

Opinion No. 51-5471

December 28, 1951

BY: JOE L. MARTINEZ, Attorney General

TO: Mr. Charles G. Caldwell, Director Division of Sanitary Engineering and Sanitation
Department of Public Health Santa Fe, New Mexico

{*184} This is in reply to your letter of December 21st requesting my opinion on whether the sale of a product resembling ice cream, manufactured from a mixture of butter fat and vegetable fat to be labeled "A Frozen Dessert -- Not Ice Cream" would violate the Filled Products Act.

In my opinion such a product would be in violation of Section 4, Chapter 200 of the Laws of 1951. This section states that:

"It shall be unlawful for any person to manufacture, sell, exchange, transport, possess, or offer for sale or exchange any filled dairy product."

Section 3 (b) of the Act defines "filled dairy product" and I quote here the portions of the definition which I believe to be applicable to the product you describe.

"The term 'filled dairy product' means any milk, cream, or skimmed milk, or any combination thereof or **any food product made or manufactured therefrom**, to which has been added, **any fat or oil other than milk fat** so that the resulting product is in imitation or **semblance** of any dairy product, including **ice cream**,. . . ." (Underlining supplied).

The product you describe contains butter fat, which is a "food made or manufactured" from milk and the product has "fat or oil other than milk fat" in it, and the product is in "semblance" of "ice cream".

{*185} There can be no doubt that the product cannot be lawfully manufactured, sold, transported, possessed or offered for sale in the State of New Mexico.