

OFFICIAL OPINION NO. 60

December 5, 1963

Hon. Kenneth J. Brown, Jr.  
State Senator  
8 Hampshire Lane  
Muncie, Indiana

Dear Senator Brown:

This is in response to your request for an Official Opinion which request reads as follows:

“I would like to request an official opinion from your office pertaining to the manufacture of all kinds of Fireworks and kindred products within the State of Indiana and to import such products into the State for the purpose of engaging in wholesale sales of the same in Interstate Commerce, and also for wholesale sales within the State of Indiana for public displays where the same are permitted.”

You have asked concerning the manufacturing of fireworks and kindred products and also concerning acting as an agent in Indiana in interstate commerce of these commodities where-in they retain the identity of an interstate shipment. These two points are grouped, since it is believed that the same law is applicable generally to each of them.

It is well-settled law, that the Federal Government has the sole power to regulate interstate commerce. However, the states retain certain rights, in connection with its police power, to protect its citizens in a manner which does not interfere with interstate commerce and is reasonably related to the peril to be protected against.

This principle is well stated in the case of *Freeman v. Hewit*, Director of Gross Income Tax Division, Department of Treasury, State of Indiana (1946), 329 U. S. 249, 67 S. Ct. 274, 276, 277, and reads, in part, as follows:

“Our starting point is clear. In two recent cases we applied the principle that the Commerce Clause was not merely an authorization to Congress to enact laws for the protection and encouragement of commerce

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among the States, but by its own force created an area of trade free from interference by the States. In short, the Commerce Clause even without implementing legislation by Congress is a limitation upon the power of the States \* \* \*

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“\* \* \* But, in the necessary accommodation between local needs and the overruling requirement of freedom for the national commerce, the incidence of a particular type of State action may throw the balance in support of the local need because interference with the national interest is remote or unsubstantial. A police regulation of local aspects of interstate commerce is a power often essential to a State in safeguarding vital local interests. At least until Congress chooses to enact a nationwide rule, the power will not be denied to the State \* \* \*.”

The Legislature, in order to fully protect the citizens of Indiana against the inherent dangers surrounding the manufacture, storage and transportation of fireworks, along with other similarly dangerous instrumentalities and conditions, enacted a statute giving the state fire marshal certain powers. This statute would be equally applicable to both the manufacture and transportation in interstate commerce of fireworks, except insofar as regulations adopted therein might extend beyond the permissible framework of controls that may be exercised by the states in connection with interstate commerce.

The pertinent statute is found in the Acts of 1913, Ch. 192, Sec. 7, as amended, as found in Burns' (1950 Repl.), Section 20-807, and reads, in part, as follows:

“For the purpose of preventing fires and fire losses or in the interest of public safety to life and property or safety to adjoining property from fire or explosion, and for nothing else, and to the extent of such prevention and safety and no farther, the state fire marshal shall, not inconsistent with any existing law or laws of the state of Indiana, make, promulgate and enforce rules and regulations for the keeping, storage, use, manufacture, sale, handling, and transportation

or other disposition of highly inflammable materials and rubbish, gunpowder, dynamite, crude petroleum or any of its products, explosives or inflammable fluids or compounds, tablets, torpedoes or any explosives of a like nature, or any other explosive including fireworks and firecrackers, and the materials and construction of receptacles and buildings to be used for any of the said purposes \* \* \*."

Your second question concerns the sale of fireworks in Indiana after manufacture in this state or import from other states. Such sales are regulated by the Acts of 1939, Ch. 154, as amended, as found in Burns' (1963 Supp.), Section 20-1101 *et seq.*

Section 1 of said act, as found in Burns' (1963 Supp.), Section 20-1101, defines the term "fireworks" as used in said act.

Section 2 of said act, as found in Burns' (1963 Supp.), Section 20-1102, governs the possession or transport for use in this state and reads as follows:

"Except as hereinafter provided it shall be unlawful for any person, firm, copartnership, or corporation to possess or transport within the state for use; to offer for sale, expose for sale, sell at retail, or explode any fireworks: Provided, That the state fire marshal shall have the power to adopt reasonable rules and regulations for the granting of permits, for supervised public displays of fireworks by municipalities, fair associations, amusement parks, and other organizations or groups of individuals. Every such display shall be handled by a competent operator to be approved by the chief of the fire department of the municipality in which the display is to be held and shall be of such a character, and so located, discharged, or fired as in the opinion of the chief of the fire department, or the sheriff of the county in case the exhibit or display is sought to be held outside of the corporate limits of any city or town, after proper inspection, shall not be hazardous to property or endanger any person or persons. Applications for permits shall be made in writing at least fifteen [15] days in advance of

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the date of the display. After such privilege shall have been granted, sales, possession, use and distribution of fireworks for such display shall be lawful for that purpose only. No permit granted hereunder shall be transferable.”

Further sections of the act, as found in Burns' (1950 Repl.), Section 20-1103 *et seq.*, govern the granting of permits, exceptions to the act and powers and duties granted the state fire marshal.

In summary hereof, it is my opinion:

1. That manufacture and shipment in interstate commerce of fireworks in Indiana is lawful but subject to the rules and regulations adopted by the state fire marshal pursuant to the provisions of Burns' 20-807, *supra*.

2. That ownership or transportation of fireworks for use in Indiana is prohibited except in those cases where the state fire marshal has issued a permit for supervised public displays pursuant to proper application made and approved.

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### OFFICIAL OPINION NO. 61

December 9, 1963

Mr. B. B. McDonald, State Examiner  
State Board of Accounts  
912 State Office Building  
Indianapolis 4, Indiana

Dear Mr. McDonald:

This is in reply to your letter requesting an Official Opinion regarding the employment of county highway engineers. Your letter reads as follows:

“When Chapter 131 of the Acts of 1963 becomes effective the boards of county commissioners throughout the state will have the authority to employ a highway engineer, a part of whose salary will be reimbursed from the state highway distribution. The statute is clear on the term of appointment, the procedure