

**Opinion No. [29-83]**

September 26, 1929

**TO:** Office of the Attorney General of New Mexico

SHEEP SANITARY BOARD -- May destroy diseased sheep and charge to expense.

**OPINION**

Reference is made to yours of the 25th inst. enclosing correspondence addressed Governor Dillon and in turn referred by him to the State Board of Finance. Such correspondence relating to the payment of indemnity to Mr. J. Ortega of Las Vegas, New Mexico, as compensation for goats destroyed in keeping with a resolution adopted by the Sheep Sanitary Board of New Mexico.

You ask, on behalf of the State Board of Finance, for an opinion as to what funds may legally be used for the purpose above stated.

I do not find any statute creating a fund for this specific purpose by name. There is a fund provided for by section 79 of the Codification of 1915, called Cattle Indemnity Fund and in which provision is made for a tax levy. From other sections of that article the word "cattle" as used in the article is defined to be understood and construed as bovine cattle only. By Section 169 of the Codification it is provided that whenever in the article the word "sheep" is used it shall be held to include rams and goats. Sheep are not bovine cattle and it is probable that the indemnity fund provided for in Section 79 is not available for the purpose of indemnifying Mr. Ortega for the destroyed goats.

By Section 178 of the Codification of 1915 the powers of the Sheep Sanitary Board are enumerated, among them being the power to dictate and prescribe quarantine and sanitary measures as circumstances may require for the prevention of disease and the spread thereof among sheep. It is also provided that the enumeration of special powers conferred on the board shall not be construed to operate as a denial to it of such others as should properly be exercised by such board; and in all matters relating and appertaining to the preservation of a healthy condition among sheep . . . and in all matters of sanitation and quarantine the board is given full powers to enforce both the provisions contained in the article and the rules and regulations prescribed by the board in accordance with the law.

I am of the opinion that the powers of the board are broad enough to include the destruction of diseased animals when by the board found to be necessary for the prevention of disease and the spread thereof among sheep.

By Section 206 of the Codification, a special tax levy on sheep is provided to be ordered by the Sheep Sanitary Board, certified to the Board of County Commissioners of each county by the State Auditor and by the county board included in the annual levy of

taxes. The funds derived from such levy are to be collected as other state taxes and paid to the State Treasurer, kept in a separate account by such treasurer and used exclusively for the payment of any expenses properly incurred by the Sheep Sanitary Board. Such funds to be paid out of the State Treasury on the order of the said board only.

In the absence of any statutory provision expressly designating and creating a fund as, for example, a Sheep Indemnity Fund, it seems reasonable that the intent of the legislature was that the fund created by this special tax levy on sheep shall be used to cover all proper expenses incurred by the Sheep Sanitary Board.

The expense incurred in the destruction of the goats, to which reference has been made, and including a reasonable sum as the value of such goats would seem to be properly within the payment of expenses properly incurred by the Sheep Sanitary Board.