

Opinion No. 63-53

May 10, 1963

BY: OPINION of EARL E. HARTLEY, 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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Is a person who transports liquefied petroleum gas in bulk quantities over public roads to a farm or ranch for his own use required to be licensed under the Liquefied Petroleum Gas Act?

CONCLUSION

Yes.

OPINION

{*109} ANALYSIS

As we understand the facts, an individual transports liquefied petroleum gas over public roads to his own farm for his own use in a 1077 - gallon capacity tank truck. Under these circumstances the question is whether this person must be licensed by the Liquefied Petroleum Gas Commission.

Section 65-7-5, N.M.S.A., 1953 Compilation, provides 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 {*110} petroleum gases as a fuel, nor shall such person, firm or corporation engage in the manufacture, sale, **transportation**, dispensing or storage of liquefied petroleum gases within this state, except where stored by the ultimate consumer for consumption only, without first having 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 (65-7-1 to 65-7-22). (Emphasis added).

The above Section does not differentiate between those who transport for profit and those who transport for their own use.

The individual in question does fall under Section 65-7-8 (3), N.M.S.A., 1953 Compilation, even though he is not a retailer. He delivers gas to an ultimate consumer

(himself) in "a transportation unit having a capacity of less than 3,500 gallons water capacity, without any other activity."

The Liquefied Petroleum Gas Act, as its title relates, is for the protection of the public from the dangers which are inherent in liquefied petroleum gas if it is not properly handled. See Attorney General Opinion No. 57-157. This is also the reason that Section 65-7-8, N.M.S.A., 1953 Compilation provided, in addition to annual license fees, for "a safety inspection of each and every vehicular unit used for transportation of liquefied petroleum gas in bulk quantities."

A liquefied petroleum gas transportation unit used to haul such gas for the individual's own use is not, simply for that reason, any safer than one used to haul for gain. Nor does transportation for one's own use remove any of the dangers surrounding liquefied petroleum gas transportation.

The license fees imposed by the Act are not for revenue purposes as such. The purpose is, as stated, for defraying the expenses of administering the laws relating to liquefied petroleum gas. And such laws are for the protection of the health and safety of the public.

Reading the various provisions of the Act together, and keeping in mind that the entire Act is a safety measure, it is our opinion that the individual in question must be licensed and his transportation equipment inspected.

By: Oliver E. Payne

Assistant Attorney General