

Under these circumstances, if no services relative to the August primary were in fact performed by this board of which Mr. Ragan was a member prior to the time of Mr. Ragan's death, it is my opinion that the entire fee to be paid to a member of this board, as provided in Section 4990, *supra*, would be payable to Mr. Ragan's successor, and none of said fee should be paid to the estate of Mr. Ragan, deceased.

Respectfully,

EDWARD C. TURNER,  
*Attorney General.*

1271.

EXCISE TAX—ON MOTOR VEHICLE FUEL SOLD IN TANK CAR LOTS.

*SYLLABUS:*

*When a refining company in Ohio sells motor vehicle fuel which it has refined, in tank car lots, to a purchaser who is a registered dealer, such purchaser is required to pay the excise tax on the amount of such motor vehicle fuel re-sold by him.*

COLUMBUS, OHIO, November 18, 1927.

*Tax Commission of Ohio, Columbus, Ohio.*

GENTLEMEN:—Permit me to acknowledge receipt of your request for my opinion, as follows:

"In the administration of the gasoline tax act the commission has been construing Section 5526-4 so as to limit the word 'purchaser' to the first vendee from the manufacturer of gasoline. We have been impelled to this view by two considerations.

1. Our belief that strictness of construction is required.
2. Any other method will greatly add to the burden of administration.

We are in receipt this morning of a vigorous protest from The Solar Refining Company which the commission desires should be forwarded to you with a request that you advise us whether the construction followed by the commission or that claimed by the protesting company is correct."

The "protest" which you enclose with your communication discloses that the question presented requires a determination as to who is required to pay the motor vehicle fuel excise tax in cases in which the refiner sells such motor vehicle fuel in tank car lots to a duly registered dealer.

Section 5531 of the General Code provides as follows:

"On or before the last day of each calendar month each dealer shall pay to the treasurer of state the excise tax due on the sale or use of motor vehicle fuel sold or used by him in the preceding calendar month, together with any tax penalty on omitted amounts as certified to him during such calendar month. Such payment shall be accompanied by a copy of the statement filed with the Tax Commission of Ohio."

This section discloses that the tax imposed must be paid by the "dealer."

The term "dealer" is defined in Section 5526 of the General Code, as follows:

“Dealer” shall include any person, firm, association, partnership or corporation who imports or causes to be imported into the State of Ohio, any motor vehicle fuel or fuels as herein defined, for use, distribution or sale and delivery in Ohio, and after the same reaches the State of Ohio, also any person, firm, association, partnership or corporation who produces, refines, prepares, distills, manufactures or compounds such motor vehicle fuel as herein defined in the State of Ohio for use, distribution or sale and delivery in Ohio. Provided, however, that when any such person, firm, association, partnership or corporation so importing such motor vehicle fuel into this state, shall sell such motor vehicle fuel in tank car lots or in its original containers to any purchasers for use, distribution or sale and delivery in this state, then such purchasers and not the seller shall be deemed the dealer as to the motor vehicle fuel contained in such tank car lots or original containers.”

As provided in the above section :

“any person, firm, association, partnership or corporation who produces, refines, prepares, distills, manufactures or compounds”

motor vehicle fuel “for use, distribution or sale and delivery in Ohio” is a “dealer” within the meaning of the act.

An exception thereto was made by the present General Assembly when it enacted Section 5526-4 of the General Code, as found in 112 Ohio Laws, 193, which section provides as follows :

“In the event any person, firm, association, partnership or corporation producing, refining, preparing, distilling, manufacturing or compounding motor vehicle fuel in Ohio, shall sell such motor vehicle fuel in tank car lots to any purchaser who is duly registered as a dealer under the provisions of Section 5528, General Code, then such purchaser and not the seller shall be deemed the ‘dealer’ as to the motor vehicle fuel contained in such tank car lots.”

As suggested in your communication, your question does not require a construction of the term “purchaser” as used in said section.

It will be noted that the section provides that in case any person, firm, etc., who “refines” motor vehicle fuel and sells the same “in tank car lots” to “any purchaser who is a registered dealer,” the purchaser, and not the seller, shall be deemed to be the “dealer” within the meaning of the act.

It is the contention of the protestant that this section permits sale and re-sale from one dealer to another so long as the fuel is kept intact in tank car lots, and that each such dealer in selling such tank car lots intact may sell it without being obligated to pay the tax ; that the tax does not attach until it comes into the hands of a registered dealer who unloads the car and sells the contents as motor vehicle fuel.

I do not believe that the section can be given such construction. The statute is plain in its provisions. It provides, in cases in which those “producing, refining, preparing, distilling, manufacturing or compounding” motor vehicle fuel in Ohio sell a quantity of such fuel in tank car lots to a registered dealer, the purchaser from such producer, refiner, preparer, distiller, manufacturer or compounder shall be deemed to be the “dealer” instead of such refiner, etc.

This section is an exception to the definition contained in Section 5526, *supra*.

The protestant contends that such a construction penalizes Ohio industries, in that it does not permit them to compete with those who import such motor vehicle fuel into this state, because of the latter provisions of Section 5526, as follows:

"Provided, however, that when any such person, firm, association, partnership or corporation so importing such motor vehicle fuel into this state, shall sell such motor vehicle fuel in tank car lots or in its original containers to any purchasers for use, distribution or sale and delivery in this state, then such purchasers and not the seller shall be deemed the dealer as to the motor vehicle fuels contained in such tank car lots or original containers."

This section does not permit the re-sale of imported motor vehicle fuel without the payment of the tax imposed. The section specifically provides that when the importer sells such fuel in tank car lots or in original packages for use and distribution in this state, in that event the purchaser and not the importer shall be deemed to be the "dealer," and if such purchaser sells such imported fuel in tank car lots or original containers, he is required to pay the excise tax.

The Tax Commission, however, must be satisfied that the person selling such imported motor vehicle fuel is the actual importer thereof before he may be permitted to sell the same without paying the excise tax thereon.

While under the provisions of said act there may be discrimination in certain instances, such condition must be remedied by the legislature and not by the administrative officers. The law must be administered according to the provisions thereof.

Opinion No. 1016, rendered to you under date of September 19, 1927, contains matter somewhat in point on the question herein presented.

From what has been said, it is my opinion that when a refining company in Ohio sells motor vehicle fuel which it has refined, in tank car lots, to a purchaser who is a registered dealer, such purchaser is required to pay the excise tax on the amount of such motor vehicle fuel re-sold by him.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*

1272.

INSURANCE—BUILDING AND LOAN COMPANY MAY CARRY POLICY FOR OFFICER WHOSE DEATH WOULD BE A SUBSTANTIAL LOSS TO THE COMPANY—CONSENT OF STOCKHOLDERS UNNECESSARY—PROCEEDS OF SUCH POLICY DISCUSSED.

**SYLLABUS:**

1. *Where a building and loan company has a pecuniary interest in the life of one of its officers or where the success of the business is dependent upon the officer's continuance in life to such an extent that his death would cause a substantial loss to the company, the company has an insurable interest in the life of said officer and may protect itself from such loss by carrying a policy of insurance on the life of such officer.*

2. *Where the constitution of a building and loan company authorizes the directors to do all things necessary to enable the company to exercise the powers authorized by law, the board of directors may enter into such contract of insurance, without previous and specific authority having been obtained from the members or stockholders.*