September 17, 1929

To Elbert D. Hayford, State Auditor
Re: Gasoline Tax - Amendment to "Distributors".

. . . With reference to yours of September 10th,-the attorney for the Great Northern Paper Company wrote me to inquire both regarding the effect to the recent amendment to the definition of "distributor", and also whether our tax applies to purchases outside the State of gasoline to be used without resale within the state. . .

Judge Fogg wrote him unofficially, explaining the purpose of the 1929 amendment to the definition of the word "distributor", as a practical device for equalizing the tax situation as between various kinds of gasoline dealers. A corporation bringing into the State tank car lots for its own use becomes liable for the tax when the gasoline is used, but one buying in the State gasoline for its own use, whether in tank car lots or otherwise, pays the tax at the time of purchase.

The attorney has not asked for a further or official opinion, and I am hoping that the Great Northern is now paying the tax without question, in which case there is no point in stirring it up by further correspondence. . .

Apparently it has not been necessary as yet to pass officially on the applicability of the gas tax to gasoline used.

Unofficially, it seems this may be the situation with reference to the taxing of gasoline used without resale. Our Law Court validated the statute as a tax on gasoline sold. It is actually a tax on gasoline used as well as on gasoline sold, but the machinery is not provided for collecting the tax on small lots used, and, practically, to attempt to collect it on small lots would be prohibitive. In some foreign cities the tank of every automobile is measured when it comes into and goes out of the city, and a tax is actually paid on gasoline brought in and used, with a rebate on gasoline taken out. Our Legislature could not have intended any such tax.

As a tax on gasoline used, the Law Court might equally have validated it if the question had been put in that form. In some other States is has been validated as a tax on gasoline used. Your letter, like Mr. Fogg's, was primarily concerned with the method of collecting the tax rather than with the question whether a tax on gasoline used is in existence.

The statement which you quote at the bottom of the first page of your letter to me is perhaps incomplete in the following respect,- only on gasoline purchased of the Gulf Refining Company in Maine is the tax paid at the time of the purchase. Gasoline bought outside the State is taxed to the Great Northern after it is used.

On this underlying question, therefore, of whether the tax is imposed,and can be properly imposed, on gasoline used as well as on gasoline sold, and in such case whether it is proper to collect from large but not from small users, no official opinion has as yet been given, and very likely none will be called for.

On the practical question of the enforcement of the tax, as I understand it, we now have this situation, using the words "small purchaser" to indicate a person who buys less than a tank car lot.

1. A small purchaser in Maine pays the tax when he buys it regardless of the use to which he is going to put the gasoline; the tax has already been paid to the State when he gets it.

2. A small importer into the State pays no tax; no machinery for collecting this tax exists.

3. A large importer who resells is taxed at the time of resale, unless this resale is in a tank car lot to someone who in turn is going to resell it.

4. A large purchaser in Maine who resells is taxed when he resells.

5. A large purchaser in Maine who uses the gasoline pays the tax to his seller, who pays it to the State.

6. The tax is collected from a large importer who uses the gasoline himself on all gasoline which he uses.

The 1929 Act was solely confined to the practical question of permitting the same shrinkage allowance to large purchasers in the State, which large purchasers outside the State previously had. Prior to the 1929 Act a large purchaser outside the State was taxed when he disposed of the gasoline. If, however, he disposed of it to another dealer, that dealer without exception must pay the tax to the importer and take his own shrinkage. Under the present law, sale to those who buy gasoline in tank car lots inside the State are exempt from tax unti, this person himself in turn disposes of it.

I shall be interested to talk with you soon to see whether my ideas as above coincide with yours.

Clement F. Robinson
Attorney General