

Opinion No. 43-4253

March 17, 1943

BY: ERWARD P. CHASE, Attorney General

TO: Honorable Fulton J. Cox, Member of the State Legislature, Santa Fe, New Mexico

In your letter dated March 15, 1943, you request an opinion relative to the constitutionality of House Bill No. 13 and Senate Bill No. 133, and also as to the constitutionality of the Gasoline Tax Act which is sought to be amended by these bills.

House Bill No. 13 pertains to gasoline taxes and refunds thereof. Senate Bill No. 133 is more comprehensive and also pertains to the refunding of gasoline taxes.

House Bill No. 13 attempts to amend Section 68-1202 of the 1941 Compilation by amending and setting out in full only sub-section (b).

Article 4, Section 18, of the State Constitution provides as follows:

"No law shall be revised or amended, or the provisions thereof extended by reference to its title only; but each section thereof as revised, amended or extended shall be set out in full."

Since the attempted amendment only sets out sub-section (b) in full, I am of the opinion that this bill as to such attempted amendment does not comply with the section of the Constitution above quoted.

House Bill No. 13 also amends Section 68-1225 of the 1941 Compilation. Down to line 32 of page 2 of the printed bill, the present law is copied in substance with these exceptions: In line 13 the word "on" appears instead of the word "or", and in line 18 on page 2 the word "distribution" appears instead of the word "destruction."

The amendment provides that "any violation of this section shall be deemed a "misdemeanor" and provides a penalty therefor. In my opinion this does not sufficiently define a crime and is too indefinite and uncertain, and would therefore fail.

Insofar as the amendment to this section exempts gasoline or motor fuel not to be used on the highways from any gasoline tax and thereby does away with the necessity of making refunds, I am of the opinion that the same would be upheld as constitutional.

The law providing for gasoline refunds was passed in 1931. According to my information there are no outstanding highway debentures prior to 1934. Any highway debentures issued after the 1931 law went into effect would have the refund law in contemplation and for that reason the proceeds of gasoline taxes used for refunding purposes would not be pledged for the payment of highway debentures and interest thereon. If such

proceeds necessary for making refunds are not pledged then the Legislature can exempt at the source as well as refund after the taxes are collected.

Senate Bill No. 133 amends several sections of the present refunding law, but makes no radical changes. Since the constitutionality of the present law providing for gasoline tax refunds has been upheld by the Supreme Court of this State I am of the opinion that Senate Bill No. 133, if passed, would also be held to be constitutional. *Streit vs. Lujan*, 35 N.M. 672, 6 Pac. (2d), 205.

It should be noted that in the title of Senate Bill No. 133, Section 68-1231 of the 1941 Compilation is referred to as being amended, while Section 5 amends Section 68-1232 of the 1941 Compilation. This should be corrected.

Your inquiry relative to the present law has already been answered in connection with Senate Bill No. 133.

By C. C. McCULLOH,

First Asst. Atty. General