

Opinion No. 36-1427

September 16, 1936

BY: FRANK H. PATTON, Attorney General

TO: Hon. J. S. Vaught, Attorney at Law, Albuquerque, New Mexico.

{*136} I have your letter of September 15th, wherein you have written to me as attorney for the Cattle Sanitary Board.

You make reference, first, to the proposition as to the authority of the Cattle Sanitary Board to cancel commissions issued by the said Board to veterinarians which give authority for the issuance of health certificates required by other {*137} states when cattle are moved from New Mexico into such other states, and giving also the authority to make tests for tuberculosis and Bang's disease.

As a general proposition of law the power to employ carries with it the power to discharge, and in the absence of some controlling statute upon this matter it is my belief that the Cattle Sanitary Board may discharge veterinarians for neglect of duty or for failure to perform their duties in an efficient and competent manner.

I think, however, that in line with this proposition it would be proper to cite the veterinarian involved before the Cattle Sanitary Board for a hearing and to show cause why his commission should not be cancelled.

The power to employ such veterinarians, so far as I am able to determine, is found in Sec. 5 of Chapter 53 of the Laws of 1933, and I find no provision which in any way tends to limit the Board in its right to discharge for valid reasons.

You also desire to know whether or not the New Mexico Board of Veterinary Examiners has the power to revoke this particular veterinarian's license upon proper showing of inefficiency and incompetency.

Power to revoke licenses of veterinarians is found in Sec 5 of Chapter 76, of the Session Laws of 1931, and reads as follows:

"Provided that the State Board of Veterinary Examiners shall have power to refuse a license to any applicant on the ground of his having been guilty of gross immorality or gross malpractice, and it shall have the power to revoke a license on said grounds."

You can see, therefore, that the power to revoke a license is limited to gross immorality and gross malpractice.

Inefficiency and incompetency would, of course, not constitute gross immorality. On the other hand, however, inefficiency and incompetency conceivably could lead to gross

malpractice but, of course, as to whether or not certain acts performed constitute gross malpractice would constitute a combined question of law and fact.

I have grave doubts in my mind as to whether the evidence which you presented to me in my office a few days ago constitutes gross malpractice as known to the law.

Trusting the foregoing sufficiently answers your inquiry, I am,