexico Session Laws of 1939.

As I understand it, the object of such branding would be primarily for the purpose of identifying the animal as one sold by the Board as an estray and to include the brand in the description of the animal in the bill of sale issued by the Board in such cases.

The law is apparently absolutely silent {*150} in this particular matter. I find nothing in the law expressly permitting such a practice; but, on the other hand, there is nothing in the law which in any way would prohibit such a practice by the Board.

If the Board is of the opinion that this is a proper practice, the best thing to do is for the Board to have this forthcoming Legislature expressly authorize such a practice and then there would be no question in the matter.

In the meantime, and pending legislative action, I might say that if the Board desires to initiate this practice of its own initiative, I would suggest that the Board adopt a resolution setting out the desirability of the practice and authorizing its agents and inspectors to brand the estrays with the Board brand and incorporate such brand as part of the description in the bill of sale issued by the Board.

I believe that under the general powers of the Board you could initiate such a practice as a necessary incident to properly carrying out your duties in connection with the sale of estrays. At least I believe the Board would be warranted in taking that attitude until the forthcoming Legislature, at which time you should very easily be able to have the law clarified in this respect.

Trusting the foregoing is the information desired by Mr. Messick and yourself, I am,

By: FRED J. FEDERICI,

Asst. Atty. Gen.