

Opinion No. [29-102]

August 30, 1929

BY: M. A. OTERO, JR., Attorney General

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

STATE DAIRY COMMISSIONER -- Importers and manufacturers of ice cream must have license.

OPINION

I beg to acknowledge receipt of your favor of the 27th inst. enclosing copy of a letter from the Thomas Creamery Company and copy of a letter from the Secretary and Treasurer of the Curry County D. P. Association. You asked my opinion regarding the matters presented in these two letters.

Taking them up in order, will say, first, that section 9 of chapter 97 of the Laws of 1927 was amended by section 3 of chapter 152 of the Laws of 1929. This provides:

"It shall be unlawful for any person, firm or corporation to operate * * * an ice cream factory within the State of New Mexico or for any person, firm or corporation to ship into the State of New Mexico for the purpose of selling or distribution within the state any * * * cheese or ice cream without having first secured a permit * * *."

If this party's mix can be said to be ice cream before it is frozen, then he is shipping in ice cream and is required to have a permit, but if it is not ice cream until it is frozen then he is a manufacturer of ice cream and must have a permit, so in any event he must have a permit and pay the fee of \$ 25.00.

As to number 2, there are not sufficient facts given to enable me to determine anything about it. The Dairy Commissioner evidently understands the situation, but unfortunately we are not in a position to do so without a full statement of the facts to which this letter relates.