

1974 S.C. Op. Atty. Gen. 15 (S.C.A.G.), 1974 S.C. Op. Atty. Gen. No. 3682, 1974 WL 21203

Office of the Attorney General

State of South Carolina

Opinion No. 3682

January 3, 1974

***1 1. A distributor of fireworks from another state selling from a tractor-trailer van to customers in South Carolina, would be charged a license fee according to his classification. There is also serious question as to the permissibility of conducting sales from a tractor-trailer van.**

2. It is the responsibility of the Office of the State Fire Marshal to coordinate with local officials in the implementation of the law pertaining to the regulation of fireworks.

3. The initial and direct responsibility in regard to the issuance of retail licenses within the various municipalities and counties is placed upon local officials. However, the overall responsibility of enforcing the rules and regulations of the Fire Marshal's Office and the law pertaining generally to storage of fireworks is the responsibility of the Office of the State Fire Marshal.

4. In determining when a vehicle designed as a mobile unit is permanently attached to real estate is a mixed question of law and fact, and all circumstances should be considered by the court.

5. When an immediate hazard is posed to the safety of the public for which there is no adequate remedy at law, steps should be taken to obtain injunctive relief which would enjoin the party posing such hazard from continuing to operate in such a manner.

Director
Inspection Services
Division of General Services
State Fire Marshal
Division of General Services

By way of Memorandum dated November 21, 1973, the Office of the State Fire Marshal, Division of General Services, has requested an opinion of this office in regard to a number of questions pertaining to the fireworks law. To promote clarity these questions will be restated as posed and answered in that order.

Question 1. It is our understanding that a distributor of fireworks from another state is selling from a tractor-trailer van to customers in South Carolina. We would like to know the status of the requirements with regard to licensing in this instance.

The answer to question 1 depends upon how the distributor in this particular situation is classified. The various classifications are set out in Section 66–556, Code of Laws of South Carolina [1972 Supplement], which requires an annual license fee of \$1,000.00 for wholesalers, \$400.00 for jobbers, and \$50.00 for retailers. In addition to this annual license fee, there is also the requirement that the dealers falling in these various categories comply with the rules and regulations of the State Fire Marshal governing the storage of fireworks.

Another area of concern in this instance is the permissibility of conducting sales from a tractor-trailer van. The Rules and Regulations of the State Fire Marshal, filed June 19, 1973, clearly prohibit the retail sales of fireworks from trailers, trucks, or any other vehicle approved for transportation. Rules and Regulations III(A) 10. The promulgation of a similar

provision, which would encompass wholesalers and jobbers, would provide more effective regulation in these instances. If the distributor in question falls under the classification of wholesaler, Section 66–558, Code of Laws of South Carolina, 1962, would require the storage of the fireworks in a room set aside for that purpose only and, would additionally require the room to be properly posted in accord with the above section.

*2 Question 2. Whose responsibility is it in the final analysis to take action on non-licensed wholesalers, jobbers and retail outlets?

Section III(A) 13 and III(B) 8, identical provisions of the Rules and Regulations, designate the State Fire Marshal as the final authority in all cases as prescribed in the South Carolina Code of Laws. It would, therefore, be the responsibility of the Office of the State Fire Marshal to coordinate with local officials in the implementation of the law pertaining to the regulation of fireworks.

Questions 3 and 6, being related, are stated together, to wit: whose responsibility is it for those licensed that do not meet the regulations of the Fire Marshal's Office (licensed without approval of local authorities); In case of failure by local officials to follow through and enforce this act, what recourse is left, and whose responsibility does it become?

The local authorities referred to in these questions are designated in Section 66–556(3), *supra*. These local authorities are required to have the premises where such fireworks are to be kept for the purpose of sale inspected before the issuance of the requisite annual retail license. In order to determine that the building and the facilities within the building meet the safety standards for the storage and sale of permissible fireworks, the law provides that no permit should be issued to an applicant until the premises are inspected in this manner. The initial and direct responsibility in regard to the issuance of retail licenses within the various municipalities and counties is thus placed upon the local officials. However, the overall responsibility of enforcing the rules and regulations of the Fire Marshal's Office and the law pertaining generally to storage of fireworks is the responsibility of the Office of the State Fire Marshal. It would be incumbent upon the State Fire Marshal to coordinate with the various local officials in seeing that these statutes, rules and regulations are properly implemented and enforced on a local basis. Though local officials which stand in violation of the law by licensing without prior inspection, it is felt that the only practical solution in such cases would be to fully apprise all local officials involved of the required procedures which must be followed before the issuance of retail licenses. One approach to this might be drafting of a standard approval form which would enable local officials to accomplish the required inspections in an organized and consistent manner. Such coordination of State and local efforts through programs of assistance and organization would hopefully result in a more effective regulation and control of the sale of fireworks within our State.

Question 4. When does a vehicle designed as a mobile unit become a permanent part of real estate?

The answer to this question would turn on whether the mobile unit in question is permanently attached to the realty. Our State Supreme Court has held that such a determination, 'is a mixed question of law and fact, and that all the circumstances should be considered by the court.' *Parris Mountain Water Co. v. Woodside*, 133 S. C. 283, 131 S. E. 37. The issue would ultimately have to be resolved by viewing the situation in a practical manner with consideration given to the intention of the parties and the circumstances involved. One such practical consideration would be to determine whether the unit in question is taxed as real estate or whether it retains those characteristics of mobility which gave use to its initial classification.

*3 Question 5. In a case where a license has been issued to an outlet and at a later inspection by this officer or a local official it is found to be out of compliance and poses an immediate hazard to the safety of the public, what steps should be taken; by whom, and to what extent?

When an immediate hazard is posed to the safety of the public for which there is no adequate remedy at law, steps should be taken to obtain injunctive relief which would enjoin the party posing such hazard from continuing to operate in such

a manner. Such a procedure would involve petitioning the proper court for a temporary restraining order requiring the respondent involved to appear and show cause why a temporary injunction should not be issued. The proper party to move before the court by way of petition could either be local officials or agents of the State Fire Marshal's Office. Again, coordination of State and local effort in this regard would provide the desired organized approach to the regulation of firework sales within our State.

It is hoped that this response to your inquiry will be of assistance to you. If this office can be of further assistance, please do not hesitate to call or write.

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