

OPINION 105

OFFICIAL OPINION NO. 105

November 18, 1953.

Mr. H. L. Solberg,
School of Mechanical Engineering,
Purdue University,
Lafayette, Indiana.

Dear Mr. Solberg:

This is in reply to your letter of October 7, 1953 in which you inquire as to the following:

“Steam boilers are used in mint stills, in canneries, and in farm dairies and creameries. In some cases, the installation is owned by one farmer and is operated only by himself and his family and is used in processing only the output of his own farm. In some instances, the installation is owned by one farmer but is operated by him either with or without hired labor, in processing the production of his own farm and the farms of his neighbors. In other cases, the installation is owned by a group such as a farmers’ cooperative or company and is used for the processing of the farm products that are raised within reasonable trucking distance. Canneries are generally in this category.

“Some of these installations, particularly in the mint stills, are notorious for the bad condition of the steam boilers. The Board of Rules and Appeals is interested in knowing whether or not such installations are covered by the inspection requirements of the Act or are exempt under Item 1 of Section 26. In each case, the installation is used for the conversion of a product raised on the farm into a different form in which it can be sold.”

Chapter 66 of the Acts of the General Assembly of 1953 as found in Burns’ Indiana Statutes Annotated (1950 Repl., 1953 Supp.), Sections 20-632 through 20-664 provide in part as follows:

“SEC. 2. From and after the 1st day of July, 1953, it shall be the duty of the owner or user of each steam boiler, hot water heating boiler, hot water supply

boiler, or unfired pressure vessel installed, used, or operated in this state to maintain or cause the same to be maintained in safe operating condition in accordance with the applicable standards prescribed or provided for by this Act pertaining to inspection, repair, and allowable working pressures of boilers and unfired pressure vessels in service; and to that end to cause the same to be inspected pursuant to said standards and where indicated by such inspection to cause the same to be repaired, reconditioned, or rerated and to subsequently require the same to be operated under service conditions no more severe than those for which such boiler or vessel meets the requirements of this section; and to keep posted or on file in the establishment in which each such boiler or vessel is installed either a valid certificate of inspection issued by the administrator or a true record or copy of the report of the latest of each such inspection signed either by the inspector who made such inspection or by a qualified engineer under whose supervision such inspection was made. If upon the inspection of any boiler or unfired pressure vessel it is found that the same does not conform to said standards for the service in which said boiler or vessel is being used and for any reason same is not to be repaired, reconditioned, or rerated as above provided, then the boiler or vessel shall be retired from service and shall not again be used for any service within the purview of this Act unless and until the same is inspected for the intended service and is found to conform to the applicable requirements of this Act.
* * *

“SEC. 25. Exemptions. This Act shall not apply to the following:

“(1) Domestic Water Heaters.

“(2) Unfired Pressure Vessels containing water only at a temperature not in excess of 150 degrees Fahrenheit.

“(3) Boilers and Unfired Pressure Vessels under Federal Regulation.

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“(4) Unfired Pressure Vessels meeting the requirements of the Interstate Commerce Commission for shipment of liquids or gases under pressure.

“(5) Air Tanks located on vehicles operating under the rules of other State authorities and used for carrying passengers, or freight.

“(6) Air Tanks installed on the right of way of railroads and used directly in the operation of trains.

“(7) Unfired Pressure Vessels having a volume of 15 cubic feet or less when not located in a place of public assembly.

“(8) Unfired Pressure Vessels designed for a pressure not exceeding 15 pounds per square inch gauge when not located in a place of public assembly.

“(9) Unfired Pressure Vessels containing liquefied petroleum gases which are under the regulation and control of the State Fire Marshal under Section 1 of Chapter 48 of Acts, 1947 (Burns' Indiana Statutes, Volume 5, Part 2, paragraph 20-807).

“SEC. 26. Exemptions from Inspection Requirements. The following shall be exempt from the provisions of Section 2 of this Act and all other provisions thereof relating to inspection.

“(1) Any Boiler or Unfired Pressure Vessel located on a farm and used solely for agricultural purposes.

“(2) Steam boilers used for heating purposes carrying a pressure of not more than 15 lbs. per square inch gauge and hot water heating boilers carrying a pressure of not more than 30 lbs. per square inch gauge, which are located in private residences or in apartment houses of not more than six families.

“(3) Steam boilers used exclusively for heating purposes carrying a pressure of not more than 15 lbs. per square inch gauge or hot water heating boilers carrying a pressure of not more than 30 lbs. per square inch gauge, which have a gross output rating of not to exceed 215,000 btu's per hour and are not located in a place of public assembly.

“(4) Any hot water supply boiler not located in a place of public assembly.

“(5) Any Unfired Pressure Vessel containing only water under pressure for domestic supply purposes, including those containing air, the compression of which serves only as a cushion or for an airlift pumping system, when located in a private residence or in an apartment house, the occupancy of which is limited to not more than six (6) families.”

It is evident that Chapter 66, *supra*, was enacted as police legislation of the state to insure safety for persons and property in the vicinity of boilers or unfired pressure vessels. That construction of the statute will be given which will correct the mischief intended to be removed.

Board of Commissioners, Clinton County v. Given (1907), 169 Ind. 468, 80 N. E. 965.

Police regulations enacted for the benefit of the public are to be given a liberal construction in order to effectuate their purposes.

Lagler v. Bye (1908), 42 Ind. App. 592, 85 N. E. 36.

In the converse, however, an exemption under this type of legislation is given a strict construction. This rule is particularly applicable where the statute is promotive of the public welfare.

50 Am. Jur., page 452, Section 432, “Statutes.”

By looking at the exemptions under Sections 25 and 26 it is to be noted that all of the exemptions except that one contained in sub-section (1) of Section 26 are applicable only if not located in a place of public assembly or in a residence or apartment house which is limited to not more than six (6) families.

It is apparent that the exemption in this Act, insofar as your question is concerned, is intended to apply in spirit to actual *bona fide* farmers who are using boilers for agricultural purposes on their farms. Of course, the question is complicated by the fact that such a boiler could be owned jointly by

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two or more farmers and still be within the spirit of the exemption while other boilers which were owned jointly by one or more persons would clearly not be used for agricultural purposes and clearly not exempt from this Act.

I believe therefore that in each case it will be a question of fact as to whether a boiler is located on a farm and if it is used solely for agricultural purposes. The following are submitted as suggested tests for determining whether the boiler is exempt under this Act in the particular case, but, of course, these tests are not all inclusive.

Steam boilers used in mint stills, canneries, farm dairies and creameries are exempt from inspection under this Act, if:

1. It is located on a farm and is used only in processing the output of that one particular farm, or for other agricultural purposes associated with the operation of said farm, or

2. It is located on a farm and is used only by the owners of a steam boiler such as two or more persons owning it jointly, for the purpose of processing output from the farms of the owners of the boilers, or for other agricultural purposes associated with their said farms.

3. However, any time a boiler is utilized for the purpose of processing any agricultural output other than that of the owners of the boilers, it is by such use being used for commercial purposes and is not therefore "used solely for agricultural purposes" and is not exempt under Section 26 of Chapter 66 of the Acts of 1953, *supra*.

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November 24, 1953.

Mr. R. R. Wickersham,
State Examiner,
State Board of Accounts,
304 State House,
Indianapolis, Indiana.

Dear Sir:

I have your letter dated October 30, 1953 submitting the following question: