

MAINE STATE LEGISLATURE

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March 31, 1927

To Elbert D. Hayford, State Auditor
Re: Gasoline Tax

In answer to your inquiry of March 22nd, relative to the Beacon Oil Company, this department makes the following reply:

The soliciting of orders for goods to be shipped from another state, their shipment from another state to this state, and the delivery of the goods to the persons who ordered them is interstate commerce, and the state cannot burden interstate commerce by compelling persons engaged therein to pay a special tax for the privilege of engaging in such commerce, State v. Littlefield, 112 Me. 214. As said by Chief Justice Wiswell in his opinion in Corbin v. Houlehan, 100 Maine 246,

"Commerce among the several states includes not only the transportation of commodities from one state to another, but as well the sale of such commodities in one state to be transported into another. The regulation of commerce between states having been delegated to the Federal Congress, no state can interfere therewith, or impose any condition, restriction or burdens thereon. The state cannot tax interstate purchases or sales, nor the means or instruments of such commerce."

Under the decisions of the Supreme Court of the United States, as well as the decisions of our own State, it is the opinion of this department that:

(1) By authority of Chapter 224 of the Public Laws of 1923, as amended, the State should insist that the Beacon Oil Company pay on all tank cars shipped from one of its stations within this State to a retailer in this State. If cars are shipped to the Colonial Station of this Company at Falmouth, on consignment to a retailer, and again forwarded from Falmouth, the contention will probably be made that it continues to be an interstate shipment, but it would appear to this department that its interstate character ceases when the shipment stops at the Company's Falmouth Station. See State v. Montgomery, 92 M. 192 and 439.

(2) There is no authority to enforce the payment of the tax by the Beacon Oil Company on such gasoline, as this company ships from its yards in Everett, Massachusetts, to a retailer in this State, because such shipments are interstate commerce.

(3) This department doubts if any action can be taken against the Cities Service Corporation to make it conform to the spirit of our law in the distribution of its product from another state direct to retailers in Maine, although its travelling salesmen throughout the State solicit orders for oil.

Raymond Fellows
Attorney General