

Opinion No. 57-328

December 23, 1957

BY: OPINION OF FRED M. STANDLEY, Attorney General Joel B. Burr, Assistant Attorney General

TO: Dr. F. H. Sharp, Veterinary-Surgeon, Cattle Sanitary Board of New Mexico, P. O. Box 1296, Albuquerque, New Mexico

QUESTION

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Is an out of state manufacturer of biologics required to obtain a manufacturer's license to qualify to market biologics in New Mexico, or will a distributor's license suffice?

CONCLUSION

A distributor's license will suffice.

OPINION

ANALYSIS

The answer to your question is found in § 47-19-1, N.M.S.A., 1953 Compilation. It reads as follows:

"Any person, firm or corporation, except a duly licensed and registered druggist, desiring to sell, produce, distribute or manufacture any serum, vaccine or other biologics intended for diagnostic or therapeutic use with animals in the state of New Mexico, shall first obtain a license from the cattle sanitary board of New Mexico. Every person desiring to use or administer any of said serums, vaccines or biologist, excepting owners of animals or livestock who desire to use and administer said serums, vaccines or biologics on their own animals, shall also obtain a license therefor from the cattle sanitary board of New Mexico. Applications for all such licenses shall give the name and address of the person, firm or corporation applying and shall state the purpose for which said license is being obtained, and shall be made upon forms prescribed by the said cattle sanitary board, and shall be accompanied by the license fee for the first year in the amount hereinafter prescribed. The license fees shall be payable annually at a time to be prescribed by the said cattle sanitary board and shall be in the following amount: Manufacturer or producer, ten dollars (\$ 10.00); seller or distributor, five dollars (\$ 5.00); license to use or administer, one dollar (\$ 1.00)."

A reading of the above statute discloses that all persons, firms or corporations, with the exception of registered druggists, desirous of selling, producing, distributing or

manufacturing any serum, vaccine or other biologics intended for diagnostic or therapeutic use with animals in the State of New Mexico must first obtain a license from the Cattle Sanitary Board of New Mexico.

The statute also sets up a fee scale wherein a manufacturer or producer's license fee is set at \$ 10.00 as distinguished from a seller or distributor's license, which is only \$ 5.00.

Your question reveals a factual situation in which an out of state manufacturer seeks authority to market or sell biologics in New Mexico which have been manufactured in another state, and does not intend to manufacture them within the limits of New Mexico. It, therefore, follows that the person in question need only obtain a seller or distributor's license.