

Opinion No. 26-3913

September 9, 1926

BY: FRED E. WILSON, Attorney General

TO: Hon. H. L. Kent, President, New Mexico College of Agriculture, State College, New Mexico.

Your letter of August 27 came to the Office during my absence and just at a time when Mr. Dow, the Assistant Attorney General, was ill, and this morning is the first opportunity I have had to answer it.

The question you submitted deals with the provisions of Chapter 45 of the Session Laws of 1923 as amended by Chapter 134 of the Session Laws of 1925 relative to the sterilization of cotton seed. You ask specifically, if under the terms of this statute the Board of Regents has discretion to change the method of sterilization from the method specified in the law, and adopt another method which might be equally or more satisfactory.

§ 6 of Chapter 45 of the Session Laws of 1923 provides that no license shall be issued or granted to any ginner under the terms of the Act until such gin is equipped with a disinfecting machine which will expose all cotton seed to a temperature of not less than 145 degrees F., and specifies the equipment for said machine. You will observe that this is made a condition for granting license, and applies to all gidders in the State. However, § 6 of said Chapter 45 was amended by Chapter 134 of the Session Laws of 1925 so as to require license only of such gidders who operate a gin within the area quarantined or regulated by reason of the infestation by the pink boll worm. In other words, the Board of Regents is given authority to license gidders to operate without such sterilizing equipment if the Board of Regents determines that the area in which said gin operates has been free from infestation or suspected infestation by the pink boll worm for a period of three years.

The only discretion I find in the statute is the discretion the Board has to determine whether or not a given area is free from infestation or suspected infestation of the pink boll worm for a period of three years. If the Board so determines no sterilization whatever is required in such areas.

It seems to me that the Legislature has definitely committed the Board to a particular method of sterilization where any sterilization at all is required, and that is by the use of a disinfecting machine at the gin in the infected area, which might be called the steam treatment. As a matter of law I do not think the Board would be justified in substituting its judgment as to the proper method for the method adopted by the Legislature.

However, if the Board could justify a finding that a certain area in a certain county has been free from infestation by the pink boll worm for a period of three years, that, of

course, would relieve the ginner from sterilizing the seed by the steam treatment at the gin. An agreement might be reached whereby all ginner would voluntarily agree to fumigate the seed under the plan outlined in your letter, but I do not believe the Board would have power to compel any ginner who might object to adopt this method. You do have power to compel the gins to be equipped with the disinfecting machine, and to have all cotton seed exposed to such treatment.

I trust that this will be of some benefit to you and the Board in your meeting, and I trust that it will reach you in time.

With best wishes, I am