

**Opinion No. 19-2272**

May 20, 1919

**BY:** HARRY S. BOWMAN, Assistant Attorney General

**TO:** State Highway Engineer, Santa Fe, New Mexico.

Highway Department Not Subject to Payment Gasoline Excise Tax.

**OPINION**

In reply to your oral request for an opinion from this office, regarding the necessity for your department to pay excise tax upon gasoline, provided for in House Bill No. 298, we wish to advise you that in our opinion state agencies or departments are not required to pay this tax, for the reason that the persons required to pay the same are limited in the act itself to "persons, corporations, firms, co-partnerships and associations," and a state department or agency is not included within the definition of any such named persons.

That the word "person" does not in its ordinary or legal definition, include either a state or a nation. See

McBride vs. Pierce County Commissioners, 44 Fed. 17;

In re Fox, 52 N. Y. 530, 11 Am. Rep. 751;

United States vs. Fox, 94 U.S. 315, 24 L. Ed. 192;

West Coast Mfg. Inv. Co. vs. West Coast Imp. Co., 66 Pac. 97, 25 Wash. 627, 62 L. R. A. 763.

In the case of Banton vs. Griswold, 95 Me. 445, 50 Atl. 89, the court said:

"The word "person" in a statute does not necessarily include the state itself. The decisions upon the question are not easily reconciled, but the better opinion seems to be that the word "person" does not, in its ordinary or legal signification, embrace the state or government."

See also City of Louisville vs. Commonwealth, 62 Ky. 85 Am Dec. 624;

United States vs. B. & O. Ry. Co., 84 U.S. 322, 21 L. Ed. 597.