

## Opinion No. 13-996

February 27, 1913

**BY:** FRANK W. CLANCY, Attorney General

**TO:** Hon. W. H. H. Llewellyn, Chairman of Special Committee, House of Representatives, Santa Fe, N. M.

### **COAL OIL INSPECTOR.**

Moneys collected by coal oil inspector are not public funds.

### **OPINION**

{\*161} I have today received your letter of yesterday, in which you inform me that, under House Resolution No. 17, you, with four other members of the House, were appointed a committee to investigate all matters pertaining to the office of Coal Oil Inspector, and that the committee is preparing to make the investigation in question, wherefore you ask, on behalf of the committee, that I give you an opinion in writing as to the office of Coal Oil Inspector and, more particularly, whether the funds collected by the different inspectors in this state are public funds or not.

The office of Coal Oil Inspector was established by Chapter 66 of the Laws of 1905. In the first section of that act the office is established and the method of appointment of the inspector is provided, and in the same section it is further declared to be the duty of the inspector to inspect all oils which are products of petroleum brought into the territory for sale or use for the purposes of illumination and to mark, stamp or brand upon each package the degree of fire test and specific gravity of the oil as the result of the inspection.

Section 2 of the act requires the giving of a bond by the inspector to the territory in the sum of \$ 10,000.00 for the faithful performance of his duties and gives him power to appoint deputy inspectors.

Section 3 declares that "The inspector or deputy inspectors is entitled to demand and receive from the owners of any oil, gasoline or naphtha inspected, one cent for each gallon so inspected." The word "naphtha" was stricken out by an amendatory act, which is Chapter 22 of the Laws of 1905. This section makes it the duty of each inspector and each deputy inspector to keep an accurate record of his inspections and, at the beginning of each month, each deputy inspector is to forward to the territorial inspector a true copy of his record and all moneys received by him for his inspections; and in January in each year the territorial inspector is to make and deliver to the governor a report of the inspections made by himself and deputies during the preceding calendar year.

Sections 4, 5, 6 and 7 refer to violations of the act, whether by dealers or inspectors and are not material at the present time.

There is no requirement, anywhere in the act, that the territorial {<sup>\*162</sup>} inspector is to pay over any of the moneys received, whether by him directly, or from his deputies, but the deputies are to send to him all moneys received by them for inspections. No provision is made for any salary to any inspector, and it seems clear that the inspection fees were intended to constitute the compensation for all the work performed.

The nature of the office is the same as that of any other territorial office, and any matter pertaining to that office must be a proper subject of investigation by the Legislature.

As to whether the funds collected by the Coal Oil Inspector are public funds or not, I am compelled to say that they must be regarded as the personal property of the Coal Oil Inspector, the only provision of the statute with regard to them, as hereinbefore indicated, being that the inspectors shall receive them. I am unable to see how they can be considered as public money any more than are the fees collected by a notary public for services performed by him, or by any other officer, whose compensation is by fees alone, without any requirement that they be paid over to the public treasury.