

1979 WL 43238 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

August 23, 1979

\*1 Joseph A. Dean  
Fire Marshall  
Sea Pines Forest Beach Fire Department  
Post Office Box 5193  
Hilton Head Island, South Carolina 29928

Dear Mr. Dean:

With reference to the inquiries which you have made of this Office concerning the use and sale of fireworks in Beaufort County, I can advise you as follows:

Question 1: Would the Beaufort County Council violate State law by enacting the proposed amendment to section 17.03b of the Standard Fire Prevention Code, which would place strict building requirements on fireworks' dealers within the county?

In my opinion, this question can be definitively answered only by a court test of the proposed ordinance. In your letter, you refer to an opinion of this Office dated January 13, 1978, wherein it was stated that while a county can not prohibit the sale of fireworks, it can enact regulations pertaining to the method of their sale which are stricter than those issued by the State Fire Marshall (Regulations R 19-20 to R 19-34, SOUTH CAROLINA CODE OF LAWS, 1976). I doubt that a county can prohibit indirectly that which it cannot prohibit by direct action. Inasmuch as a county cannot directly ban the sale of fireworks, I do not believe a county can pass regulations so strict or unreasonable that they amount to an indirect ban on their sale. It is not possible for this Office to determine whether or not the requirements of proposed section 17.03b amount, in practical or economic effect, to a ban on the sale of fireworks in Beaufort County; it would appear arguable, however, that some of the proposed requirements are harsh enough that they might be contested on that ground by interested parties.

Question 2: Can the Beaufort County Council pass an ordinance prohibiting the discharge of fireworks within the county?

In my opinion, while the Council cannot prohibit the sale of fireworks within the county, it can, through its police power to protect the health and safety of its citizens, prohibit their discharge or use. [See generally, § 4-9-30\(5\), CODE OF LAWS OF SOUTH CAROLINA, 1976, as amended.](#)

Question 3: Is Act No. 1221 of 1968, which prohibits the sale of fireworks within the Sea Pines and Forest Beach Public Service districts, still valid?

In my opinion, that Act is still valid. The General Assembly did not place an expiration date on the legislation and neither is it affected by the provisions of Act No. 283 of 1975, the 'home rule' legislation. [Section 4-9-80 of the 1976 Code](#) provides that the home rule legislation should not be construed to devolve any additional powers upon county councils with respect to special purpose districts situate within their respective counties. Compare, however, [Torgerson vs. Craver, 230 S.E.2d 228 \(1976\).](#)

As you know, the General Assembly recently enacted into law House Bill No. 2642, which creates a State Board of Pyrotechnic Safety. That Board is given the power to enact regulations relating to the sale of pyrotechnics in this State,

including the storage and fire safety of such products. It may be that such regulations, once promulgated by the Board and approved by the General Assembly, will supersede any local ordinance relating to fireworks. I am enclosing a copy of that statute for your examination.

With kind regards,

\*2 Karen LeCraft Henderson  
Senior Assistant Attorney General

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