

Opinion No. 13-1015

April 14, 1913

BY: FRANK W. CLANCY, Attorney General

TO: Messrs. Catron & Catron, Santa Fe, N. M.

OIL.

As to the sale of oils by measure or by weight.

OPINION

{*179} I have received your letter of the 12th inst. enclosing another from Mr. Hannum, Special Agent of the Continental Oil Company which, as requested, I return herewith. You ask me to give my views with reference to Section 18 of Senate Bill No 186, concerning which Mr. Hannum writes to you.

In his letter he calls attention to the fact that in said Section 18 the bill requires that engine naphtha sold by weight shall weigh 6 1/2 pounds per gallon and miner's oil sold by weight shall weigh 7 1/2 pounds per gallon, and he says that all measures in use by his company are gauged by government measure, a gallon of any product being the standard United States gallon containing 231 cubic inches and that, in order to comply with the law and sell engine naphtha weighing 6 1/2 pounds to the gallon, it would be necessary, either to sell more than an actual gallon or, to sell naphtha which would weigh 6 1/2 pounds to the gallon, in which case it would be so heavy in gravity and so low in quality that it could not be marketed. He further says that the miner's oil which he sells weighs 7.26 pounds per gallon and, in order to make an oil which would weigh 7 1/2 pounds to the gallon to comply with the law, his company would be obliged to sell a product, not only of inferior quality, but costing the customer more per gallon.

With the wisdom of the requirements of the statute we cannot make any question, but I believe that the Continental Oil Company can obviate the difficulties indicated in Mr. Hannum's letter and still comply with the statute.

At our recent interview, on Wednesday last, to which you refer, you called my attention to the language of said Section 18, and I then told you, and now confirm what I said, that the oil company could, by contract, sell its products by measure and not by weight. The first sentence of that section is as follows:

"Whenever any of the following named articles shall be sold or delivered by wholesale, or in the original package within the State of New Mexico, unless otherwise provided by contract, such sale and all computation for payment and settlement therefor shall be by weight."

Then follows a list of various oils and the weights per gallon.

I can see no serious difficulty in the way of otherwise providing *{*180}* by contract, as the statute permits, and in all sales by the company, by wholesale or in the original package, the company can contract with its customers to sell its product by measure of 231 cubic inches to the gallon instead of by weight and all dealings can be put on that basis.

I call your attention to the fact that in Sections 14, 16, 17, 19 and 22 of the act, similar exceptions are made so as to permit, by agreement, the sale of the various articles by different standards than those prescribed in the act. Even without such exceptions, I believe that parties, by contract, might agree upon any different standard of weight or measure.