

vehicles used in maintaining and building highways in the respective counties?"

So much of Section 1 of Chapter 175, Laws of 1931, as is pertinent here, reads thus: "That any person who shall purchase and use any gasoline, with reference to which there has been paid into the Treasury of the State of Montana, under the laws of this State licensing dealers in gasoline, a tax at the rate of five cents (5 cents) per gallon, for the purpose of operating or propelling stationary gas engines, tractors used for agricultural purposes other than on the public highways or streets of this State, motor boats, aeroplanes or air craft, or for cleaning or dyeing, or for any commercial use other than propelling vehicles upon any of the public highways or streets of this State, and who has paid said tax either directly to the State of Montana or indirectly as a part of the purchase price of said gasoline, shall be allowed and paid as a refund or drawback an amount of money equal to five cents (5 cents) multiplied by the number of gallons of gasoline so purchased and used, upon presenting to the Board of Equalization of the State of Montana, within the time allowed by law, a sworn statement, accompanied by the original paid invoices showing such purchase and use, which statement shall set forth that the tax has been paid, the total amount of such gasoline so purchased upon which he has paid the tax and which has been used by such consumer other than for propelling vehicles operated upon any of the public highways or streets of this State, and which statement shall contain such additional information as may be required by the Board of Equalization of the State of Montana on forms to be furnished by said board; provided that such refund or drawback shall not exceed the tax imposed by law."

Opinion No. 271.

**Gasoline License Tax—Refunds—
Counties—Highways—State
Board of Equalization.**

HELD: Counties are entitled to refunds of gasoline license tax only in cases where the gasoline purchased by them was actually consumed in the construction of new highways or in changing to some extent the route of existing highways.

April 23, 1936.

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In yours of April 6, you propounded to us the following question: "Is a county entitled to a refund on gasoline under provisions of Chapter 175 of the Laws of 1931 for trucks and

The word "person" includes a corporation as well as a natural person. (Section 16, R. C. M. 1921; In re Beck's Estate, 44 Mont. 561.) Corporations are either public or private. Public corporations are formed or organized for the government of a portion of the state; all other corporations are private. (Section 5901, R. C.

M. 1921; Crow Creek Irr. Dist. v. Crittenden, 71 Mont. 66.) A county is the largest political division of the state having corporate power. (Section 4293, R. C. M. 1921.) Every county is a body politic and corporate. (Section 4441, R. C. M. 1921; State v. McGraw, 74 Mont. 152; State v. Holmes, 100 Mont. 256, 47 Pac. (2d) 624.) It is obvious, therefore, that a county is a public corporation (15 C. J. 390, 391; Crow Creek Irr. Dist. v. Crittenden, above; State v. Dilworth, 76 Mont. 218; People v. Bank of Chebanse, 172 N. E. 50; Strickfaden v. Green Creek Highway Dist., 248 Pac. 456), and as such falls within the definition of the word "person" given by Section 16, above.

The State Board of Equalization has always followed the practice of granting refunds to counties only in cases where the gasoline purchased by them was actually consumed in the construction of new highways or in changing to some extent the route of existing highways. This constitutes a practical construction of the act by the board whose duty it is to administer it. The contemporaneous construction given a statute by the officer or board charged with the duty of administering it is entitled to weight, and particularly so where the construction has been observed and acted upon for a long period of time. (59 C. J. 1025; Miller Ins. Agency v. Porter, 93 Mont. 567.)

We are disposed to agree with the position taken by the State Board of Equalization. The statute does not permit a refund on account of gasoline used in the propulsion of vehicles upon the public highways of the state, but it does permit a refund on account of gasoline used for commercial purposes other than the propulsion of vehicles upon the public highways of the state. Gasoline consumed by tractors or trucks in the construction of a new highway or in changing in part the route of an existing highway is, we think, gasoline put to a commercial use in view of the somewhat broad language of the act. (Jordan v. Tashiro, 278 U. S. 123, 73 L. Ed. 214; Orient Ins. Co. v. Northern Pac. Ry. Co., 31 Mont. 502; Town of Bristol v. Bristol R. Co., 100 Atl. 37; Building Com'r of Town of Brookline v. McManus, 160 N. E. 387.)