

**Opinion No. 53-5795**

August 3, 1953

**BY:** RICHARD H. ROBINSON, Attorney General

**TO:** Senator Lewis Cox Attorney at Law c/o Quinn and Cox Clovis, New Mexico

{\*204} We are in receipt of your letter {\*205} of June 15th requesting an opinion as to the constitutionality of the "Filled Products Act" which is Chapter 200 of the New Mexico Session Laws of 1951. Similar acts have been the subject of much litigation. In the case of **Sage Stores Company and Carolene Products Company, Petitioners, vs. State of Kansas ex rel. A. B. Mitchell, 323 U.S. 32 89 L. Ed. 25, 65 Cup. Ct. 9**, the Supreme Court of the United States held valid an act almost identical to the Act in New Mexico. The Court, in an opinion authored by Mr. Justice Reed, stated:

"Apparently the objection under the equal protection clause is that the Kansas statute permits the sale of skimmed milk which has less calories and fewer vitamins than petitioners' compound and yet forbids the sale of the compound despite its higher nutritive value. Such an objection is governed by the same standards of legislation as objections under the due process clause. It is a matter of classification and the power of the legislature to classify is as broad as its power to prohibit. A violation of the Fourteenth Amendment in either case would depend upon whether there is any rational basis for the action of the legislature. *United States v. Carolene Products Co.* 304 144, 153, 154, 82 L Ed. 1234, 1242, 1243, 58 S. Ct. 778; *Carmichael v. Southern Coal & Coke Co.*, 301 U.S. 495, 509, 81 L. Ed. 1245, 1252, 57 S. Ct. 868, 109 ALR

The same Act was held constitutional in the case of **Poole and C. Market Company vs. Breshears, 343 Mo. 1133, 125 SW 2d 23**, and the Court in that case held that the Act was not arbitrary and unreasonable, and it was within the power of the legislature to determine policy concerning any of the foods mentioned in the Act.

Therefore, it is the opinion of this office that Ch. 200 of the 1951 New Mexico Session Laws is constitutional and has a reasonable base for classification and does not violate the discriminatory provisions of the Constitution of New Mexico and of the United States.

By: Fred M. Standley

Assist. Attorney General