

**Constitutional Law—Motor Vehicles—Registration—Rural
Mail Carriers—Mail Carriers—Gasoline Tax—Tax—Carriers.**

The so-called "gasoline tax" is a license or occupational tax levied upon distributors and dealers in gasoline and distillate. Therefore a consumer cannot claim exemption from it.

The fee for the registration of motor vehicles is a license fee levied and collected under an exercise of the police power of the state.

A law proposing to determine the amount of the fee for the registration of motor vehicles upon the basis of the occupation or financial circumstances of the owner would be unconstitutional.

Hon. W. S. McCormick,
Lieutenant Governor,
Kalispell, Montana.

December 13, 1924.

My dear Mr. McCormick:

You have submitted to this office for my opinion the question of whether a law exempting rural mail carriers from paying the gasoline tax and allowing them to register their motor vehicles at one-half the regular rate upon the ground that they are underpaid and that the public would get the benefit of such exemption and reduced rate would be a constitutional enactment.

The so-called "gasoline tax" levied and collected for state purposes in the state of Montana is a license or occupational tax levied upon and collected from distributors and dealers in gasoline and distillate. It is

a tax paid by such distributors and dealers for the privilege of doing business in the state of Montana. (See *Mid Northern Oil Co. v. Walker, et al.*, 65 Mont. 414.)

It is not levied upon the consumer of gasoline and distillate as a tax, although it is, no doubt, true that the ultimate consumer pays it, as he pays all other taxes, as a part of the price of his gasoline or distillate. However, not being levied upon the consumer as a tax, I am not able to see how he can ask to be relieved from it.

The laws of Montana provide for the registration of all motor vehicles by the owners thereof and for the collection of certain fees for such registration. The only exemptions from the payment of the fees for registration are extended to the United States, the state of Montana, and all counties and cities of Montana, and the reason for such exemptions is apparent. The amount of the fee required for the registration of each motor vehicle is determined by a classification fixed by the legislature which under our law is based upon the horsepower in the case of pleasure vehicles, and upon capacity in the case of trucks.

That motor vehicles are a proper subject for regulation by the state in the exercise of its police power; that the fee exacted for the registration is not a property tax but is rather in the nature of a license fee levied and collected under the power of regulation, and that the law of Montana is an exercise of its police power, cannot be doubted. (22 Cyc. 32; *State v. Pepper*, 226 Pac. 1108.)

It is the general rule that license fees, levied under an exercise of the police power of the state, need not be uniform upon all persons or things, but that persons or objects subject to such fees may be classified by the legislature and different rates or fees applied to and levied upon different classes. However, when such a classification is made it must be a reasonable and just one and not merely arbitrary, unjust and discriminatory, and the rate of the fee must be uniform and equal upon all persons or objects coming within any particular class. In determining whether or not a classification is reasonable it is proper to consider whether there is any direct or natural relation between the classification and the object to be attained by the law.

Under the law as it exists the classification of motor vehicles for the purpose of determining the fee to be paid for registration is based in one instance upon the horsepower and in the other upon the capacity. Such classification is reasonable.

Hendrick v. Maryland, 235 U. S. 610;
Ex Parte Schuler, 139 Pac. 685;
Lillard v. Milton, 87 S. E. 421.

However, a classification for the purpose of determining the amount of the fee to be paid for registration of a motor vehicle, based upon the employment or financial circumstances of the owner thereof, could not be said to bear any direct or natural relation to the object to be attained by the registration but would be purely arbitrary, unjust, and discrimina-

tory, and therefore unreasonable, and a law having such classification as a basis for determining the amount of the registration fee would, in my opinion, be violative of the provisions of the Fourteenth Amendment to the Constitution of the United States.

Very truly yours,

L. A. FOOT,
Attorney General.