

## Opinion No. 43-4223

February 3, 1943

**BY:** EDWARD P. CHASE, Attorney General

**TO:** Senator A. E. Petit, Jr., New Mexico State Senate, Santa Fe, New Mexico

We are in receipt of your letter of February 2, 1943, in which you ask our opinion as to the Constitutionality of an act relating to the giving of exemption from the Gasoline Tax to persons who do not use such fuel to propel a motor vehicle on the public highway.

First: Your attention is called to the fact that while the title is quite long and specific, that there is nothing in the title covering Section 4 of this act. It is suggested that if the clause relating to the issuance of permits were changed to read "and providing for the issuance and revocation, by the Bureau of Revenue, of permits, etc.," that such objection would be taken care of.

Second: The main constitutional question that this act raises is as to whether or not it violates Article 2, Section 19, and Article 9, Section 16, of the New Mexico Constitution, prohibiting the impairing of contracts, and prohibiting any law which will decrease the amount of revenue pledged for the payment of State Highway debentures, respectively. The theory, of course, on which this law might be declared unconstitutional is that the 5c tax on motor fuel is pledged to the payment of Highway debentures, and that if the Legislature exempts certain persons from paying this tax, they would, in effect, impair the contract of the State of New Mexico with the bond holders, and would decrease the amount of annual revenue pledged for the payment of such debentures.

In the case of *Streit vs. Lujan*, State Comptroller, found in 35 N.M. 672, a similar question was raised with respect to the validity of the refund law, and the court held that only such revenue from the Gasoline Tax as was necessary to pay the interest and principal on the Highway debentures was pledged for this purpose, and that the State could use any surplus as it saw fit. In that case, the plaintiff failed to show that there was not sufficient revenue from the Gasoline Tax and other sources to pay these debentures, and so he had no standing in court, and that so long as this situation existed, the act would be constitutional. However, considering the probability of a serious decrease in revenues from the Gasoline Tax and Motor Vehicle License Tax, the situation may well rise where there will not be sufficient funds to pay the interest and principal on the outstanding highway debentures. If this should happen, and a bond holder properly brings himself before the court, the court would, no doubt, hold the act unconstitutional. For this reason, it appears to me that to assure yourself that the act will be sustained, that an additional clause should be added to the effect that the exemption shall be allowed only so long as there are sufficient funds to pay the principal and interest of the outstanding Highway debentures.

Third: As a matter of law, any subsequent act will, in fact, repeal all prior inconsistent acts. However, the question often arises as to just what acts are inconsistent, and further it is desirable to eliminate all obsolete acts by specific repeals. I would therefore suggest that in your bill you specifically repeal Sections 68-1226 to 68-1223 of the 1941 Compilation, or such of these sections as you consider will become inoperative as a result of the passage of this bill.

Trusting that the foregoing sufficiently answers your inquiries, I am

By ROBERT W. WARD,

Asst. Atty. General