

Opinion No. 33-649

September 15, 1933

BY: E. K. NEUMANN, Attorney General

TO: Honorable G. D. Macy, State Highway Engineer, Santa Fe, New Mexico.

{*76} I have examined the letter from Dudley Cornell to Juan N. Vigil, with relation to the matter of the assignments of claims for gasoline tax refunds made to the Farmers Oil Company of Clovis, New Mexico and upon which assignments said Oil Company has been receiving refunds for gasoline tax paid.

It is my opinion that all such assignments are illegal and should not be recognized by the State Comptroller. This opinion is probably contrary to an opinion which I have heretofore expressed, but an examination of the invoices discloses that the purchaser has purchased from the oil company the gasoline tax free. This is evidenced by many invoices or sales tickets issued by said oil company. An assignment based upon such a sale is invalid and no person is entitled to a refund because no tax has been paid by the consumer, and it is only in cases where the consumer uses the gasoline in a motor vehicle not designed for use upon the public highways and has paid the tax upon such motor fuel that such consumer can claim a refund for the taxes paid.

Claims for refunds based upon sales of this kind are invalid for several {*77} reasons: first, the dealer takes the consumer's word that the gasoline will not be used in a vehicle designated for use upon the public roads and the affidavit is made by the consumer that he has paid a tax upon the gasoline purchased, when, as a matter of fact, he has paid no tax, and is simply lending his name to the dealer so that the dealer may sell him the motor fuel in question at five cents per gallon less than the market value plus the five cents sales and use tax.

We are advising the Comptroller that, in our opinion, he should reject all claims for refund by persons claiming to be assignees of the consumer.