

Opinion No. 65-162

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TO: David McNeill, Registrar, State of New Mexico, Contractor's License Board, P. O.
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QUESTION

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Is the construction and maintenance of oil field compressor stations, gasoline plants, access roads to oil and gas well sites, and oil transport lines leading from the wells at the site to processing plants exempt under the Contractors' License Law?

CONCLUSION

See analysis.

OPINION

{*273} ANALYSIS

Section 67-16-2(C) of the Contractor' License Law, N.M.S.A., 1953 Compilation (as amended, 1965 Session Laws, Chapter 290) provides that:

"Nothing herein shall be construed to apply to a public utility in the construction, reconstruction, operation or maintenance of its plant other than construction of buildings, or to apply to the **drilling, testing, abandoning or operation** of any petroleum or gas well, or to geophysical or similar exploration for oil or gas." (Emphasis supplied.)

A reading of the above clearly discloses an express exemption from licensing to any contractor engaged in contracting work which is undertaken in the exploration, drilling, testing, abandoning or operation of a petroleum or gas {*274} well. Oil wells are also obviously included within this statutory exemption since oil is petroleum and under this provision the two phrases can be used interchangeably. The word "petroleum" is derived from the Latin words "petra and oleum" meaning rock oil and is a liquid mineral extracted from the earth by the process of mining. Summers, **Oil and Gas**, Volume 1, page 2; **Bouvier's Law Dictionary**, 3rd Revision.

In addition, we believe this statutory exemption also includes all contracting work as defined under the Contractors' License Law which is necessary in the production of oil

from the well. This conclusion is based upon the meaning of the word "operation" as used in Section 67-16-2 (C), supra. In general, "operation" is defined as the performance of some type of work or activity and is the action of making or producing something. **Webster's New Collegiate Dictionary; 23 Words and Phrases** (P.S.) 186. As used in the oil and gas industry, an oil well operation would appear to include all actions directed towards the drilling and producing of oil from the well or oil field. **Utilities Production v. Carter Oil Co.**, D.C. Okl., 2 F. Supp 81, 85; Section 46-1802, **Burns Indiana Statutes Annotated**, (1952 Replacement). Further support for this conclusion is evidenced by the case of **Jackson v. Young**, 6 La. App. 854, 857; where it was held that the transporting of gas through pipelines was a necessary part of the operation of a gas well.

Thus, contracting work directly related to and required for the production of oil from the well, as well as all contracting work involved in the exploration, drilling, testing, and abandoning of the well would appear to be exempt from licensing under the Contractors' Law.

However, it should be pointed out that the "production of oil" is to be distinguished from the "processing of oil" or the further transportation of the oil after it has been processed. The statutory exemption in question does not appear to include contracting work which directly pertains to the processing or further chemical treatment of oil and subsequent transporting of same even though it might be argued that such construction and maintenance activity had some connection with the production of oil from the field.

Thus, under the foregoing analysis the building of an oil field compressor station for the moving of the oil and gas from the well site, and the building of access roads to the site would in all probability be exempt from licensing under the law. However, we express grave doubts as to the exemption of the construction and maintenance of gasoline plants. As we understand it, a gasoline plant is directly related to the processing of oil and not to its actual production. In this connection, it is also noted that the construction of any transport lines used as part of the processing of oil would also fall in this non-exempt category. The construction of lines from the oil well to the plant would be exempt since such construction is more a part of the production rather than processing. But any lines leading from the gasoline or storage plant would be used for the transportation of processed oil. Thus, under the analysis above, such construction and maintenance work might very well be subject to the licensing requirement.

In closing we also note our awareness of **B & R Drilling Co. v. Gardner**, 55 N.M. 118, 227 P.2d 627 (1951) where the New Mexico Supreme Court held that exceptions to the Contractors' License Act should be given "a reasonable construction and should be held to embrace . . . the performance of any work fairly incidental to carrying on the named pursuits, ordinarily considered a part thereof, and helpful or essential to their prosecution." We seriously question whether this rule can be properly applied to exempt from the Contractor' Law, construction and maintenance of gasoline plants and oil transport lines {*275} leading therefrom. If anything, this rule furnishes additional support for the opposite conclusion because the performance of such work is not fairly

incidental nor essential to any of the "named pursuits" which are exceptions to the Law. Rather, this work as we have previously explained is a part of and essential to the processing of oil which is not an exception to the Contractors' License Law.