

**Opinion No. 35-1115**

July 29, 1935

**BY:** FRANK H. PATTON, Attorney General

**TO:** Mr. Howard Brosier, County Clerk, Clayton, New Mexico.

{\*76} We have your letter of July 26th asking whether or not a county is entitled to a refund of state gasoline tax heretofore paid by it. The gasoline tax in question is the five cent tax levied under the provisions of Chapter 176 of the Laws of 1933. Section 6 of this chapter provides for the exemption from the payment of the tax but the exemption therefore applies only to certain officers or agents of the Federal Government. The state has the power to tax itself and its political subdivisions if it so chooses and it seems that it has done so with respect to the gasoline tax law.

This office in a number of previous opinions has held that the state as well as the counties and all other political subdivisions are subject to the payment of the state gasoline tax and can not secure a refund for the payment thereof.

By J. R. MODRALL,

Asst. Atty. General