

MOTOR VEHICLE FUEL TAX: Right of State Inspector to disregard corporate fiction in refusing to grant application for dealer's license.

3-20

March 17, 1937.

Hon. Roy H. Cherry,  
State Inspector of Oils,  
Jefferson City, Mo.



Dear Sir:

A request for an opinion has been received from you under date of March 1, 1937, such request being in the following terms:

"Section 7820, of the Motor Vehicle Fuel Tax Act reads in part as follows:

'After a license shall have been revoked, no new license shall be issued to such licensee unless such person, distributor or dealer shall pay all taxes, penalties and interest in arrears or due the state and all fines and costs assessed against such licensee for any violation of this article, and shall also enter into bond to the state of Missouri in a sum to be fixed by said inspector and equal to the total amount of such license tax paid or due from said licensee on motor vehicle fuels received, manufactured, compounded or handled by such licensee for distribution or sale in this state, or sold by him in this state, during a period of six months preceding the date of default, but in no event less than ten thousand dollars, with good and sufficient sureties approved by said inspector and conditioned for the faithful performance of all obligations under all the provisions of this article and for the payment of all taxes, penalties, interest and costs that may thereafter become due the state, at the time and in the manner provided by law, and said inspector may commence and prosecute, or cause to be commenced and prosecuted, an action at law on said bond for the recovery of any tax, penalty, interest or cost that may be due the state, at any time such person, distributor or dealer

March 17, 1937.

may be in default.'

Will you please furnish me with your opinion as to whether the state inspector is required to issue a license based on the following statement of facts?

On August 14, 1936, the license of the Power Oil Corporation, 600 South Vandeventer Avenue, St. Louis, Missouri, was revoked for its failure to pay tax and penalties to the state of Missouri according to law. This corporation in its last application for license listed as its officers, J. O. Sampson, President; H. D. Sampson, Vice-President; and E. B. Connelly, Secretary. The application was signed by J. O. Sampson, as are the road tax reports on file in this office.

The Atlas Oil Company, Inc., 700 South Vandeventer Avenue, St. Louis, Missouri, in its application for license for the year 1936 listed as its officers, J. O. Sampson, President; H. D. Sampson, Vice-President; and Z. A. Pennington, Secretary. This corporation failed to file a road tax report for the month of December, 1936, and according to our records owes tax and penalties on three tank cars of gasoline received and distributed by it during the month of December. This company did not file an application for 1937 license; therefore, there was no license to revoke for failure to pay this tax and penalties.

Since January 1, 1937, the oil station at this location, 700 South Vandeventer Avenue, St. Louis, Missouri, has been operated by J. O. Sampson as an individual registered with the Secretary of State as the Keystone Oil Company under the fictitious name law. On February 16, 1937, an application for license under the name of Keystone Oil Company signed by J. O. Sampson, 700 South Vandeventer Avenue, St. Louis, Missouri, was received by this department. Therefore, you can readily see that this plant at 700 South Vandeventer Avenue, St. Louis, Missouri, has been operated from January 1st to February 16th by Mr. Sampson in violation of the law, without even filing his application for license.

On February 25, 1937, a letter was received by this department from the Keystone Oil Company,

March 17, 1937.

signed by J. O. Sampson, requesting blanks on which to make application for dealer's license for station to be operated at 600 South Vandeventer Avenue, St. Louis, Missouri, the site of the old Power Oil Corporation.

The question is whether or not the state inspector of oils is required by law to issue a license under conditions as stated above. Your early opinion will be appreciated."

Section 7820 quoted in your letter is the only statute which we have discovered which gives you any specific authority to refuse applications for licenses. This section does not give you any broad discretionary powers in this regard, such as those vested in the State Board of Health in passing on applications to practice medicine (R.S. Mo. 1929, sections 9113, 9120), or those relating to admission to the Bar (Revised Rules of the Supreme Court of Missouri, Rule No. 38). Section 7820 forbids you to issue licenses to certain persons, but the prohibition is restricted to such persons as have previously had their licenses, as dealers in motor vehicle fuels, revoked for violations of law. Without passing upon the question of whether you have any implied power to refuse a license to a person who had never been licensed before, it is plain that this statute does not give you any express power to refuse a license to such person. To come within the language of this statute a person whose application for a license can be refused, must be a person who had previously been licensed.

From the facts stated in your letter we assume that J. O. Sampson and H. D. Sampson are the principal owners of, and dominate, the corporations mentioned in your letter. On this assumption it appears that they have attempted to use the corporate device offered by the laws of this state for the purpose of evading motor vehicle fuel taxes. The question then is, whether you have a right to disregard the corporate fiction and take into account the fact that an applicant for a license as an individual would be disqualified from obtaining a license in the name of a corporation which he had formed and which had been revoked for violation of the laws administered by your department.

In the case of Southern Electric Securities Co. v. State, 91 Miss. 195, 44 So. 785 (1907) the court said

March 17, 1937.

that the "fiction that the corporate existence and corporate functions are distinct from that of stockholders \* \* \* is introduced for convenience, and to subserve the ends of justice; but, when invoked in support of an end subversive of its policy, should be and is disregarded by the courts".

In U. S. v. Milwaukee Refrigerator Transit Co., 142 Fed. 247 (1905) the court said:

"If any general rule can be laid down, in the present state of authority, it is that a corporation will be looked upon as a legal entity, as a general rule, and until sufficient reason to the contrary appears; but, when the notion of legal entity is used to defeat public convenience, justify wrong, protect fraud, or defend crime, the law will regard the corporation as an association of persons."

In Kendall v. Klappertal Co., 202 Pa. 596, 52 Atl. 92 (1902) the court held that where practically the same persons own the stock of several corporations which have been organized as branches of a single development scheme, and advances have been made by certain of the directors, and there have been various issues of stock and bonds, a court of equity will deal with the matter between the individuals interested as if there were but a single concern.

In St. Louis Stamping Co. v. Quinby, Fed. Cas. No. 12240a, 4 Bann. & Ard. 192 (1880), the court stated that the "Missouri statute as to private corporations, and the formation of corporations thereunder, cannot be interposed as a shield by the corporators, to protect them against wrongful acts."

The case of State v. Miner, 233 Mo. 312, 135 S. W. 483 (1910) might seem in apparent conflict with the above doctrine because of certain language used therein to the effect that the corporate existence cannot be ignored simply because a corporation is acting outside the scope of its charter, and that is a matter for the state to deal with in a direct proceeding. In that case a conviction for operating a bucket shop was reversed, but a careful study of the case shows that the reason for the reversal was a faulty indictment which attempted to charge the president of the corporation as the principal when, under the statute, he should have been charged as the agent of the corporation,

#5 - Hon. Roy H. Cherry

March 17, 1937.

the evidence failing to show that he was the controlling spirit of the enterprise or that any trades were made by him in person or by his direction.

Under the facts stated in your letter, it appears that the individual in question incorporated two companies and secured licenses on applications signed by this individual as president of these companies, and that after these licenses were revoked for violations of law, this individual is attempting to secure licenses in his own name to operate the same kind of business at the same locations. According to your letter, this individual has also operated without a license in the interim, in violation of law, without attempting to secure such license. It appears to us that these facts constitute an attempted use of the Missouri Corporation Laws for the purpose of evasion of the motor vehicle fuel tax laws which would warrant you, if you are satisfied that this individual is substantially the sole owner of these corporations, in disregarding the corporate fiction.

In conclusion it is our opinion that under the facts stated in your letter you would not be acting improperly in refusing a dealer's license applied for by J. O. Sampson, doing business as Keystone Oil Company, unless this applicant cures the previous defaults, under the motor vehicle fuel tax law, of himself and his corporations referred to in your letter.

Very truly yours,

EDWARD H. MILLER  
Assistant Attorney General

APPROVED:

J. E. Taylor  
(Acting) Attorney General