

Opinion No. 37-1654

June 1, 1937

BY: FRANK H. PATTON, Attorney General

TO: Mr. L. M. Tartaglia 709 West Marble Albuquerque, New Mexico

{*107} This is in response to your letters dated May 25th and May 30th wherein you make inquiry as to whether a deputy weighmaster appointed under and by virtue of Section 153-103, New Mexico Statutes Annotated, 1929 Compilation, is authorized to inspect gasoline pumps, and further whether such deputy weighmaster may charge a fee for making the inspection.

Section 153-101 provides that all weights and **measures** accepted and used by the United States Government shall be deemed the lawful standard weights and **measures** of the people of this state. Section 153-122 of the 1929 Compilation defines a gallon measure specifically mentioning gasoline. Section 153-126 provides as follows:

"All milk or cream shall be sold only in bottles containing quarter pints, half pints, pints, quarts, half gallons or gallons. **All other liquid commodities shall be sold only by standard liquid measure or standard weight**, except where parties otherwise agree."

Considering Chapter 153 of the 1929 Code as a whole, together with the above mentioned sections therein, it is my opinion that a deputy weighmaster has **implied** authority to inspect gasoline pumps if he so desires to.

It is my opinion, however, that a deputy weighmaster is not entitled to demand and receive any inspection fees for the inspection of gasoline pumps. Section 153-113 of the 1929 Code specifies the fees that are to be charged but no mention is made of inspection fees as regards gasoline pumps in the absence of which none may be charged.

It might be noted, however, that Section 19, Chapter 83, Laws of 1937, expressly provides as follows:

"The Commissioner of Revenue, or any duly authorized agent of the Bureau of Revenue is hereby given the authority to examine during the business hours of the day the * * * storage tanks and other equipment of any distributor, wholesale dealer, retail dealer, purchaser or common carrier pertaining to motor fuel or other petroleum products {*108} received, sold, shipped or delivered, or used, as the case may be, to verify the truth and accuracy of any statement, report or return, etc."

The section just quoted does not, however, deprive the weighmaster of any authority he may have relating to the inspection of gasoline pumps.

Before setting out a specific course of conduct on a matter of this nature, I would suggest that the deputy weighmaster take the matter up with his legal advisor, the District Attorney of the district wherein he was appointed.

Trusting that the foregoing may be of some information to you, I am

By: FRED J. FEDERICI,

Asst. Atty. Gen.