

**OPINION
51-65**

April 28, 1951 (OPINION)

FEES

RE: Not Authorized to Charge Fee for Inspection of Pumps Not Used to
for Distribution

You recently called at this office and requested an opinion concerning the inspection and fee schedule for the calibration of certain storage and bulk loading tank meters.

You stated that a certain North Dakota station has refused to allow your inspectors to test its loading tank meters. Its refusal is based upon the proposition that the meters were used only for the loading of the company's own trucks and not for measuring products for sale.

You wish to know whether you and your inspectors are authorized by law to charge and collect fees for such inspection.

Subsection 3 of section 64-0201 of the 1943 Revised Code defines a gasoline pump as "shall include any pump, meter, or similar device used for measuring gasoline for sale."

Section 64 0216 of the 1943 Revised Code provides for the licensing of gasoline pumps and the payment of annual license fees.

Section 64-0213 of the 1943 Revised Code authorizes the chief inspector and his employees to test any instrument or mechanical device for measurement, "if the same is kept, offered, used, or employed, or is offered for sale or sold for the purpose of being used or employed, by any person in determining the size, quantity, extent, area, or measurement of quantities, things, produce, or articles for distribution or consumption which may be offered or submitted by any person for sale, hire, or reward."

It is the opinion of this office that the licensing and inspecting provisions apply to any mechanical gasoline measuring device which is used to measure gasoline for sale, whether the same is located on a truck, bulk tank, storage tank, or pipeline.

It is our understanding that the meters in question are used by the company for the purpose of keeping record of the amount of gasoline loaded on its tanks, and further, that there are no sales made directly from these tanks.

Therefore, it is our opinion that if no sale is made the chief inspector and his employees are not authorized to test devices and charge the scheduled fee for such inspections.

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