

Opinion No. 45-4691

April 16, 1945

BY: C. C. McCULLOH, Attorney General

TO: Mr. J. R. Poe State Dairy Commissioner State College, New Mexico

{*47} We are in receipt of your letter of April 1, 1945 in which you ask several questions concerning Chapter 49, Article 23, of the New Mexico 1941 Compilation, relating to bees.

In your first question you state that a man has refused to sterilize or burn hives of bees contaminated with foulbrood. You ask our opinion as to whether or not, under Section 49-2307 of the 1941 Compilation, you have authority to destroy such contaminated hives. I have carefully studied this section, and there is certain language in it which might imply that you have this authority. This language is as follows:

"The state bee inspector shall direct sterilizing and cleaning up of foulbrood and other contagious bee diseases, provided that good judgment be exercised in such methods as to allow for the preservation of as much equipment such as hives, frames and wax as possible and that burning or total destruction be resorted to only in case of small isolated infections or where burning is the owner's preference or in case the owner completely refuses to allow sterilization."

However, the language here contained is ambiguous and susceptible of various constructions. It could well be argued that the only effect of the failure to sterilize the colonies is that the owner would not be entitled to a certificate. In view of the foregoing, it is my opinion that you should not destroy the infected colonies without a court order which {*48} could be obtained in a mandatory injunction proceedings or in a proceedings to abate a nuisance. In addition you have the remedy of withholding the certificate, preventing the sale of honey and the criminal proceedings provided for in Section 49-2303.

By your second question, you ask whether a large beekeeper, who has bee yards scattered over wide areas, should have a certificate for each yard and pay a \$ 5.00 inspection fee for each yard. Section 42-2308 of the 1941 Compilation provides in part as follows:

"Hereafter all beekeepers, owners and possessors of bees * * * shall be required to apply for an annual inspection and certification by the state bee inspector. * * *"

This section then provides for various fees based on the number of hives. In view of the fact that the certificate is applied for and granted to the owner of the bees rather than on any particular bee yard, it is my opinion that the owner need have only one certificate, whether he has one or more bee yards.

By your third question you call attention to the apparent discrepancy between Section 49-2303 and Section 49-2315. Both provide penalties. The former section makes it a misdemeanor for any person possessing bees or appurtenances to allow them to become infected or diseased and knowingly permit them to remain in such condition. Thus this section makes it a crime to do certain particular acts.

Section 49-2315 is a general criminal provision making it a crime to violate any provision of the bee inspection act. As this is a general provision and as a general provision will not be deemed to supersede or conflict with a specific provision of law, it is my opinion that this section would have no application to the things and matters covered in Section 49-2303, so that there would be no conflict in the application of these two sections.

Trusting that the foregoing sufficiently answers your inquiry, I am

By ROBERT W. WARD,

Asst. Atty. General