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STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

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Honorable Gregory D. Wren
Member, House of Representatives
4213 Carmichael Road
Montgomery, Alabama 36106

Motor Fuel Marketing Act – Discounts –
Penalties – Motor Fuels

A retail store's purchase of gasoline for the customer at the full pump price, in exchange for the purchase of a qualifying amount of goods, does not violate the Motor Fuel Marketing Act.

Dear Representative Wren:

This opinion of the Attorney General is issued in response to your request.

QUESTION

Is the Motor Fuel Marketing Act violated where the discounted price paid by the consumer is ultimately paid in full to the fuel retailer by the company offering the incentive to the consumer?

FACTS AND ANALYSIS

Your request states as follows:

As the retail price of gasoline continues to rise, many companies not in the retail fuel industry are offering fuel-related incentives to consumers. A common method used in other states is for retail stores to partner with fuel providers to offer a specific discount per gallon of gas purchased. The full price of the fuel is then paid to the retail fuel center by the retail store

offering the incentive. The incentive is based on the dollar amount spent and can reach the full amount of a gallon of fuel.

Fuel providers will not contract with stores in Alabama to provide these incentives because they believe it violates the provisions of the Motor Fuel Marketing Act. Therefore, Alabama residents in border areas are likely to purchase fuel in a neighboring state that offers such discounts because of the significant savings involved. As this type of incentive is certain to expand, the state loses fuel and sale tax dollars.

This Office has previously explained the Alabama Motor Fuel Marketing Act ("AMFMA") as follows:

The Motor Fuel Marketing Act is codified at Code of Alabama 1975, Section 8-22-1 through 8-22-18. The legislative intent of this Act as expressed in Section 8-22-3 provides that it is an unfair trade practice to advertise, offer for sale, or to sell motor fuel below cost or at a cost lower than that charged by persons on the same market level when such cost is intended to destroy or substantially lessen competition.

Section 8-22-6 . . . specifically prohibit[s] below cost fuel sales . . . [This] provision[] state[s]:

§ 8-22-6.

It shall be unlawful for any person engaged in commerce in this state to sell or offer to sell motor fuel below cost or to sell or offer to sell it at a price lower than the seller charges other persons on the same day and on the same level of distribution, within the same market area, where the effect is to injure competition.

Opinion to Honorable Gary Aldridge, State Senator, 3rd District, dated December 21, 1984, A.G. No. 85-00135, at 2 (emphasis added). "In order to establish a prima-facie case of a violation of the AMFMA, the plaintiff must show: (1) a sale of gasoline below cost, and (2) an injurious effect on

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competition. *State ex rel. Galanos v. Mapco Petroleum, Inc.*, 519 So. 2d 1275, 1296 (Ala.1987).” *Home Oil Company, Inc. v. Sam’s East, Inc.*, 199 F. Supp. 2d 1236, 1240 (M.D. Ala. 2002).

In the program described, the retail price of gasoline is not discounted. In exchange for a customer’s purchasing a qualifying amount of goods, the retail store purchases a certain amount of gas for the customer at the full pump price. Because the gas retailer is not selling at a lower price to persons participating in the program, there is no violation of the AMFMA.

CONCLUSION

A retail store’s purchase of gasoline for the customer at the full pump price, in exchange for the purchase of a qualifying amount of goods, does not violate the Motor Fuel Marketing Act.

I hope this opinion answers your question. If this Office can be of further assistance, please contact Ward Beeson of my staff.

Sincerely,

LUTHER STRANGE
Attorney General

By:



BRENDA F. SMITH
Chief, Opinions Division

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