

ADJUTANT GENERAL: Whether department is liable for State Gasoline Tax.

MOTOR VEHICLE FUEL TAX: Whether Adjutant General Department is liable for State tax.

March 3, 1943.

Mr. Wm. P. Weimar,
Brig. Gen. I. S. G.,
Indianapolis, Indiana.

Dear Sir:

I have the following letter from you requesting an official opinion as to whether you should honor the State Auditor's request for gasoline taxes:

"Since 1933 the Adjutant General's Department has never been required to pay the State gasoline tax of four cents per gallon. Inasmuch as this office has always been considered as the military department, exemption has apparently been granted by virtue of a letter or an unofficial opinion which cannot be located at present.

"This department has now been asked to pay the above mentioned tax and to reimburse the State Auditor's Office for all taxes due since July 1, 1941, at which time the National Guard was called to the service and the Indiana State Guard organized."

In the past your department has to a great extent operated for and at the expense of the Federal Government. The Federal Government has never consented to taxation by the states and most taxes which have been so imposed have been held unconstitutional. This general principle is well settled and undenied. Problems sometimes arise as to whether a specific tax attempts to abrogate this principle. Gasoline use taxes have been held inapplicable where they would divert funds appropriated by the Federal Government.

Wiseman v. Dyess, 189 Ark. 381, 72 S. W. (2d) 517;

Dyess v. Wiseman, 190 Ark. 59, 72 S. W. (2d) 979.

The state, being a sovereign, may tax itself or its political subdivisions in accordance with its constitution and laws. The Motor Vehicle Fuel Tax Law imposes a license fee of four cents per gallon on the use of all motor vehicle fuel used in this state for any purpose whatsoever. The duty of collecting the taxes is imposed on the dealer and he has no right to exempt anyone from payment. The law provides for refunds of taxes where the fuel is used for purposes other than propelling a vehicle on the highways. However, no person or entity is permitted refunds for any other reason. Under this all-inclusive statute municipalities, counties, and other subdivisions of the state have been taxed. The right of the state to do this was questioned in several states and answered in each case in the affirmative.

State ex rel. Beck v. Barton County, 142 Kan. 624, 51 F. (2d) 33;
 Ft. Smith v. Watson, 187 Ark. 830, 62 S. W. 965;
 State v. Monroe, 177 La. 983, 149 So. 541.

Your question may then be answered by applying the stated principles to the present situation of your department. With the mustering into service of the National Guard your department functions exclusively for the state. Under those circumstances and in the absence of express exemption, it is my opinion you should pay the Motor Vehicle Fuel Tax.

STATE BOARD OF HEALTH: Whether hospitals are required to accept patients with communicable diseases.

March 4, 1943.

Dr. J. W. Jackson,
 State Epidemiologist,
 1098 West Michigan Street,
 Indianapolis, Indiana.

Dear Sir:

I have received your letter of February 10, 1943, as follows:

“Will you kindly give me an official opinion as to whether or not it is legal for a local health officer to quarantine a case with a communicable disease in: