

Opinion No. 16-1778

April 10, 1916

BY: FRANK W. CLANCY, Attorney General

TO: Mr. James A. Hall, Portales, N. M.

As to validity of so-called "herd law" which appears as Chapter 94 of the laws of 1909.

OPINION

{*350} I have your letter of the 7th instant in which you ask, in substance, whether the herd law, which appears in Chapter 94 of the Laws of 1909, is still effective, notwithstanding the fact that it has not been carried into the Codification of 1915, and also whether there is, in a district which had voted for a herd law under that statute, any such vested right as would continue to the citizens of that district, notwithstanding the failure to incorporate the statute in the Codification.

Answering the latter part of the foregoing, it seems clear to me that no district, because it had adopted and put in force the provisions of such a statute as that of 1909, could have any vested right in continuing it in force. The legislature might repeal the law and I take it that whatever came into existence by virtue of the statute, would fall with it. The right spoken of is not a property right, the destruction of which would be impossible under the provisions of Article II of the Constitution.

There are two questions which present themselves and which are not free from difficulty. The first is as to the effect of the omission of this statute from the Codification. As you will recall, it is provided in the repealing and saving clause of the Codification, that "all acts of a general and permanent nature not contained in this Codification, are hereby repealed." The statute of 1909 was of a permanent nature but can it be said that it was of a general nature? It was limited to the counties of Quay, Roosevelt and Curry and the portion of the county of Guadalupe lying east of the Pecos and Gallinas Rivers. But if it was not general in its {*351} nature, was it valid at any time under the act of congress of July 30, 1886, which prohibited local or special laws regulating county and township affairs, or under the similar provision in Section 24 of Article IV of the Constitution?

If we can hold that the law was valid from its beginning, notwithstanding the congressional prohibition, and remained valid after the adoption of the Constitution by virtue of Section 4 of Article XXII thereof, and that it is not general in its nature, it would follow that its omission from the Codification would have no effect upon it. I think the matter is in such shape that it ought to be submitted to the courts for judicial settlement.

You say in your letter that someone claims to have a letter from Santa Fe which is understood to be from me, to the effect that the law is now effective. I have no recollection of having ever written anything like that, but one of my assistants says that he answered a letter from someone who asked about the effect of a division of a precinct which had adopted the herd law after it was passed in 1909, and that he wrote him that if the law was in effect before the precinct was divided, it might be considered as still in effect for the country included in the precinct which had voted for the herd law. I am very sure that no one here has expressed any more positive opinion than I have indicated in this letter on this subject. I know that we have discussed it more than once, but we did not get any further along than is hereinbefore indicated.