

Opinion No. 70-08

January 23, 1970

BY: OPINION OF JAMES A. MALONEY, Attorney General

TO: David L. Norvell Speaker, New Mexico House of Representatives Drawer E Clovis, New Mexico 88101

QUESTION

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Is a retail seller of preassembled camping trailers, in which liquefied petroleum gas appliances were installed, required to obtain a Retail Sales License from 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

{*12} ANALYSIS

The question of whether a person selling some type of living unit must obtain a Retail Sales License from the Liquefied Petroleum Gas Commission if such living unit is equipped with liquefied petroleum gas appliances was answered by this office in Attorney General's Opinion No. 61-70, August 7, 1961. The opinion of this office was then, and is now, that a Retail Sales License must be obtained by every person, firm or corporation that sells any type of liquefied gas appliance, either as individual units or when the appliance is a small part of a much larger unit such as a house trailer, a home or a camping trailer, as long as the appliance is being fed from a reservoir of more than five pounds of liquefied gas.

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 to do so for each main or branch office, or business operated within the state, within the scope of this act . . ."

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 Attorney General's Opinion mentioned above dealt with the situation of a building contractor who built houses in which he installed liquefied petroleum gas appliances and then sold the houses. Our opinion at that time was that the contractor was obligated, under Section 65-7-8, N.M.S.A., 1953 Compilation, to obtain two separate licenses. He was required to have a class (5) license, covering the **installation** of liquefied petroleum gas appliances in his houses, and a class (4) license, covering the ultimate **retail sale** of his houses containing liquefied petroleum gas appliances.

The conclusions reached in the above Opinion are even more valid when applied to a situation such as we are now considering. The intent of our Legislature when it passed this act (65-7-1 to 65-7-23) was, because of the inherent dangers involved in the use or misuse, of liquefied petroleum gas and liquefied petroleum gas appliances, that the State of New Mexico should have such reasonable regulatory control over the handling and use of liquefied petroleum gas and liquefied petroleum gas appliances within our borders, as would insure the health, safety and welfare of our citizens.

It is extremely probable that the situation would arise wherein camping trailers, which had been manufactured and assembled in a state that had few or no regulations regarding the manufacture or installation of liquefied petroleum gas appliances, would be sold through a retail outlet in New Mexico. {^{*13}} If such retail outlets were not required to obtain a class (4) Retail Sales License from the Liquefied Petroleum Gas Commission and to employ qualified personnel, then the liquefied petroleum gas appliances in those foreign camping trailers could be purchased and used by our own unsuspecting citizens without their having been checked for safety as to design and installation.

The intent of our legislature was to guard against just such a situation.

By: F. Stephen Boone

Assistant Attorney General