

June 14, 1963

Honorable Milton Carpenter
State Treasurer
State Capitol Building
Jefferson City, Missouri



Dear Mr. Carpenter:

This refers to your letter of May 1, 1963, in which you requested an opinion concerning the following question:

"Should the inspection fees received by the State of Missouri, authorized by Missouri Statutes 414.020, 414.050, and 414.060, be credited to the General Revenue Fund or to the State Highway Department Fund."

Your request and a similar request received from Mr. M. E. Morris, Director of Revenue, were prompted by a letter dated April 29, 1963, addressed to you by Mr. Robert L. Hyder, Chief Counsel, State Highway Commission, requesting that the inspection fees in question be credited to the State Highway Department Fund. Subsequently, in a letter addressed to us under date of May 21, 1963, Mr. Hyder requested that, if we concluded that the inspection fees should not be credited to the State Highway Department Fund, we then consider the question whether the cost of the inspections may properly be paid from that fund, as is now being done.

Section 414.020, RSMo 1959, provides, in part, as follows:

"1. All kerosene, and all gasoline or any other motor fuel, whether manufactured in this state or not, shall be inspected as provided in this chapter before being offered for sale or used in this state. * * *

"2. For the purposes of this chapter motor fuel shall mean all those products subject to the motor fuel tax law of this state. Any petroleum product designated by name or reference as 'kerosene' shall be classified as kerosene."

Elsewhere in Section 414.020 and other portions of Chapter 414, RSMo 1959, such inspection of petroleum products is made the duty of the state collector of revenue, and various requirements are prescribed, including tests to be used and standards to be met.

Provision for inspection fees, to which your inquiry relates, is contained in Section 414.050, RSMo 1959, which reads, in part, as follows:

"1. The fee for the inspection of kerosene and motor fuel under this chapter shall not exceed one and one-half cents per barrel nor be less than one-half cent per barrel.

* * * *

"4. On the first day of January, 1944 and on the first day of January thereafter the collector of revenue shall ascertain the total receipts and expenses for the inspection of kerosene and motor fuels during the preceding year, and he shall fix the inspection fee for the ensuing year at such rate per barrel not to exceed one and one-half cents and not less than one-half cent as will approximately yield revenue equal to the expenses of administering the law during the preceding year."

Insofar as it is here pertinent, Section 414.060, RSMo 1959, provides that the collector of revenue "shall remit to the state treasurer once a week all money collected as inspection fees".

Neither Section 414.060 nor any other constitutional or statutory provision specifically designated the fund to which these inspection fees shall be credited in the state treasury; and there can be no doubt that, in the absence of some provision to the contrary, the fees should be credited to general revenue.

Mr. Hyder's request that these fees be credited to the State Highway Department Fund was based upon the view that this is required by Article IV, Section 30(b), Constitution of Missouri, which reads in part as follows:

"For the purpose of constructing and maintaining an adequate system of connected state highways all state revenue derived from highway users as an incident to their use or right to use the highways of the state, including all state license fees and taxes upon * * * motor vehicle fuels,

and upon, with respect to, or on the privilege of the manufacture, receipt, storage, distribution, sale or use thereof * * * less the cost (1) of collection thereof, (2) of maintaining the commission, (3) of maintaining the highway department, (4) of any workmen's compensation, (5) of the share of the highway department in any retirement program for state employees as may be provided by law, (6) and of administering and enforcing any state motor vehicle laws or traffic regulations, and less refunds and that portion of the fuel tax revenue to be allocated to counties and to cities, towns and villages under section 30(a) of Article IV of this Constitution, shall be credited to a special fund and stand appropriated without legislative action for the following purposes, and no other:"

Pursuant to the foregoing constitutional provision (and Section 226.200, RSMo 1959, which implements it), the revenue described therein is required to be credited to the State Highway Department Fund. We cannot agree, however, that the inspection fees here under consideration constitute such revenue.

These inspection fees are not "derived from highway users as an incident to their use or right to use the highways". The petroleum products specified by the statute must be inspected and the fees paid thereon without reference to whether they are used to propel motor vehicles upon our highways and, in fact, inspection is required of some products which are not commonly used for that purpose. The fees are not paid directly by highway users or other ultimate users of the inspected products and are not passed on, as such, to the users of the products. There is no provision, as in the case of the motor fuel tax, for refunds if the inspected products are not used on the highways. The absence of any direct connection between the oil inspection statutes and highway use is further emphasized by the fact that, while they have since been substantially amended, such statutes were originally enacted nearly one hundred years ago when the principle concern was the use of petroleum products for illumination.

The inspection fees are not "revenue" or "taxes". Inspection is required for the protection of the public and the fees are charged not to produce revenue but simply to reimburse the state for the cost of the services performed by it. Subject to a stated minimum and maximum, the amount charged is determined upon the basis of the cost of inspections during the preceding year. The fact that the statutory minimum charge per barrel now produces more than is actually being spent does not change the basic character of the oil inspection law and the charges made thereunder.

In *Viquesney v. Kansas City*, 305 Mo. 488, 266 S.W. 700, l.c. 703, it was contended that a city ordinance imposing a one cent per gallon tax on the sale of gasoline was illegal on the ground, among others, that it was in conflict with the then existing state statute concerning oil inspection fees, which was comparable to the present statute except that no minimum was prescribed. In disposing of this contention, the court stated:

"Appellant cites section 6073, R. S. 1919, as amended by the Laws of 1921, p. 404, § 3, which provides for fees for the inspection of gasoline, etc., and that only in such amounts as are reasonably necessary to cover the expense of such inspection shall be collected. That, of course, is a pure police regulation, and not a revenue measure. It relates solely to inspection and limits the fees for inspection.

"Section 8704 is as follows:

" 'Any municipal corporation in this state, whether under general or special charter, and having authority to pass ordinances regulating subjects, matters and things upon which there is a general law of the state, unless otherwise prescribed or authorized by some special provision of its charter, shall confine and restrict its jurisdiction and the passage of its ordinances to and in conformity with the state law upon the same subject.'

"The ordinance under consideration, as the appellant contends all through, is a revenue measure. It has nothing to do with the inspection of gasoline and is not in conflict with section 6073."

In view of the foregoing, it is our opinion that the inspection fees under consideration should be credited to general revenue, rather than to the State Highway Department Fund.

Referring now to Mr. Hyder's question concerning payment of the cost of the inspections, such payment may properly be made from the State Highway Department Fund only if the cost of the inspections falls within one of the six numbered categories of expenditures listed in the first paragraph of Article IV, Section 30(b), Constitution of Missouri, which is quoted earlier in this letter.

The first type of authorized expenditure is the cost of collection of the revenue required to be credited to the State Highway Department Fund. Even if the cost of inspections could be regarded as a cost of collection of the fees charged therefor (which seems anomalous to us), our conclusion that the inspection

fees should not be credited to the State Highway Department Fund takes the cost of the inspections out of this class of expenditure. Another class of authorized expenditure is the cost of administering and enforcing state motor vehicle laws or traffic regulations; but, for reasons indicated above and others, we do not regard the oil inspection statutes as motor vehicle laws, and they obviously are not traffic regulations.

The workmen's compensation and retirement system classes of authorized expenditures, of course, also are inapplicable. This leaves the two categories covering cost of maintaining the Highway Commission and the Highway Department and these would not be applicable to the cost of performance by the Department of Revenue of duties placed upon it by statute, as in the case of oil inspections.

In view of the foregoing, it is not apparent to us that there is any basis for the payment of the cost of the inspections from the State Highway Department Fund.

Yours very truly,

THOMAS F. EAGLETON
Attorney General

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cc: M. E. Morris
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