



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Hon. Olin Culberson, Director
Gas Utilition Division,
Railroad Commission of Texas
Austin, Texas

Dear Sir:

Opinion No. 0-1005
Re: Jurisdiction of the Rail-
road Commission of Texas
over the storage of li-
quified petroleum gas
within this State by Con-
tinental Oil Company.

We have your letter of June 14, 1930, requesting
our opinion upon a question stated in substance as follows:

Is the Continental Oil Company subject to the jurisdic-
tion of the Railroad Commission of Texas in its operations
pertaining to liquified petroleum gas and especially insofar
as its storage of same in a container situated on the premises
of its refinery in Wichita Falls, Texas, is concerned?

The statutes relevant to your inquiry provide as
follows:

*Art. 6053a. INVESTIGATION AND REGULATION
OF USE OF HALOCRANTS.

*Sec. 2. In addition to the duties and pow-
ers of the Commission hereinabove set forth, it
is empowered and it shall be its duty to investi-
gate the use of halocorants by persons, firms, or
corporations engaged in the business of handling,
storing, selling or distributing natural and li-
quified petroleum gases, including butane and
other odorless gases, for private or commercial
uses, or supplying the same by pipe lines or
otherwise, to any public building or buildings
or the general public, and the Commission is em-
powered to require such persons, firms or corpora-

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tions to odorize such gas by the use of a malodorant agent of such character as to indicate by a distinctive odor the presence of gas; such malodorant agent so required to be used, however, shall be non-toxic and non-corrosive and not harmful to leather diaphragms in gas equipment, the method of its use and containers and equipment to be used in connection therewith to be under the direction of and as approved by the Railroad Commission of Texas; the Commission having full power and authority to prescribe such rules and regulations as in its wisdom may be deemed necessary to carry out the purposes of this Act. Nothing herein contained shall apply to gas transported out of the State of Texas.

EQUIPMENT FOR STORING AND DISPENSING LIQUEFIED PETROLEUM GASES

Sec. 3-A. After the effective date of this Act all containers and pertinent equipment installed for use in this State for the storage and dispensing of liquefied petroleum gases for the purpose of providing gas for industrial, commercial and domestic uses, shall be designed, constructed, equipped, and installed as specified under the published regulations of the National Board of Fire Underwriters for the design, installation, and construction of containers and pertinent equipment for the storage and handling of liquefied petroleum gases, effective July 15, 1934, and amendments, modifications or revisions thereto. All containers used for the transportation of liquefied petroleum gases over the highways of this State, shall be designed, constructed, and operated in accordance with the published regulations for the design, construction, and operation of automobile tank trucks and tank trailers for the transportation of liquefied petroleum gases, adopted by the National Board of Fire Underwriters and the National Fire Protection Association in the year 1936, and amendments, modifications or revisions thereto. Containers subject to the regulations of the Interstate Commerce Commission and containers which are owned or used by the Government

of the United States of America are excepted from the provisions of this Section. Provided, however, that nothing herein shall be construed to alter, modify, or amend the Motor Carriers Law of the State of Texas.

***PENALTY; SUIT FOR COLLECTION**

Sec. 3. The failure of any person or persons, firm, or corporation, municipality, or otherwise, or any association, or manufacturing or distributing or storing system in this State handling such gases, or installing or using such containers and pertinent equipment, as set out in this Act, to, within sixty days (60) after the receipt of any order of the Railroad Commission, comply fully with the Act or any such order, rule or regulation, shall be a violation of this Act, subjecting such person or persons, and the officers and executives of such named concerns to a penalty of One Thousand Dollars (\$1000) for each day they shall fail to comply with such Act; and the Attorney General is empowered to bring suit for the collection of same in the District Court of Travis County, Texas."

The language of the foregoing statute is specific and clearly makes it the duty of the Railroad Commission to pass on the containers used for storing liquefied petroleum gas in this State, and in Sec. 2-a of the Act sets up specific standards which the containers must meet.

Since, as stated in your letter, the container in question is a stationary one, located on the premises of the refinery of the Continental Oil Company in Wichita Falls, and is used exclusively in storing liquefied petroleum gas in this State, as distinguished from a container used to transport same in interstate commerce, it follows that no question of interstate commerce is presented, and that none of the exceptions set out in the Act apply.

From the foregoing it is apparent that it is our opinion that the Railroad Commission of Texas has full authority to inspect the container of the Continental Oil Company used for the storage of liquefied petroleum gas referred to in your letter, and further that the Continental Oil Company is subject to the jurisdiction of the Railroad

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Commission in its operations pertaining to liquefied petroleum gas, as specifically provided for and set out in the statutes quoted above.

We feel that it is proper to call your attention to the fact that the Forty-sixth Legislature passed an act amending Article 6053, as amended, the Act in question being H. B. 792, which greatly extends the duties and powers of the Railroad Commission of Texas pertaining to the storing and transportation of liquefied petroleum gas, this Act contains an emergency clause stating that it shall take effect and be in force from and after its passage, but though it passed the House by a record vote of 122 yeas and no nays, it passed the Senate by a viva voce vote, and since no record vote was had on said bill by the Senate, it will become effective ninety days after adjournment of the Legislature. The Legislature having adjourned June 21, 1939, the Act will become effective September 20, 1939.

We feel that it is unnecessary to set out H. B. No. 792 of the Forty-sixth Legislature herein, but think that it is proper to state that under its provisions we would have arrived at the same conclusions expressed herein as the powers of the Railroad Commission pertaining to liquefied petroleum gas were increased and not diminished by said Act.

Trusting that this satisfactorily answers your questions, we are

Very truly yours

ATTORNEY GENERAL OF TEXAS

By *E. R. Simmons*
E. R. Simmons
Assistant

ERS-MR

APPROVED AUG 31, 1939

Frederic Mann

ATTORNEY GENERAL OF TEXAS

