

Opinion No. 37-1808

November 2, 1937

BY: FRANK H. PATTON, Attorney General

TO: Mr. R. W. Ludwick State College, New Mexico

{*175} This is to acknowledge receipt of your letter requesting an interpretation of Chapter 25, New Mexico Statutes Annotated, 1929 Compilation {*176} (Chapter 154, Laws of 1929). You wish to know (1) if the Board of Regents of the New Mexico State Agricultural College, its agents or employees, have authority to make arrests for violations of Chapter 25, supra; (2) what would constitute a hearing within the meaning of Section 25-109 of the act; (3) if the section could be interpreted in order that a hearing might be held immediately following the findings of violations if authority of the Board of Regents was vested in the party in charge of the office.

(1) The Board of Regents is vested with no authority to make arrests for violation of any of the provisions of Chapter 25. The arrest would have to be made by some duly constituted peace officer.

(2) The procedure for hearings is specifically set out in Section 25-109. Notice will have to be given as specified therein. What would constitute reasonable notice and opportunity to be heard would, of course, depend upon the facts and circumstances of each case.

(3) I do not believe that a regulation providing for a hearing immediately following the findings of violations would be valid, if by immediately you mean as soon as the person violating the law has been apprehended and found with unmerchantable food products within the meaning of the act. The law contemplates a reasonable time for the party to be heard and present his side of the case. Summary action is not authorized under this section.

I believe that your trouble lies largely in your interpretation of the law as a whole. Section 25-101 defines feeding stuffs included in the act. Section 25-102 provides that all commercial feeding stuffs sold, offered or exposed for sale or distributed within this state shall have affixed thereto a tag or label specifying, among other things, the ingredients used in its manufacture. Section 25-103 provides in substance that before any food stuffs shall be sold, a copy of the tag specified in Section 25-102 with a sample of the food stuff shall be filed with the Board of Regents of the New Mexico Agricultural College. Section 25-104 provides for affixing of stamps to all products sold within this state. Section 25-105 provides for the registration of the particular brand of feeding stuffs with the Board of Regents. Section 25-107 gives the Board of Regents, or their agents, power to inspect such products; and Section 25-108 sets out the procedure for securing the samples for inspection. Section 25-110 is the penalty section.

As I construe the act, it is designed, first, to require the registration of all commercial feeding products sold or offered for sale within the state, and, second, that the products so offered for sale shall be of the same standard as represented in the certificate on file with the Regents. There are two types of violation of this act. The first type is where the producer neglects or fails to register his product. The violation is complete when the sale is attempted without having first secured registration of the product. The producer or seller in such a case is entitled to no notice or hearing. The second type of violation occurs where the product is registered and certified as containing certain constituent elements and an inferior product is actually sold. In such a case the seller or producer is entitled to a notice and hearing as to whether or not the product sold or offered for sale was actually inferior. The strict requirements of the statute must be met, and if the producer or seller desires a hearing it must be granted. Notice and hearing are prerequisites to a valid prosecution for this type of violation.

However, in case a trucker is exposing or offering such a product for sale without first complying with {**177*} the provisions of the act relative to registration, payment of inspection fees, etc., he may be prosecuted summarily just as for any other violation of the law.

Trusting that this answers your questions, I am

By: RICHARD E. MANSON,

Asst Atty. Gen.