



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

PRICE DANIEL
ATTORNEY GENERAL

July 16, 1948

*modified by
M-1143*

Hon. Ernest O. Thompson, Chairman
Railroad Commission of Texas
Austin, Texas

Opinion No. V-638

Re: Reissuance of licenses
under the Liquefied Pe-
troleum Gas Act, Art.
6053, V.C.S., bond and
insurance requirements
on change of business
and related questions.

Dear Sir:

By letter dated June 24, 1948, the Director of the Gas Utilities Division of the Railroad Commission requested the opinion of this office upon certain questions presented under the Liquefied Petroleum Gas Act, Art. 6053, V.C.S., as follows:

"1. A licensed corporation changes during the year to a partnership wherein the stockholders of the corporation become the partners in the partnership no partners being added who were not stockholders in the corporation. Also, the exact converse is often true wherein a partnership changes over to a corporate entity.

"2. A licensed dealer, either individual, partnership or corporation, merely changes the name of the concern during the year while the ownership remains the same.

"3. A licensee changes into a partnership, corporation or back to individual ownership either adding new partners or stockholders, or dropping some as the case may be. Sometimes the firm name under which the licensee operates is changed, sometimes not.

"Under all of the situations enumerated above, it has been the practice of this Division to require an amended application for license, and a new license is issued reflecting the changes that have occurred. The question is whether or not a licensee who makes an amended application for license during the year which reflects any of the changes set out above, must pay a new license fee or whether the fee paid for the original license will suffice for that year.

"The next question deals with Section 11 of Article 6053, as amended, Title 102, (VACS). Can a licensee who operates a dealership in one town and who is the sole owner of scattered dealerships throughout the State, all operating under different names, satisfy the bond and insurance requirements of Section 11 by procuring one bond that purportedly covers all of his dealerships and one policy of insurance that also purportedly covers the operations of employees and trucks throughout his dealerships? Also, in line with the license requirements of Section 7. A. 6053, will one license taken out for all of the dealerships mentioned above suffice, or will a separate license have to be obtained for each dealership?"

Sections 7, 10, and 11, Article 6053, V. C. S., provide:

"Sec. 7. (1) No person, firm or corporation shall engage in this state in the manufacturing, and/or assembling, and/or repairing, and/or selling, and/or installing of containers to be used with liquefied petroleum gases as a fuel, nor shall such person, firm, or corporation engage in the sale, transportation, dispensing or storage of liquefied petroleum gases within this state, except where stored by the ultimate consumer for consumption only, without having first obtained from the Railroad Commission of Texas under the provisions of this Act a license so to do. Applications for such licenses shall be in writing and shall contain such information as the Commission shall prescribe. No

such license shall be issued until a hearing is had thereon and the Commission has determined that the applicant has made good and sufficient proof that he can and will meet all safety requirements provided in this Act and by the rules and regulations of the Railroad Commission, and the Commission finds that such applicant is qualified and the evidence adduced justifies issuance of such license. The Railroad Commission shall have the authority to promulgate rules and regulations for the safety and protection of the public."

"Sec. 10. For the purpose of defraying the expenses of administering this Act, each person, firm, corporation or association engaged in one or more of the pursuits named in subsection (1) of this section, except as otherwise provided in this subsection, shall at the time of issuance of such license, and annually thereafter, on or between September 1st and September 15th of each calendar year pay to the Railroad Commission a special fee of Twenty-five (\$25.00) Dollars; except that each person, firm, or corporation who operates a truck or trucks in the wholesale or retail delivery of liquefied petroleum gas, shall at the time of issuance of such license, and annually thereafter, on or between September 1st and September 15th of each calendar year, pay to the Railroad Commission a special fee of Fifty (\$50.00) Dollars, and when such fifty dollar fee is paid, said firm or corporation shall not be liable for the payment of the Twenty-five (\$25.00) Dollar fee as provided herein.

"If the license here provided for is issued after the month of September of any year, all fees shall be prorated to the remaining portion of the year to August 31st following, but in no case less than one-fourth of the total annual fee."

"Sec. 11. No license shall be issued pursuant to this section, unless such licensee shall first file with the Commission a surety bond in the sum of Two Thousand (\$2,000.00)

Dollars with a bonding company authorized to do business in Texas. All such bonds shall provide that the obligator therein will indemnify and pay the State of Texas, to the extent of the face amount thereof, all judgments which may be recovered in the name of the State of Texas against such licensee, during the term of such bond and proximately caused by any violation, by said licensee, of the terms of this Act or any orders or rules promulgated by the Railroad Commission as authorized by this Act.

"In addition to the bond herein required, such licensee shall be obligated to procure from some reliable insurance or surety company qualified to do business in the State of Texas, and keep same in force so long as they shall continue in business, a policy of insurance or surety bond which shall guarantee the payment of all damages which proximately result from any act of negligence, while engaging in any of the activities as herein provided, on the part of said licensee, their agents and employees, to both the employees of said licensee and also to the public generally, said policy or bond to be in the sum of not less than Ten Thousand (\$10,000.00) Dollars for personal injury for any one accident, and not less than Five Thousand (\$5,000.00) Dollars for property damage for any one accident. Provided that this section shall not be applicable unless and until such bonds or policies of insurance are available for purchase and further provided that such bonds or policies of insurance shall be approved by the Railroad Commission of Texas."

It is undoubtedly the intent of the statute to require that those individuals or business entities legally responsible to the public for the consequences of engaging in such business be licensed under the Act. For the protection of the public it is necessary that the records of the Gas Utilities Division accurately reflect the current status of all licensees.

Therefore, in answer to your first series of questions, it is our opinion that in each case of

change of name under which a licensee is operating, an amended application must be made and an amended license issued. No fees should be charged unless the business entity also changes. For example, a corporation into a partnership, a partnership into a corporate business, or an individual into either. Likewise, in the case of partnerships, a new license must issue and new fees be charged upon the addition or withdrawal of a partner. This is true because such changes automatically dissolve the old partnership and effect an entirely new entity with different legal relations to the public. 32 Tex. Jur. p. 495.

In the case of the individual operating various dealerships in several towns under different assumed names, it is our opinion only one license is required, which should, however, indicate that the individual is doing business at the various places under the various names.

It is also our opinion that under Section 11 of the statute one bond or policy of insurance is all that is necessary for an individual doing business in more than one town under various assumed names. We do advise, however, that, as in the case of the license for such individual, the bond or policy of insurance show it is intended to cover the individual doing business under the various assumed names.

SUMMARY

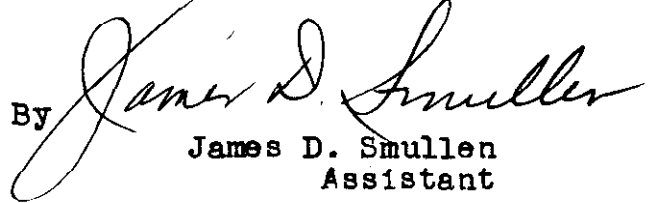
A new license is required and new license fees are payable under the Liquefied Petroleum Gas Act, Art. 6053, V. C. S., when an individual licensee ceases doing business as an individual and the business changes into a corporation or copartnership or when the number of partners in a copartnership changes. The same is true when a business organization ceases operating as a partnership or corporation and the business is owned and conducted by an individual.

One license will suffice and only one bond or policy of insurance is required under

Section 11 of Art. 6053, V. C. S., for an individual doing business in several localities under various assumed names.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By  James D. Smullen
Assistant

JDS:jt

APPROVED:


FIRST ASSISTANT
ATTORNEY GENERAL