

Opinion No. 16-1806

May 19, 1916

BY: FRANK W. CLANCY, Attorney General

TO: Capt. W. C. Reid, Albuquerque, New Mexico.

Slaughtering of cattle infected with tuberculosis.

OPINION

{*369} I have today received your letter of yesterday relative to the matter of compensation of Mr. D. W. Low by the Cattle Sanitary Board for certain mulch cows condemned for slaughter on account of their having been found to be infected with tuberculosis. You say that he has made application to the Cattle Sanitary Board for reimbursement under the statute, and is advised by that board that I have stated, in a verbal opinion, that he is not entitled to any compensation for the reason that he did not have these cattle inspected within three months after they arrived within the state.

I have not the faintest recollection of ever having talked with anyone about Mr. Low's cows, or about any other cows similarly {*370} situated, or of having given any opinion that a failure to have such cows inspected within three months after their arrival in the state would be a bar to obtaining compensation if they were condemned under Section 113 of the Codification, and I cannot find anyone connected with this office who has any recollection of ever having talked with anyone on the subject. Of course, negative memory is not as valuable as that of an affirmative kind, but I do not believe that I could ever have expressed such an opinion if I had examined the statutes.

The requirement as to the inspection within three months after arriving in this state is contained in Section 112 of the Codification. I think it imposes a burden upon the owner of cows, but I cannot see that a failure to discharge the duty thus imposed has any relation whatever to the provisions of Section 113 as to appraisement of infected animals which are to be slaughtered, and payment therefor by the Sanitary Board. The punishment denounced by Section 112 is only for a refusal to have such cattle tested when directed by the authorized veterinarian or inspector appointed by the board, and the argument is strong that there is no duty imposed upon the owner until he is called upon by the proper officer appointed by the board. Section 113, so far as I can see, has no connection with the test required within three months by the first paragraph of Section 112, and the only restriction which prevents the payment of compensation is in the proviso which you quote in your letter, to the effect that no compensation shall be paid to any person who has brought the animals into the state affected with the disease, or from a district in which such disease was known to exist, or who may wilfully conceal the existence of such disease, or by wilful neglect, contribute to the spread of the contagion.

You say that Mr. Low and his associates have not violated any of these provisions, and under those circumstances I am unable to see any reason why the owner should not be compensated by the board.

I return herewith Mr. Low's letter, which you may need for your files.