

**OPINION
42-32**

October 9, 1942 (OPINION)

BEES

RE: Destruction of foul hives

Your inquiry of October 5th, relative to the right of the bee inspector to destroy beehives infested with American foul brood, owing to the fact that the law does not provide compensation to the owner, has been referred to the undersigned.

The right of destruction is contained in section 2790a9 of the 1925 Supplement, as amended by chapter 91 Session Laws of 1929. This specifically provides that there shall be no compensation and I do not think that the fact that no compensation is paid would in any manner affect the validity of the Act. Our Supreme Court in the case of Neer v. State Livestock Sanitary Board, 40 North Dakota page 340, in the fourth paragraph of the syllabus stated:

"There is no property right in that which is a nuisance and no right of liberty in that which is harmful to the public weal."

The case of Neer v. State Livestock Sanitary Board presented facts somewhat similar to the question which is now confronting you. That statute, however, differs considerably, and that difference consisted of the right of the person whose animals were to be destroyed, to have a hearing. Under that Act, the Livestock Sanitary Board, if they determined a contagious or infectious disease existed, would give notice to the owner or keeper, giving him twenty-four hours in which to file a protest against the killing. It then went on to provide that the Livestock Sanitary Board would appoint one expert, the owner, another expert, and those two, a third expert, who would determine whether or not the disease actually existed. Our court then held that such a hearing was due process.

A statute of this type should permit a hearing, for the reason that, if it could be shown that an inspector destroyed hives which were not infected, this inspector would become personally liable to the owner of the hives.

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