

Opinion No. 21-3023

July 2, 1921

BY: HARRY S. BOWMAN, Attorney General

TO: Hon. Manuel Martinez, Secretary of State, Santa Fe, New Mexico.

Gasoline License Tax.

OPINION

{*71} Referring to the matter of the license provisions of Chapter 93, Laws 1919, insofar as they apply to the \$ 50.00 license fee to be paid by distributors of gasoline, and concerning which the writer has had considerable communication with Miss Wileman, I desire to advise you as follows:

The Supreme Court of the United States has held, in the recent opinion sustaining the validity of the excise tax upon the sales of gasoline, that the license provisions could not be enforced against the distributors because the license applies both to distributors in interstate as well as intrastate commerce. It will therefore be necessary for you to rebate to those distributors who have paid the license such amount as has been deposited with you for that purpose.

In our opinion, however, the license fee applying to and to be paid by the retailers is not subject to the same construction as that which the law requires to be paid by distributors and in our opinion the license tax imposed upon retailers is valid and should be enforced.

We would therefore, suggest that you require all retailers who have not paid the tax for the two years ending March 12, 1921, to send remittance in payment therefor at once, and any license fees that have heretofore been paid by such retailers be covered into the proper fund and paid over to the state treasurer.