



STATE OF IDAHO

OFFICE OF THE ATTORNEY GENERAL

LAWRENCE G. WASDEN

June 21, 2017

Representative Matt Erpelding
Idaho House of Representatives
Idaho State Capitol
Boise, ID 83720

Via email: merpelding@house.idaho.gov

Re: Inquiry re: fireworks regulation

Dear Representative Erpelding,

I am the Chief of the Criminal Law Division of the Office of the Attorney General. Your inquiry regarding fireworks in Idaho was forwarded to my office. For purposes of this response, I have aggregating your six questions by subject matter into three questions.

QUESTIONS PRESENTED

- I. If a fireworks dealer requires a purchaser to sign an affidavit in which the purchaser agrees not to sell or use fireworks illegally¹, is such a practice consistent with the language and intent of the Idaho Fireworks Act, and specifically with Idaho Code 39-2603(2)?
- II. When can fireworks, other than non-aerial or common fireworks, be sold and used in Idaho? Who can purchase fireworks, other than "safe and sane" fireworks, in Idaho?
- III. Under Public Law 280, can the Idaho legislature regulate fireworks sales on tribal land?

¹ In this letter, references to the illegal sale or use of fireworks include both the sale and use of illegal fireworks and the illegal sale and use of otherwise legal fireworks.

BRIEF ANSWERS

- I. The Idaho Fireworks Act neither requires nor prohibits that a seller obtain an affidavit from a purchaser in which the purchaser pledges not to sell or use fireworks illegally. While such a practice is not inconsistent with the intent of the Idaho Fireworks Act, including Idaho Code 39-2603(2), it is purely voluntary. Whether a seller requires such an affidavit or a purchaser chooses to sign or go elsewhere to purchase fireworks it is a wholly private matter.
- II. Special fireworks, that is, fireworks that are not “safe and sane” or nonaerial common fireworks, can be sold throughout the year. However, they may only be sold to a person with a permit to use them at a public display or event to take place on a date certain, and they must be sold only within a reasonable time period before such a display or event.
- III. The Idaho legislature cannot regulate fireworks on tribal land. In order for such regulation to take place, the Idaho legislature would have to assume jurisdiction over fireworks regulation on tribal land, with the consent of the affected tribes.

ANALYSIS

I. The Practice Of Requiring A Fireworks Purchaser To Sign An Affidavit Pledging That The Buyer Will Not Use Fireworks Illegally.

The sale and use of fireworks in Idaho are governed by the Idaho Fireworks Act (the “Act”), Chapter 26 of Title 39 of the Idaho Code. A brief review of the Act’s key provisions will assist in placing this issue in context.

The Act deals with two types of legal fireworks. “Nonaerial common fireworks” are designed to remain on or near the ground, not to travel outside a 15-foot circle, or emit burning material outside a 20-foot circle or above a height of 20 feet. Idaho Code § 39-

2602(6). In contrast, "Special fireworks" are designed primarily for display and because of their more dangerous nature, are classified by the United States bureau of explosives and the United Nations. Idaho Code § 39-2602(8).

Idaho Code § 39-2603(2) provides that wholesalers may sell fireworks only:

- (a)(i) To a person with a valid sales tax seller's permit issued pursuant to section 63-3620, Idaho Code; and
- (ii) During period beginning sixty (60) days prior to a date on which the retail sale or use of nonaerial common fireworks is authorized under this chapter; or
- (b) To a person with a valid permit issued pursuant to section 39-2605, Idaho Code, within a reasonable time period before the display or event.

Subsection (2)(a) deals with the sale of nonaerial common fireworks to retailers, while subsection (2)(b) deals with the sale of special fireworks for use in a public display or event. Nonaerial common fireworks may only be sold twice during a year, from midnight June 23 to midnight July 5, and from midnight December 26 to midnight January 1. Idaho Code § 39-2606(1). Wholesalers may only sell to retailers for a period of 60 days prior to these two periods. Idaho Code 39-2603(2)(a)(ii). Fireworks sold for a public display or event may be sold throughout the year, but must be sold "within a reasonable time period" before the display or event at which they will be used. Idaho Code §§ 39-2606(2), 39-2603(2)(a)(b).

In order to sell fireworks legally, wholesalers must obtain a license from the Idaho State Fire Marshall and retailers must obtain a permit from the local permitting authority, and both must provide a bond or certificate of liability for a minimum amount of \$100,000. Idaho Code §§ 39-2603, 39-2604. Persons using special fireworks in a public display or event must obtain a permit and, among other requirements, provide a bond or certificate of liability in an amount of \$1,000,000. Idaho Code § 39-2605. The Act contains additional restrictions and penalties, including possible infractions, misdemeanors, and a civil injunctive remedy. Idaho Code §§ 39-2609, 39-2613.

These provisions indicate that the legislature was very concerned about the dangers posed by fireworks, and that it intended to limit their use generally and prohibit their use in a dangerous manner. While the Act does not require a fireworks seller to obtain an affidavit from a purchaser in which the purchaser promises not to sell or use fireworks illegally, such a practice would not be inconsistent with the intent of the Act, including § 39-2603(2). Ultimately, however, the purchase and sale of fireworks is a voluntary transaction in which a seller may ask a purchaser to sign an affidavit, and a purchaser is free to sign it or take his or her business elsewhere.

ii. Restrictions On The Sale And Use Of Special Fireworks That Are Not Non-Aerial Common Fireworks Or “Safe And Sane” Fireworks”

For purposes of this discussion, I assume that “safe and sane” refers to nonaerial common fireworks as defined in Idaho Code § 39-2602(6), which may be sold at retail in Idaho. As discussed in the preceding section, a wholesaler may sell special fireworks only to a person holding a permit authorized under Idaho Code § 39-2605, which includes, at § 39-2605(3), a requirement that the permit include the date of the display or event. A wholesaler may sell fireworks to a permittee only “within a reasonable time period” before that display or event. Idaho Code § 39-2603(2)(b).

iii. Public Law 280 And Regulation Of Fireworks On Tribal Land

The United States Congress has the power to define the nature of federal, state, and tribal civil and criminal jurisdiction within Indian country. State v. Mathews, 133 Idaho 300, 311, 986 P.2d 323, 334 (1998), *citing* California v. Cabazon Band of Mission Indians, 480 U.S. 202, 207, 107 S.Ct. 1083, 1087, 94 L.Ed.2d 244, 253 (1987). In 1953, Congress enacted Public Law 280, which permitted states to assume jurisdiction over Indian affairs by affirmative legislative action. See Public Law No. 280, § 7, 67 Stat. 588 (1953).²

² Public Law 280 was repealed by the Civil Rights Act of 1968 and replaced with 25 U.S.C. §§ 1321 – 1326, under which the United States consented to assumption of jurisdiction over criminal and civil matters on tribal lands by a state, with tribal consent.

In 1963, the Idaho legislature enacted I.C. §§ 67-5101 and 67-5102. By way of § 67-5101, the state assumed civil and criminal jurisdiction on tribal land over compulsory school attendance, juvenile delinquency and rehabilitation, child protection, mental illness, public assistance, domestic relations, and operation of motor vehicles upon state and county highways and roads. Idaho Code § 67-5102 provided that concurrent jurisdiction in state civil and criminal matters may be extend to Indian country with the consent the tribe occupying the affected area.

Idaho has not assumed exclusive or concurrent jurisdiction of matters involving fireworks on tribal lands. Absent an assumption of such jurisdiction, with the consent of the affected tribe, the Idaho legislature cannot regulate fireworks sales on tribal land.

CONCLUSION

A fireworks purchaser is not required by law to sign an affidavit promising not to use fireworks illegally. A fireworks seller may impose such a requirement, and a purchaser is free to agree or take his or her business elsewhere. Such a practice is not inconsistent with the Act's purpose of promoting the safe, legal and limited use of fireworks in Idaho.

Special fireworks, that is, fireworks that are not nonaerial common fireworks or "safe and sane" fireworks, can only be sold to a person possessing a permit issued pursuant to Idaho Code § 39-2605 for a public display or event. Such fireworks can only be sold within a reasonable time period before the display or event.

The Idaho legislature does not have authority to regulate fireworks on tribal land at this time. Such authority would have to involve an assumption of jurisdiction by Idaho and the consent of the affected tribes.

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I hope this information is helpful. Please feel free to contact me if you have any questions. Thank you for these interesting questions.

Sincerely,

A handwritten signature in blue ink, appearing to be "Paul R. Panther", with a stylized flourish extending to the right.

PAUL R. PANTHER
Chief, Criminal Law Division
2017-Idaho Attorney General's Office

PRP/fn

Enc.