

to provide the funds to meet authorized expenditures. However, the statute provides that:

“If for any reason the amount of revenue in any year should fall short of the sum expected to have been raised, and thereby a deficit shall be incurred for current running expenses, then it shall be the duty of said council to provide for such deficit in the next tax levy.”

This particular sentence seems to be a complete answer to your second question. To summarize, it is my opinion, therefore, that there can be no valid appropriation of money in excess of funds on hand or provided for. When such funds have been exhausted and additional funds are needed to pay for the necessary functions of government the county council should, by an emergency appropriation, approve such additional expenditures and provide the means for raising the money.

AUDITOR OF STATE: Authority to adopt regulations defining gasoline in administration of gasoline tax account.

September 1, 1937.

Honorable Laurence F. Sullivan,
Auditor of State,
State House,
Indianapolis, Indiana.

Dear Mr. Sullivan:

I have before me your letter calling attention to certain procedural aspects of the law of the state with reference to the collection of the four cents per gallon motor vehicle fuel tax imposed on the use of all motor vehicle fuel used in this state.

The Act provides in the first place for the imposition on the use of all motor vehicle fuel used in this state for any purpose a license fee of four cents per gallon without limitation as to the exact use to be made of the motor vehicle fuel.

Burns Indiana Statutes, Annotated (1933), Section 47-1501.

Section 47-1505, however, provides for a refund to any person who shall buy or use any motor vehicle fuel classed as gasoline for the purpose of operating or propelling stationary gasoline engines, tractors used for agricultural purposes, motor boats, airplanes or aircraft, or who shall purchase or use any motor vehicle fuel for cleaning or dyeing or for any other commercial use, except for the propelling of motor vehicles operated in whole or in part upon any of the public highways of the state. The foregoing refunding provision applies, however, as already indicated, to only such motor vehicle fuels as are classed as gasoline. As to motor vehicle fuels other than gasoline the dealer is authorized by the same section to sell the same free from the license fee imposed by the earlier provision of the Act referred to on condition that at the time of delivery the dealer obtains a certificate in writing from the purchaser wherein the purchaser certifies the date and place of delivery, from whom purchased, character of the product purchased, amount purchased, uses to be made of product purchased, and a positive statement that no part of such motor vehicle fuel described in said certificate is to be used in whole or in part for the propulsion of a motor vehicle upon the highways of Indiana.

The above certificate is generally referred to as "a certificate of use" and pursuant to the statute is accepted by the Auditor of State in lieu of the license fee otherwise due on the sale of such products.

Simplifying the statement further for the purpose of the discussion, the Act first proceeds to impose a tax upon all motor vehicle fuel. The evident intent, however, is that motor vehicle fuel used for purposes other than the propulsion of motor vehicles used upon the highways shall not ultimately be taxed upon its use. Two methods are set up to accomplish this purpose in which is involved a classification of motor vehicle fuels into the class called gasoline and into the class embracing all other motor vehicle fuels except gasoline. As to gasoline the tax must be paid irrespective of the use and the exemption, in case the use is for purposes other than in the propulsion of motor vehicles on the highway of the state, is accomplished by means of a refund.

As to motor vehicle fuels other than gasoline, notwithstanding the provision imposing the tax irrespective of use, no tax is required to be paid if supported by a so-called certificate of use.

It will be observed from the foregoing that fundamentally the classification of motor vehicle fuels as a basis for the application of the refund method or the certificate of use method resolves itself around the meaning of gasoline. In one class is gasoline—in the other class are all motor vehicle fuels which are not gasoline. It is important, therefore, that some definition of gasoline be obtained so that the Auditor may determine upon the application thereto of one or the other of the above described procedures. This, as I understand it, is the problem presented and upon which you desire the advice of this department.

The Act itself (Section 47-1509 of Burns Indiana Statutes, Annotated (1933),) defines the word "gasoline" as used in the Act as to "include the liquids derived from petroleum or natural gas, commonly known or sold as gasoline, and all other volatile and inflammable liquids by whatsoever name known or sold, containing any derivative of petroleum, natural gas, coal, shale, or similar natural materials and produced, prepared, blended or compounded for the purpose of propelling motor vehicles, or which is suitable and practicable for the propulsion of motor vehicles upon the public highways.

Obviously the definition of gasoline as including the liquids derived from petroleum or natural gas, commonly known as "gasoline," is of very little help. To define a term by the use of the same term is hardly a definition. The definition of gasoline as set out in the Act, however, goes further and includes all other volatile and inflammable liquids by whatsoever name known or sold, containing any derivative of petroleum, natural gas, coal, shale, or similar natural materials and produced, prepared, blended or compounded for the purpose of propelling motor vehicles, or which is suitable and practicable for the propulsion of motor vehicles upon the public highways.

Reduced to its last analysis, therefore, it seems to me that the test is as to whether these particularly described materials are either produced, prepared, blended or compounded for the purpose of propelling motor vehicles or are suitable and practicable for the propulsion of motor vehicles upon the public highways. If they meet either of the above tests, they are "gasoline" and should be so treated in the application of the Act requiring the collection of a tax and author-

izing a refund in the case of a use other than the propulsion of motor vehicles upon the public highways.

As pointed out in your letter, however, it is desirable that something more definite even than this be set out from the standpoint of the administration of the law and I think your point is well taken. In other words, the determination of what is practicable and suitable for the propulsion of motor vehicles upon the public highways is a question requiring technical knowledge and understanding which the legislature has left to the administrative officers to determine in the first instance, and I see no objection to your department's preparation of such reasonable specifications for guidance in the administration of the Act as may be necessary. I do not think that any specifications which you may make will necessarily have the force and effect of law if it should later turn out that such specifications do not meet the test set up in the statute. In my opinion, however, you would be authorized to set up such specifications as an aid in the administration of the Act. As to just what these specifications should be I think is the subject for engineers and experts in that particular line.

You will observe that I have not answered your questions categorically. I do not think they can be answered categorically with any degree of accuracy, except by some engineer or expert who has knowledge of the specifications which a motor fuel has which is suitable and practicable for the propulsion of motor vehicles, or which are used for that purpose.

I think the department can go only so far as to suggest to you that the plan of establishing a rule or regulation embodying specifications which will comply with the statute is entirely within your rights, and this is true even without any specific authority for the making of rules and regulations. It is true because you are compelled in the administration of the Act to differentiate between the two classes of motor vehicle fuels and unless you have a standard to go by, that cannot be done.

I trust that this will answer your purpose.