

Opinion No. 55-6214

July 6, 1955

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. O. L. Garretson, Chairman, New Mexico Liquefied Petroleum Gas Commission, Capitol Building, Santa Fe, New Mexico

Replying to your letter of June 21, 1955 in which you requested an opinion on the following questions;

1. Should the new fee schedule set out in Chapter 97 of the Laws of 1955, be charged on all applications for licenses after the effective date of said Act, or should this schedule be held in abeyance until January 1, 1956?
2. Can the new fee schedule be charged on applications which were sent to the Liquefied Petroleum Gas Division of the Public Service Commission, prior to the effective date of the amended act, to-wit: June 10, 1955, on which no processing has been done on said applications?
3. Can the Liquefied Petroleum Gas Commission issue licenses on the old fee where the application was made prior to the effective date of new Act, the application fee having been deposited to the Public Service Commission Account, but the licenses were not issued because of the necessity of correcting certain parts of the application?

we shall answer the questions in the order named above.

1. Section 65-7-8 of Chapter 97, Laws of 1955, reads in part, as follows:

". . . each person, firm or corporation shall, at the time of issuance of such license and annually thereafter, on or before January 31st of each calendar year, pay to the commission the following designated license fee for each place of business in the state where operations are carried on under the provisions of this Act . . ."

It is our opinion that the new fee schedule is to be charged to each applicant from and after the date of June 10, 1955, even though the license is issued only for the remainder of the year. We call your attention to the opinion rendered by this office No. 5013, 1947-1948, copy of which is enclosed herewith.

2. It is our opinion that if the applications were properly submitted prior to the effective date of Chapter 97, Laws of 1955, so as to give the Board reasonable time to act upon the application in accordance with § 65-7-5, N.M.S.A., 1955, the license should be granted under the fee schedule prior to the amendment by Chapter 97, Laws of 1955. If the application was submitted at such time prior to June 10, 1955, that it would have been impossible for the Board to act upon said application, the fee schedule provided

for in the new act should be charged for the license. A board or commission cannot arbitrarily withhold action on an application in order to secure a higher fee as provided by an amendment to the fee schedule. However, a board must be given a reasonable time in which to act upon a license and, generally, the law in force at the time the action is taken is to be applied. See 169, A.L.R., at page 584.

3. It is our opinion that the applicants described in paragraph 3 of your letter should be issued a license under the old fee. We reach this conclusion because of the fact that from the situation outlined in your letter it appears to us that some action had been taken on the application, namely, the acceptance and deposit of the application fee, the determination of certain technical defects in the form of the application or the bond or the insurance policy, and at this time the necessary corrections for these technical defects are being made. If these applicants can meet the other requirements of the Act and satisfy the Commission, that they can meet the standards required by the law, we feel that these applicants should be issued a license under the old fee.

Trusting we have satisfactorily answered your questions, we remain

By: Paul L. Billhymer

Assistant Attorney General