

**OPINION**  
**50-9**

September 20, 1950            (OPINION)

AGRICULTURE

RE: Sale of Unlawful Cream

In your letter of the eighteenth, you ask our interpretation of chapter 4-18 N.D.R.C. 1943 and, specifically, whether or not this chapter makes a producer, i.e.; a dairy farmer, guilty of a misdemeanor if he sells cream classed as "unlawful cream" by subsection 4 of section 4-1815.

From our examination of the whole chapter, it is our opinion that the producer may sell with impunity cream classed as "unlawful cream" if he can find a purchaser. But, unfortunately for the purchaser, he is guilty of a misdemeanor if he purchases such unlawful cream "to be converted into any product of human food" under the provisions of section 4-1847. Conceivably, such unlawful cream may be used for a purpose wholly unconnected with the making of human food, and its sale and purchase is not unlawful under this chapter.

Section 4-1846 makes it a misdemeanor to sell "for domestic or potable use, to be converted into any product of human food" any unclean, impure, adulterated, unwholesome milk. This section contains no mention of cream. Therefore, it does not make the sale of "unlawful cream" a misdemeanor. It does not make it a misdemeanor to sell impure, etc. milk for purposes other than human food.

Section 4-1853 is not, in our opinion, broad enough to cover the sale of "unlawful cream", since at no place does the statute provide that such sale is a misdemeanor.

Perhaps this chapter should be amended by the next Legislature to cover this apparent defect in the present law.

WALLACE E. WARNER

Attorney General