

Opinion No. 47-5078

September 19, 1947

BY: C. C. McCULLOH, Attorney General

TO: Mr. John E. Miles Commissioner of Public Lands State Land Office Santa Fe, New Mexico. Atten: George A. Graham

{*89} We wish to acknowledge receipt of your inquiry of September 18, 1947, as to the application of Chapter 141, New Mexico Session Laws of 1939, as to whether or not the business of manufacture of pulp from timber growth on private lands falls within the proviso of said act, which reads in part as follows:

"Provided that in operations removing trees 12 inches or less in diameter outside bark at a point 4 1/2 feet from the ground for **non-lumbering purposes**, such as hewn railroad ties, mine props, stulls of poles, or any combination thereof, trees required to produce said items may be cut to a minimum diameter of five inches outside bark at a point 4 1/2 feet from the ground, but in such cuttings there shall be reserved and left uncut not less than four (4) live, wind firm seed trees per acre measuring 17 inches or more in diameter outside bark, at a point 4 1/2 feet from the ground; Provided, further, however, that in the event that no live, wind firm trees measuring 17 inches or more in diameter outside bark at a point 4 1/2 feet from the ground exist on said area at the time cutting, that the largest live, wind firm trees available on said area shall be left for seed trees in the number prescribed above for operations cutting logs for lumber and timber manufacturing purposes and for operations removing trees 12 inches or less in diameter for non-lumbering purposes respectively."

{*90} That timber used in the manufacture of pulp is timber used for a non-lumber manufacturing purpose is not open to question.

It is our opinion that the examples enumerated in the aforementioned act were not set forth by the legislature for the purpose of limiting the use of timber for non-lumber manufacturing purposes but that the legislature merely set forth a few examples in order to clarify what they actually had in mind.

It is our opinion that the business of manufacturing pulp from timber growth, whether on state owned or private lands, falls within the proviso of said act hereintofore set forth, and that timber may be cut and used in accordance with the terms therein provided.

Trusting the aforementioned satisfies your inquiry, I am,

By ROBERT V. WOLLARD

Asst. Atty. General