

Opinion No. 60-75

April 13, 1960

BY: OPINION of HILTON A. DICKSON, JR., Attorney General

TO: Clay Buchanan, Director Legislative Council P. O. Box 1651 Santa Fe, New Mexico

QUESTION

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1. May a handler, as defined in the "Dairy Act," pass the fees or taxes assessed him under § 5, Chapter 184 of the Laws of 1959 on to the producer in the form of (a) a specific deduction from the posted price; (b) a lower posted field price?
2. If the handler can specifically deduct this fee, is he in violation of he deducts it from producers even if he ultimately sells all or part of the milk outside the state?
3. If the handler has deducted this fee from his payments to producers, can he be compelled to make refunds on (a) all the milk he purchased, or (b) the milk he sold outside the state?
4. May a license, as provided for under § 4 of Chapter 184, supra, be required of a retailer?

CONCLUSIONS

1. There is no statutory prohibition against a handler computing this tax in arriving at the contract price he pays for his dairy products. It is a matter of private contract right and not a matter of statutory law.
2. Again, this is a matter of private contract right and not a matter of statutory law.
3. Not as a matter of statutory law but he may be as a matter of contract right.
4. A license may not be required of a retailer as defined in Section 2 N of Chapter 184

OPINION

{*435} ANALYSIS

Questions 1, 2 and 3 are subject to the same principle of law. The rights involved in all three of the above questions are rights derived from private contracts between the parties and the enforcement of those rights are matters to be settled in a civil action. There is no statutory prohibition involved in any of the questions.

It is immaterial insofar as statutory law is concerned what the handler pays the producer for the milk he purchases from him. There is no law fixing the price of milk.

In response to question No. 4 above, it is our opinion that the {*436} statute does not require a fee of retailers as defined in Section 2 N. At no point within the statute as passed is any such requirement made. However, it should be particularly noted that a retailer is defined as one who buys milk or dairy products from a handler and who resells the same to consumers **without further processing or manufacturing thereof**. Thus, if a person as defined in Section 2 A processes or manufactures the milk or dairy product in any manner, then he would fall within the definition of Section 2 F, which defines one who is a handler or processor. The latter category is, of course, required to have a license as required in Section 4.

By: Hilario Rubio

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