

Opinion No. 44-4507

May 10, 1944

BY: EDWARD P. CHASE, Attorney General

TO: State Corporation Commission, Santa Fe, New Mexico. Attention of Don R. Casados

You have handed to us for examination the file in connection with the Humble Pipe Line Company and ask our opinion as to whether or not this corporation is subject to the franchise tax.

This company's report shows that it is engaged exclusively in interstate commerce. In view of this fact I will not cite the various statutes involved, as you are familiar with them, but will call your attention to the case of Southern Pacific Company v. State Corporation Commission found in 41 N.M. 556. In that case the court held that "Business in this state' means just that. It does not mean business across state lines, but that transacted wholly within the state." The court also pointed out that the statute itself specifically excluded from the computation property of the corporation used exclusively in interstate commerce.

In view of this decision it is my opinion that, if the facts as presented are correct, the Humble Pipe Line Company is not subject to the franchise tax, since all of its property is used exclusively in interstate commerce, and since it does no business wholly within the state, being engaged solely in interstate commerce.

You will note that this opinion is exactly what the court held in the case brought by the Humble Pipe Line Company against the State Corporation Commission, being Cause No. 17373 in the District Court of Santa Fe County, New Mexico. Insofar as this opinion conflicts with Opinion No. 1614, which was written prior to the decision in the Southern Pacific case, that opinion is hereby modified.

As a word of caution I want to call your attention to the fact that merely because a company sells a product in another state or carries on some interstate commerce this does not mean that it is exempt from the franchise tax, but only so far as its property is used exclusively in interstate commerce, and insofar as its business is done in interstate commerce.

By ROBERT W. WARD,

Asst. Atty. General