

## Opinion No. 39-3351

December 9, 1939

**BY:** FILO M. SEDILLO, Attorney General

**TO:** Dr. E. B. Godfrey, Director, Dept. of Public Health, Santa Fe, New Mexico.

{\*124} I have examined proposed rules and regulations contemplated to be adopted by the State Department of Public Health pursuant to Chapter 155, New Mexico Session Laws of 1939.

Of course, it is almost an impossibility for an attorney to pass on the reasonableness or unreasonableness of these rules which cover highly technical and specialized fields perhaps of engineering rather than law. However, if any of the rules adopted prove to be arbitrary or unreasonable, the state department will no doubt amend them or suffer the risk of testing their reasonableness in court.

At any rate, from a careful reading of the same I believe that generally they fall within the purview of Chapter 155 and are germane to the subject-matter sought to be regulated by the act.

I do, however, disapprove the following portions, which should be stricken before adoption:

All of the second paragraph on page 1 reading as follows:

"In the administration of the liquefied gas Act, these regulations shall have the same effect as the provisions of the Act itself."

The last sentence of the fifth paragraph on page 2 reading as follows:

"All necessary costs and expenses incident to such testing and inspection shall be borne by the owner of the equipment subject to inspection."

The last phrase of the seventh paragraph on page 2 reading as follows:

"and failure to render such reports shall subject said dealer or distributor to the penalties prescribed in the act."

The last paragraph on page 2 reading as follows:

"It shall be unlawful for any person, firm, association or corporation not so registered with the Department of Public Health to install or sell and install any liquefied gas containers, plants or pertinent equipment."

I return herewith a copy of rules that you forwarded this office.

By: FRED J. FEDERICI,

Asst. Atty. Gen.