

Opinion No. 60-90

May 17, 1960

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

TO: Dr.. Stanley J. Leland Director, N.M. Dept. of Public Health Santa Fe, New Mexico

QUESTION

QUESTIONS

1. Must the health officer accept the distribution of graded milk and milk products on the basis of a duly executed "Sanitation Certificate?"
2. Is the shipper required to make application for a permit in addition to supplying a sanitation certificate?

CONCLUSIONS

1. No, see analysis.
2. Yes, see analysis.

OPINION

{*453} ANALYSIS

Section 3, page 7 of Regulations Governing The Grading and Grade Labeling of Milk and Milk Products, adopted by the State Board of Public Health February 12, 1956, as amended by the State Board of Public Health, December 8, 1957, provides in substance that it shall be unlawful for any person to bring into or receive into the State of New Mexico or its police jurisdiction for sale or to sell or offer for sale therein or to have in storage where milk or milk products are sold or served, any graded milk or milk products defined in said regulations, who does not possess a permit from the health officer.

Section 52-2-11, N.M.S.A., 1953 Compilation, provides as follows:

"Transportation of milk -- Certificates. -- It shall be unlawful for any person, firm, association or corporation to transport anywhere within or into the state, graded milk or milk products bearing a Grade A label, unless each such shipment is accompanied by a facsimile, or copy of, either (a) a 'Milk Sanitation Certificate' as hereinafter set forth or the shipper's or producer's current Grade A labeling permit issued by the New Mexico department of public health in accordance with said department's regulations."

The following section, to-wit, 52-2-12, prescribes in substantial detail a form entitled "Milk Sanitation Certificate." This certificate, in substance, recites that all of the milk products labeled Grade A in this shipment were produced and processed under sanitary conditions together with recitals as regards tests for tuberculosis and brucellosis (Bang's disease). This certificate is signed by some person representing the shipper or producer and acknowledged by him in the presence of an officer competent to administer oaths.

It should be noted at this point that the aforementioned certificate is merely the sworn statement of the shipper or producer of the milk product. The certificate shows nothing whatsoever to the effect that the milk products constituting the shipment have been examined by **any** health authority either from this or any other state. Said document is merely a sworn statement by a shipper or producer of milk products as to the existence of a certain state of facts.

{*454} It would seem incongruous that the shipper or producer should police his own conduct and activities. Not until the advent of the millennium can milk producers or shippers or anyone else for that matter be trusted to be the arbiters of his or their own doings.

Certainly it is not out of order, nor is it unduly repetitious for us to reiterate our pronouncements made in other opinions to the effect that the authority of your department, whether conferred by law or departmental regulation, is necessarily far reaching and powerful in the extreme.

In the policing of milk products, it is evident to even an untutored layman that the public must be protected at all costs against the diseases which the medical profession now recognize as being caused by "bad" milk.

Section 12-1-4, N.M.S.A., 1953 Compilation, states:

"The state department shall be responsible for the administration of the public health activities of the state as hereinafter provided, and in that respect shall:

(1) Supervise the health of the people of the state.

....

(17) Regulate the sanitation and safety for consumption of milk, meats, other foods and drugs.

....

(19) Establish, maintain and enforce such rules and regulations as may be necessary to carry out the intent of this act and to publish same."

In addition to the law of our own state, an examination of the encyclopedias and case law of other jurisdictions demonstrates conclusively that the preservation of the public health is one of the duties devolving upon the State as a sovereign power and that the enactment and enforcement of health measures find ample support in the police power which is inherent in the State and which the latter cannot surrender. 2 Am. Jur., Health, Sec. 3, page 287.

Further, the general rule is that statutes delegating to subordinate governmental agencies and authorities the power to enact and enforce health regulations are to be liberally construed in order to effectuate the purpose of their enactment. 25 Am. Jur., Health, Sec. 8, page 291.

An abundance of cases on the subject of health have been decided by the highest appellate courts of the several states of our Union. These cases uniformly hold that health authorities are possessed of almost unlimited authority to protect the public health by the exercise of the police powers of the states.

In view of the foregoing, our answer to your first question is an emphatic no.

Our answer to your second question is an emphatic yes.

By: Carl P. Dunifon

Assistant Attorney General