

## Opinion No. 31-163

May 19, 1931

**BY:** Frank H. Patton, Asst. Attorney General

**TO:** Mr. Adolph P. Hill, Field Inspector and Collector of Gasoline Taxes, Santa Fe, New Mexico.

{\*76} Your letter of even date has been received, in which you wish to know if an individual who purchases gasoline from a refinery and who hauls the same into the State of New Mexico for the purpose of distributing same without first having obtained a distribution license has the right to do so.

You must be governed by the facts as they exist in matters of this kind and consider the terms "distributor of gasoline" and "retail dealer in gasoline". The distributor is one engaged in the business of selling gasoline and motor fuel **in this state** from refinery, tank farms, tank cars, receiving tanks or stations or in or from tanks, barrels, drums or other containers in quantities exceeding 56 gallons in any one sale and delivery, except persons engaged in selling exclusively in interstate commerce.

A retail dealer is one other than a distributor who sells **in this state** in quantities less than 56 gallons.

Under this law, one who sells from a truck would, in my opinion, be either a retailer or a distributor. If such person is making such acts his usual business, under Section 60-202 of the 1929 Compilation, a license is required before engaging in such business.

You also wish to know if these individuals having made their purchases and hauling their motor fuel into the State of New Mexico for their own individual use can be subjected to a license. In my opinion, this question should be answered in the negative, inasmuch as the license tax is only required of those who sell **in this state**.