

OPINIONS

and, if there is any disagreement, the Commissioner of Labor and Industry is required to afford the person affected a hearing as indicated and thereafter decide the issues.

Very truly yours,

THEODORE D. PARSONS,
Attorney General.

TDP:NR

JUNE 10, 1949.

HON. HARRY C. HARPER,
Commissioner of Labor and Industry,
State House,
Trenton 7, N. J.

FORMAL OPINION—1949. No. 64, supplementing
FORMAL OPINION—1949. No. 42.

Re: Employment of Minors in Agricultural Pursuits.

DEAR COMMISSIONER:

Your request for a further opinion relating to Formal Opinion, No. 42 and raising additional matters has been received.

While the precise question propounded is whether or not the duties of a minor in selling the products of his employer are to be classified as agricultural or mercantile and are, therefore, an incident to ordinary farming operations as distinguished from manufacturing or commercial operations, the more fundamental issue is the distinction between the two classifications.

The so-called Child Labor Law (R. S. 34:2-21.1 (e)) defines "Agriculture" as follows:

"'Agriculture' includes farming in all its branches and among other things includes the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities (including commodities defined as agricultural commodities in section fifteen (g) of the Agricultural Marketing Act, as amended) the planting, transplanting and care of trees and shrubs and plants, the raising of livestock, bees, fur-bearing animals or poultry, *and any practices (including any forestry or lumbering operations) performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market, provided that such practices shall be performed in connection with the handling of agricultural or horticultural commodities the major portion of which have been produced upon the premises of an owning or leasing employer.*" (Italics ours.)

It must be noted that the statutory definition by the use of the words ". . . and any practices (including any forestry or lumbering operations) performed by a farmer

agricultural business of the employer, administrative officers should not by devious or arbitrary construction attempt to override its intent.

Whether the activities of an employee in any particular case are to be considered agricultural or commercial or industrial, must depend on the facts of the particular case and no definite rule of general application can be evolved.

Very truly yours,

THEODORE D. PARSONS,
Attorney General,

By: GRACE J. FORD,
Assistant Deputy Attorney General.

JUNE 10, 1949.

DANIEL BERGSMA, M.D., M. P. H.,
State Commissioner of Health,
State Department of Health,
State House,
Trenton, New Jersey.

Attention: L. M. LOUNSBERY, *Veterinarian in Charge, Food & Drug Section.*

FORMAL OPINION—1949. No. 65.

DEAR SIR:

This is in response to your communication dated May 24, 1949, concerning a milk product labeled "Frozen Milk Drink."

It appears from your communication that sugar and flavoring are mixed with a high test milk, the mixture agitated, then partially frozen in an ice cream freezer and subsequently placed in a "hardening" room to complete the freezing process. The finished product is transported in refrigerated trucks to the company's retail outlets, placed in a storage box and scooped from the container as needed. The product is labeled "Frozen Milk Drink—For Milk Shakes Only" and is supposedly used only in making milk shakes.

Analysis discloses that it contains less than ten per cent butterfat and more than five per cent total milk solids. On examination, the product has the texture and characteristics of ice cream. Three questions arise and their answers follow:

Question 1: Is the product an imitation ice cream where it is not sold in the frozen state as ice cream (R. S. 24:10-63)?

Answer: No.

Question 2: Does R. S. 24:10-65 apply?

Answer: No.

Question 3: Can R. S. 24:10-66 be applied independently of the above actions?

Answer: No.