

MAINE STATE LEGISLATURE

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October 3, 1932

To Frank H. Holley, State Tax Assessor
Re: Gasoline used on Clubhouse Grounds

. . . Refund is requested for gasoline used in a truck operated upon the property of a club for the purpose of moving materials and mowing machines from place to place. I doubt his being entitled to the refund. The refund section expressly permits refunds of gasoline used in motor boats, agricultural tractors not on public ways, vehicles on rails or tracks, stationary engines, mechanical or industrial arts,

"or for any other commercial use except in motor vehicles operated or intended to be operated upon any of the public highways."

It does not seem to me that gasoline used in a motor vehicle operated on the grounds of a club is gasoline used commercially. Otherwise, it would not be necessary for the statute to specify a refund in the case of agricultural tractors not operated on public ways. If a truck is in a "commercial use" on the property of a club, so would a tractor used on a farm. Why, then, it may be said, does the commercial use clause above quoted specify an exception of motor vehicles on the highway? Does the exception imply that other motor vehicles may be in commercial use as far as the rebate is concerned?

My answer is that the clue to resolve the possible ambiguity in the express mention of agricultural tractors in one clause, and of non-highway vehicles in another clause is that the whole section gives the right to a rebate to be paid from the state treasury from the proceeds of taxes paid in, and therefore should be strictly interpreted. Anyone claiming the rebate must bring himself strictly within its terms. Any ambiguity must be answered against the claim for a rebate. We cannot properly imply that a motor vehicle operated elsewhere than on a highway is in a commercial use in the face of the express exemption of tractors used in that same way. The expression of one thing excludes the implication of the other.

In making this decision I confirm the opinion of the Deputy Attorney General of July 29, 1932, which rules against the right to refund in the case of gasoline used in motor trucks used for agricultural purposes and not operated on public ways.

Clement F. Robinson
Attorney General