

Opinion No. 192.

Schools—Gasoline Tax Refund—Chapter 67, Laws of 1939, Amending Section 2396.4.

HELD: School districts qualifying therefore under the provisions of Section 2396.4, R. C. M., 1935, as amended by Chapter 67, Laws of 1939, are entitled to a gasoline tax refund.

January 26, 1940.

The State Board of Equalization
The Capitol

Gentlemen:

On your question "under what circumstances is a school district entitled to a refund of gasoline tax, under Chapter 67, Laws of 1939," permit me to advise you as follows:

The pertinent portion of the Act to which you refer is:

"Any * * * school district * * * which shall purchase and use gasoline in the performance of its governmental or proprietary functions, shall be allowed and paid a sum equal to 5c per gallon on such gasoline * * * upon presenting * * * with-

in the time allowed by law, a sworn statement showing the amount purchased and the purpose of which it was used."

It would seem clear that the only restrictions upon the right of a school district are (a) that the gasoline be purchased by the district and, at the time, an invoice therefore be issued to, and in the name of the district; (b) that the gasoline so purchased be used in the discharge of a proper function of the school district; and (c) that the district comply with the law in presenting its claim for refunds.

For example, a district might either (a) own and operate its own bus for the transportation of children, (b) lease a bus and employ the owner (or another) to operate it, or (c) contract for the transportation of pupils on the basis that the district will furnish the gasoline and contract only for the use of vehicles and the services of the driver or drivers. On the other hand, where the school district enters into a contract for the transportation of pupils with one who buys and uses his own gasoline therefor, it could not qualify under the law for a tax refund.

So long as the school district purchases and uses the gasoline, it is immaterial how the purchase is made. The purchase may be by agent, in the usual manner of delivery into bus gasoline tanks for immediate use; by barrel and use therefrom; from a pump operated by an employee of the district; or by arrangement with a service station, or stations, to service all such busses and charge the gasoline to the district.