

Opinion No. 61-70

August 7, 1961

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

TO: Mr. W. S. Eoff, Director Liquefied, Petroleum Gas Commission P. O. Box 1357, Santa Fe, New Mexico

QUESTION

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Must a building contractor who builds residences for sale and equips them with liquefied petroleum gas appliances pay a license fee to the Liquefied Petroleum Gas Commission?

CONCLUSION

Yes, if the equipment installed is being fed from a reservoir of more than five pounds of liquefied gas.

OPINION

ANALYSIS

Section 65-7-5, N.M.S.A., 1953 Comp., provides in pertinent part as follows:

"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 . . . without having first obtained from the commission a license to do so for each main or branch office, or business operated within the state, within the scope of this act . . .**" (Emphasis added)

In 1955, an exception to this requirement was enacted to cover situations where the particular appliances are being fed from a reservoir of less than five pounds of liquefied gas. Licenses are required for the sale and installation of appliances and equipment which do not fall within this exclusionary requirement.

The next question is just what license fee or fees must be paid by the building contractor. Section 65-7-8, N.M.S.A., 1953 Comp., provides for ten different types of licenses, depending upon what the particular operation entails. The person who installs liquefied petroleum gas appliances must obtain an installation, service and repair license, the annual fee for which is \$ 100.00. The person who makes retail sales of

appliances utilizing liquefied petroleum gas must obtain a retail sales license, the annual fee for which is \$ 40.00. Section 65-7-8, supra.

Section 65-7-8, supra, provides for a license for every phase of the liquefied petroleum gas industry. If a building contractor purchases liquefied petroleum gas appliances wholesale, and I believe we must assume that he does, and installs them in residences which he sells, unless this contractor has a retail sales license, the requirement for this type of license is circumvented. That such was not the intention of the legislature is indicated by the following provision in Section 65-7-8.

"The activities of a licensee are limited to those for which application is made and license is issued. A separate license must be secured for each of the activities or operations listed above."

We conclude then that a building contractor installing liquefied petroleum gas appliances and equipment in the houses he builds for sale must have a retail sale license as well as an installation license.

It is also to be noted that Section 65-7-6, N.M.S.A., 1953 Comp., requires that such contractor have within his regular employ at least one person who has by examination demonstrated that "he is competent and qualified to properly install, service or repair such containers, appliances and equipment or dispense liquefied petroleum gas."