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LETTER



DEPARTMENT OF LAW  
OFFICE OF THE  
**Attorney General**  
STATE CAPITOL  
Phoenix, Arizona

July 18, 1961

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Mr. Clyde Killingsworth, Superintendent  
Motor Vehicle Division  
Arizona Highway Department  
Phoenix, Arizona

Dear Mr. Killingsworth:

In reply to your letter of July 12, 1961, requesting an opinion on the following questions:

- "1. May the Superintendent of the Motor Vehicle Division make a determination of what combustible liquid petroleum comes within the meaning of the term "Motor Vehicle Fuel" as used with reference to the Motor Vehicle Tax Act, A.R.S. §1501 through 1527?
2. If the Superintendent of Motor Vehicles has determined that certain fuels do not come within the definition of motor vehicle fuel as used in A.R.S. §1501 through 1527, may he impose the motor vehicle fuel tax on such fuel?

Our answer to Question 1 is Yes, and our answer to Question 2 is No. In regard to Question 1, the two principal statutes to be considered are:

"§28-126. Motor vehicle fuel

'Motor vehicle fuel' means any inflammable liquid other than kerosene, by whatever name known or sold, which is used or usable in motor vehicles, either alone or when mixed, blended or compounded, for the propulsion thereof upon the highways."

"§28-1524. Testing of motor vehicle fuels by superintendent

A. The superintendent may take samples of any liquid believed to be motor vehicle fuel and make or cause to be made an analysis thereof.

B. The chemistry department or other qualified department of the university of Arizona shall analyze samples upon request of the superintendent, and promptly furnish to him, without cost, a full report of the analysis."

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It would seem clear that the very purpose of A.R.S. §28-1524 is to allow the Superintendent to determine what is, in fact, "motor vehicle fuel." It would also appear that the duty placed on the University of Arizona to analyze fuel for the benefit of the Superintendent shows a clear legislative intent that the determination be based on objective scientific norms. Therefore, the Superintendent may, by providing samples for the University based upon their chemical and mechanical analysis, determine whether or not a given substance is "used or usable" in motor vehicles, either alone or when mixed, blended or compounded for the propulsion thereof on the highways. In this connection "used or usable" means, in effect, motorcycle, tractor or scooter, or other vehicle normally used on the public highway, and successfully and safely propel that vehicle under normal conditions for a reasonable use.

In answer to Question 2, the Superintendent is responsible for the collection of the motor vehicle fuel tax and for the promulgation of rules and regulations concerning the tax; A.R.S. §28-202, 203; A.R.S. §28-1502 through 1527. His authority is co-extensive with the motor vehicle fuel tax itself. It follows, therefore, that as a tax can only be imposed on a motor vehicle fuel, it cannot be imposed by the statute on a substance determined not to be a motor vehicle fuel. Therefore, the Superintendent may not administratively impose a motor vehicle fuel tax on substances determined not to be motor vehicle fuels. If it, therefore, comes to the attention of the Superintendent that a tax has been imposed improperly, he has the duty of investigating the imposition of the tax and determining whether or not the imposition was proper, and acting accordingly. As a matter of precedence, on at least two prior occasions the Superintendent has exempted certain fuels from the imposition of the tax. This exemption was promulgated to the adoption of a rule and regulation under the Administrative Procedure Act and this is the proper method of establishing the exemption. Thus, precedent and reason support the answers given above.

Very truly yours,

ROBERT W. PICKRELL  
The Attorney General

PHILIP M. HAGGERTY  
Assistant Attorney General

PMH/mm