

## **Opinion No. 75-35**

June 12, 1975

**BY:** OPINION OF TONEY ANAYA, Attorney General

**TO:** Liquified Petroleum Gas Commission 1040 Don Diego Santa Fe, New Mexico  
87501

### **QUESTIONS**

#### QUESTIONS

1. May a Liquified Petroleum Gas Commission inspector who discovers an unsafe LPG installation disconnect the gas tank from the installation or place a lock on the tank until the installation is made safe?
2. May the Liquified Petroleum Gas Commission adopt a regulation prohibiting the employee of any LPG licensee from connecting or serving any LPG appliances or tanks unless he first determines that the appliance or tank meets the requirements of the commission's safety code?

#### ANSWERS

1. Yes.
2. Yes.

### **OPINION**

#### **{\*102} ANALYSIS**

1. Subsections (B) and (C) of Section 65-7-7, NMSA, 1953 Comp. (1973 Supp.) provide:

"B. An inspector may cause immediate discontinuance of service to any installation or device, appliance or equipment found to be dangerous to life or property because it is defective, of faulty design, not properly qualified, or incorrectly installed, until the installation, device, appliance or equipment is made safe.

C. The inspector shall order the correction of any defects or of any incorrect installation and shall issue a notice to the owner, lessee or renter outlining the corrections to be made in order to meet commission requirements."

The power to cause immediate discontinuance of service and to order correction of any defects with respect to any installation, device, appliance or equipment found by a LPG

Commission inspector to be dangerous to life or property is expressly conferred by the foregoing statutory provision.

"It is fundamental rule of construction that when a power is conferred by statute everything necessary to carry out the power and make it effective and complete will be implied. **Kennecott Copper Corp. v. Employment Security Commission**, 78 NM 398, 432 P.2d 109 (1967).

In order to enable a LPG Commission inspector to effectively and completely carry out the express power ". . . to cause **immediate** discontinuance of service . . . until the [dangerous] installation, device, appliance or equipment is made safe," the authority to disconnect or lock such facilities until they are made safe must necessarily be implied. Compare **Reese v. Dempsey**, 48 NM 417, 152 P.2d 157 (1944); **State ex rel. Clancy v. Hall**, 23 NM 422, 168 Pac 715 (1917). Accordingly, embraced within the powers expressly granted by Subsections (B) and (C) of Section 65-7-7, **supra**, is the {*\*103*} authority to take the actions outlined above.

2. Subsection (A) of Section 65-7- --, NMSA, 1953 Comp. (1973 Supp.) provides in relevant part:

"The commission may adopt and promulgate such rules and regulations as shall be necessary to carry out the purpose of the LPG Act [65-7-1 to 65-7-23] and for the public peace, health and safety as affected by the use of such materials."

The manifest purpose of the LPG Act is to promote safety in the storage, transportation, and consumption of liquid petroleum gases. Obviously, it is not feasible for a LPG Commission inspector to be present on each occasion a LPG tank, installation or appliance is connected or serviced. Accordingly, in order to effectually and efficiently accomplish the purpose of the LPG Act and protect the public health and safety, it would seem to be a reasonable and necessary, if not essential, precaution to require an employee of an LPG licensee to determine that the system meets the requirements of the Commission's safety code before he connects or services any LPG tank, installation, appliance, device or equipment. Thus a regulation imposing this requirement is authorized by Subsection (A) of Section 67-7-4, **supra**. This conclusion is further supported by Section 65-7-6 NMSA, 1953 Comp. (1973 Supp.) which empowers the LPG Commission to require employees of licensees to pass an examination based on the Commission's safety code.

By: Thomas Patrick Whelan

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