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NOV 18 1985

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Liquefied Petroleum Gas Board -
Licenses and Permits

Private poultry suppliers who pay a poultry producer's LP gas bill, then charge a fee for paying the bill are not in the business of selling LP gas and thus, are not required to obtain a Class "A" permit.

Dear Mr. Pakruda:

This letter is in response to your letter of September 27, 1985, requesting an opinion regarding whether certain poultry suppliers are in the business of selling LP gas so as to require Class "A" permits. You stated that private poultry suppliers are, if so requested, paying poultry producer's LP gas bills and then later collecting for the gas and charging one and a half cents per gallon for this service. Specifically, you asked:

"1. Will this type of arrangement place the poultry supplier in the category of being in the retail business of selling Liquefied Petroleum Gas as specified in Section 9-17-105 (A) of the 1975 Code of Alabama as amended?"

"2. Will the poultry suppliers require a Class "A" permit as specified in Section 9-17-105 (B)(1) of the 1975 Code of Alabama as amended?"

Regarding the issuance of LP Gas permits, Code of Alabama 1975, Section 9-17-105, provides, in part, as follows:

(a) The board shall have the power to issue permits to any person to engage in or continue in the business of selling, distributing, storing or transporting liquefied petroleum gases and to engage in or continue in the business of selling, installing, servicing, repairing, or adjusting liquefied petroleum gas containers, tanks or systems in the state of Alabama and to prescribe the requirements of such person to obtain such permits.

(b)(1) PERMIT A. Shall give the holder a right to engage in or continue in the business of selling, distributing, storing or transporting liquefied petroleum gases and to engage in or continue in the business of selling, installing, servicing, repairing or adjusting liquefied petroleum gas containers, tanks or systems at retail. Before any person shall engage in or continue in the business of selling, distributing, storing or transporting liquefied petroleum gases, except where the liquefied petroleum gas so handled is in quantities of less than one gallon U.S. water capacity and is an integral part of a device for its utilization, or before any person shall engage in the business of selling, installing, servicing, repairing or adjusting liquefied petroleum gas containers, tanks or systems at retail in the state of Alabama, such person shall first obtain from the board a Permit A and shall execute and file with the board a bond and the insurance herein required.

The central issue is whether a business that pays a LP gas bill for a poultry producer then collects at a later time is in the business of selling LP gas as contemplated by the above Code section. A sale has been defined as a "contract whereby property is transferred from one person to another for a consideration of value, implying the passing of the general and absolute title, as distinguished from a special interest

Mr. Leonard Pakruda
Page 3

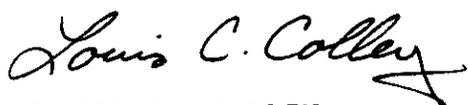
falling short of a complete ownership." Blacks Law Dictionary, 4th ed., p. 1503. Where poultry suppliers merely pay a LP gas bill, they are at no time in ownership of, nor possess title to, the gas. A business cannot sell that which it does not own, thus, under the above-described circumstances it is the opinion of this office that the poultry suppliers you describe are not in the business of selling liquefied petroleum gas and do not require a Class "A" permit.

I hope we have fully answered your questions and if we may be of any further service, please do not hesitate to contact us.

Sincerely,

CHARLES A. GRADDICK
ATTORNEY GENERAL

By:



LOUIS C. COLLEY
ASSISTANT ATTORNEY GENERAL

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