AUDITOR OF STATE: Oil Inspection: Whether inspection fee is applicable to product sold to the United States Government, or to contractors doing work for the United States Government.

October 6, 1941.

Honorable Richard T. James,
Auditor of State,
State House,
Indianapolis, Indiana.

Dear Mr. James:

I have before me your letter of the 25th ult., relating to oil inspection fees. Your letter states that a question has arisen in connection with the application of the oil inspection law and the fees to be paid thereunder when the oil is to be sold to or used by the Federal Government or its agencies and instrumentalities.

You submit the following specific question and request my official opinion in answer to the same, to wit:

"Are oil companies, or distributors of petroleum products exempt from paying the inspection fee on products sold to the United States Government or contractors doing work for the United States Government?"

My answer to your question is necessarily in the negative.

"From and after the passage of this act it shall be unlawful for any person to sell, offer for sale, or use any petroleum product within the State of Indiana, unless and until the same has been inspected and approved for sale or use by the Department as herein-after provided."

Sec. 2, Acts 1937, Ch. 289, p. 1326;
Sec. 35-2118 Burns’ Revised Statutes, 1933, Supp. of 1941.

From the above it is apparent that the oil inspection act is a police regulation of the state. The enforcement of the act requires a corps of trained, skilled inspectors who must be compensated for their services. The fees, by Section 14 of the Act, are to be converted into the State Treasury, there to be
"credited to the petroleum inspection fund and from such funds all costs of petroleum inspection shall be paid."

These inspection fees are therefore, in no sense, a tax. They represent and are set aside as reasonable compensation for necessary service in making the inspection. The tax cases that have been cited, are, for this reason, inapplicable, and the obligation to pay the fee is not, in the usual course of business, upon the Government. It lies, in practically all cases, upon the seller or distributor in this State. The latter, under the statute, cannot sell or offer for sale, for use until the product has been inspected and approved.

The question presented here approximates a similar question answered by my predecessor August 3, 1934. (Opinions of Attorney General 1934, p. 391). There the same distinction was made between a fee and a tax. To quote:

"It will be noted then, that the exemption from state taxation applicable to agencies and instrumentalities of the Federal Government is not absolute but is circumscribed of necessity by the very reason for the existence of the rule. This being the case, it logically follows that while such an exemption is applicable to taxation it cannot be extended to cover also the right of the state to collect fees such as the one covering the subject of this inquiry for services actually performed for such agencies * * *.”

(See cases cited in that Opinion)

Because these fees are set aside for the purpose of compensation for services rendered in the enforcement of the Act, it is my opinion that the rule exempting the Federal Government and its agencies from taxation does not extend to and include fees of this nature, and my opinion and answer to your question is accordingly in the negative.