

Opinion No. [30-09]

July 31, 1930

BY: J. A. MILLER, Assistant Attorney General

TO: Mr. F. E. Oakes, State College, New Mexico.

COMMERCIAL FERTILIZERS -- Bat guano not excepted.

OPINION

I have yours of the 29th inst. in which you express doubt as to whether or not bat guano found deposited in a cave in this state and offered for sale as a fertilizer should be registered under the requirements of Chapter 151, Laws of 1929.

By section 2 of that act it is made unlawful to sell, offer or expose for sale, or to distribute in this state any "commercial fertilizer" which has not been officially registered.

By section 1 of that act "any substance shall be deemed to be a commercial fertilizer if by reason of its chemical composition or other quality it is sold, offered or exposed for sale, or distributed in this state for the purpose of increasing the crops produced by land." The provisions of the act are declared not to apply to certain materials there listed. In this list we find one exception to be the dung of domestic animals when sold as such and unmixed with anything else. A bat, however, cannot be classed as a domestic animal especially a bat inhabiting a cave.

We are of the opinion that this commodity comes under the definition of commercial fertilizer and is not included among those exempted from the operation of the act. One who would sell or distribute bat guano in this state as a fertilizer should meet the requirements of your office and the statute as to registering.