

Opinion No. 51-5384

July 10, 1951

BY: JOE L. MARTINEZ, Attorney General

TO: L. W. Leibrand, Chairman New Mexico Public Service Commission P. O. Box 561 Santa Fe, New Mexico

{*71} In reply to your letter of June 12, 1951, requesting an opinion concerning several problems confronting the Commission regarding Chap. 214 of the New Mexico Session Laws of 1947 and amendments thereto, I will endeavor to answer each problem in the order in which you presented them in your letter.

1. The Commission is concerned about these installations made prior to the effective date of the Liquefied Petroleum Gas Act and Commission General Orders, as to the authority they are privileged to exercise under the law to require such installations to be brought up to Commission standards or outlaw them.

{*72} Sec. 2 of Chap. 214, Laws of 1947, reads as follows:

"All containers and pertinent equipment used or to be used in this state for the storage, transporting and/or dispensing of liquefied petroleum gases, by either industrial, commercial and/or domestic users, together with appliances used or to be used in this state with liquefied petroleum gases as a fuel, shall be designed, constructed, assembled, equipped and installed as specified by the rule and regulations of the New Mexico Public Service Commission, adopted and/or promulgated as provided in this Act."

This section gives the Commission authority over any person who is storing liquefied petroleum gas for use either domestically, industrially or commercially and it gives the Commission authority over containers and equipment, used or to be used, in this State for the storage, transportation, or dispensing of such gases. It also gives the Commission authority over appliances, used or to be used in this State with liquefied petroleum gas as a fuel. The Commission has this authority regardless of the date when such installations were made.

This section must be read in conjunction with Sec. 4, Chap. 214, Laws of 1947, which provides as follows:

"The commission shall have full power and authority to adopt and promulgate such rules and regulations as shall be necessary to carry out the purpose of this Act and for the public peace, health and safety as it is affected by the use of such materials. The regulations so made shall be substantially in conformity with the regulations of the National Board of Fire Underwriters as recommended by the National Fire Protection Association, covering the same subject matter. Nothing contained in this Act shall apply

to containers subject to the regulation of the Interstate Commerce Commission, nor to containers owned and used by the U. S. Government, nor to containers installed in refineries, gasoline plants, and pipeline terminals."

This section specifically gives the Commission power to make rules and regulations as shall be necessary to carry out the purposes of this act, and for the public peace, health and safety.

It is my opinion that, under these sections, the Commission can require, by rule and regulation, that owners revamp their systems and bring them to minimum safety standards of the Commission and if such owners refuse, the systems may be tagged and placed in disservice.

Your second question is as follows:

2. What authority do they have over systems cut off of municipal systems and connected to privately-owned tanks? For example, have we the legal authority to compel an owner to revamp his system and bring it up to minimum safety standards of the Commission and if he refuses, tag the system and place it in disservice?

Since the answer to question No. 1 indicates that the Commission, pursuant to appropriate rule and regulation, has authority over users of liquefied gas, containers and equipment used for storage, transportation, or dispensing of such gas, and appliances used, it follows that the Commission has authority over systems cut off from municipal systems just as it has authority over other systems.

In this connection, your attention is respectfully referred to Attorney General's Opinion No. 5156, issued by Mr. C. C. McCulloh under date of June 17, 1948, in which it is stated that any utility, owned and operated by a municipal corporation, is subject to the liquefied petroleum gas act of 1947. This is mentioned merely for your consideration in connection with questions Nos. 3 and 4.

{*73} Your question No. 3 is as follows:

3. What authority has the Commission to require licensees to make inspections of liquefied petroleum gas systems and report irregularities or unsafe conditions to the Commission where they are called upon to service, extend or repair piping, appliances or tanks, that have been installed prior to the effective date of Chap. 214, New Mexico Session Laws of 1947, and amendments thereto.

Sec. 5, Chap. 214 Laws of 1947, provides as follows:

"Section 5. No person, firm or corporation shall engage in this state in the manufacturing, assembling, repairing, selling, or installing of containers or appliances, to be used with liquefied petroleum gases as a fuel, nor shall such person, firm or corporation engage in the manufacture, sale, transportation, dispensing or storage of

liquefied petroleum gases within this state, except where stored by the ultimate consumer for consumption only, without having first obtained from the Commission a license so to do for each main or branch office, or business operated within the state, within the scope of this Act. No such license shall be issued until the Commission has determined that the applicant will meet all safety requirements provided for in this Act and required by the rules and regulations of the Public Service Commission, and the Commission finds, after hearing, that such applicant is fit and able to perform the work for which a license is requested. * * * *".

Under Section 4 of the Act, the Commission has the authority to make rules and regulations governing the conduct of licensees in servicing systems.

It is my opinion that the Commission has authority to compel licensees to make inspections of liquefied petroleum gas systems and to report irregularities or unsafe conditions when they are called upon to service, extend or repair piping, appliances or tanks, or in filling tanks by making such licensees responsible by appropriate rule for the safety of such systems as they service. In this fashion by appropriate rule unsafe systems can be tagged regardless of the date of installation.

Your question No. 4 is as follows:

4. The Commission is concerned about the legal responsibility of licensees servicing liquefied petroleum gas systems without making a complete inspection of such systems where they have been installed prior to July 1, 1947, and as to whether or not our authority is broad enough to require owners of such systems to bring them up to standards now in effect, or tag the system and not permit its use until it is brought up to these standards.

It is my opinion, as indicated in my answer to your question No. 3, that the Commission can require licensees servicing liquefied petroleum gas systems to inspect such systems regardless of the date of installation and, as indicated in my answers to your questions No. 1 and No. 2, the Commission has authority to compel owners of systems to bring them up to proper standards, regardless of the date of installation.

In the last paragraph of your letter, you state that you have in mind the promulgating of a new set of rules and regulations providing you have the authority to enforce them. As above stated, you have the authority to promulgate rules and regulations to cover these conditions and it is my opinion that you should do so so long as your rules and regulations are not contrary to existing law.

As to the authority to enforce them, you have the power and the authority under both Chap. 214, 1947 Session Laws, and Chap. 122, 1949 Session Laws.

I would also suggest that you {*74} read, in connection with this opinion, the following sections of the 1941 Compilation, N.M.S.A., p.s., Vol. 5:

§§ 71-806 through 71-811, §§ 71-815 through 71-817 and §§ 71-824 through 71-825.

In conclusion may I state the Commission has authority by appropriate rule to compel owners of liquefied gas systems, regardless of the date of installation, to bring such systems up to standard according to reasonable rules and regulations adopted by the Commission pursuant to law.

Also, the Commission has authority to require licensees to inspect such systems as a condition to their servicing and to require licensees to report any unsafe or dangerous conditions found to the end that such systems may be tagged and not used until made safe.

I trust that this fully answers your inquiry.