

Opinion No. 61-101

October 5, 1961

BY: OPINION OF EARL E. HARTLEY, Attorney General 02,05,50 Oliver E Payne
Assistant Attorney General

TO: 02,05,50 Mr. W. S. Eoff Director, Liquefied Petroleum Gas Commission Santa Fe,
New Mexico

QUESTION

QUESTION

Should refund of a license fee be made to a company that was illegally operating in this State without a license prior to the time the fee was paid?

CONCLUSION

No.

OPINION

ANALYSIS

In this opinion request, you inform us that an out-of-state transporter of liquefied petroleum gas was found to be operating in this State without the required license. When your Commission discovered this fact, a demand was made on the company to qualify under the Liquefied Petroleum Gas Act by paying the license fee and filing the required bond and other forms. The company then paid the one hundred dollar wholesale license fee. However, after checking the other costs involved in qualifying for a license, the company decided to drop its application for a license and now requests refund of the one hundred dollar payment. You ask whether such a refund should or must be paid. Our answer is no.

We would first like to point out that in the absence of an express refund statute, any such attempted refund would violate Article IV, Section 30 of the New Mexico Constitution which provides that except in the case of interest or other payments on the public debt, money shall be paid out of the treasury only upon appropriations made by the legislature. Attorney General Opn. No. 410 (1956).

Turning to the Liquefied Petroleum Gas Act, we find that Section 65 - 7 - 9, N.M.S.A., 1953 Comp., does provide for a suspense fund "for the purpose of making any **necessary** refunds". (Emphasis added)

The reason for such refund statutes is so that an agency may constitutionally return erroneous over-charges. **Gamble v. Velarde**, 36 N.M. 262, 13 P. 2d 559. Attorney General Opinion 58-165. Certainly, we have no such situation here. The applicant was violating the laws of this State and was subject to both civil and criminal penalties, as well as an injunction. Sections 65-7-18, 65-7-22 and 65-7-21, N.M.S.A., 1953 Comp. He paid the one hundred dollar license fee only when a stop order was put on his truck at the New Mexico Port of Entry.

For the guidance of the Commission, we would further advise that even if the applicant had paid the license fee **prior** to beginning operations, it should not be refunded. If someone wishes to engage in the liquefied petroleum gas industry, or any other industry, common business prudence would dictate that he familiarize himself with the various costs for bonds and license fees before entering such business. Simply because he pays a license fee and then decides that the occupational hazards are too great, gives him no right to a return of such fees in the absence of an express statutory provision to this effect. The situation is analogous to a person demanding the return of money paid for a marriage license simply because he decides not to get married. The law in this State does not so provide.