OIL INSPECTION:
DIESEL FUEL:

Railroads and municipalities who use such must have same inspected and pay fees thereon.

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May 28, 1942

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Mr. George Metzger
State Oil Inspector
Jefferson City, Missouri

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61

Dear Sir:

This will acknowledge receipt of your letter of March 31, 1942, which is as follows:

> "In checking the records of common carriers, the Deputy Inspectors of this department have secured information covering tank car shipments, also transport deliveries of a large volume of Diesel Fuel to railroad companies and municipal-owned-and-operated light plants. This fuel is being used in combustion engines to generate power.
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> "Some of the department deputies have had personal interviews with individuals and officials connected with various railroad companies and light plants, with the view of having them file monthly inspection reports and pay inspection fees on all such fuel received. These officials have informed our deputies that their companies have never filed such reports or paid such fees in the past, and that they have been of the opinion that they were not required to file report and pay fees on the Diesel Fuel they receive.
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> "In view of these facts, will you please let me have your opinion covering Section 14688, Article 2, Chapter 109, R. S., 1939."

Section 14688 R. S. Missouri, 1939, provides:

> "All petroleum, kerosene, gasoline, benzine, or other fluid or substance, by whatever name known, which is a product of petroleum, or into which petroleum or any product of petroleum enters or is found as a constituent element, or any other motor vehicle fuel, whether manufactured in this state or not, shall be inspected as provided in this article before being offered for sale or used for consumption for illuminating, heating or power purposes in this state, or which is of such a character that it may be used for either of said purposes. * * * * * * * * * * * * * * * * * and provided further, that heavy oils, commonly known as 'distillates', 'gas oil' and 'fuel oil', or like products of whatever name known, when sold for heating or household purposes, shall not be subject to inspection. * Crude oil, insecticides, germicides, lubricating oils and medicants shall not be subject to the provisions of this article. * * * * * * * * * * * * *." (Underscoring ours)

As we understand "Diesel Fuel" it is a product of petroleum commonly known as a "distillate", or "fuel oil." From your letter it appears this diesel fuel is being used for power purposes and is of such character that it may be used as such. When so used it could not be "sold for heating or household purposes" so as to be exempted under that provision. Consequently, it is clear that the diesel fuel used by municipalities to generate electrical power and by railroads in combustion engines is comprehended within the terms of the above statute.

Section 14688 further provides:

> "* * * * * It is hereby made the duty of every dealer, distributor, producer or compounder in such oils or fluids, immediately on receipt of a consignment of the same, at his own expense, to express to the state inspector of oils, at his principal office, a properly identified sample of not less than eight fluid ounces of such oil so secured, and said inspector shall determine whether or not such oil is subject to inspection and payment of inspection fees: * * * * * *."

This is the only provision in the act imposing any duty upon anyone (except as hereafter noted) to submit samples for inspection. That duty is imposed on the "dealer, distributor, producer or compounder" in such oils. While we are certain that a railroad or municipality receiving tank car shipments of diesel fuel for their own use are not "producers or compounders" in such oils, it remains to be seen whether they fall within the classification of "dealer or distributor" in such oils. The act nowhere defines these terms, therefore, we must ascertain what the legislature intended when it so used them. In this connection we must keep in mind that "one of the cardinal rules of statutory interpretation and construction is that words in common use are to be construed in their natural, plain and ordinary significance and acceptation." (Bellerive Inv. Co. v. Kansas City, Mo. Sup., 13 S. W. (2d) 628, 638).

In Words & Phrases Perm. Ed., Vol. 11, the following appears:

> "'Dealers' are the middlemen between the manufacturers or producers and consumers. Commonwealth v. Vetterlin, 63 A. 192; 193, 214 P. 21."

> "A 'dealer' in the popular sense of the word is one who buys to sell again. * * * * * In re I. Rheinstrom & Sons. Co. 207 F. 119, 136."

> "'Dealer' in the popular and therefore the statutory sense of the word, is not one who buys to keep or makes to sell but one who buys to sell again. * * * * * Commonwealth v. Vetterlien, supra."

> "A person whose business is to buy and sell is a 'dealer.' State v. Silverman, 70 A. 1076, 1077, 75 N. H. 50."

Webster's New International Dictionary 2d Ed., defines "dealer" as follows:

> "1.a - One who divides, distributes or delivers. * * * * * d. One who does business; a trader; a trafficker; a middleman; esp., a person who makes a business of buying and selling goods."

The same authority defines "distributor" as follows:

> "1. One who or that which distributes; a distributor.
> 2. An agent or agency for marketing, usually in a particular territory, some manufactured goods or other commodities."

In Words & Phrases Perm. Ed. Vol 13, the following appears:

> "The term 'distributor' connotes a wholesaler or jobber of goods, but it may include a retailer. Port Chester Wine &

> Liquor Shop v. Miller Bros. Fruiterers, 1 N. Y. S. (2d) 802, 805."
>
> "To 'distribute' is to divide among several or many. Great Atl. & Pac. Tea Co. v. Morrissitt, 58 Fed. (2d) 991, 993."
>
> "'Distribute' is defined as 'to divide among several or many; to deal out; to allot.' State ex rel. Shaw v. Thompson, 131 N. W. 231, 235."

Under these definitions it can hardly be asserted that municipalities and railroads receiving diesel fuel for their own use are "dealers or distributors" in such oils. They are not buying for resale nor do they divide, deal out or allot any of such fuel.

Section 14691, R. S. Missouri, 1939, provides:

> "It shall be unlawful for any person, firm or corporation, to use, sell or offer for sale in this state any of the oils or fluids specified in this article unless the same shall have been inspected and approved by the inspector of oils."

Section 14693, R. S. Missouri, 1939, makes it the duty of "every person, firm or corporation receiving" any of the described fuels to file a report thereof and pay the inspection fees thereon as fixed in Section 14695, R. S. Missouri, 1939, at the rate of one and one-half cents per fifty gallon barrel.

Section 14697, R. S. Missouri, 1939, provides:

> "Whenever any person, partnerhsip or corporation shall receive from any other state any of the oils, gasoline or fluids mentioned in this article that has not been inspected under the laws of this state, and inspection fees thereon paid, it shall be his or its duty to cause to be inspected the said oils or gasoline, as provided in this article, before the same is offered for sale; and shall pay the same inspection fees as is provided in this article." (Underscoring ours)

From the foregoing, it seems that the situation is that while diesel fuel (to be used-not sold) is within the definition of what fuel is subject to inspection before use, there is no duty imposed upon the user of such fuel to submit the same for inspection, yet, it is made unlawful for anyone to use such fuel unless it is inspected (a misdemeanor under Sec. 14710). A duty is imposed on any person receiving such fuel to report and pay the inspection fees, and a duty is imposed on the person receiving fuels from without the state to cause the same to be inspected and the fees paid before offering it for sale.

In view of this confused condition in which we find the law, we hesitate to attempt to reach any conclusion. What could the Legislature have intended by making certain oils subject to inspection, before use, but imposing on no one the duty to submit the same for inspection, yet making a person guilty of a crime if he used the same without inspection; then imposing the duty on the person who receives such fuel to report and pay the fees thereon (with no reference to sale or use), but conditioning the duty to have inspected and the fees paid thereon with reference to outstate imports to before the fuel is offered for sale?

In Viquesney v. Kansas City, 266 S. W. 700, 703, it is said that the act with which we are dealing "is a pure police regulation," and we think the purpose of the Legislature appears in Section 14688, supra, in that the Legislature

intended that all such fuel sold or used in this state must be inspected before such sale or use, in order that the public might be protected from using inferior and dangerous products. It is common knowledge that some fuels, while suitable for one purpose, would not do for another. Examples of this purpose appear all through the act. Section 14689 lays down certain standards for kerosene or illuminating oils and provides for the rejection of such if the standards are not met. Section 14690 fixes the standard for gasoline and provides: "If, on analysis by the department chemist, it should develop that such blending or addition of any ingredients to said gasoline or motor fuel should, in any manner, endanger the life and health of the users of the same" it is to be rejected and its sale prohibited. Provision is also made for properly labeling those products too highly inflammable to be kerosene. Section 14688 makes it unlawful to sell distillates, fuel oil and gas oil for domestic heating purposes if it ignites at a lower temperature than kerosene. Section 14692 deals with marking the containers in which certain fuels are kept and treats them as explosives.

Considering all this, it is apparent the Legislative purpose was to furnish protection to the public and see that fuel designed for one purpose was not sold or used for another where it might be dangerous. With this in mind, it would be difficult to understand why the Legislature would not reach all such fuel, and as will be hereafter demonstrated, we think it did.

By excepting "distillates," "gas oil" and "fuel oil", when sold for heating or household purposes, the Legislature recognized that these products were not inherently dangerous when so used. They did, however, make provision even for the inspection of those products, even when so used, by making provision for this inspection if the user should desire. By not excepting such products when sold or used for illuminating, heating or power purposes, the Legislature, we think, recognized that inferior products might be harmful and the public should be afforded protection. That protection is not afforded if, as heretofore pointed out, only "dealers and distributors", as heretofore defined, are under a duty to submit samples for inspection.

It has been said that where necessary to conform to the legislative intent, words will be given a different meaning than the dictionary definition. State ex rel. Bess v. Schult, 143 S. W. (2d) 486, 489; State ex rel. Todlock v. Moneyham, 253 S. W. 1098, 1100; State ex rel. Consolidated School Dist. v. Hockman, 258 S. W. 1011. It is also well established that the context and setting in which words are found are determinative of what they were intended to mean.

The setting in which we find the words "dealer or distributor" here is that they immediately follow the sentence in Section 14688 that describes the fuel which must be inspected before being used or sold. That being true, when coupled with the purposes of the act, leads us to believe said terms, as here used, include the person who buys such fuels for use as well as the person who buys the same for sale.

This view settles the question as to the liability of railroad companies to cause to be inspected the diesel fuel they use, but one other point remains as to the municipalities. That is: Are they exempt because they are political subdivision of the state? There is a rule that the state is not subject to general law unless expressly named, but that rule seems to apply to the state, not its political subdivisions.

That distinction between the State and a political subdivision of the state is maintained in Emery v. Holt County, 132 S. W. (2d) 970, where it was held that the statute of limitations ran against a county. The court said, l. c. 971:

> "Defendants cite State v. Fleming, 19 Mo. 607. That was an action by the state to recover school lands. We ruled that the maxim 'nullum tempus occurrit regis' applied and that the statute of limitations did not apply to the state. We did not rule that the maxim applied to political subdivisions of the state."

In County of St. Charles v. Powell, 22 Mo. 525, this distinction is given express recognition in connection with the question of limitations. It is said, l. c. 525:

> "In 6 Bacon's Abr. Tit. 'Prerogative' E. S., it was said that where a statute is general, and thereby any perogative, right, title, or interest is divested or taken from the king, in such case the king should not be bound, unless the statute is made by express words to extend to him."

The State, under our form of government, stands in the stead of the sovereign and the court further said, l. c. 528:

> "The immunity, however, it seems, was, even at common law, an attribute of sovereignty only, and did not belong to the municipal corporations or other local authorities established to manage the affairs of the political subdivisions of the state."

This would seem to put at rest the question of the application of the statute to a municipality.

CONCLUSION

It is, therefore, our opinion that railroad and municipalities who use diesel fuel for power purposes are required to submit sample of the same for inspection, before such use, and are subject to pay the inspection fee due thereon.

APPROVED:

Respectfully submitted,

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