

## Opinion No. 57-267

October 17, 1957

**BY:** OPINION OF FRED M. STANDLEY, Attorney General Joel B. Burr, Jr., Assistant Attorney General

**TO:** Dr. F. L. Schneider, Secretary-Chief Veterinarian, Sheep Sanitary Board of New Mexico, Room 334, Korber Building, Albuquerque, New Mexico

### QUESTION

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Following a duly adopted resolution by the Sheep Sanitary Board ordering a rerecording of sheep and goat ear marks and brands as authorized under Section 47-8-19 to 47-8-23, N.M.S.A., 1953 Compilation, what is the legal length of time necessary before old ear marks or brands not rerecorded may upon application therefor be issued to others?

#### CONCLUSION

Two hundred and ten (210) days from the date of the adoption of the resolution ordering rerecording of sheep and goat ear marks and brands, as authorized under § 47-8-19, N.M.S.A., 1953 Compilation.

### OPINION

#### ANALYSIS

The following statutes are material to your inquiry. Section 47-8-19, N.M.S.A., 1953 Compilation, authorizes the rerecording of sheep and goat ear marks and brands, and provides as follows:

"Whenever the board deems it necessary it shall cause all brands and marks to be rerecorded by the adoption of a resolution so declaring. Within thirty (30) days after the adoption of the resolution the board shall give notice thereof by mailing a circular letter containing a copy of the resolution addressed to each owner of any mark or brand on record with the board to the postoffice address shown on said record. Each letter shall **also require the owner of the mark or brand to file with the secretary, within one hundred and twenty (120) days from the date of the adoption of the resolution**, a facsimile of any mark or brand owned, being used, or desired by said owner, accompanied by a fee to be fixed by the board in a sum not to exceed three dollars (\$ 3.00). In addition to the above notice the board may give such additional notice by publication or otherwise as it may deem necessary." (Emphasis ours.)

Section 47-8-23, N.M.S.A., 1953 Comp., provides for the cancellation of marks and reinstatement, and reads as follows:

"Any person failing to rerecord his mark or brand within the one hundred and twenty (120) days provided in section 19 shall forfeit the right to use that mark or brand, and it shall be canceled from the records of the board. **However, said mark or brand shall not be awarded to any person until the expiration of ninety (90) days from the date of forfeiture.** During this time the original owner of the mark or brand may apply to the board, and if just cause be shown for failure to comply with the rerecording provisions the board may re-record the mark or brand in the name of such owner upon compliance with the provisions of this act as to payment of fees and filing a facsimile of mark or brand." (Emphasis ours.)

Section 47-8-19, supra, would require a person to rerecord his mark or brand within one hundred and twenty (120) days from the date of the adoption of the resolution by the Sheep Sanitary Board directing a rerecording of all brands and marks. Section 47-8-23, supra, provides that upon failure to rerecord his mark or brand within the time prescribed, such person shall forfeit the right to use that mark or brand, and the Sheep Sanitary Board is given the power to cancel such a brand or mark from its records. A further reading of § 47-8-23, however, discloses that said mark or brand, once cancelled, shall not be awarded to any person until the expiration of ninety (90) days from the date of forfeiture.

Since the date of forfeiture under § 47-8-23 is one hundred and twenty (120) days from the date of the adoption of the Board's resolution directing a rerecording of all marks and brands, and since § 47-8-23 restricts the Board from awarding to any person any mark or brand until the expiration of ninety (90) days from the date of forfeiture, it therefore follows that the answer to your inquiry is that the Board is precluded from re-issuing a mark or brand which the original owner has forfeited, until the expiration of two hundred and ten (210) days from the date of the adoption of the resolution by said Board directing a rerecording of all brands and marks, pursuant to § 47-8-19, supra.