

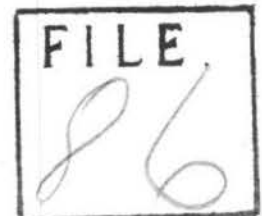
MOTOR VEHICLE FUELS: Oils and fluids sent for inspection  
STATE HIGHWAY DEPARTMENT: to the State Inspector may be used  
by the State or its agencies.

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May 14, 1942

*Stigall*  
Mr. Louis V. Stigall  
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State Highway Department  
Jefferson City, Missouri

5-16



Dear Sir:

This department is in receipt of your request for an official opinion, which reads as follows:

"As you of course know, we all anticipate state highway revenue will be cut very materially over what it has been for the last few years and this will grow progressively worse as tire and gasoline rationing increase so that there is a possibility of there not being sufficient funds at some time in the future to take care of highway bonds and interest and the necessary maintenance of existing state highways. The Board of Fund Commissioners met with the Highway Commission at its regular meeting this month and an effort was made to inaugurate all possible economy in the expenditure and use of state highway funds.

"In pursuance of this policy, we contacted, among others, the State Oil Inspection Department, to which Department is appropriated \$116,000 of highway department funds in addition to the \$2,000,000 for refunds as shown on page 208 of the Laws of 1941. We discovered that the Inspection Department has a residue resulting from inspecting samples which they destroy each month approximately as follows: 200 gallons of gasoline, 10 gallons of kerosene and 10

gallons of fuel oil. While this residue probably is not suitable for ordinary use as gasoline, fuel oil, etc., it is possible for the Highway Department to use it for different purposes and thus save some costs which would otherwise be placed on the taxpayer. It also seems a shame in these war times to have to destroy any kind of usable property.

"The question, therefore, arises as to whether the Highway Department could furnish the Oil Inspection Department with containers and collect this residue for whatever use could be made of it by the Highway Department instead of having it destroyed by the Oil Inspector. Would this be legal under the provisions of Section 14,706, R. S. Mo. 1939, which provides in part that:

"nor shall he (any inspector or deputy inspector), for the purpose of inspecting, testing or gauging the same, take away or appropriate for his own use, or for the use of others, any part or portion of said oils or fluids."

"Of course, Section 14,688 makes it the duty of every dealer, distributor, producer or compounder of such oils

"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.  
\* \* \* \*"

Section 14688, R. S. Mo. 1939, provides in part as follows:

"\* \* \* 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 the inspection fees:  
\* \* \* \*"

Under the above section it will be seen that while a sample of the oils or fluids must be sent to the State Inspector of Oils, yet there is no provision at all for the return of the same, nor is anything said as to the disposition of said fluid and oils.

Section 14706, H. S. No. 1939, provides as follows:

"No inspector or deputy inspector shall, while in office, be interested, directly or indirectly, in the manufacture or sale of any of the oils or gasoline specified in this article, nor shall he, for the purpose of inspecting, testing or gauging the same, take away or appropriate for his own use, or for the use of others, any part or portion of said oils or fluids."

(Underlining ours.)

The obvious purpose of the above statute was to prohibit the State Inspector of oils, or any of his deputies, from converting these oils and fluids to his own private and personal use or to give away to someone else for such use.

It is a well settled rule of statutory construction that a state and its agencies are not included in the purview of a

statute unless they are specifically made so. The general rule is stated in 59 C. J. 1103, as follows:

"The state and its agencies are not to be considered as within the purview of a statute, however general and comprehensive the language of such act may be, unless an intention to include them is clearly manifest, as where they are expressly named therein, or included by necessary implication. This general doctrine applies with especial force to statutes by which prerogatives, rights, titles, or interests of the state would be divested or diminished; or liabilities imposed upon it; but the state may have the benefit of general laws, and the general rule has been declared not to apply to statutes made for the public good, the advancement of religion and justice, and the prevention of injury and wrong."

Also, in *Morris v. State*, 88 Okla. 189, we find the following:

"The presumption obtains that it is the legislative intent to exclude the state from the operation of a statute for the reason that the laws are ordinarily made for the government of citizens and not the state."

This position is also sustained by *Inhabitants of Whiting v. Inhabitants of Lubec*, 121 Maine 121; *State Highway Department v. Mitchell's Heirs*, 216 S. W. 336.

It is a further rule of statutory construction that "in choosing between two meanings of not entirely unambiguous language, reason requires that to be chosen which will not render the act absurd and unenforceable in practice." *Kansas City v. Public Service Commission*, 210 S. W. 381, 276 Mo. 539.

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We do not believe that it was the intent of the Legislature that these oils and fluids sent to the State Inspector of oils should be thrown away or destroyed. This would be an unconscionable waste and to so construe Section 14706, supra, would be to impute to the Legislature that they intended an absurd thing.

It will be further noted that the dealer or distributor, in sending in the sample, obviously intends to part with all title to such fluids and oils and does not intend or desire the return of same.

Therefore, we believe that the fluid and oils sent to the State Inspector of oils for inspection purposes may be used by the State of Missouri or its agencies.

CONCLUSION

It is therefore the opinion of this department that the oils and fluids sent by a dealer, distributor, producer, or compounder to the State Inspector of oils for the purpose of having them inspected, may be used by the State or its agencies.

Respectfully submitted,

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APPROVED:

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ROY MCKITTRICK  
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