

Opinion No. 53-5822

October 6, 1953

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. James M. Doughty, Jr. Supervisor of Milk Sanitation Division of Sanitary Engineering and Sanitation State Department of Public Health Santa Fe, New Mexico

{*231} This is in answer to your request for an opinion as to whether or not the product known as "Reddi-spread" comes within the provisions of the Laws of 1951, Chapter 201, Section 1, et seq., (Section 49-2115 et seq., N.M.S.A., 1941 Compilation, as amended), the New Mexico Filled Products Act. The title of the act is as follows:

"An act to prevent confusion, fraud and deception of the public in connection with the sale of dairy products; to make unlawful the manufacture, sale, exchange, transportation, possession, or offer for sale or exchange of "filled dairy products" as defined herein; to provide for the enforcement and administration of this act; and to prescribe penalties for its violation."

It is clear from Section 2 of the act the intention of the Legislature was to prevent substitution, confusion and deception in the sale of dairy products and for the protection of the general health and welfare of the public of the State of New Mexico.

Section 3 of the act clearly exempts oleomargarine from the provisions of this act. The question therefore is whether the product known as "Reddi-spread" is in fact oleomargarine and therefore exempt from the provision of this act.

As part of the letter in which you request an opinion, you have enclosed what appears to be the top part of a package or container of the product known as "Reddi-spread", and an advertisement appearing in the Albuquerque Journal, August 14, 1953. Both the container and the advertisement clearly indicate by printing thereon in clearly legible letters the name "Oleomargarine" and "Margarine". Also appears the following description of the product:

"Ingredients: Hydrogenated cottonseed and soybean fats, butter, water, salt and non fat dry milk solids, lecithin, mono and diglycerides, 0.1% sodium benzoate as a preservative, artificial flavoring, artificial coloring, 15,000 U.S.P. Units Viatmin 'A' per pound added. One ounce supplies 23% of the minimum adult daily requirement of Viatmin 'A'.

It would clearly appear from the data advertising this product, and in which it is packaged, that the product contains hydrogenated vegetable fats and butter. Laws 1951, Chapter 200 do not define "Oleomargarine". Under Federal Laws there has been a definition and standard set up under the Federal Food Drug and Cosmetic Act which appears as No. 2, Part 45 of the Federal Security Agency, Food and Drug

Administration, § 4 Stat. 20, 52 Stat. 1046, 1055, 21 U.S.C. 341 and 371. In {*232} this standard of identity and definition which appears as Section 45.1, it would appear that the product known as "Reddi-spread" and described on its container, would come within the allowances and specifications set by the Federal agencies for oleomargarine or margarine.

It is therefore the opinion of this office that the product known as "Reddi-spread" is oleomargarine and is exempt from the provisions of Laws 1951, Chapter 200, Section 1, et seq.

By: William J. Torrington

Assist. Attorney General