

LABOR: Commissioner of Labor can prosecute proprietor or owner of gasoline filling station under Section 13218, Revised Statutes Missouri 1929, for failure to pay inspection fee.

---

March 22, 1937

3-29

Mrs. Mary Edna Cruzen  
Commissioner  
Labor & Industrial Inspection Department  
Jefferson City, Missouri



Dear Mrs. Cruzen:

This Department is in receipt of your letter of March 6 wherein you make the following inquiry:

"I hereto attach a file of correspondence with the Mid-Continent Petroleum, Tulsa, Oklahoma, in connection with my efforts to collect the fees covering the inspection of their service stations and bulk plants located in the various towns and cities of this State.

"Under date of July 10, 1933, you rendered to me, at my request, an opinion wherein you advised that I was authorized to make inspections of gasoling filling stations, under section 13218, Revised Statutes of Missouri, in cities of over three thousand population. This I have been doing, but the Mid-Continent Petroleum Corporation has protested payment of fees covering same. I would appreciate an opinion from you as to section 13219, Fees for inspection--owner or manager refusing to allow inspection guilty of misdemeanor-- penalty. "

"To me it does not appear that I have any authority to sue in an effort to force a collection of such fees, but I would like to be advised as to

whether or not it would be logical for me to prosecute for refusal to pay such fee.

"Thanking you for your consideration of this matter, and your opinion, I am."

This Department, as the correspondence attached to your letter indicates, has at one time ruled on the question in controversy between your Department and the Mid-Continent Petroleum Corporation, by holding to the effect that gasoline filling stations are mercantile establishments within the meaning of Section 13218, Revised Statutes Missouri 1929.

We have been unable to locate any authority by any court which would tend to make us change the original ruling of this Department. We note that Mr. Burckhalter, Assistant Tax Agent for the Mid-Continent Petroleum Corporation, insists that you furnish him with authority substantiating your position in the matter.

Since you have taken the position that the gasoline filling stations are liable for tax, we consider the burden on Mr. Burckhalter to furnish you with authority to the contrary, and that you are under no greater obligation to this effect than he is. If the gasoline filling stations are mercantile establishments within the meaning of Section 13218, then, we think, under the decision of State v. Vickers 186 Mo. 103, that you would have authority to prosecute and could charge the station owner with "wilfully and unlawfully refusing to pay the inspection fee." This decision, after disposing of constitutional questions raised, makes this pertinent conclusion, l. c. 107:

"As a police regulation the State has the unquestioned right to exact and demand an inspection fee for the inspection and certificate of inspection required by the act. It has never been ruled that an inspection fee pure and simple is a tax upon

March 22, 1937

property. (Cooley on Taxation, 586; State ex rel. v. Hudson, 78 Mo. 302; St. Charles v. Alsner, 155 Mo. 671; Patapsco Guano Co. v. Board of Agriculture, 171 U. S. 345; Willis v. Standard Oil Co. 50 Minn. 290.)

"The inspection fee of one dollar for the inspection and certificate is so manifestly reasonable that it is clear that it is not objectionable on that ground.

"The very mention of an inspection law suggests the exercise of police power by the State and the requirement that the persons or things inspected shall pay for it. The fact that the manufacturers are required to pay the inspection fee provided by this act in no manner infringes any constitutional right of the defendant. "

Therefore, in answer to your question as to whether or not it would be logical for you to prosecute, we are of the opinion that you are in a position to take that course if you so desire.

Respectfully submitted,

OLLIVER W. NOLEN  
Assistant Attorney General

APPROVED:

---

J. E. TAYLOR  
(Acting) Attorney General

OWN:LC