

Opinion No. 59-102

August 13, 1959

BY: HILTON A. DICKSON, JR., Attorney General

TO: Hon. Patrick F. Hanagan District Attorney Fifth Judicial District Roswell, New Mexico

{*161} This is in response to your recent request for an opinion on the following:

"Is it legal to give trading stamps on cigarette purchases?"

It is my opinion that it is legal to give trading stamps on the purchase of cigarettes provided the combined selling price of the cigarettes and the stamps do not violate Sections 49-3-2 and 49-3-4, N.M.S.A., 1953 Compilation.

The pertinent part of Section 49-3-4, N.M.S.A., 1953 Compilation, is as follows:

". . . and in all advertisements, offers for sale, or sales, involving the giving of any gift or concession of any kind whatsoever **(whether it be coupons or otherwise)**, the retailer's or wholesaler's combined selling price shall not be below the cost to the retailer or the cost to the wholesaler, respectively, of the total of all articles, products, commodities, gifts and concessions included in such transactions, **except that if any such articles, products, commodities, gifts or concessions, shall not be cigarettes, the basis cost thereof shall be determined in like manner as provided in subdivision "h" of section 2 (49-3-2).**" (emphasis supplied)

The Legislature has, as we can see, made provisions under the Cigarette Fair Trade Act for computing the selling price of cigarettes when coupons (or anything else) is given in connection with their sale. It follows then that the giving of stamps will not violate the act but might require an adjustment of the selling price of the cigarettes to conform with sections 49-3-2 and 49-3-4, N.M.S.A., 1953 Compilation.

By: B. J. Baggett

Assistant Attorney General