

March 23, 1938.

Robert A. Greene, Director,
Arizona State Laboratory,
University of Arizona,
Tucson, Arizona.

LAW LIBRARY ARIZONA ATTORNEY GENERAL

Dear Sir:

We have your letter of March 10, 1938, requesting an opinion as to the authority of the State Laboratory to investigate complaints concerning adulterated butter and cheese under the Arizona Pure Food Law, and asking whether or not the passage of Chapter 82 of the Laws of 1931, known as the State Dairy Commission Act, has ousted the State Laboratory in matters respecting dairy products such as butter and cheese. Due to the press of business we have been unable to answer your letter before this, and appreciate your patience in the matter.

It is our opinion that the State Laboratory has power to investigate cases involving adulteration of butter and cheese, and that the passage of the Dairy Commission Act did not limit that power, or place the investigation of such adulteration under the exclusive supervision of the Dairy Commissioner. You will note that in Section 45 of the Dairy Act setting forth the duty of the attorney general and county attorneys, it is made the duty of each of the above officials to institute and prosecute to conclusion any civil or criminal actions arising under the provisions of the act when the facts justifying such civil or criminal action are brought to their attention, either by the commissioner or any other person.

Of course, the Dairy Act sets up certain standards for butter and cheese, and these standards are the ones that will have to be used when an investigation or analysis to determine adulteration is made. If, after investigation and analysis, it is found that the butter or cheese is adulterated within the meaning of the standard set up in the Dairy Act, and an action is decided to be brought against the person or persons

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guilty of adulterating such foods, the action will have to be brought under the Dairy Act. Under sections 47 and 52 of that Act it is made a misdemeanor for any person to adulterate or misbrand any dairy product. The passage of those sections would have the effect of repealing the pure food law in so far as dairy products are concerned, and would make it necessary to base an action of adulteration of dairy products on those sections rather than the pure food law.

Apart from the legal aspect of the matter, I believe, for the purpose of minimizing departmental friction, it would be the best to communicate with the dairy commissioner and have an understanding with him that you intend to prosecute all the cases that are called to your attention. I do not know who he is, but believe that this would be a good idea. However, you may suit yourself as to whether or not you will follow my suggestion.

Trusting that this is sufficient to answer the question,
I am

Very truly yours,

JOE CONWAY,
Attorney General.

EDWARD P. CLINE,
Assistant Attorney General.

Approved:

✓
EARL ANDERSON,
Special Assistant
Attorney General.

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