

Opinion No. 56-6403

March 6, 1956

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. Dallas Rierson, Director of Regulatory Services, New Mexico College of A. & M.A., State College, New Mexico

You have requested an opinion of this office on the question of whether or not the State Dairy Commissioner has the power to subpoena records of a processor of milk to determine if the processor has declared more surplus than necessary and used same in the form of market milk. You state that dairy processors purchase milk on a butterfat basis from the producers. That in certain seasons of the year when surpluses are declared, processors pay one price for the amount of butterfat that is used in market milk and another price for the amount which is declared surplus. The surplus being used in the making of ice cream and other dairy products. You state further that the producers feel that sometimes the processors declare more surplus than is necessary and some of the surplus is used in the form of market milk.

The subpoena powers of the Commissioner are as set forth in § 52-1-3, N.M.S.A., 1953 Compilation, as follows:

". . . They shall also have power to examine, under oath or otherwise, any person whom they believe has knowledge concerning the unlawful operation of any creamery, public dairy, butter, cheese or ice cream factory. The dairy commissioner shall have power to issue subpoenas requiring the appearance of witnesses, and the production of books and papers, and to administer oaths with like effect as is done in courts of law in this state"

The Act in general applies to the protection of the public health and safety by the inspection and close supervision by the Dairy Commissioner of the producers and processors of milk or milk products. Therefore, the Commissioner's subpoena power is limited to the purpose of enforcing the Act.

It is noted that § 52-1-2, N.M.S.A., 1953 Compilation, states, in part, that the Dairy Commissioner shall compile and publish annually, statistics and information concerning all phases of the dairy industry in this state. There is no question but what the Dairy Commissioner has the power to subpoena records for this purpose. Should this be done, it would accomplish the end result of giving information to everyone concerning the amount of milk each processor used for bottle milk and the amount used for surplus. Perhaps in this manner the producers could determine if the processor accurately declared surpluses.

Where Attorney General's Opinion No. 5944, 1953-54, is inconsistent with this opinion, the same is hereby overruled.

By Jack A. Smith

Assistant Attorney General