

Opinion No. 61-136

December 26, 1961

BY: OPINION OF EARL E. HARTLEY, Attorney General Marvin Baggett, Jr., Assistant Attorney General

TO: Mr. Charles A. Curtis, Secretary, Cattle Sanitary Board of New Mexico, P. O. Box 1296, Albuquerque, New Mexico

QUESTION

QUESTION

Who is a dealer in fresh meat for the purposes of Sec. 47-20-1, 2, 3, N.M.S.A., which require a dealer in fresh meat to be bonded and to be licensed by the Cattle Sanitary Board?

CONCLUSION

See analysis.

OPINION

ANALYSIS

Section 47-20-1, N.M.S.A., 1953 Comp., prohibits the carrying on as a dealer in fresh meats without first having obtained a license and filed a bond as required in the subsequent sections.

Section 47-20-2, N.M.S.A., 1953 Comp., states that "every person . . . engaging in the business of selling or dealing in fresh meats . . . shall obtain a license to engage in such business from the Cattle Sanitary Board. . ."

Section 47-20-3, N.M.S.A., 1953 Comp., provides that no person, firm or corporation shall engage in a business of selling or dealing in fresh meats without having first filed a bond in the sum of \$ 1,000.

The Act in general provides a method of control over butchers, slaughterers, cold storage locker plant operators, and dealers in fresh meats. It is clear from the Act that any person who sells fresh meat is covered. It is not required that the person selling the meat actually engage in slaughtering or butchering his own meat.

We feel that any person, firm or organization selling or otherwise distributing fresh meats is a "dealer" within the meaning of the above cited statutes, and must be licensed and bonded accordingly.

Practical experience, common usage, and **Webster's Collegiate Dictionary**, all confirm that a "dealer" is one who engages in a distributing or retailing business. It would be immaterial whether or not the dealer actually did the slaughtering, butchering or packaging of fresh meats as long as he actually sold or distributed fresh meats. The statutes cited anticipate that a person might perform only one of the aforementioned steps in marketing meat in that they require butchers, slaughterers, public cold-storage plant operators, and dealers to have licenses and to put up bonds.

The policy considerations behind these requirements obviously pertain to assuring your Board adequate control and inspection of the process by which fresh meat reaches the consumer, to the end that only livestock legitimately placed in commercial channels will reach the retail market.

The evils avoided by licensing and bonding of dealers in fresh meats are great, the cost to the dealer of such bonds and licenses is small, and we are of the opinion that regardless of the quantity involved or the nature of packaging used, all dealers must comply with the statutory requirements.

For a definition of "fresh meats", we find in *Florida Packing & Ice Co., v. Carney*, 51 Fla. 190, 41 So. 190, the Court observed that:

". . . Whether the same be either 'packed or refrigerated' it must be, at the time that he sells it in the ordinary course of his business, in that state where it can properly be termed 'fresh meat,' as contradistinguished from cured or salted meats, in order to render him liable to the occupational tax here imposed. Meats technically known as 'cured,' from having been treated with salt, smoke, etc., keep in an edible condition indefinitely even in the warmest latitudes, whereas the same meats when untreated and fresh, though capable of being kept in their fresh and natural condition for long periods in a low temperature either natural or artificial, (sic) quickly spoil, become putrid, and unfit for use when subjected to high or even mean or ordinary temperatures. . ."

This same distinction was subsequently cited with approval by the Supreme Court of Pennsylvania.

Thus, we conclude that any person, firm or corporation which sells fresh meats must be licensed and bonded as required by the above statutes.