

Opinion No. 23-3720

July 21, 1923

BY: JOHN W. ARMSTRONG, Assistant Attorney General

TO: Requested by: Hon. C. A. Doty, State Rodent Inspector, Albuquerque, New Mexico.

In Exterminating Rodent Pests on Private Lands, Law Requires that the Actual Expense Must be Determined.

OPINION

{*71} Your query:

"Is it legal to base the charges for labor for the treatment of a tract of land, upon the number of quarts of poisoned grain used; the average cost for the labor to distribute one quart having been obtained by taking the average cost to distribute grain for a number of days upon a number of tracts owned by individuals?"

We think not. The law evidently requires that the "actual" expense must be determined in each instance in the absence of any agreement to the contrary. In order to legally impress lands with a lien, we think that "actual" expense must be determined.

{*72} The law provides that in case any owner of land infected by prairie dogs shall fail, after proper notice, to destroy such pests, the inspector is authorized to enter upon the lands and destroy the same at the expense of the owner, which expense shall be a lien upon said lands. The law further provides that the inspector shall keep an itemized account of actual expense of materials and labor and necessary traveling or other expenses in connection with destroying such pests upon any such lands.