

Opinion No. 34-724

February 6, 1934

BY: E. K. NEUMANN, Attorney General

TO: Mr. Walter M. Connell, President Sheep Sanitary Board, Albuquerque, New Mexico.

{*114} The matter of cancellation of brands of sheep used by Frank W. Runyan of Hope, New Mexico. has come to the attention of this office by means of a letter from yourself, dated February 1, 1934, and a personal visit of Mr. George W. Armijo, Secretary of the Sheep Sanitary Board.

Under date of February 1st, Mr. Adams wrote you that it was his opinion that the Board had the authority to strike ear marks and brands from the records in cases where such had been recorded by mistake, and in his letter he made reference to Section 4-1619 of the 1929 Compilation.

It is our opinion that the matters and things set forth by Mr. Adams were correct in all respects, but in addition to said letter and by reason of other and further facts, we will attempt to clarify the situation.

Section 4-1612 of the 1929 Compilation sets forth the powers and duties of the Sheep Sanitary Board, and paragraph 4 of said section, it is provided among other things as follows:

"The enumeration of special powers hereby conferred on the Board, shall not be construed to operate as a denial to it of such others as should properly be exercised {*115} by such board, and in all matters of a healthy condition among sheep, the prevention of illegal or improper handling or dealing in sheep, registration of owners, marks and brands, * *".

It is our belief that under this provision there exists in the Sheep Sanitary Board the implied power, to say the least, to make rules and regulations governing marks and brands, and that under this provision there is a further implied power to cancel or strike from the record any ear marks or brands which have in the satisfaction of the Board been either improperly recorded or improperly used.

We would suggest, therefore, from the facts which have been submitted to us in the report by Mr. DeGraften Ried, that the Board strike the brand of Mr. Runyan from the records, showing as a reason that such recorded brand has not in fact been used as recorded; that such brand has been used in a way different from that in which recorded, thereby making the brand as used a brand which is not of record, and that Mr. Cauhape be notified of the action of the Board.

Upon this showing, Mr. Cauhape will then be in a position to go into the District Court and restrain Mr. Runyan from further and continued use of the brand which he is now using.

The statutes are strangely silent upon some of the matters discussed herein, but it is our belief that the above and foregoing is the correct interpretation of the statutes and the powers and duties of the Sheep Sanitary Board.

By: FRANK H. PATTON,

Asst. Attorney General