

OFFICE OF THE ATTORNEY GENERAL



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Honorable Ronald L. Jones
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Counties - Motor Fuels -
Motor Fuels Tax - Herbicides

Herbicides may be road materials and may be purchased with funds generated from the gasoline excise tax authorized by Act No. 88-291 if the herbicides are to be used for road construction but not for routine maintenance.

Dear Mr. Jones:

This opinion is issued in response to your request for an opinion from the Attorney General.

QUESTION

Are herbicides used for maintaining county roads and rights-of-way considered "road materials" under the terms of Act No. 88-291?

FACTS AND ANALYSIS

Section 13 of Act No. 88-291, which authorizes the imposition of an excise tax on persons or companies engaged in the business of selling, distributing or storing gasoline

and motor fuel, mandates that the funds collected be spent only on "road materials." Section 13 provides:

"Section 13. Expenditures from the special fund provided for in Section 12 shall be made exclusively for road materials, only. At least five percent of the proceeds shall be used to resurface gravel roads."

We have been informed by a landscape engineer for the State of Alabama that herbicides are routinely used as a "routine maintenance item," are used in the actual construction of roads, and are utilized in lieu of "swing blades and mowers." It is our opinion that herbicides used for new construction may be termed "road materials" under § 13 of Act No. 88-291, but that herbicides used for routine maintenance of rights-of-way and roads are not "road materials."

In the Attorney General's opinion to Representative Ben T. Richardson, dated September 4, 1990, A.G. No. 90-00352, the Attorney General wrote that the funds generated by the tax levied pursuant to Act No. 88-291 should be spent only to acquire, and not to properly put in place, road materials. The Attorney General wrote "such funds may not be used to purchase equipment or right-of-way." The Attorney General has not defined the term "road materials" to any greater extent. Nor have we discovered any statutory definition for the term.

However, as the Supreme Court stated in Standard Dredging Corp. v. State, 271 Ala. 22, 122 So.2d 280, appeal dismissed, 364 U.S. 300, 5 L.Ed.2d 90, 81 S.Ct. 268 (1960), a statute is to be construed in accordance with its real intent and meaning and not so strictly as to defeat the legislative purpose. See Attorney General's opinion to Honorable Kenneth Moss, Mayor, dated March 5, 1984, A.G. No. 84-00193. The real intent and legislative purpose of Section 13 seems to be to restrict the expenditure of funds to the substances or constituent elements of which roads are built, composed, repaired, improved or maintained. Labor costs are the most obvious expenses which are excluded. However, as the Attorney General's opinion to Representative Richardson noted, expenditures for equipment are also prohibited, even though equipment is required to deliver or utilize road materials.

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The definition of road materials, then, excludes items, equipment or materials which are not constituent elements of roads, regardless of the necessity for the utilization of those other items to build, repair or maintain roads. The proceeds of the tax authorized by Act No. 88-291 may be used to purchase road materials only, and, if herbicides are used in place of some mechanical clearing of vegetation when building or resurfacing roads, a herbicide may be a constituent element or material of a road. Therefore, the proceeds of the tax authorized by Act No. 88-291 may be used to purchase herbicides for the purpose of the new construction of a road, but not if the herbicide is to be used for routine maintenance.

CONCLUSION

Herbicides may be road materials and may be purchased with funds generated from the gasoline excise tax authorized by Act No. 88-291 if used for the purpose of road construction, but not if to be used for the routine maintenance of roads.

I hope this sufficiently answers your question. If our office can be of further assistance, please do not hesitate to contact us.

Sincerely,

JIMMY EVANS
Attorney General
By:


JAMES R. SOLOMON, JR.
Chief, Opinions Division

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