

Opinion No. 35-997

April 25, 1935

BY: FRANK H. PATTON, Attorney General

TO: Mr. Dudley Frank, Acting Administrator, New Mexico Emergency Relief Administration, Santa Fe, New Mexico.

{*63} Your letter of April 24 has reference to exemption of the above named administration from the payment of state tax on gasoline purchases.

It is understood that such purchases are paid from FERA funds allotted to this state and that the {*64} gasoline is to be used in the soil erosion work in this state.

I gather from the contents of your letter and from oral conversations that this gasoline is to be used in furtherance of a Governmental project.

We believe the general rule of law to be that the state has no power to tax an instrumentality of the Government when used in the performance of an essential Governmental function.

Due to the necessity of the program for soil erosion and the great benefits which it is hoped will be derived from same, and in view of the rule of law just cited, it is my opinion that such purchases of gasoline with FERA funds would not be subject to payment of the state tax.

We are mailing a copy of this letter to the gasoline tax department of this state and this opinion should be authority for your department and for the gasoline tax department to make similar rulings in all cases of like import.