

Opinion No. 56-6380

February 3, 1956

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. Frank B. Zinn, Legal Counsel, New Mexico Bureau of Revenue, Santa Fe, New Mexico

You have presented for the opinion of this office the question:

Must the State Highway Department qualify as a special motor fuel user under the provisions of Chapter 207, Laws of 1955, and pay the taxes imposed thereby?

You state that the State Highway Department has advised the Bureau of Revenue that it will not pay the taxes under the above Act, and, thus, the request for this opinion.

Prior to the passage of Chapter 207 by the 1955 Legislature the State Highway Department paid the excise under the old Special Motor Fuels Act, that is, the old Act relating to petroleum products other than motor fuel as motor fuel was defined in § 64-26-1 N.M.S.A., 1953. Under the old Act the excise tax was levied upon "all users." Thus under the old Act there was an all comprehensive coverage and by virtue thereof the State and its agencies were subject to the tax. However, the Legislature in 1955 repealed the old Act, and in its stead passed Chapter 207, Laws of 1955. In so doing the Legislature, instead of making the Act applicable to "users," as under the old Act, provided that the Act should apply to certain persons, and "person" was defined by the 1955 Legislature as:

"'Person' shall mean and include persons, firms, partnerships, companies, corporations (public, private or municipal), associations, receivers, common-law trusts, statutory trusts, and whatever concerns by whatever name known or however organized, and the use of the singular number shall include the plural number." (§ 1 b, Chap. 207, Laws 1955)

Thus, the inquiry is limited to the question as to whether or not State agencies, and, therefore, the State Highway Department, come within the definition of "persons" as that term is defined above.

It is noticed that the State or its agencies is not in terms included within the definition. If State agencies come within the definition of "person," they would be included therein under the language "whatever concerns by whatever name known or however organized." That the State or its agencies do not come within the definition under the language quoted above seems to us to be indicated by the fact that there is an enumeration of the types of persons or organizations covered. The nature of those expressly enumerated would seem to indicate the nature of those intended to be

covered by the general language "whatever concerns by whatever name known or however organized."

The familiar rule of construction, "ejusdem generis," is applicable here. That rule is applied in, among other situations, where the intention of the Legislature is not otherwise apparent and under this rule general terms following specific ones are limited by the specifics. We take the view that the State and its agencies are of a nature and character different than those organizations specifically enumerated and that, therefore, the general language quoted above does not encompass the State or its agencies.

The above, to us, is sufficient. The State and its agencies do not come within the definition of "person."

However, one further consideration may be noted here. § 11 of Chapter 207 provides that the taxes under this chapter, less 3% thereof, shall be credited to the State Road Fund to be used for the maintenance, construction and improvement of the public highways. Thus, if payment were made by the State Highway Department of the tax imposed by this chapter, there would be done a useless thing, for, after collection by the Bureau of Revenue, the proceeds of that tax would then be returned to the State Highway Department. This rationale, of course, does not apply to other State agencies who use Special Motor Fuels, for the tax taken from them would be transmitted to the State Highway Department. However, since the State Highway Department is the State agency which uses the largest amount of Special Motor Fuels, it is not unreasonable to speculate that the State Legislature, for these reasons, did not specifically include State agencies as coming within the Act.

In view of the foregoing your question is answered in the negative.

By: Santiago E. Campos

Assistant Attorney General