

Opinion No. 13-993

February 24, 1913

BY: FRANK W. CLANCY, Attorney General

TO: W. J. Linwood, Secretary, Cattle Sanitary Board, Albuquerque, N. M.

CATTLE.

Procedure governing sale of an estray animal.

OPINION

{*158} I have received your letter of the 21st inst. in which you state that, in a controversy which has arisen over the ownership of an estray animal sold by the Cattle Sanitary Board, it has been found that in advertising the estray, part of the brands, as sent to you by the party taking up the animal, were really not those which appeared on the animal, but that none of the brands on the animal are of record and, in substance, you ask whether under the statute the same would still be valid, notwithstanding the fact that part of the brands were wrongfully given.

I assume that the proceedings leading up to the sale of the animal were intended to be in accordance with Chapter 80 of the Laws of 1907, and especially of Sections 4 and 5 of that act. Without quoting in full, Section 4 provides that if the Secretary is unable to ascertain who is the owner or probable owner of such an animal, he shall advertise for two consecutive weeks, giving a description of the animal, stating when and where the same was taken up and giving notice that, unless the animal is claimed by the legal owner within ten days after the last publication of the notice, it will be sold by the Cattle Sanitary Board. Section 5 provides that if the animal is not claimed within the ten days, it shall be sold through an authorized brand inspector, who must give a bill of sale to the purchaser from the board.

Any such summary proceedings, in order to deprive the owner of his property, must be strictly in accordance with the statute, without stopping to consider at this time whether the proceedings, under such a statute even if strictly followed, would constitute due process of law within the meaning of Section 18 of Article II of the Constitution of New Mexico; and when it is required that a description of the animal be given in the advertisement that certainly must include the statement of the brand or brands on the animal. If such brands are incorrectly given, or not given at all, I am unable to see how the advertisement can be construed as giving any notice whatever to the owner. The object of the advertisement is to give him at least constructive notice that his animal has been taken up and may be sold. Moreover, the bill of sale from the board must contain a statement of the brands on the animal, as required by Section 119 of the Compiled Laws of 1897, and the inspector giving the bill of sale would not be authorized to put therein a description of any brands except as set out in the advertisement, and if those

brands are not the ones actually on the animal, the bill of sale would not be sufficient to pass title.

{*159} Under these circumstances, I am unable to see how the same can be held valid.