

Opinion No. 37-1750

September 7, 1937

BY: FRANK H. PATTON, Attorney General

TO: Mr. John D. Bingaman Commissioner of Revenue Santa Fe, New Mexico.
Attention: Mr. P. E. Culver, Director, Gas Tax Department.

{*155} Your letter of recent date, together with claim of New Mexico Construction Company for refund on gasoline purchased for use in a manner other than in motor vehicles operated on the highways of this state but not colored, has been received.

The first act covering colored gasoline was Chapter 162 of the Session Laws of 1933. This has now been amended by Chapter 101 of the Session Laws of 1935.

In the first act the clause in connection with coloring of gasoline is included in a mere proviso at the end of Section 2 and merely imposes a duty upon the seller to color the gasoline black at the time of sale and purchase.

The law makes it unlawful to use such colored gasoline in any motor vehicle operated or intended to be operated upon the public highways of the state.

The new law, Chapter 101, Section 2, merely provides that the State Comptroller shall have power to make rules and regulations concerning the nature and use of identifying chemicals which shall be used for the purpose of identifying such gasoline and motor fuel and again the duty is imposed upon the seller to mix such chemicals in the gasoline at the time of sale and purchase.

Again the statute makes it unlawful for anyone to use such chemically treated gasoline in any motor vehicle operated or intended to be operated upon the public highways of the state.

The statute imposes a penalty for the use of colored gas in vehicles operated on the highways, but no penalty is imposed for using noncolored gas in vehicles not operated on the public highways.

Apparently, from the way the act is drawn the full intent of the statute is to provide refunds for gasoline not used in vehicles operated upon the public highways.

It is my belief that if the forms otherwise comply with the law and your office is satisfied with the affidavits as to the intended use of the {*156} gasoline at the time of purchase, then the proper refund may be made.

As I view the statute, the provision in regard to coloring is merely a safeguard to prevent evasions of the Refund Tax Law. The foregoing being true, I believe you may honor the application of the New Mexico Construction Company.

I herewith return your file in this connection.