



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**WAGGONER CARR
ATTORNEY GENERAL**

February 14, 1963

Mr. Frank X. Vance
County Attorney
Medina County
Hondo, Texas

Opinion No. C-15

Re: Liability of a county for
the state and federal
excise tax on gasoline.

Dear Mr. Vance:

You ask whether gasoline purchased by Medina County and used exclusively by it is subject to the state and federal excise tax on gasoline.

Our answer is that such gasoline is subject to the state excise tax and that it is not subject to the federal excise tax.

I.

The state excise tax on gasoline is imposed by Chapter 9 of Title 122A, Taxation-General, Revised Civil Statutes. The very broad and specific provisions of these statutes make clear that the Legislature did not intend to exempt from this tax the motor fuel purchased by the State and its political subdivisions. Article 9.02 (1) imposes the tax upon every "purchaser or recipient". The definition of "first sale" in Article 9.01 (10) is not restricted to any particular kind of "purchaser or recipient". The opinion of a prior Attorney General, No. WW-1502 (1962), held to this effect. A copy of this opinion is herewith enclosed.

II.

The federal excise tax on gasoline is imposed by 26 U.S.C.A., Section 4081(a); 75 Stat. 123, Pub. L. 87-61, Title II, Sec. 201(b)-(d), June 29, 1961. Congress further provided that the tax should not be imposed on a sale ". . . to a State or local government for the exclusive use of a State or local government, . . .". 26 U.S.C.A., Section 4221(a) (4); 75 Stat. 126, Pub. L. 87-61, Title II, Sec. 205(a), June 29, 1961. Subsection (d) (4) of Section 4221 states that "The term 'State or local government' means any State, any political subdivision thereof, or the District of Columbia."

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Counties are political subdivisions of the State.
Limestone County v. Robbins, 120 Tex. 341, 38 S.W.2d 580
(1931).

S U M M A R Y

A county which purchases gasoline for its own exclusive use must pay the state excise tax thereon, but is not subject to the federal excise tax on such gasoline.

Very truly yours,

WAGGONER CARR
Attorney General of Texas

By:


W. E. Allen
Assistant

WEA:pw

Enclosure

APPROVED:

OPINION COMMITTEE
W. V. Geppert, Chairman
H. Grady Chandler
Brady Coleman
Gilbert Hargrave
Robert T. Lewis

APPROVED FOR THE ATTORNEY GENERAL
By: Stanton Stone