

## Opinion No. 42-4017

February 14, 1942

**BY:** EDWARD P. CHASE, Attorney General

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

{\*157} In your letter dated February 11, 1942, you request an opinion from this office relative to the adequacy of our laws to rigidly enforce a quarantine should it be necessary to establish one, and you quote from a letter to you from the Bureau of Animal Industry, Department of Agriculture, regarding outbreaks of foot and mouth disease and other dangerous and fatal diseases among livestock as follows:

"The effectiveness of quarantines in the case of an outbreak of foot and mouth disease directly determines, other factors being equal, the limitations of spread of the disease. In any outbreak, the matter of quarantines and the policing of areas rests entirely within the jurisdiction of the State livestock regulatory authorities. This authority should be well centralized and, preferably, the right of rigid quarantine established, if possible by law prior to the occurrence of an outbreak. Injunctions by an owner or the public against the authorities may soon prove ruinous if necessarily continued by Court Order. It is important, therefore, that the State regulatory authority knows in advance as to "how far it can go". Can it legally and absolutely control the movement of the human animal where necessary? Will its quarantines of premises hold ironclad? Can it or the State police absolutely regulate vehicular traffic successfully, forbidding such traffic to enter quarantined areas and interstate traffic be obliged to detour such areas? Are the State laws such as to permit the prompt arrest of violators? in other words, as may become and usually always does become necessary: -- how nearly may almost martial law become established and enforced as dealing with quarantine infected areas? A foot {\*158} and mouth disease quarantine usually affects business operations generally in and about the involved area. Frequently the public becomes impatient and must have evidence through vigorous enforcement of necessary regulations until full cooperation is extended the authorities."

The Bureau of Animal Industry has propounded five questions upon which you and the Bureau desire information as follows:

1. Can the Cattle Sanitary Board legally and absolutely control the movement of the human animal where necessary?
2. Will its quarantines of premises hold ironclad?
3. Can it or the State Police absolutely regulate vehicular traffic successfully, forbidding such traffic to enter quarantine areas and interstate traffic be obliged to detour such areas?

4. Are the state laws such as to permit the prompt arrest of violators?

5. How nearly may almost martial law become established and enforced as dealing with quarantined infected areas?

I shall attempt to answer these questions in the order propounded.

The first question is somewhat confusing when you ask whether the Cattle Sanitary Board can legally and absolutely control the movement of the human animal where necessary. I assume that you mean human beings when you use the term "human animal", and I shall attempt to answer your question upon that assumption. The Cattle Sanitary Board is a state agency, and as such has only such powers and authority as may be granted to it by the Legislature. Chapter 53, Laws of 1933, as amended by Chapter 50, Laws of 1937, sets forth the powers and duties of the Cattle Sanitary Board, and under Chapter 50, Laws of 1937, said board is authorized to exercise general supervision over the **livestock** interests of the state, and under subsections G. H and I of said Chapter, the Board is authorized to make certain rules and regulations to control importation of animals into this state and establish quarantine, provide its boundaries and give notice thereof. The Board is also authorized to make rules and regulations relative to the slaughter of animals affected with contagious or infectious diseases, and is further authorized to make rules and regulations governing the importation, manufacture, sale, and distribution or use within the state of serums, vaccines, and other biologics, etc.. In subsection J, the terms "livestock" or "animals" is defined as including all cattle, horses, donkeys, mules, and hogs. In Chapter 53, Laws of 1933, under sections 8, 9, 10, and 11, provision is made for a proclamation by the Governor of such rules and regulations as the Cattle Sanitary Board may make to prohibit the importation into this state of animals subject to the disease sought to be prevented, as well as animal products and hay, strawfodder, cotton seed or other products or material calculated to carry the infection of such disease. A penalty is provided by these statutes to prohibit any person or persons, company or corporation from importing the prohibited animals or products. In addition, said board and its agents or inspectors are given powers in connection with investigating of violations of the rules and regulations, including the power to hold hearings and to enter upon and examine any car, yard, stable, corral or any building or premises, to examine any livestock therein or thereon. However, the law does not give the board or its agents and inspectors authority to control the movement of persons into or out of the state, except insofar as such persons may be violating the rules and regulations {*\*159*} relative to the importation of prohibited animals and products.

Your second question is: "Will its quarantines of premises hold ironclad?".

Under the laws above mentioned, apparently the quarantine contemplated by the Legislature is of an area or areas within this state against importation of prohibited animals or products from outside the state. There does not seem to be any provision for quarantine of animals within this state which were not theretofore imported illegally into the state. Apparently the only authority of the board relative to animals which may have

been raised in New Mexico is to slaughter the same in the event they become infected with contagious diseases, and to pay the owner compensation therefor. In no event is there authority by the board, within its powers of establishing quarantine areas, to prohibit persons from moving into or out of such areas, provided such persons are not otherwise violating rules and regulations which may be propounded by the board relative to importation of animals and products.

Your third question is relative to the power of the board or the State Police to regulate vehicular traffic and to forbid such traffic to enter quarantined areas, and require interstate traffic to detour such areas. This question has already been answered in the negative insofar as the Cattle Sanitary Board is concerned, and so far as legal authority is concerned. I believe the question should be answered in the negative insofar as the State Police are concerned. The State Police are merely law enforcement officers, and unless using a highway within a quarantined area is made a violation of law by the Legislature, the State Police cannot legally forbid such use of the highway. Under the present law, about all that could be done by way of detouring traffic and forbidding use of the highways within such areas would be by means of persuasion and reasoning only, rather than by legal means which could be enforced by arrest if necessary.

Your next question is whether state laws are such as to permit the prompt arrest of violators. My answer to this question is that the laws are such as to permit the arrest of violators of rules and regulations which your board is authorized to make. However, there could be no legal arrest for the use of the highways by persons not violating such rules and regulations and the quarantine rules and regulations would not and could not apply to persons, but only could apply to animals. The quarantine of persons is under the jurisdiction of the Department of Public Health, and pertains only to contagious diseases of persons. Article II, Chapter 110, 1929 Compilation.

Your last question is whether a state of almost martial law may become established and enforced as dealing with quarantined infected areas. Under Article V, Section 4 of the Constitution, the Governor has power to call out the militia to preserve the public peace, execute the laws, suppress insurrection and repel invasion. Under Section 93-104 of the 1929 Compilation, it is provided that when the militia is employed in the aid of civil authority, the Governor, in order to maintain law and order, may declare martial law in the city or county in which the troops are serving, or any part thereof. If the situation in a quarantined area should develop into such a condition as to amount to an insurrection, and endanger the public peace, the Governor would probably be justified in declaring martial law in such district. However, danger of infection to livestock in an area, of itself, would not be grounds sufficient for that purpose. There would need to be overt acts of violence by persons within the areas, and the state of martial law would be justified in quelling such disorders of persons, rather than in upholding rules and regulations establishing quarantine {\*160} areas for the protection of livestock.

Trusting that the foregoing sufficiently answers your inquiries, I am,