

Opinion No. 51-5376

June 21, 1951

BY: JOE L. MARTINEZ, Attorney General

TO: Mr. James M. Doughty, Jr. Supervisor, Milk Sanitation Department of Public Health Santa Fe, New Mexico

{*58} This is in reply to your letter of May 29 requesting an opinion to clarify the confusion which has been caused by the error of failing to include in the finally approved enrolled and engrossed copy of House Bill No. 359, the milk regulation act, all of the amendment which was voted to place administration of the act solely in the hands of the Health Department.

Under our Constitution, Article 4 of Section 20, the enrolling and engrossing, as well as the signing by the Governor, are an integral part of the legislative process. The Supreme Court of New Mexico, in the case of Kelley v. Marron, 21 N.M. 239, 153 P. 262, ruled that an enrolled bill which has been signed by the Speaker and the President of the respective Houses, and approved by the Governor, and deposited with the Secretary of State is conclusive upon the courts as to the regularity of its enactment, since the signatures of the officers are a solemn declaration by the officers of a coordinate department that the bill as enrolled was enacted and approved. On the basis of this decision, it is my opinion that House Bill No. 359, as enrolled and engrossed, is now controlling statutory law as Chapter 201 of the Laws of 1951 and must be administered as its language directs.

This leaves you with the necessity of compliance with the terms of the statute.

Section 3 of the act vests full authority and power to carry out the purposes of the act in the State Board of Public Health. All authority to administer the act is vested solely in the State Board of Public Health or in the Director of Public Health, with the one exception of "the making of rules and regulations as shall be deemed necessary to carry out the provisions of this act." This latter authority and power is granted to the Board of Public Health, "under the direction of the Regents of the Agricultural College of New Mexico."

It is suggested that a properly adopted resolution of the Board of Regents of the Agricultural College directing that, since under the terms of Section 3 of Chapter 201 of the Laws of 1951, the act in question, the Board of Regents was given supervisory powers over the {*59} State Board of Health, that they, by such resolution, authorize the Board of Health to promulgate such rules and regulations as they deem necessary to carry out the provisions of the act. Such a resolution should also contain a provision for review and approval of such regulations by the Board of Regents or such official as they might designate to do this for them.

In my opinion this would amount to full compliance with the requirements of the statute and would permit the operation of the milk regulation act as was intended by the Legislature.

I trust that this will answer your questions fully.