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February 24, 1970

State Board of Insurance
1110 San Jacinto
Austin, Texas 78701

Opinion No. M-585

RE: H.B. 1070, Acts 61st.,
R.S., 1969, Ch. 550, p.
1692, (Codified as Art.
1111C-1, Vernon's Ann.
P.C.) Flammable Liquids -
Retail Service Stations -
Storage, Handling and Use.

Dear Sirs:

This is in response to your letter of February 5, 1970, in which you inquire about the applicability of the "grandfather clause" contained in Article 1111C-1, Vernon's Annotated Penal Code, insofar as it might bear on the specific provision prohibiting the use of overground storage tanks in retail stations. More specifically these provisions are as follows:

"Sec. 4(a). Flammable liquids shall not be stored at retail service stations in tanks of more than 60 gallons gross capacity above the surface of the ground. Underground flammable liquid tanks at retail service stations shall not be limited in individual or combined capacities or sizes."

"Sec. 5. The rules and regulations shall be made allowing reasonable provision under which facilities in service prior to the effective date of the rules and regulations and not in strict conformity therewith may be continued in service provided they do not constitute a distinct hazard to life or property. For guidance in enforcement, the rules and regulations may delineate those types of nonconformities that should be considered distinctly hazardous and those nonconformities which should be evaluated

in the light of local conditions. The rules and regulations shall provide that reasonable notice be given to the person owning the facility affected of intention to evaluate the need for compliance and the time and place at which he may appear and offer evidence thereon."

The applicable rule of statutory construction as set forth in Volume 53 Texas Jurisprudence 2d, STATUTES, Section 160 states:

" Another fundamental rule requires that a statute be construed as a whole and that all of its parts be harmonized if possible, so as to give effect to the entire act according to the evident intention of the legislature. Pursuant to this rule, a court that is called on to interpret a statute will consider, examine, read, or view the act in its entirety. This means that consideration will be given the title, the body, and the emergency clause, if any, and not to any one phrase, clause, or sentence. It means also that the court will endeavor to reconcile the various provisions of the act, insofar as they may appear to be conflicting or inconsistent, to the end that the enactment and every word, phrase, clause, and sentence may have its proper effect."

In looking at Article 1111C-1 as a whole it can easily be seen that the Legislature intended to create a system for controlling the retail sale of gasoline and other flammable liquids from the effective date of the act on but also intended that existing facilities should continue in use unless or until such existing facilities might be deemed a distinct hazard to life or property.

It is therefore the opinion of this office that the Board of Insurance is authorized to make provisions in its regulations permitting the continued use of above-surface storage tanks for flammable liquids having a gross capacity

in excess of 60 gallons providing that such tanks were in service prior to September 1, 1969 and further provided that such tanks meet the standards established by the Board for determining whether a distinct hazard to life or property exists.

SUMMARY

The Board of Insurance is authorized to permit the continuance of the use of above-ground storage tanks for flammable liquids at retail service stations where such tanks were in service prior to September 1, 1969 and where such tanks conform to standards established by the Board for determining whether a distinct hazard to life or property exists.

Very truly yours,


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APPROVED:
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