

Recorder of Marks and Brands, Duty Of. Brands, Illustrated List Of Published. Marks and Brands, Cost Of Publishing.

The general recorder of marks and brands is not required at his own expense to illustrate and distribute pamphlet containing marks and brands.

October 18, 1911.

State Board of Examiners,
Helena, Montana.

Gentlemen:

I am in receipt of your letter of October 16th, enclosing a communication from D. W. Raymond, secretary of the state board of stock commissioners, in which he submits to the board the question:

Is it the duty of the general recorder of marks and brands to annually have published, at his own expense, an illustrated list of all brands or marks not previously published?

Under the provisions of Sec. 790, Revised Codes, the Secretary of the State Board of Stock Commissioners is the General Recorder of Marks and Brands.

The act of February, 1877, provided that the general recorder of marks and brands should receive a fee of one dollar for each brand recorded, and that he should annually, at the expense of the territory, have published a list of the brands so recorded. This law afterwards became Sec. 110 of the Fifth Subdivision of the Revised Codes of 1879, and was afterwards amended by the act of March 9, 1887, and as so amended constitutes Sec. 172, Fifth Division of the Compiled Statutes of 1887. This section was later amended at the Extraordinary Session, on September 13, 1887, in which latter act it was provided, among other things, that the recorder should receive a fee

of two dollars for each brand recorded, and should, at his own expense, have illustrated and published a list of the brands so recorded. Sec. 1792 of the Revised Codes of 1907 constitutes a part of this act of September 13, 1887.

Chapter 27 of the Laws of 1911 provides that the general recorder of marks and brands shall receive the sum of twenty-five cents for re-recording a brand and the fees now allowed by law for other recording and the same law also provides that all this money so received by the recorder shall be deposited to the credit of the stock inspector and detective fund. No provision is made in the law for any salary for the recorder of marks and brands, and if the provision of said section 1792 of the revised codes to the effect that this publication must be at the expense of the recorder himself, then, so far as these provisions of law are concerned, this official must serve without pay, and must donate from his own pocket a sufficient amount to pay the expense of such publication. Under the law as it stood prior to the enactment of said Chap. 27, the recorder provided for the expense of this publication out of the fees received by him for recording the brands, and said Chap. 27, Laws of 1911, while purporting on its face to be an original act, makes direct amendment of the law of September 13, 1887 in so far as it requires the recorder to account to the state treasury for all such fees received, and by thus taking away from the recorder all means of meeting the expense of the publication required by Sec. 1792, it, by implication, amended that provision of the law, so that, if under the law as it now stands it is necessary that this list of brands be published, the cost thereof is a proper charge against the expense account, and if there is no provision of law by which such expense can be met, then the list cannot be published at all.

The conclusion reached is that there is no duty resting upon the general recorder of marks and brands to print, illustrate and distribute, at his personal expense, the pamphlets before referred to in said Section 1792 of the Revised Codes.

Very truly yours,

ALBERT J. GALEN,

Attorney General.