

Opinion No. 44-4611

November 10, 1944

BY: C. C. McCULLOH, Attorney General

TO: Mr. Ted Tenorio, Assistant District Representative, War Food Administration Office of Distribution, Post Office Box 587, Albuquerque, New Mexico

We have your letter of November 8, 1944 wherein you state that you have been advised by your regional office of the possibility that canned tomatoes may be made available for direct distribution to school lunch programs and state institutions in New Mexico. You state that these tomatoes were packed by prison labor in one of the eastern states and originally intended for lend-lease. In view of the above situation, you request an opinion concerning the legality of the importation and distribution of products processed by out-of-state prison labor.

Section 41-3309 of the New Mexico 1941 Compilation provides:

"It shall be unlawful for any person, firm or corporation to knowingly distribute, exchange, sell or offer for sale in this state any goods, wares, or merchandise manufactured, produced or mined wholly or in part by convicts or prisoners of any other state (except convicts or prisoners on parole or probation); **Provided, that nothing in this section shall be construed to forbid the sale of such goods to the state or any political subdivision thereof, or to any public institution owned and managed or controlled by the state or by any political subdivision thereof**, where such goods are to be used or possessed solely by the state, the political subdivisions thereof or by the said institution."

While the underlined exception in the above statute pertains only to sale, it is our opinion that the word "sale" in the exception should be construed as was intended by the Legislature to include the words "distribute" and "exchange".

In view of the fact that the various school districts are political subdivisions of the State of New Mexico, and also in view of the fact that state institutions are included in the exception, it is our opinion that the New Mexico law does not prohibit the plan contemplated in your letter as set out above.

By HARRY L. BIGBEE,

Asst. Atty. General