

**Opinion No. 44-4554**

July 27, 1944

**BY:** C. C. McCULLOH, Attorney General

**TO:** Mr. Charlie E. Bassett, Director of Field Administration, Box 559, Santa Fe, New Mexico

We are in receipt of your letter of July 25, 1944, in which you state that a contractor having a permit for refund of the state gasoline tax operates a fleet of trucks from the air base at Roswell to a rock crusher. You also state that this contractor built and maintains a road from the crusher to the air base but that the road crosses State Highway No. 13. In view of this situation, you ask whether or not he is entitled to a refund for gasoline used in trucks operated over this road.

While Section 68-1226 of the 1941 Compilation provides that refunds may be allowed on gasoline used solely and exclusively other than in motor vehicles operated or intended to be operated upon any public street or highway, yet it certainly was not contemplated by the Legislature that the necessary crossing of the highway amounted to operating a motor vehicle upon such highway. The same situation must necessarily exist with the many farmers who have to cross a highway with their equipment to reach various of their fields.

In view of this situation, it is my opinion that a person who merely crosses a highway is not operating a motor vehicle upon such highway and so, if otherwise qualified, he is entitled to a refund of his gasoline tax.

By ROBERT W. WARD,

Asst. Atty General