

**Opinion No. 62-07**

January 17, 1962

**BY:** OPINION OF EARL E. HARTLEY, Attorney General L. D. Harris, Assistant Attorney General

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

**QUESTION**

QUESTION

Under any section of New Mexico law is the New Mexico Liquefied Petroleum Gas Commission obligated to perform inspection or supervision of installations, or any other service, on public utilities controlled or regulated by the New Mexico Public Service Commission?

CONCLUSION

No.

**OPINION**

ANALYSIS

The primary consideration in answering your question is to determine what is a "public utility" within the definition of the law applicable. Before determining the definition view of the fact situation would be warranted and that is that there are certain plants in approximately ten municipalities in this state which are operated by private corporations. These plants supply, by means of pipelines, liquefied petroleum gas to consumers, presumably for heating and cooking purposes.

The definition of "public utility" such as we are herein concerned with is contained in Section 68-3-2 (F), which states:

"F. "Public utility" or "utility" means every person not engaged solely in interstate business and except as hereinafter stated, that now does or hereafter may own, operate, lease or control:

.....

(2) Any plant, property, or facility for the manufacture, storage, distribution, sale or furnishing to or for the public of natural or manufactured gas or mixed or liquefied petroleum gas for light, heat, or power, or other uses: . . ."

The part of Section 2 that was omitted is an exception which states that the term "public utility" shall not apply to a facility which deals in liquefied petroleum gas in enclosed containers or tank trucks and which will be used by **others than those who receive their supply through any pipeline system operating under municipal authority or franchise and distributed to the public.** Our interpretation of the statute is that the plants which are the basis of your question are properly defined as public utilities according to the above.

Section 65-7-19 provides the following:

"Nothing contained in this Act (65-7-1 to 65-7-22) shall apply to any person, firm or corporation operating as a "public utility" as defined in section 1 of the New Mexico Public Utility Act, chapter 84, Laws of 1941 (68-3-2), in so far as the operations of such public utility are subject to the control of the public service commission under said act."

Section 68-5-4 provides:

"The commission shall have **general and exclusive power and jurisdiction to regulate and supervise every public utility in respect to its rates and service regulations, . . .**" (Emphasis supplied)

We find then that the plants under consideration are defined in the statutes of New Mexico as a "public utility." We further find that the public utility is exempt from the provisions of the law applicable to liquefied petroleum gases. We further find that the law placed the general and exclusive power and jurisdiction to regulate and supervise every public utility in the Public Service Commission.

It is understood that by an order of the Public Service Commission any public utility subject to the Commission's jurisdiction was required to meet the minimum safety requirements and standards applicable to installation under the Liquefied Petroleum Gas Act. There appeared to be no determination by the Public Service Commission that the Liquefied Petroleum Gas Commission should conduct these inspections and even if there was an attempt to delegate the duty of inspection and supervision to the Liquefied Petroleum Gas Commission, it is entirely up to the Liquefied Petroleum Gas Commission whether or not they will accept this delegation of responsibility. It is to be remembered that the primary duty is imposed upon the Public Service Commission.

No question was asked and no research has been done whether or not there could be a delegation of this nature by the Public Service Commission.