

Opinion No. 45-4747

July 10, 1945

BY: C. C. McCULLOH, Attorney General

TO: Mr. Eugene Allison Chairman, Rate Department State Corporation Commission
Santa Fe, New Mexico

{*100} Replying to your letter of July 5, 1945, requesting an opinion on the interpretation of Sections 69-302 and 69-308 of the Compiled Laws of 1941, New Mexico Statutes Annotated:

"69-302. Oil and gas pipelines to be common carriers -- Manner of conveyance prescribed. -- All pipe-lines laid, built, or maintained for the conveyance of crude oil or gas within the state of New Mexico are hereby declared to be common carriers, and said conveyance of said oil and gas shall be in the manner and under the restrictions in this act provided."

"69-308. Licenses from corporation commission -- Pipe-line contingency fund. -- The owners or operators of all pipe-lines laid, built or maintained for the conveyance of crude oil or gas within the state of New Mexico shall, within thirty (30) days after the taking effect of this act, and annually thereafter on the first day of July of each year, apply for and procure a license from the state corporation commission to operate such pipe-lines, and shall on or before the 20th day of each month pay to the state corporation commission a license fee of one-tenth of one cent per barrel of oil or gasoline transported by such pipe-lines, and one-tenth of one cent per ten thousand cubic feet of gas transported by such pipelines, for the preceding calendar month. All license fees so collected by the state corporation commission shall be paid into a fund known as the "Pipe Line Contingency Fund," and shall be expended only for the inspection of, and administration and enforcement of the rules and regulations affecting, pipe-lines as provided for in this act."

In your letter you quoted from a recent decision of the United States District Court for the District of New Mexico:

"The fact that the Defendant, Murchison, may have complied with the laws of the State of New Mexico respecting pipelines does not in any manner invalidate the contracts involved herein, and that said Defendant, Murchison, is not a common carrier under the provisions of Chapter 104, New Mexico Annotated Statutes, 1929."

I refer you to two opinions rendered the Corporation Commission by this office on the same subject:

August 21, 1929: "OIL PIPE LINES -- Sec. 8, Chapter 125, Laws 1927 held unconstitutional as applied to interstate lines."

The other Opinion is the one dated April 26, 1937.

Since the writing of the above opinions, each of them has been confirmed by the Supreme Court of New Mexico in rendering its decision in the case of Humble Pipe Line Co. v. State, 45 N.M. 29:

"The appellee cites, and largely rests its case upon, Ozark Pipe Line Corp. v. Monier, supra. The appellant, a foreign corporation, owned and operated a pipe line extending from Oklahoma through Missouri into Illinois. It did no intrastate business. The Missouri statute requires every corporation engaged in business in that state to pay an annual franchise tax equal to one-tenth of one per cent. on the par value of its capital stock. The holding of the court was (266 U.S. 555, 45 S. Ct. 185, 69 L. Ed. 439): 'The tax is one upon the privilege or right to do business * * * and {*101} if appellant is engaged only in interstate commerce it is conceded, as it must be, that the tax so far as appellant is concerned, constitutionally cannot be imposed. It long has been settled that a state cannot lay a tax on interstate commerce in any form, whether on the transportation of subjects of commerce, the receipts derived therefrom, or the occupation or business of carrying it on.'"

The Ozark Pipe Line Case, "in the writer's judgment has become the rule of the Supreme Court of the United States through later decisions."

It is, therefore, my opinion that a pipe line company engaged exclusively in interstate commerce is not subject to the above provisions of the New Mexico statutes. However, the pipeline company is subject to and legally obligated to make the reports required to advise the Commission pertaining to the kind of business it is transacting.

By THOS. C. McCARTY,

Asst. Atty. General