



OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

GERALD C. MANN  
ATTORNEY GENERAL

Mr. Gus J. Strauss, Director  
Gas Utilities Division  
Railroad Commission of Texas  
Austin, Texas

Dear Sir:

Opinion No. O-5438

Re: Paltex Oil and Gas  
Company is a gas  
utility company under  
the facts submitted.

The factual situation contained in your letter of July 12, 1943, and upon which you predicate your request for an opinion is:

"Paltex Oil and Gas Company of Palacios, Texas, purchases gas from producers in the Palacios Field and sells it to the United States Government at Camp Hulen, Texas. The gas is transported from the Palacios Field to Camp Hulen by a pipe line which is owned by Paltex Oil and Gas Company. Its gas pipe line is laid under a number of public roads, a State Highway, and right-of-way of a railroad; and it is not disputed that the gas transported is for sale. The United States Government is the only customer being served from the pipe line, but Paltex Oil and Gas Company has offered gas for sale to the City of Palacios, Texas, should the City of Palacios acquire a distribution system to serve its residents.

"The above described operations were begun about December 11, 1940, and since that time several demands have been made of Paltex Oil and Gas Company to file with the Railroad Commission of Texas the quarterly reports required of gas pipe line operators by Article 6060, Revised Civil Statutes, 1925.

"The Railroad Commission of Texas has prescribed a form of annual report for such operators, as provided for in Article 6056, Revised Civil Statutes, 1925, and demands have been made of this company to file such annual reports with the Commission.

"The Company contends that it is not a utility and that it is beyond the power of the Legislature of Texas to classify it as such; and it has, therefore, refused to file the reports required by Article 6060 and the order of the Commission entered under Article 6056. It has also refused to pay the gross receipts taxes levied by Article 6060. \* \* \*

You propound the question:

"Please advise us at your earliest convenience (1) whether or not it is your opinion that Paltex Oil and Gas Company is a gas utility as defined by Article 6050, (2) if it is subject to the reports and taxes prescribed by Article 6060, and (3) has the Commission authority to require the Company to file the annual report prescribed by the Commission under Article 6056?"

We have ascertained from the Secretary of State that Paltex Oil and Gas Company is a Texas corporation, having as its purpose clause "to establish and maintain an oil business with authority to contract for the lease and purchase of the right to prospect for, develop and use coal and other minerals, petroleum and gas; also the right to erect, build and own all necessary oil tanks, cars and pipes necessary for the operation of the business of the same." Subdivision 37 of Article 1302, Vernon's Annotated Civil Statutes.

The pertinent statutes are Articles 6050, 6056 and 6060, V. A.C.S., which are as follows:

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"Art. 6050. Classification

"The term 'gas utility' and 'public utility' or 'utility,' as used in this subdivision, means and includes persons, companies and private corporations, their lessees, trustees, and receivers, owning, managing, operating, leasing or controlling within this State any wells, pipe lines, plant, property, equipment, facility, franchise, license or permit for either one or more of the following kinds of business:

\* \* \* \*

"Owning or operating or managing a pipe line for the transportation or carriage of natural gas, whether for public hire or not, if any part of the right of way for said line has been acquired, or may hereafter be acquired by the exercise of the right of eminent domain; or if said line or any part thereof is laid upon, over or under any public road or highway of this State, or street or alley of any municipality, or the right of way of any railroad or other public utility; including also any natural gas utility authorized by law to exercise the right of eminent domain.

\* \* \* \*

"Art. 6056. Operator's reports

"The Commission may require of all persons or corporations operating, owning or controlling such gas pipe lines sworn reports of the total quantities of gas distributed by such pipe lines and of that held by them in storage, and also of their source of supply, the number of wells from which they draw their supply, the amount of pressure maintained, and the amount and character and description of the equipment employed, and such other matters pertaining to the business as the Commission may deem pertinent."

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"Art. 6060. Utility tax

"Every gas utility subject to the provisions of this subdivision on or before the first day of January and quarterly thereafter, shall file with the Commission a statement, duly verified as true and correct by the president, treasurer or general manager if a company or corporation, or by the owner or one of them if an individual or co-partnership, showing the gross receipts of such utility for the quarter next preceding or for such portion of said quarterly period as such utility may have been conducting any business, and at such time shall pay into the State Treasury at Austin a sum equal to one-fourth of one per cent of the gross income received from all business done by it within this State during said quarter."

In our Opinion No. 0-3524a, the original of which you have in your office, we had before us the question of whether the Republic Natural Gas Company, organized under the same subdivision, was required to file the reports and pay the taxes sought to be required in the instant case.

We there held that the Republic Natural Gas Company was not liable for the gross receipts tax as provided in Article 6060, supra. Such holding was predicated upon the proposition that the company was not engaged in the business of owning or operating or managing a pipe line company for the transportation or carriage of natural gas as provided in Article 6060; that the transportation of natural gas was but incidental to the execution of its purpose of operating an oil and gas producing business under Subdivision 37 of Article 1302, V.A.C.S.

The facts upon which the Republic opinion was written were:

The company owned a number of gas wells in the Saret Field, Nueces County, Texas; that it had pipe lines from its wells to a central point on its own lease, where the gas is sold and delivered to the City of Corpus Christi through a line owned by that city; its lines constituted a gathering system on its own leases which brought the gas to a central point for sale and delivery.

In the instant case, Paltex Oil and Gas Company is not selling gas which it is authorized by its charter to produce. It is purchasing gas from other producers and transporting it through its own lines for the purpose of reselling said gas to the United States Government. We do not pass upon the question of the right of Paltex Oil and Gas Company under its charter to purchase gas for the purpose of resale. Suffice it to say that by virtue of its doing so, it has, in our opinion, constituted itself a gas utility within the plain language of Article 6050, supra, and is required to file the reports and pay the taxes provided in Articles 6056 and 6060.

APPROVED AUG 5, 1943  
*[Signature]*  
FIRST ASSISTANT  
ATTORNEY GENERAL

LA:EP

Yours very truly,  
ATTORNEY GENERAL OF TEXAS  
*[Signature]*  
By *[Signature]*  
Lloyd Armstrong  
Assistant

APPROVED  
OPINION  
COMMITTEE  
BY *[Signature]*  
CHAIRMAN