

Opinion No. 45-4739

June 28, 1945

BY: C. C. McCULLOH, Attorney General

TO: Frank Young, Chief New Mexico State Police P. O. Box 919 Santa Fe, New Mexico

{*92} We are in receipt of your letter of June 25, 1945, and the enclosed letter from Patrolman L. W. Dennis, in which he states that a certain truck operates through the state using butane or protane instead of gasoline without the payment of any gasoline tax. He asks if such practice is in violation of our law.

Your attention is called to Section 68-1203 of the 1941 Compilation which provides as follows:

"(a) An excise tax is hereby levied and imposed upon all users of petroleum products, including liquefied gases composed of propane, propylene, butane, butylene and diesel fuel, other than motor fuel as defined in this act for the generation of power to propel motor vehicles on the highways of this state at the rate of five cents (5 [cents]) per gallon to be paid and computed as herein provided. The tax hereby levied is a toll for the use by said motor vehicles of the highways of this state.

"(b) It shall be unlawful for any person to use petroleum products other than motor fuel as defined in this section for the generation of power to propel motor vehicles upon the highways of this state unless such user is the holder of an uncanceled license issued by the bureau of revenue. To procure such licenses every such user shall file an application upon oath and in such form as the bureau of revenue may prescribe and shall further file a {*93} bond in the sum of not less than one hundred dollars (\$ 100.00) and not more than five thousand dollars (\$ 5,000.00) as may be determined by the bureau of revenue conditioned upon the payment of all taxes levied hereunder. Upon the filing of the application a license fee of one dollar (\$ 1.00) shall be paid to the bureau of revenue. Such licensed users shall thereupon be subject to all of the provisions of this act relating to licensed distributors of motor fuel and shall make monthly reports upon such forms and contain such information as the bureau of revenue may prescribe.'

You will observe by this section that a 5 [cents] tax is specifically levied on butane and protane, just as it is on diesel fuel. This tax is the same tax as that imposed upon diesel fuel and should be collected in the same manner that the tax on gasoline is collected from motor vehicles entering the state with gasoline in their tanks purchased outside of the state.

I enclose herewith a copy of this letter for your convenience.

By ROBERT W. WARD,

Asst. Atty. General