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 O 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:
“a. Public Hospital.

“b. Private Hospital.

“May I also have your opinion as to the power of (a) public hospital, (b) a private hospital, to elect whom it will receive and whom it will not receive, and what kind of disease it will treat, and what kinds it might not treat.”

Section 35-407, Burns’ R. S. 1933, provides:

“The state board of health and county board of health and any local board of health, or a majority thereof, shall have power to remove or cause to be removed from any hotel, boarding-house, boarding-school, or other building of like character, tenement or apartment-house, to a proper place designated by such board, persons sick with any contagious, infectious or pestilential disease * * *. Provided, however, That no person shall be removed under this act, except after examination and determination by two (2) physicians in good standing and practice that such person is sick with a contagious, infectious or pestilential disease. The boards of health above mentioned, may, by resolution, delegate the authority herein conferred to any health officer in the employ of such boards. (Acts 1903, ch. 83, Sec. 7, p. 161.)”

Section 35-408, Burns’ R. S. 1933, provides:

“** * * That it shall be the duty of said board or such health officer to provide said building where such person or persons shall be quarantined * * *.”

I therefore wish to advise, in answer to your first question, that if a sick person is located in any hotel, boarding-house, boarding-school, or other building of like character, tenement or apartment-house, that such health officer would have the authority to quarantine and remove said sick person to a suitable place. If no suitable place was available, under Section 35-408, Burns’ R. S. 1933, supra, he can provide such a place at the expense of the city or town, or if living outside of said city or town then from the general funds of the county.
It is my opinion that a private hospital would not be required to accept such cases of contagious disease. Section 25-3605, Burns’ R. S. 1933, being one of the sections of the statutes governing charity hospital associations, provides in part as follows:

“* * * It may elect whom it will receive and whom it will not receive as patients, what kinds of disease, deformities and injuries it will treat in its hospitals, or in any of them, and what kinds it will not treat, and for what length of time it will treat and care for any patient, * * *.”

Whether or not public hospitals, or those receiving financial assistance from cities, towns or counties, can refuse to take communicable disease cases brought to them by the local health officer, in my opinion, depends upon the fact of each individual case presented.

A number of statutes govern the operation of said hospitals, including Sections 22-3201, et seq., Burns’ R. S. 1933, 48-7501, et seq., Burns’ R. S. 1933, 48-7514, Burns’ R. S. 1933. Said statutes authorize the board of managers of the hospitals to make reasonable rules governing the operation of the hospital. If the hospital should not have an isolation ward or such facilities for the segregation of contagious disease patients, in my opinion, they would not have to receive such patients.

The Supreme Court of Indiana, in the case of Blue v. Beach, 155 Ind. 121, on page 130, in deciding defendant school officials could legally exclude plaintiff’s son from attending school during a smallpox epidemic, when the son had refused to be vaccinated as required by the health officers, said:

“In order to secure and promote the public health, the State creates boards of health as an instrumentality or agency for that purpose, and invests them with the power to adopt ordinances, by-laws, rules, and regulations necessary to secure the objects of their organization. While it is true that the character or nature of such boards is administrative only, still the powers conferred upon them by the legislature, in view of the great public interests confided to them,
have always received from the courts a liberal construc-
tion, and the right of the legislature to confer upon them the power to make reasonable rules, by-
laws, and regulations, is generally recognized by the authorities."

On the question of reasonable rules and regulations by the health department, see Jow Ho v. Williamson, 103 Fed. 10, 22. The court, in holding quarantine for bubonic plague of all "Chinatown" unreasonable, said:

"* * * The police power of the state may be en-
forced by quarantine and health officers, in the exer-
cise of a large discretion—as circumstances may re-
quire. * * * To accomplish this purpose, persons afflicted with such diseases are confined to their own domicile, * * * . The object of all such rules and regulations, is to confine the diseases to the smallest possible number of people, * * * ."

It is therefore my opinion that the persons in charge of public hospitals, having the power to make reasonable rules governing the management of said hospitals, may make and enforce reasonable rules regarding the rejection or acceptance of cases of communicable diseases in said hospitals. It is the duty of the hospital authorities to make such rules and determine if admission of such communicable disease cases would endanger the health or lives of other patients in said hospital. However, such authority so exercised is not to be used arbitrarily, but must be reasonable in view of the facilities of the hospital and the ability to isolate such cases.