

## Opinion No. 33-682

November 9, 1933

**BY:** E. K. NEUMANN, Attorney General

**TO:** Honorable E. R. Wright, Attorney at Law, Santa Fe, New Mexico.

{\*90} Your letter of October 26th requests the opinion of this office as to whether electricity and natural gas should be considered as "merchandise" under the terms of Chapter 73 of the Laws of 1933.

We have not located any decisions of the Courts upon **this question**, but we are advised that the Department of Finance of the State of Illinois has made a ruling in this regard. It is the duty of that department to administer the Retailers' Occupation Tax Act of that state and, we understand further, that the interpretation placed upon the Act by that department has been taken to the Courts but as yet there is no decision.

Section 1, A, of said Chapter 73, sets forth the definition of Retail Dealer and this definition is as follows:

"A. 'Retail Dealers' or 'Retail dealers in merchandise.' As used herein shall mean and include any person or persons, firm, association, partnership, stock company, company or corporation having a fixed and established place of business, dealing in merchandise by selling to the ultimate consumer of consumption or use and not for resale purposes in small quantities than that purchased, and who sells in small parcels, packages, bales, boxes or other containers of whatsoever kind and not in gross, except sales to Federal, State or County Authorities or Charitable Institutions."

Apparently, the gist of this provision {\*91} is the sale to the consumer for consumption or use and not for resale. Is then the term "Merchandise" sufficiently comprehensive to include electricity and natural gas?

Webster defines merchandise as follows: The objects of commerce; whatever is usually bought or sold in trade or market, or by merchants; wares; goods; commodities.

An examination of cases cited in various editions of "Words and Phrases" reveals that this definition has been used quite generally throughout the United States.

It is our belief that electricity and natural gas may well fall within this meaning, and we, therefore, hold them to be commodities of merchandise within the terms of said Chapter 73 of the Laws of 1933.

By: FRANK H. PATTON,

Asst. Attorney General