

Opinion No. 71-28

February 17, 1971

BY: OPINION OF DAVID L. NORVELL, Attorney General

TO: Mr. Columbus Ferguson Chairman State Corporation Commission P.E.R.A.
Building Santa Fe, N.M. 87501

QUESTIONS

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Does Section 65-4-24 of the Pipeline Safety Act require that the Pipeline Safety Engineer be the Director of the Pipeline Department?

CONCLUSION

No.

OPINION

{*44} ANALYSIS

Section 65-4-24, N.M.S.A., 1953 Comp. (1969 Supp.) provides:

" **Pipeline safety engineer and staff.** -- The commission shall appoint a professional engineer who shall have at least five [5] years' actual experience in the design, construction, maintenance and operation of oil or gas pipeline facilities and who shall be designated 'pipeline safety engineer.' The commission shall retain such other personnel as may be necessary to carry out the provisions of the Pipeline Safety Act [65-4-15 to 65-4-24], and the commission shall, subject to state laws and regulations covering classification and compensation of state employees, be empowered and authorized to fix the compensation to be paid the pipeline safety engineer, and the compensation of other personnel employed under the authority of this section shall be subject to the state Personnel Act [5-4-28 to 5-4-46]."

This section does not expressly designate the professional engineer head {*45} of the Pipeline Department. It merely commands the Commission to appoint an engineer.

The Commission does have express authority to retain "such other personnel as may be necessary to carry out the provisions of the Pipeline Safety Act." Section 65-4-17 charges the Commission to promulgate and enforce safety regulations, to cooperate with federal regulatory agencies, to administer grants, to make safety investigations, and to inspect records. These responsibilities embrace more than the strictly technical activities of which a professional engineer has special knowledge. The Pipeline Safety

Act does not designate who is to be director; consequently the Commission has the authority to appoint a non-technical administrator to direct the over-all activities of the department. That authority is reasonably implied from the express authority to appoint such personnel as may be necessary to give effect to the Pipeline Safety Act. **Winston v. New Mexico St. Police Bd.**, 80 N.M. 310, 454 P.2d 967 (1969).

Provision for the appointment of an engineer does not limit the Commission's authority to appoint a non-technical administrator to direct the department. The purpose in providing for an engineer is to ensure that the Commission has the necessary expertise to promulgate and enforce reasonable safety regulations. The engineer does not have to be director of the department to provide that expertise.

By: Thomas Patrick Whelan, Jr.

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