

in the State of Montana, in which are stored petroleum products, is subject to the provisions of Chapter 155, Laws of 1933, commonly called the Chain Store Act, on account of said bulk plants.

According to your letter the statement which the company furnished to you is substantially as follows:

"Due to the hazardous nature of the products handled, it is impractical to store at service stations any large quantities of petroleum products. Due to the limitations on the amount that can be stored at service stations, due, also, to the fact that they are seldom, if ever, located on or near railroad facilities, and due to the manner in which petroleum products are shipped from the refinery, it is absolutely necessary that some bulk storage be provided so that these tank cars can be properly unloaded and so that the products can be stored until such time as they are required for prompt delivery to service stations and dealers. These bulk plants are usually located on the right-of-way of the railroad company; they are never located in the business section of any town or city, and are sometimes in the country. They are not on any highway except by accident. The public do not come to such bulk plants; they are not held out as a place where sales are made to the public, and for that reason they are located with the view of making them as inaccessible to the public as possible. No facilities of any kind are provided for at such plants for serving cars or for making deliveries of any product to a customer. There are no pumps or other like measuring devices.

"So far as our company is concerned these bulk plants are in charge of an agent who furnishes his own truck and delivers products from the bulk plant to service stations and dealers on a commission basis. The agent simply goes to the bulk plant for the purpose of loading his truck for delivery to the trade. The truth of the matter is that during normal business hours there is no one at the bulk plant. It is completely locked. No business office is maintained at the bulk plant for making sales or for transacting other business. Telephones are not provided. As said before, these bulk plants exist primarily as bulk

#### Opinion No. 222

##### Chain Stores—Licenses—Gasoline Storage Plants—Service Stations —Leased Service Stations.

HELD: Under the facts presented, the bulk storage plants of the Standard Oil Company of Indiana are wholesale stores and the owner thereof should pay license fees accordingly.

Where the Standard Oil Company of Indiana operates and maintains its own service stations it must pay a license fee on a graduated scale for each of said service stations, but where such station is operated and maintained by a lessee, the lessee is liable for the license fee.

May 26, 1933.

You have asked us whether or not the Standard Oil Company of Indiana, which owns a number of bulk plants

storage so that service stations and dealers can be promptly provided with their requirements. The agent also sells in the country to farmers products taken from the storage plants. These sales, including delivery, are made out on the farm. No charge is made for delivery, and, therefore, there is no inducement and farmers do not, therefore, come to the plant for products except in isolated instances. At rare intervals, such as an emergency during the harvest season, a farmer may come to town with his own truck and get a barrel filled. The agent, if he happens to be at the plant, would not under those circumstances refuse to accommodate such a customer. These instances, however, are rare, and they do not in any way alter the character or purpose of these bulk storage plants."

It is our view, based on the foregoing recital and the language of section 8 of the law, that these bulk plants are in fact wholesale stores and that the owner thereof should pay license fees accordingly. (*Atlantic Refining Co. v. Van Valkenburg*, 109 Atl. 208; *Gunther v. Atlantic Refining Co.* 121 Atl. 53; 60 C. J. 116-122; "Words and Phrases" (Fourth Series), in which the word 'store' is defined.)

You have asked us further whether or not the company must, under the law, pay a license fee on a graduated scale for each service station belonging to it in the State of Montana. In this regard the circumstances, as stated in your letter, are as follows:

"This same company owns many filling stations in Montana which are, or will be leased to private individuals. Under the terms of their lease, form of which is enclosed, it appears that they lease the filling station premises together with all equipment connected therewith for a certain period of time and from month to month, the lessor reserving the right to terminate the lease at any time on giving to the lessee written notice of its intention to so terminate the lease. The lessee agrees to pay as rent for such premises, a specified number of cents per gallon on all gasoline which the lessee purchases for said station to be paid to the lessor at the time of delivery of gasoline. The lessee pays all expenses of operating the station, in-

cluding license fees and taxes imposed upon the business or property leased. The lessee agrees to replace any equipment damaged or destroyed and at the expiration of the lease return to the lessor the premises and equipment thereon in as good condition as at the date of the execution of the lease, ordinary wear and tear excepted."

Our answer, then, is that it must to the extent that it operates and maintains its own service stations. We believe, however, that where the company leases one of its service stations, with the equipment, to another and he enters into possession thereof and engages in the sale of petroleum products, and pays or agrees to pay rent therefor in some form, and further agrees to meet the cost of operating the same, it (the company) is not liable for the license fee, but the lessee is. In that case the service station (store) is operated and maintained by the lessee.