

Opinion No. 54-5944

May 5, 1954

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. J. R. Poe State Dairy Commissioner State College, New Mexico

{*397} Receipt is acknowledged of your letter dated April 10th 1954, in which you request an opinion as to whether or not the Dairy Commissioner has the power to issue subpoenas requiring the appearance of witnesses, and the production of books and papers.

As you state in your letter, it seems that the processing plants, at the present time, declared a surplus of Grade A milk, with some plants claiming to have as high as a 25 per cent surplus, which means that the producer is paid only a butterfat price for 25 per cent of the milk he delivers. Also the producers are very suspicious of some of the plants using a part of this so-called surplus in their Grade A channels, which of course, means a great loss to the producer, and the Dairy Commissioner's authority to go in a plant and examine their books to see just how much milk is being used in Grade A channels and how much is being used in a surplus channel has been challenged by some of the plants, and you want to know whether the Dairy Commissioner has the authority to do this or not.

Section 49-2103 of the New Mexico Statutes Annotated, 1941 Compilation, among other powers has the following:

"* * * The dairy commissioner shall have power to issue subpoenas requiring the appearance of witnesses, and the production of books and papers, and to administer oaths with like effect as is done in courts of law in this state. It shall be the duty of any district court or the judge thereof, upon the application of said state dairy commissioner to issue an attachment for such witnesses, and compel him or them to attend before the commissioner and give testimony upon such matters as he or they shall be lawfully required to give by such commissioner, and said court or judge shall have power, in cases of refusal to punish for contempt, as in other cases of refusal to obey the orders and process of the court.

It is plain from the wording of the above quoted portion of Section 49-2103, N.M.S.A., 1941 Compilation, that the Dairy Commissioner has the power to issue subpoenas by making application to the District Court in county where application for subpoenas is requested, and they may be subpoenas duces tecum which in plain language means subpoenas compelling the witness to produce their records and books.

{*398} It is therefore the opinion of this office that under the above quoted section the Dairy Commissioner, among other powers has the power to issue subpoenas requiring any owner or owners of a public dairy or plant to produce its records provided the Dairy

Commissioner makes application to the District Court where application for subpoenas is requested.

We trust that this fully answers your inquiry.

By: Hilario Rubio

Assist. Attorney General