

Opinion No. 76-38

November 17, 1976

BY: OPINION OF TONEY ANAYA, Attorney General

TO: Mr. C. P. Corell, Director, Liquefied Petroleum Gas Commission, Santa Fe, New Mexico 87501, Mr. Benito Vigil, Director, Mobile Housing Commission, Santa Fe, New Mexico 87501

QUESTIONS

Questions

1. Does the Mobile Housing Act, Sections 67-41-1, et seq., NMSA (1975 Supp.) supercede or repeal by implication the Liquefied Petroleum Gas Act, Sections 65-7-1, et seq., NMSA (1975 Supp.) with respect to jurisdiction over the installation of liquefied petroleum gas lines within a mobile housing unit?
2. Does the Mobile Housing Commission or the Liquefied Petroleum Gas Commission, or both, have jurisdiction over the installation of liquefied petroleum gas lines within a mobile housing unit?

Conclusions

1. No.
2. Both the Mobile Housing Commission and the Liquefied Petroleum Gas Commission have jurisdiction over the installation of liquefied petroleum gas lines within a mobile housing unit.

OPINION

{*130} Analysis

The liquefied petroleum gas industry is extensively regulated by the State of New Mexico under the Liquefied Petroleum Gas Act (hereafter LPG Act), Sections 65-7-1, **et seq.**, NMSA (1975 Supp.), which vests the New Mexico Liquefied Petroleum Gas Commission with full power and authority to regulate all aspects of liquefied petroleum gas. Sections 65-7-1(A), 65-7-2, 65-7-4(A) and 65-7-5, NMSA (1975 Supp.). The LPG Act specifically provides in Section 65-7-3, NMSA (1975 Supp.) that:

[t]he selling or exposing for sale, constructing, **assembling**, repairing, equipping, **installing**, filling with fuel, storage of fuel within, dispensing of fuel therefrom or transporting fuel within such containers without same having been designed, constructed, assembled, equipped, maintained, tested and inspected as specified in the

rules and regulations of the commission pursuant to the LPG Act [65-7-1 to 65-7-23] shall be a violation of the LPG Act and shall be subject to the fines, penalties and restrictions provided. (Emphasis added.)

Thus, the installation or hook-up of a liquefied petroleum gas line within a mobile housing unit is an activity expressly governed by the {**131*} LPG Act, **supra**, and clearly within the regulatory jurisdiction of the Liquefied Petroleum Gas Commission.

The recently enacted Mobile Housing Act, 67-41-1, **et seq.**, NMSA (1975 Supp.) additionally provides for the comprehensive regulation of all aspects of the mobile housing industry in New Mexico through the Mobile Housing Commission. The Mobile Housing Commission is empowered to regulate, inspect, and supervise the manufacture, repair, modification and installation of mobile housing units as well as the licensing of those persons engaged in such activities. Sections 67-41-6 and 67-41-8, NMSA (1975 Supp.). Although the Mobile Housing Act nowhere mentions either the LPG Act or liquefied petroleum gas itself, Section 67-41-6(N), NMSA (1975 Supp.) of that act does mandate that the Mobile Housing Commission "adopt regulations prescribing standards for . . . the installation of consumers' gas pipe. . . ." Under this section, the Mobile Housing Commission has jurisdiction to regulate and inspect the installation of all types of gas lines within a mobile housing unit, including liquified petroleum gas lines.

The question presented here is whether the more recent Mobile Housing Act, **supra**, supercedes or repeals by implication the LPG Act with respect to jurisdiction over the installation of liquefied petroleum gas lines within a mobile housing unit. To answer this question, the two statues must be examined in light of the applicable rules of statutory construction. Repeals by implications have not been favored by the New Mexico courts and are only reached as a last resort where it is absolutely necessary to give effect to the obvious intent of the legislature. **Galvan v. City of Albuquerque**, 87 N.M. 235, 237, 531 P. 2d 1208, 1210 (1975); **Buresh v. City of Las Cruces**, 81 N.M. 89, 90, 463 P.2d 174, 176 (Ct. App. 1971).

Before concluding that the legislature intended to repeal a prior statute by a subsequent one, the courts have required that the new law encompass in a comprehensive manner the same subject matter of the prior law with the same object and purpose and that there exist an irreconcilable conflict between the two laws that manifests a clear intention by the legislature to repeal the previous law. **State of New Mexico v. Lujan**, 76 N.M. 111, 116, 412 P.2d 405, 408 (1966); **Stokes v. New Mexico Board of Education**, 55 N.M. 213, 217, 230 P.2d 243, 245 (1951); **State v. Melendez**, 49 N.M. 181, 184, 159 P.2d 768, 770 (1945); **Rader v. Rhodes**, 48 N.M. 511, 514, 153 P. 2d 516, 518 (1944). In this instance, neither requirement is met. First, the Mobile Housing Act, **supra**, and the LPG Act, **supra**, cover entirely different subject matter. Compare Sections 65-7-2, 65-7-3, and 65-7-4, NMSA (1975 Supp.) with Sections 67-41-3 and 67-41-6 (1975 Supp.). The fact that the Mobile Housing Act, **supra**, mentions, as a matter of peripheral concern, the installation of "consumers' gas pipe" in no way articulates a clear expression of legislative intent to displace or repeal provisions of the LPG Act,

supra. Furthermore, the Mobile Housing Commission deals on a broad basis with all aspects of the mobile housing industry, while the Liquefied Petroleum Gas Commission has the specialized expertise and regulatory authority over the narrow area of liquefied petroleum gas. Where a general statute includes the same matter as a more specialized act which deals with the subject matter in a more minute and definite way, the {^{*132}} specialized statute is considered as an exception to the general statute and prevails. **State v. Lujan**, 76 N.M. 111, 117, 412 P.2d 405, 408 (1966); **State v. Blevins**, 40 N.M. 367, 368, 60 P.2d 208, 209 (1936). Second, no irreconcilable conflict exists between provisions of the two statutes nor any discernible conflict at all. The mere fact that the two statutes overlap does not in and of itself render them inconsistent or in conflict. Section 67-41-6(N), NMSA (1975 Supp.) of the Mobile Housing Act simply requires the Mobile Housing Commission to promulgate regulations governing the installation of all types of gas lines within mobile housing units.

There is nothing in the language of Section 67-41-6(N), NMSA (1975 Supp.) that is clearly repugnant to any provision of the LPG Act, **supra**. Indeed, the purpose of both acts is to insure the health and safety of persons in New Mexico. If conflicts do arise in the applicable regulations of the two commissions, inter-agency reconciliation and accommodation is always possible. In the absence of a clear conflict between two statutes, the statutes must be construed as affirmative, cumulative or auxiliary. 82 C.J.S., **Statutes**, Section 292, p. 497. We therefore conclude that the Mobile Housing Act, **supra**, does not supercede or repeal by implication the LPG Act, **supra**, with respect to liquefied petroleum gas line installations within a mobile housing unit.

Consequently, the Mobile Housing Act, **supra**, in no way confers on the Mobile Housing Commission exclusive jurisdiction over liquefied petroleum gas line installations within mobile housing units. Both the Mobile Housing Commission and the Liquefied Petroleum Gas Commission have jurisdiction to regulate and inspect the installation of liquefied petroleum gas lines in mobile homes. In this regard, it is incumbent upon both commissions to harmonize any conflicts and achieve uniformity of regulation in this area of overlapping jurisdiction.