

## **Opinion No. [29-57]**

August 21, 1929

**TO:** Office of the Attorney General of New Mexico

OIL PIPE LINES -- § 8, chapter 125, Laws 1927 held unconstitutional as applied to interstate lines.

### **OPINION**

Reference is made to your letter of the 16th instant, in re license fee and tax on pipe lines and with which you enclose a letter from J. M. Hervey, dated August 5, 1929. Mr. Hervey's letter having to do with instructions received by him from the legal department of Humble Oil & Refining Company.

You desire to be advised as to the kind of suit we prefer to have filed in behalf of the Commission and in answer we can but repeat what was said in substance in our letter of July 5, 1929. That is, we see no necessity for any test suit in this matter.

The statute under discussion being Chapter 125 of the Laws of 1927, which is an act granting the right of eminent domain for the acquisition of right of way for oil and gas pipe lines, etc., applies, as we see it, only to such lines within the State and is without application to such common carriers engaged in interstate business.

It is a well established and recognized rule that interstate and foreign commerce are subject to regulation by Congress only, and that the State may not tax or otherwise lay burdens upon interstate commerce. True, cases may be cited in which state inspection laws for the purpose of detecting possible violations of the criminal laws of the State, for detecting frauds and protecting health, have been upheld and in such cases reasonable inspection fees have been permitted. A State may not, however, under the guise of an inspection fee impose a tax for revenue.

The legislative act here referred to in Section 8 provides for the payment of a license fee of one-tenth of one cent per barrel of oil or gasoline transported and one-tenth of one cent per thousand cubic feet of gas transported by such pipe lines for each calendar month and further provides that all license fees so collected shall be expended only for the inspection of and administration and enforcement of the rules and regulations effecting pipe lines as provided for in the act. I am not informed that there is in fact any real inspection of the pipe lines represented by Mr. Hervey.

As I view it, the only defense there might be in such a suit as is proposed would be the possible right of the State to impose a genuine inspection fee.

Feeling as we do that the Legislature probably did not at all intend the application of this statute to interstate commerce and feeling as above expressed, that if the Legislature

did have in mind the taxing of interstate commerce, such intention is probably unconstitutional, we can see no advantage in putting the company to the trouble and expense of a suit which we would find very embarrassing to be called upon to defend.