

Opinion No. 49-5246

September 12, 1949

BY: JOE L. MARTINEZ, Attorney General

TO: New Mexico Public Service Commission Santa Fe, New Mexico. Attention: Mr. Carter

{*86} I am writing in reply to your inquiry as to whether the Sacra Brothers Company is required to pay a license fee for its operation at Vaughn, New Mexico.

It is our understanding that the Sacra Brothers Company has its principal office in Clovis, New Mexico, for which they have a license under the provision of Chapter 122, Laws of 1949. At Vaughn they keep one man who is in charge of a certain amount of LF-gas which is stored at that point. This employee distributes the gas in the area around {*87} Vaughn. Section 5 of Chapter 122, Laws of 1949 provides that a license is required for "each main or branch office or business operated within the state". The sole problem is what is meant by the term "branch office or business operated within the state".

In the case of Fert Smith Lumber Co. vs. Shackelford, 171 S.W. 99, 101, the Court was confronted with a similar situation and stated:

"Acts 1909, P. 293, providing that any corporation which keeps or maintains in any of the counties a 'branch office or other place of business' shall be subject to suits in any of the counties where it so keeps or maintains such office or place of business, and service on the agent in charge of the office or place of business is sufficient, provides a cumulative method of service in aid of the law declaring that service may be had on a corporation in the county where it is situated, or where it has its principal office or place of business, separate from the county in which the corporation is situated, or in the county where its chief officer resides, and the term 'branch office' indicates the maintenance office tributary to the principal office, and designates a place maintained in a county where business is transacted similar to that where the principal office is situated, and the term 'other place of business' refers to a place where the corporation is conducting a settled or established business, and designates a place where an established business is carried on regardless of whether the corporation has its principal or branch office situated there or not and the agent in charge of a 'branch office' must be one having authority to carry on the general business of the corporation, while an agent in charge of an 'other place of business' may be limited and special and confined to the particular business over which he has supervision".

It is the opinion of this office that the establishment at Vaughn is a branch office within the meaning of the act. The mere fact that the clerical and other activities of the company are performed primarily at Clovis is not the test. That is a matter of convenience. The purpose of the law is to exercise a close supervision over all places

where LF-gas is handled. Inspection must be made at Vaughn as well as at Clovis. It is, therefore, my opinion that the operation of the Sacra Brothers Company at Vaughn requires a license.