

## Opinion No. 65-153

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**BY:** OPINION OF BOSTON E. WITT, Attorney General Oliver E. Payne, Deputy Attorney General

**TO:** Mr. C. E. Youts, Director, New Mexico Liquefied Petroleum Gas Commission, P.O. Box 1357, Santa Fe, New Mexico

### QUESTION

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Are the licensees of the New Mexico Liquefied Petroleum Gas Commission required to obtain permits from the Contractors' License Board for the installation of liquefied petroleum gas appliances and equipment?

#### CONCLUSION

No.

### OPINION

#### {\*259} ANALYSIS

Section 65-7-20, N.M.S.A., 1953 Compilation specifically provides that:

". . . licensees under this act [Liquefied Petroleum Gas Act] are specifically exempted from application of the Contractors' Licensing Law insofar as their liquefied petroleum gas operations are concerned."

We see then that the only possible argument to be made for dual licensing is that the installation of liquefied petroleum gas appliances and equipment is not a part of the licensee's "gas operations."

But we find this is not the case when we examine the various provisions of the Liquefied Petroleum Gas Act.

Section 65-7-2, N.M.S.A., 1953 Compilation provides as follows:

{\*260} "All containers and pertinent equipment used or to be used in this state for the storage, transporting and/or dispensing of liquefied petroleum gases, by either industrial, commercial and/or domestic users, together with **appliances** used or to be used in this state with liquefied petroleum gases as a fuel, shall be so designed, constructed, **assembled, equipped and installed as specified by the rules and**

**regulations of the liquefied petroleum gas commission,,** adopted and/or promulgated as provided in this act." (Emphasis added).

Section 65-7-5, N.M.S.A., 1953 Compilation 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 so to do for each main or branch office, or business operated within the state, within the scope of this act. **No such license shall be issued** until the commission has determined that the applicant will meet all **Safety requirements** provided **for in this act** and required by the rules and regulations of the liquefied petroleum gas commission, and the **commission finds, after hearing, that such applicant is fit, and able to perform the work for which a license is requested.** (Emphasis added).

Turning to the license fee section, we find in Section 65-7-8 (5), N.M.S.A., 1953 Compilation the following:

"INSTALLATION, SERVICE AND REPAIR. Installation, service and repair of liquefied petroleum gas appliances and equipment -- \$ 100.00."

Even more significant is Section 65-7-6, N.M.S.A., 1953 Compilation which provides in pertinent part as follows:

"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 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." (Emphasis added).

The same Section goes on to state as follows:

"It is unlawful for any person to **repair, service or install any appliances** or piping or modify any appliances or liquefied petroleum gas system. . . until he has passed such an examination. . . ." (Emphasis added).

We note then the following things: (1) installation of liquefied petroleum gas appliances must be in accordance with the rules and regulations of the Liquefied Petroleum Gas Commission, (2) persons must obtain a license from the Commission to do installation work, (3) they must pay a license fee to the Commission and (4) such persons must

pass on examination showing that they are competent and qualified to do this type of installation work.

With all of these statutory provisions {*\*261*} governing the Commission's licensing of those who install service and repair liquefied petroleum gas appliances and equipment, one must necessarily conclude that these are operations in which licensed persons engage. This being the case, Section 65-7-20, *supra*, is applicable and a contractor's license does not have to be obtained.

We believe the stringent requirements for an installation, repair and service license imposed by the Liquefied Petroleum Gas Act, plus the exemption of these licensees from the Contractors' Licensing Act, was a legislative recognition that duplication of effort by these two agencies was unnecessary and would work an undue hardship on persons licensed under the Liquefied Petroleum Gas Act. After all, these licensing acts are not revenue statutes; rather, they are enacted under the police power to protect the public. This the legislature has done by enacting the Liquefied Petroleum Gas Act.