Brands—Re-Recording of—Transfer by Assignment or Bill of Sale Constituting Re-Recording—Fee for Re-Recording.

When a brand is transferred by assignment and recorded in the name of a different person from that in whose name the brand stands of record, a fee of $2 should be collected. Re-recording, for which a fee of 25 cents is collectable, refers to renewals of the record as it stands in the name of the person applying for re-recording.

E. A. Phillips, Esq.,
Secretary Montana Livestock Commission,
Helena, Montana.

My dear Mr. Phillips:

You have inquired whether the fee to be charged by your office in connection with an application for recording or re-recording, accompanied by and based upon an assignment of the brand in question and a bill of sale for same, should be $2 as for an original recording, or 25 cents for re-recording, under Chapter 144 of the Laws of 1921.

Section 2 of this Chapter requires any person, firm or corporation desiring to have recorded an artificial mark or brand for use in distinguishing or identifying the ownership of any domestic animal or livestock, to make application therefor to the Secretary of the

Livestock Commission in writing. The recorder is then required to "designate for the applicant's use some practical form of mark or brand * * * " It is apparent that this section does not have reference to re-recording or to transfers of brands. It does not require the recorder to record a brand suggested or applied for by the applicant, but to designate some brand not theretofore in use for the applicant.

Section 3 provides that in every tenth year commencing with 1921, "upon the application of any person, firm or corporation, or the transferree of such person, firm or corporation * * * to re-record any mark or brand which at the time of such application stands of record in said Recorder's office in the name of such person, firm or corporation," the recorder shall re-record the brand.

While the fact that Section 2 apparently refers to the original granting of brands to persons who have not theretofore had a brand of record, and the language "or the transferree of such person" contained in Section 3 might indicate that persons to whom brands are assigned or transferred are within the re-recording provisions, the language quoted later from Section 3 negatives that conclusion, inasmuch as a re-recording is there limited to brands standing of record in the names of persons applying for re-recording, necessitating the conclusion that the language, "or the transferree of such person," refers to transfers made at a time previous to the application.

The purpose of the re-recording is further brought out and the intention of the Legislature is made clear by the language of Section 5, where, in requiring publication of notice, such notice is required to be "to the effect that such year is a year for re-recording such marks and brands, and that no marks or brands shall continue of record unless re-recorded." Unless the mark or brand were already of record it could not of course "continue of record."

The meaning of the term "re-recording," as used by the Legislature, is indicated by the fact that Section 6 of Chapter 27 of the Laws of 1911, of which the above Act is a re-enactment in amended form, definitely required that the charge for recording an old brand in a new name should be the same as for recording a new brand, while for re-recording the present fee of 25 cents was provided.

It is therefore my opinion that when a brand is transferred by assignment and recorded in the name of a different person from that in whose name the brand stands of record, a fee of $2 should be collected, and that re-recording for which a fee of 25 cents is collectable refers to renewals of the record as it stands in the name of the person applying for re-recording.

Very truly yours,

WELLINGTON D. RANKIN,
Attorney General.