Opinion No. 15-1685

November 22, 1915

BY: FRANK W. CLANCY, Attorney General

TO: Messrs. Young & Young, Las Cruces, New Mexico.

The fact that an animal is not branded does not prevent the owner from proving his title thereto.

OPINION

*{*257}* Your letter of the 17th inst. has not been sooner answered partly because of my absence from town two days last week and partly because I have not heretofore had time carefully to consider what you have written.

You say that certain owners of cattle in Mexico, American citizens who have also ranches and cattle in New Mexico, have not been able properly to brand their cattle in Mexico on account of the existence of a revolution in that Republic, and in consequence of this condition, they have, in bringing their cattle into New Mexico, necessarily brought some unbranded cattle, some of which are over ten months of age. You further say that it seems that the Cattle Sanitary Board has taken the position that these unbranded cattle can be seized and confiscated, you assume under the estray law, but that you are unable to find any authority for such action.

I think it is quite certain that these cattle cannot be confiscated by anyone. That is against every principle of law, and if we had a statute which purported to give any such authority it would be of no force. I find in the new codification a number of sections with regard to records of brands, inspection, etc. at Sections 130 and 144 to 147, but they relate entirely to cattle exported from the state. The sections with regard to estrays are to be found in Sections 157 to 163, the first of which gives the statutory definition of an "estray," from which it appears that it is an animal "found running at large upon public or private lands, * * * * whose owner is unknown in the section where found, or which shall be fifty miles or more from the limits of its usual range or pastures, or that it is branded with a brand which is not on record in the office of the Cattle Sanitary Board." Now it is hardly possible that the cattle of which you write would fall within that definition. Even if they did, they could not be confiscated as you will see by reference to the other sections on this subject, as the fact that an animal is not branded does not prevent the owner from proving his title thereto. That is to say, a recorded brand is not the exclusive way of proving ownership. This was distinctly held in Chaves v. Territory, 6 N.M., 455. It is true that brands are required by Section 117 for cattle allowed to range at large, and the use of an unrecorded brand is made a misdemeanor by Section 135. I call your attention to Sections 131 to 134 as applicable to animals having unrecorded brands, and if any of the cattle about which you write, brought in from Mexico, have unrecorded brands, the

proceedings of the Cattle Sanitary Board might be under those sections. Even then the cattle could not be confiscated if the owner should appear and prove title to the cattle.

*{*258}* It appears to me, however, that after any unbranded cattle or cattle branded with a brand unrecorded in New Mexico are brought in from another country, they ought, within a reasonable time, to be branded with a brand recorded in this state. This would be only a reasonable requirement as to range cattle and would be a compliance with the requirement of Section 117.

I am inclined to the belief that you must have been misinformed as to any contemplated confiscation by the Cattle Sanitary Board, and I will send a copy of this letter to the Secretary of that board for the purpose of ascertaining what, if any, action the board has taken, and upon what information. I do not believe there will arise any necessity for conflict with the board as I am quite sure it acts only for what is believed to be the best interests of the public.