

OFFICIAL OPINION NO. 76-115, Attendant required at self-service gas stations

December 8, 1976

Mr. Joe Egger
State Fire Marshal
Public Safety Building
Pierre, South Dakota 57501

OFFICIAL OPINION NO. 76-115

Attendant required at self-service gas stations

Dear Mr. Egger:

You have requested an answer to the following question:

QUESTION:

Do South Dakota law and rules promulgated by the state fire marshal require self-service gas stations using coin-operated, card-operated or remote control dispensing devices to have an attendant on duty?

Rule 61:10:02:05 provides:

Any service station where self-service dispensing of class I liquids is provided shall have a qualified attendant on duty at all times when such dispensing devices are open and available to the public. Such attendant shall be in a position where the dispensing devices are in complete observation at all times.

SDCL 34-38-9 provides:

The state fire marshal shall formulate and promulgate rules, regulations and standards covering the design, construction and operation of tank vehicles used in transporting flammable liquids on public highways and for the design, construction, location, installation and operation of equipment for the storage and handling of flammable liquids. Such rules, regulations and standards shall, except as herein otherwise provided for existing plants, stations or equipment, be in substantial conformity with the generally recognized standards of safety for flammable liquids promulgated by the National Board of Fire Underwriters in the latest edition of its NBFU Pamphlet No. 30, and the standards promulgated by the

National Fire Protection Association in the latest edition of its NFPA Pamphlet No. 385. When such rules, regulations and standards are promulgated as provided in §34-38-16, they shall be deemed to be a substantial part of this chapter as though set forth fully herein.

In addition, the office of State Fire Marshall has adopted Rule 61:10:91:01 which specifically adopts a number of minimum standards of safety of the National Fire Protection Association including the following:

7641. Self-service station shall mean that portion of property where flammable and combustible liquids used as motor fuels are stored and subsequently dispensed from fixed approved dispensing equipment into the fuel tanks of motor vehicles by persons other than the service station attendant, and may include facilities available for sale of other retail products.

7642. Approved dispensing devices such as, but not limited to coin-operated and remote controlled types, are permitted at self-service stations.

7643. All self-service stations shall have at least one attendant on duty while the station is open to the public. The attendant's primary function shall be to supervise, observe and control the dispensing of Class I liquids while said liquids are actually being dispensed.

Therefore, in my opinion, stations using remote control dispensing devices are included within the general class of self-service stations and are subject to Rule 61:10:02:05 requiring an attendant on duty at all times when gasoline is available to the public. One of the obvious intentions of the Legislature in requiring minimum standards was to provide certain safety features for the public. I cannot see how coin and card operated stations can be distinguished from other self-service stations with regard to safety requirements.

The answer to your question is YES.

Respectfully submitted,

WILLIAM J. JANKLOW
ATTORNEY GENERAL

WJJ:LLV:mf