

Opinion No. 22-3426

May 9, 1922

BY: HARRY S. BOWMAN, Attorney General

TO: Town of Alamogordo, Alamogordo, New Mexico.

Occupation Taxes Gasoline Service Stations.

OPINION

{*150} I have your letter of the 6th instant, enclosing letter of Mr. W. B. Howard, Manager of the Magnolia Petroleum Comany, El Paso. Texas, regarding the occupation license charged by your town against that Company for the operation of gasoline and oil stations in your municipality.

You state in your letter that Mr. Howard contends that oil companies are not required to pay an occupation license.

I do not understand that Mr. Howard claims that no occupation tax can be collected. He bases his demand for a refund upon a ruling from this office that the occupation tax upon gasoline and oil stations is authorized by Chapter 148, Laws 1919, which limits the {*151} amount of tax to be paid to one dollar per annum for each one thousand dollars volume per annum of business done, while the tax heretofore exacted has been based upon a flat rate authorized by Section 3299, Code 1915, which is in excess of the amount authorized to be collected by Chapter 148.

In my opinion, there is no authority in Section 3299 for the imposition of an occupation tax upon gasoline and oil stations, the authority for such a tax appearing in Chapter 148 as above stated.

If the tax paid by the Magnolia Company for its stations in Alamogordo is in excess of the amount provided for in Chapter 148, then the Company would be entitled to a refund of the difference between the amount therein authorized and the amount paid.

I am returning herewith Mr. Howard's letter heretofore mentioned.