

for holding a commission or certificate from the Board or Department of Education or both.” (Our italics.)

Burns' Indiana Statutes Annotated 1933, Section 28-903.

It seems to me that the italicized language quoted from said section can admit of only one construction and that is that such schools are entitled to state aid if otherwise entitled to it, to maintain their commissioned or certified high schools for the minimum term prescribed for holding a commission or certificate. In this connection, however, it should be remembered that the language used is “commissioned or certified high school” and if there are grades of such high schools, as the regulation attached to your request would indicate, state aid could only be used for the purpose of meeting any deficit occasioned by the maintenance of such a school of the lowest grade. In other words, referring to the regulation, a “continuously commissioned high school” would evidently be a commissioned high school, and if there are any other commissioned high schools with less requirements as seems to be contemplated by the language “all regular standards,” that would be the commissioned high school referred to in the statute.

Your question is answered accordingly.

AUDITOR OF STATE: Gasoline Tax—Status of post exchanges under the Indiana law and federal statute.

July 15, 1942.

Hon. Richard T. James,
Auditor of State,
Indianapolis, Indiana.

Dear Mr. James:

I have before me your letter relative to sales of motor fuel to Post Exchanges and the sale by such Exchanges of motor fuel thus acquired. You submit four questions. The first question is:

“Can a licensed distributor” (referring to a distributor licensed under the State law) “sell gasoline direct to a Post Exchange tax free?”

On the basis of the case of Standard Oil Company of California v. Charles G. Johnson, as Treasurer of the State of California, decided June 1, 1942, by the Supreme Court of the United States, I think the question should be answered in the affirmative. In that case the question before the court was as to the legal status of Post Exchanges, and after reviewing the activities of such Exchanges, as governed by law and army regulations, the court concluded that: “* * * post exchanges as now operated, are arms of the government deemed by it essential for the performance of governmental functions. * * *” The court continued: “They are integral parts of the War Department, share in fulfilling the duties entrusted to it, and partake of whatever immunities it may have under the constitution and federal statutes. * * *” On that basis I think it is clear that such exchanges are immune from state taxation and immune from any obligation to collect a state tax unless federal consent has been given to such taxation.

On the subject of Congressional consent I refer you to Title 4, Section 12 of the Cumulative Pocket Supplement of 1942 of Federal Code Annotated, which reads as follows:

“(a) All taxes levied by any State, Territory or the District of Columbia upon, with respect to, or measured by, sales, purchases, storage, or use of gasoline or other motor vehicle fuels may be levied, in the same manner and to the same extent, with respect to such fuels when sold by or through post exchanges, ship stores, ship service stores, commissaries, filling stations, licensed traders, and other similar agencies, located on United States military or other reservations, when such fuels are not for the exclusive use of the United States. Such taxes, so levied, shall be paid to the proper taxing authorities of the State, Territory or the District of Columbia, within whose borders the reservation affected may be located.

(b) The officer in charge of such reservation shall, on or before the fifteenth day of each month, submit a

written statement to the proper taxing authorities of the State, Territory or the District of Columbia within whose borders the reservation is located, showing the amount of such motor fuel with respect to which taxes are payable under subsection (a) for the preceding month.”

It will be noted from the foregoing that consent is given to the levying by states of a use tax for the use of motor fuel “when such fuels are not for the exclusive use of the United States”—the statute providing a method for the proper coverage of such taxes into the State Treasury; but I do not think the consent thus given could possibly be extended so as to authorize the collection of a tax measured by the entire quantity sold by the licensed distributor to the post exchange, which would necessarily involve a refund procedure which does not seem to be contemplated in the federal act. The answer to your first question is in the affirmative.

Your second question is as follows:

“If the answer to the first question is in the affirmative, can the Auditor of State require monthly reports from the Post Exchange showing the total purchases and sales and remittance of tax?”

I think this question must be answered in the negative as it is written. However, it does seem to be clear that the duty devolves upon the officer in charge of the reservation to make reports and to have remitted the tax upon the taxable sales by the post exchange; that is, measured by the amount sold by the post exchange which was not for the exclusive use of the United States.

Your third question is as follows:

“If gasoline sold by the Post Exchange is purchased through the Quartermaster Department, can the Auditor of State require reports and remittances from Post Exchanges or the quartermaster?”

I am not quite sure that I understand this question. If the question is as to who shall make the reports, the language of the statute makes it clear that “the officer in charge of such reservation” shall make the reports required by the statute.

Since our state statute requires that monthly reports be submitted to the Auditor of State and since the Federal statute permitting the taxation of gasoline and other motor fuels sold by the post exchanges "when such fuels are not for the exclusive use of the United States" provides that "the officer in charge of such reservation shall, on or before the 15th day of each month, submit a written statement to the proper taxing authorities of the state * * * showing the amount of such motor fuel with respect to which taxes are payable under subsection (a) for the preceding month," it is my opinion that the Auditor of State may demand and that the officer in charge of the reservation may be required to submit monthly reports and remittances on that part of such gasoline or other motor fuel which is taxable under the Act of Congress.

Your fourth question is as follows:

"If the answer to question 1 is in the affirmative, could the Auditor of State for simplification of administration, issue a license to a Post Exchange, waive the bond requirements, thereby allowing the Exchange the benefit of the three percent allowance for collecting and reporting?"

I think this question should be answered in the negative. Licenses can only be issued when the State statute is complied with and without additional legislation there is no authority for the issuance of a license until all requirements of the State statute are complied with, including the giving of a bond.