

## **Opinion No. 57-72**

April 12, 1957

**BY:** OPINION OF FRED M. STANDLEY, Attorney General Robert F. Pyatt, Assistant Attorney General

**TO:** Mr. George M. Case, Acting Director, Gasoline Tax Division, Bureau of Revenue, Box 2180, Santa Fe, New Mexico

### **QUESTIONS**

#### QUESTIONS

Does the term "motor fuel" as defined in § 14-43-2 N.M.S.A., 1953 Compilation, include diesel fuel which may be taxed by municipal corporations?

#### CONCLUSION

Yes.

### **OPINION**

#### ANALYSIS

Section 14-43-1, N.M.S.A., 1953 Comp., authorizes cities (*Continental Oil Company v. City of Santa Fe*, 36 N.M. 343, 15 P. 2d 667), towns and villages to impose a license tax upon gasoline and motor fuel sold within their limits, not to exceed one cent per gallon. Section 14-43-3, N.M.S.A., 1953 Comp., defines what are taxable sales, and this opinion assumes that any attempted tax would only be on those sales declared taxable by the last cited statute.

We do not find, in § 14-43-1 to § 14-43-8, N.M.S.A., 1953 Comp., any express mention of diesel fuel as being taxable. However, § 14-43-2 defines motor fuel as follows:

"The term 'motor fuel,' means any volatile substance, derived or compounded wholly or in part from gasoline, petroleum, natural gas, oil shales, coal, alcohol, or other elements or substances, which is practically or commercially useable in internal combustion engines for generating power."

Since diesel fuel is a volatile substance derived from petroleum commercially useable in internal combustion engines for generating power, we hold that diesel fuel was contemplated by the legislature in using the term "motor fuel," and that diesel fuel is taxable by municipal corporations within the limits and confines prescribed by § 14-43-1 and § 14-43-3, N.M.S.A., 1953 Compilation.