

Opinion No. 68-46

May 1, 1968

BY: OPINION OF BOSTON E. WITT, Attorney General

TO: Mr. Lee S. Garner, Director New Mexico Livestock Board P. O. Box 2048
Albuquerque, New Mexico

QUESTIONS

FACTS

The New Mexico Livestock Board and the Consumer Marketing Service of the United States Department of Agriculture intend to enter into two cooperative agreements in respect to meat inspection throughout the State of New Mexico. The purpose of the first cooperative agreement is to provide for a Federal-State Cooperative program for meat inspection to meet the requirements of the Federal Meat Inspection Act, 34 Stat. 1260, 21 U.S.C. §§ 71 through 91, as amended by the Wholesome Meat Act. 81 Stat. 584 and the Meat Inspection Regulations, 9 CFR, Parts 301 through 329. The inspection will apply to eligible establishments in the state as provided in the above act.

The second cooperative agreement is for the purpose of providing State-Federal cooperation in developing, administering and enforcing a state meat inspection program under state law imposing with respect to all establishments in the state and the products of such establishments, requirements at least equal to those established in the above reference meat inspection act. Both agreements further provide that the New Mexico Livestock Board will be responsible for employing qualified personnel to carry out the functions provided for in both the Federal and State Acts. The agreements also provide that a portion of the cost in administering these meat inspection programs will be borne by the Federal Government.

1. Under existing powers of the New Mexico Livestock Board, may the Board enter into these agreements with the Consumer Marketing Service in regard to the Federal-State Cooperative Program?
2. Under the Cooperative Agreement, is the New Mexico Livestock Board authorized to enforce Federal Regulations of the Federal Meat Inspection Act?

CONCLUSIONS

1. See Analysis.
2. No, but see analysis.

OPINION

{*78} ANALYSIS

The United States Government, through the Secretary of Agriculture, is authorized to enter into cooperative agreements with the responsible state agencies in respect to the administration of laws and regulations relating to marketing of agricultural products and the control and eradication of animal diseases and pests, 76 Stat. 663, 7 USC § 450. Likewise, the Livestock Board has broad general statutory authority to enter into agreements with the Federal Government in respect to the exercise of any power common to both parties. This authority is found in the Joint Powers Agreement {*79} Act (Laws 1961, Chapter 135) compiled as Sections 4-22-1 through 4-22-7, N.M.S.A., 1953 Compilation. See also Attorney General Opinion No. 64-138, November 10, 1964. Any such agreement, however, must be approved by the State Board of Finance as specified in the Act.

The question now arises as to whether there are common powers existing between the contracting parties. The United States Department of Agriculture is empowered to inspect meat and meat products for the purpose of protecting the consuming public as provided in the Federal Meat Inspection Act, as amended, *supra*. Similarly the Livestock Board is empowered to exercise general regulatory supervision over the livestock industry of the state "in order to protect the public from disease or unwholesome meat or meat products" Section 47-23-6, N.M.S.A., 1953 Compilation (P.S.). Common powers do exist therefore between the two agencies and we must conclude that the Livestock Board is authorized to enter into cooperative agreements with the Department of Agriculture respecting meat inspection.

We now reach your second question of whether the Livestock Board is authorized, pursuant to the Cooperative Agreement, to enforce Federal regulations of the Federal Meat Inspection Act. We find neither expressed nor implied statutory authorization for the Livestock Board to enforce the Federal regulations adopted pursuant to the Federal Meat Inspection Act. Such authority cannot be obtained from the Federal Government, it must be granted by the state itself. **Brownell v. Union and New Haven Trust Company**, 143 Conn. 662, 124 A.2d 901; **Driscow v. Burlington-Bristol Bridge Co.**, 8 N.J. 433, 86 A.2d 201, cert. den. 344 U.S. 838, reh. den. 344 U.S. 888.

Although we conclude that the Livestock Board is without power to enforce Federal regulations respecting meat inspection, we are of the opinion that the Livestock Board may adopt the Federal regulations concerned as a part of the rules and regulations of the Board. The Board is empowered to make and publish rules and regulations for meat inspection, § 47-23-6(A)(8), N.M.S.A., 1953 Compilation (P.S.). Caution must be exercised in this endeavor, however, to insure that only those rules and regulations are adopted which are within the Board's limited meat inspection authority. We have previously held that the Livestock Board may regulate the health of slaughter house employees the sanitation of slaughter houses, meat establishments and transportation vehicles and the maintenance of slaughter houses and meat establishments. Further the Livestock Board may control the ingredients of meat and meat products as they

relate to meat wholesomeness and may require that the slaughtering of animals and the processing of meat take place in suitable buildings which are properly maintained.

The Livestock Board may not adopt rules and regulations involving: (1) control of ingredients of meat and meat products unless such ingredients affect the wholesomeness of the meat (2) labeling or misbranding of meat and meat products (3) adulteration of meat and meat products unless the adulteration affects the meat wholesomeness (4) weights and measures for meat and meat products (5) fraudulent advertising of meat and meat products or (6) deceptive fill of containers for meat and meat products. The above matters are within the purview of the powers granted to the State Health Department, Attorney General Opinion No. 67-115, October 16, 1967. Adoption of Federal rules and regulations by the Livestock Board to the extent that they conflict with the above prohibited areas would be ineffectual and unenforceable.

In summary, we hold that although the Livestock Board is authorized to enter into cooperative agreement with the Federal {80} Government respecting meat inspection, there would be no purpose in executing the proposed agreements since they necessarily require enforcement of Federal regulations which is outside the powers of the Board.

By: David R. Sierra

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