

**OPINION
72-542**

July 19, 1972 (OPINION)

Mr. Thomas F. Meagher, Jr.
Assistant General Counsel, Transportation
Room 4226
U. S. Postal Service
Washington, D.C. 20260

Dear Mr. Meagher:

This is in reply to your letter of June 21, 1972, inquiring about the liability under the motor fuel tax laws of this state of air taxi operators who contract with the U. S. Postal Service for the carriage of mail.

One of your questions is whether "motor vehicle fuels" as defined in section 57-54-03 N.D.C.C. includes fuel consumed by piston-powered aircraft and turboprop and pure jet aircraft.

Our understanding is that piston-powered aircraft consume a type of fuel known generally as gasoline and that turboprop and pure jet aircraft consume a type of fuel referred to generally as kerosene or jet fuel. To the extent that either type of fuel meets the technical requirements of the definition of "motor vehicle fuels" provided in section 57-54-03, fuel for such aircraft is subject to the 7 cents per gallon tax provided for in chapter 57-54 N.D.C.C.

To the extent that a particular fuel for piston-powered, turbojet or pure jet aircraft does not meet the technical definition of fuel that is provided in section 57-54-03, it is regarded as a "special fuel" within the scope of the Special Fuels Tax Act, chapter 57-02 N.D.C.C., and subject to the 7 cents per gallon tax provided for in that chapter.

Your other question is whether air taxi operators contracting with the U. S. Postal Service are regarded as performing "work" that is paid for from "public funds" within the meaning of those terms as used in section 57-50-05.1 N.D.C.C.

Section 57-50-05.1 in effect recognizes that the 7 cents per gallon tax imposed by chapter 57-54 N.D.C.C. is refundable under certain conditions but prohibits the refund if, in addition to those conditions, the fuel is used by a person in the performance of work paid for from public funds. Carriage of mail by an air taxi operator pursuant to a contract with the U. S. Postal Service is, in our opinion, the performance of work by a person that is paid for from public funds within the meaning of section 57-50-05.1; accordingly, refund of the 7 cents per gallon tax paid by the air taxi operator is barred by that section.

Similarly, since the refund provisions of chapter 57-50 are incorporated into the Special Fuels Tax Act by the last sentence of section 57-52-04 of that Act, refund of the 7 cents per gallon

special fuels tax paid by an air taxi operator on special fuel used in carrying mail under a contract with the U. S. Postal Service is not refundable because of the prohibition in section 57-50-05.1.

Yours very truly,

HELGI JOHANNESON

Attorney General