

Conservation Districts are eligible under said Section 2396.4, for such refunds and drawbacks.

September 11, 1946.

Mr. Sam D. Goza, Chairman
State Board of Equalization
State Capitol
Helena, Montana

Dear Mr. Goza:

You have requested an opinion advising whether or not departments or institutions of this state, such as the Water Conservation Board, State Prison, Soil Conservation District, Montana State Agricultural College, and the like, which operate in whole or in part on state funds, are entitled to a refund or drawback of five cents per gallon as provided for by Section 2396.4, Revised Codes of Montana, 1935, as amended, where the gasoline is used for purposes other than the propulsion of motor vehicles over the highways of the state.

Section 2396.4, Revised Codes of Montana, 1935, as amended by Chapter 96, Laws of 1937, and Chapter 67, Laws of 1939, provides in part:

"That any person who shall purchase or use any gasoline . . ."

Section 2381.11, Revised Codes of Montana, 1935, defines certain words as they pertain to the gasoline drawback or refund law; and in said section the word "person" is defined as follows:

". . . (2) The word 'person' means any person, firm, association, joint stock company, syndicate or corporation."

Section 5900, Revised Codes of Montana, 1935, defines a corporation.

Section 5901, Revised Codes of Montana, 1935, states there are two types of corporations:

"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."

The Montana Court in the case of *In Re Beck's Estate*, 44 Mont. 561, 121 Pac. 784, held the State Orphans' Home at Twin Bridges was not a corporation because it did not fall within

Opinion No. 205.

Refunds and Drawbacks—Gasoline, Refunds and Drawbacks—Departments and State Institutions—State Institutions, Refunds and Drawbacks.

Held: The State Water Conservation Board, the State Prison, the Montana State Agricultural College and other like institutions are not eligible under Section 2396.4, Revised Codes of Montana, 1935, as amended, but Soil

the definition thereof in Section 5901, Revised Codes of Montana, 1935, in that it did not govern any portion of the State of Montana.

Our Court—in construing said Section 5901 in the case of *Crow Creek Irrigation District v. Crittenden*, 71 Mont. 66, 227 Pac. 63—held a public corporation had to exercise some sovereign powers over a portion of the state. However, it did not have to exercise all sovereign power over that portion.

In light of these statutes and cases cited construing them, it would seem the State Water Conservation Board could not be considered a public corporation. Its powers, such as they are, are co-extensive with the entire state and it does the bidding of the state in water conservation matters.

Further emphasizing the fact the board is an arm of the state, the law provides the board shall be made up of the Governor, the State Engineer and three members appointed by the Governor to direct and carry out the policy of the state. Further, the board is authorized to cooperate with all federal, state and local agencies in development work. In view of the law, the policy of the board should have no local application but should be co-extensive with the water problem of the entire state. It is true Section 349.22, Revised Codes of Montana, 1935, states the board is a body corporate, but it also states:

“ . . . and as such it shall be deemed to be an agency of the state of Montana.”

From the language of the act, the duties and powers given the board and the personnel constituting the board, it seems logical to say the legislature intended the State Water Conservation Board should have certain corporate rights, but be merely an arm of the state, and not in reality a separate entity, and thus not a public corporation.

The State Prison, the educational institutions, and other like institutions fall squarely under the holding of the *Beck Estate* case and cannot be construed to be public corporations.

The Soil Conservation Districts, however, are locally organized and possess some sovereign power over a portion of the state. Thus—in view of the holding of the *Crow Creek Irriga-*

tion case—they should be construed as public corporations and eligible for the refunds or drawbacks under said Section 2396.4, as amended.

Therefore, it is my opinion the State Water Conservation Board the State Prison, the Montana State Agricultural College and other like institutions are not eligible under Section 2396.4, Revised Codes of Montana, 1935, as amended, but Soil Conservation Districts are eligible under said Section 2396.4, to such refunds and drawbacks.

Sincerely yours,
R. V. BOTTOMLY,
Attorney General