

## **Opinion No. 61-11**

January 25, 1961

**BY:** OPINION OF EARL E. HARTLEY, Attorney General Norman S. Thayer, Assistant Attorney General

**TO:** Mr. W. A. Badgett, Executive Director, N.M. Liquefied Petroleum Gas Commission, P. O. Box 1352, Santa Fe, New Mexico

### **QUESTION**

#### QUESTION

1. Does the New Mexico Liquefied Petroleum Gas Commission have the authority to permit the substitution of names in an application for examination by a licensee for his employees, without payment of an additional application fee?

#### CONCLUSION

1. No.

### **OPINION**

#### ANALYSIS

Section 65-7-6, N.M.S.A., 1953 Compilation provides:

"65-7-6. REQUIRING COMPETENT EMPLOYEES IN INSTALLMENT, SALES, DISPENSING, SERVICE OR REPAIR. -- The commission shall have the authority to require every person, firm or corporation that makes installations,, or sells or repairs containers, equipment or appliances, or persons, firms or corporations dispensing or delivering liquefied petroleum gas, or using installation men, service men, and repair men, to have at least one (1) person in their regular employ or organization who shall prove through an examination given by the commission that he has a thorough knowledge and understanding of dispensing liquefied petroleum gas, and of the containers, equipment and appliances they intend to install, service or repair, and that he is competent and qualified to properly install, service or repair such containers, appliances and equipment or dispense liquefied petroleum gas.

It is unlawful for any person to repair, service or install any appliance or piping or modify any appliance or liquefied petroleum gas system or deliver or dispense liquefied petroleum gas until he has passed such an examination, and it is unlawful for any employer to permit any person in his employ who has not passed such an examination to engage in any activity or operation requiring examination under this section.

The Commission shall charge an examination fee of five dollars (\$ 5.00) which is to be paid at the time the application for the examination is made, and this fee shall not be refundable for any reason. Persons, firms and corporations who handle appliances exclusively for use with natural gas, and who do not offer their appliances for sale or use with liquefied petroleum gases are exempted from the provisions of this act (65-7-1 to 65-7-22)."

It will be noted that the application fee may not be refunded for any reason. If a substitution of names is permitted without an additional application fee, we think this amounts to a refund on behalf of the person whose name is stricken and a payment on behalf of the person whose name is added. Such refunds are prohibited. Furthermore, when a name is sought to be substituted, this is, in effect, an application on behalf of a new and different person. The quoted statute requires an application fee to be paid at the time the application is made. If a substitution of names is permitted without payment of an application fee, the statute has not been complied with.

For these reasons, it is our opinion that the Liquefied Petroleum Gas Commission has no authority to permit the substitution of names in an application for examination by a licensee for his employees, unless the Commission requires payment of an additional application fee.