

Opinion No. 39-3120

April 28, 1939

BY: FILO M. SEDILLO, Attorney General

TO: Mr. J. O. Gallegos, Commissioner of Revenue, Santa Fe, New Mexico. Attention:
Mr. Paul E. Culver, Director, Gasoline Tax Division

{*42} In your letter of April 27 you make inquiry with reference to Article II, Section 201 (e) of House Committee Substitute for House Bill No. 254, the same being Chapter 222 of the 1939 Session Laws relating to retail sales of motor fuels, which section provides as follows:

"It shall be unlawful for any retail dealer, in connection with the sale of motor fuels, to use trading stamps, lotteries, prizes, wheels of fortune, punch boards, games of chance, or any other type of inducement or to offer to give or give without charge any motor fuel or other merchandise or thing of value."

In your letter you state your inquiry as follows:

"This division has been requested for an interpretation of this section, particularly as referring to "thing of value." Many of the petroleum marketers give pencils bearing their advertising, key rings, travel service, and various other articles of an advertising nature. These, however, are not given for the purpose of an inducement to purchase their motor fuel and no purchase {*43} is required in order to obtain them.

"May we have your opinion as to your interpretation of this section as relating to advertising given by the various petroleum marketers?"

It will be noted that the prohibition of the statute against the giving of a "thing of value" is operative only if the thing of value is given "in connection with the **sale** of motor fuels."

Since in your letter you state that the articles mentioned are not given for the purpose of an inducement to purchase, and that in fact no purchase is required in order to obtain them, the conclusion is inescapable, that although a pencil, key ring, etc. may be a thing of value, yet since the same is not given away in connection with any sale of motor fuels, the practice cannot be said to be in contravention of said Section 201 (e).

By: FRED J. FEDERICI,

Asst. Atty. Gen.