

Opinion No. 34-820

October 18, 1934

BY: E. K. NEUMANN, Attorney General

TO: Mr. Don R. Casados, Chairman State Corporation Commission, Santa Fe, New Mexico.

{*161} In your letter of October 16, 1934 you enclose certain correspondence with reference to the Colorado Interstate Gas Company. From your letter and the correspondence enclosed it appears that two questions are submitted to us for our opinion:

1. Can the \$ 25.00 fee imposed by Rule No. 20 of Rules and Regulations Governing Pipe Lines adopted by the Corporation Commission, as amended August 23, 1934, be collected from the Colorado Interstate Gas Company?
2. Can the Colorado Interstate Gas Company be required to apply for and procure a license to operate its pipe line under the provisions of Section 8, Chapter 125, Laws of 1927.

We assume that the following statement of facts is correct:

"The Colorado Interstate Gas Company is a Delaware corporation. Its business in New Mexico consists entirely in making physical connection of its pipe line to the pipe line of the Canadian River Gas Company, which extends from the Amarillo gas field to a point about eight miles from Clayton, New Mexico. The gas passing through the line of the Canadian River Gas Company into the line of the Colorado Interstate Company does not at any time come to rest in the State of New Mexico, and is {*162} in continuous flow from the gas fields near Amarillo until delivered to the City and County of Denver and other municipalities and industries located along the route of the Colorado Interstate Gas Company in the State of Colorado."

In answering the first question we call your attention to the fact that Chapter 125, Laws of 1927 does not require the payment of a \$ 25.00 license fee. The only fee required to be paid for the license to operate such pipe lines is that mentioned in Section 8 of the Act, namely one-tenth of one cent per ten thousand cubic feet of gas transported in said lines. The power of the Commission to "prescribe reasonable rules for the conduct and operation" of such pipe lines, granted by Section 6 of the act, does not, in my opinion, include the power to establish a license fee in addition to that imposed by the statute. It is therefore my opinion that the imposition of a \$ 25.00 fee by the Commission's Rule No. 20 is wholly unauthorized by law and cannot be legally collected from said gas company.

As to the second question we call your attention to the case of United Fuel Gas Company vs. Hallanan 257 U.S. 277, 66 L. Ed. 234, 42 Sup. Ct. Rep. 105. The holding in this case is stated in the syllabus as follows:

"A corporation engaged in gathering and purchasing natural gas, which it distributes through its pipes, may not be subject to a state license or occupation tax measured by the volume of the traffic, where the great body of the gas starts from points outside the state, and goes to them either in the company's own pipes or those of connecting companies, to whom it sells, although the necessity of business require a much smaller amount of gas, destined to points inside the state, to be carried undistinguished in the same pipes, and although, as to the gas sold to the connecting companies, the seller and purchasers may change their minds before the gas leaves the state, and the precise proportions between local and outside deliveries may not have been fixed."

We also call your attention to the case of Ozark Pipe Line Corporation vs. Monier 266 U.S. 555, 69 L. Ed. 439 and cases cited therein. The holding in this case is summed up in the syllabus as follows:

"The operation of a pipe line across a state to carry crude oil from one state to another is interstate commerce, which is beyond the power of the state to tax."

Section 8 of Chapter 125, Laws of 1927 provides that "owners and operators of pipe lines * * * shall * * * procure a license from the State Corporation Commission to operate such pipe lines, and shall * * * pay * * * a license fee, etc.". This section, if applied to the business of the Colorado Interstate Gas Company as heretofore stated, would clearly be a tax upon interstate commerce, which under the authorities above cited is beyond the power of the state to tax.

The letter written to the Commission by Mr. Elmer L. Brock of Smith, Brock, Akolt & Campbell under date of October 4, 1934 and which you enclose with your letter, in my opinion clearly states the law and needs no amplification. We agree with his conclusions, assuming that the facts as stated in this letter are correct.

By: QUINCY D. ADAMS,

Asst. Attorney General