

**OPINION**  
**51-178**

March 3, 1951           (OPINION)

**TAXATION**

RE: Fuel Tax - Dealer Not Entitled to Commission for Collection

We have your request for an opinion as to whether or not a dealer as defined in Senate Bill 104 is entitled to 1% commission for collecting the tax provided for in said bill.

We call your attention to section 2 of said bill as amended, which reads in part as follows:

There is hereby imposed a tax of one cent per gallon on all sales of motor vehicle fuel sold in this state. The tax imposed by this section shall be separate and apart from and in addition to all other taxes and shall be collected by the dealer from the consumer on all sales other than sales of fuel in the original packages."

From the above you will note that this is a new and independent act and we call your attention to section 4 of the bill which reads:

Every dealer who is required to collect the motor vehicle fuel tax imposed by this Act shall charge and collect the tax of one cent per gallon on all motor vehicle fuel sold by him, except as provided in section 2 of this Act, as a part of the selling price thereof."

And we especially call your attention to section 5 of the act which reads:

The tax collected upon a motor vehicle fuel sold in any calendar month shall be remitted by the dealer to the state auditor, who shall receipt to the dealer therefor, and forthwith shall pay over all of the money thus received to the state treasurer."

From the above you will see that it is the duty of the dealer to collect one cent on each gallon sold and to remit all of it to the state auditor and there is no provision for the payment of a commission to the dealer for making this collection, and we therefore hold that the dealer has no right to collect a commission of 1% percent or any other commission for making the collection.

ELMO T. CHRISTIANSON

Attorney General