

Opinion No. 55-6260

August 24, 1955

BY: RICHARD H. ROBINSON, Attorney General

TO: New Mexico Liquefied Petroleum Gas Commission, State Capitol Building, Santa Fe, New Mexico. Attention: Mr. Morris C. Wycoff, Mr. Cliff Kealey Commissioners

You have requested the opinion of this office relative to whether or not the Commission would be within its authority in the performance of its duties as set forth in Chapter 97, Laws of 1955, by making the following requirements as regards insurance to be carried by licensees under said Act.

1. To require by a General Order that a Certificate of insurance be filed on behalf of the licensee by his insurance carrier.

A reading of Section 2 and Section 5 of the Act indicates that the Legislature intended that your Commission should make reasonable rules and regulations for the administration of the Act. It is stated in 53 **C.J.S.**, Section 37 (b), at page 631, as follows:

"As a general rule the board or officer vested with the power to grant or to refuse licenses may prescribe reasonable qualifications or adopt reasonable rules or regulations for the issuance of licenses. The qualifications or regulations must be reasonable, and they must not be in contravention of, or beyond the authorization of, the statute or ordinance."

Since the General Order which you propose to issue in this matter is not in contravention or beyond the authority of the statute, and since it appears to be reasonable, it follows that it is the opinion of this office that your Commission has the authority to prescribe reasonable rules in the operation of this Act.

I would suggest that the proposed form of Certificate which you forwarded to this office be changed to include employers bodily injury liability insurance, otherwise the form appears to be sufficient.

2. To issue a General Order of the Commission requiring certain types of insurance within the four categories of individual licensees.

As I interpret Section 6 of the Act, the Commission would not be exceeding statutory authority to require one type of insurance, all types of insurance mentioned, or a combination thereof. Since you are dealing with an activity in which the public safety factor is so important, it would appear that the Legislature has left to your discretion the evidence to be submitted of the types of insurance carried by the licensees under the Act.

3. The answer to your third question has been answered in handling the first question submitted in your letter. The requirement of the endorsement proposed in this question is, in our opinion, merely an additional requirement of financial responsibility and does not seem to be unreasonable.

4. To issue a General Order requiring all licensees to immediately file this Certificate, within a reasonable time of approximately ten days for compliance.

The Legislature saw fit to amend the laws regulating the Liquefied Petroleum Gas Industry and placed the regulation of same in your Commission. It has been established that you may promulgate reasonable rules and regulations in the exercise of your duties under the Act. The Legislature intended that all licensees were to file evidence of financial responsibility with your Commission irrespective of whether they be old or new licensees. Therefore, I see no reason why licensees who have secured their license under the old Act should not be required to immediately comply with the new Act.

Hoping this has been of service to you, we remain

By Jack A. Smith

Assistant Attorney General