

## Opinion No. 15-1467

March 11, 1915

**BY:** FRANK W. CLANCY, Attorney General

**TO:** Mr. P. P. Ackley, Curry, N. M.

**Running of stock at large committing trespass.**

### OPINION

{\*51} I have just received your letter of the 8th inst. in which you say you would like information with regard to stock trespassing in a free range district, and you ask whether a man can herd sheep or cattle on another man's land if he shows the herders where the lines are.

I assume from what you say that your precinct is not one where the herd law has been put in force under the provisions of Chapter 94 of the Laws of 1909. If the herd law were in force, animals would not be permitted to run at large, but I gather from what you say that there are herders in charge of the stock which has trespassed upon lands in your district.

I agree with you that unless you can keep stock off your land there is no use in leasing land from the state for five years. I do not think that owners of stock have any right to come upon your leased land, and if they do so you could sue the owners for damages, but it is an expensive and troublesome thing to get into litigation over matters of this kind.

There is another statute of 1909 which says, in effect, that a man cannot recover damages for such trespasses unless he has his land fenced, but notwithstanding that provision there are circumstances under which damages could be recovered as has been distinctly held by the supreme court of the United States in a case which went up from Colorado, where there was a similar fence law. In addition to this, it is my opinion that Section 98 of the Compiled Laws of 1897 furnishes a better remedy than a suit for damages and it is still in force. By that section, the running at large, without herders, of large stock is prohibited from the first of March to the end of October, and this is made a criminal offense and can be punished by fine or imprisonment, or both, as is provided in Section 1055 of the same Compiled Laws. This section does not, however, appear to apply to sheep.