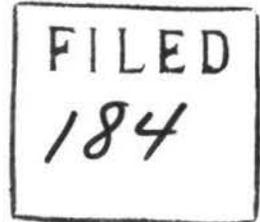


FUEL ALLOCATION BOARD: Section 414.150, RSMo, which makes it unlawful for any person to offer fuel products for sale in any manner so as to tend to deceive the purchaser as to the nature, quality, and identity of the product or under any name except the true trade name is not applicable to fuel allocations made by the Missouri Fuel Allocation Board.

OPINION NO. 184

April 11, 1974

Mr. James F. Mauze, Chairman
State of Missouri Fuel Allocation Board
Post Office Box 360
Jefferson City, Missouri 65101



Dear Mr. Mauze:

This opinion is in response to your request for an opinion of this office asking whether the provisions of Section 414.150, RSMo, are applicable to allocations of fuel by the Missouri Fuel Allocation Board as prescribed by the Federal Mandatory Petroleum Allocation Program and whether the Fuel Allocation Board is violating a state statute when ordering emergency delivery of a product from one supplier to be delivered to an outlet of another supplier for sale to the public.

It is our understanding that the Missouri Fuel Allocation Board was created to meet the requirements of the Emergency Petroleum Allocation Act of 1973, P.L. 93-159 and related acts and rules and regulations promulgated pursuant to such laws by the Federal Energy Office. The Federal Energy Office Rules and Regulations respecting petroleum allocation and price regulations are found in Federal Register, Vol. 39, No. 10, dated January 15, 1974, and the authority for such rules and regulations is set forth on page 1925 thereof.

Subsection 1 of Section 414.150, RSMo, to which you refer, provides:

"It shall be unlawful for any person, firm or corporation to store, sell, expose for sale, or offer for sale, any of the said oils or fluids which this chapter provides for inspection, in any manner whatsoever, so as to deceive or tend to deceive the purchaser as to the nature, quality and identity of the product so sold or offered for

Mr. James F. Mauze

sale, or under any name whatsoever except the true trade name thereof."

To the extent that such state law may be viewed as conflicting with the laws of the United States and the rules and regulations promulgated thereunder, including such authorized allocation functions of the Missouri Fuel Allocation Board, such state law is clearly superseded by the laws of the United States. This is because Article VI of the United States Constitution provides in pertinent part that:

"This constitution and the laws of the United States which shall be made in pursuance thereof, and all treaties made or which shall be made under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding."

In addition, it should be clear that Section 414.150 as such has no application to the Missouri Fuel Allocation Board.

Further, it is our view that persons selling such products allocated by the Board in accordance with the criteria established for such sales cannot be in violation of Section 414.150 because such sales are a necessary part of the federal and state allocation program pursuant to such federal laws.

CONCLUSION

It is the opinion of this office that Section 414.150, RSMo, which makes it unlawful for any person to offer fuel products for sale in any manner so as to tend to deceive the purchaser as to the nature, quality, and identity of the product or under any name except the true trade name is not applicable to fuel allocations made by the Missouri Fuel Allocation Board.

The foregoing opinion, which I hereby approve, was prepared by my assistant, John C. Klaffenbach.

Yours very truly,



JOHN C. DANFORTH
Attorney General