

1983 WL 182085 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

July 1, 1983

***1 XXNO ADDRESS**

SUBJECT: Public Utilities; Statutes; Statutory Construction

The twelve-month period provided in [Sections 58-5-240\(F\)](#), [58-9-540\(D\)](#) and [58-27-870\(E\)](#) of the [South Carolina Code of Laws \(1976\)](#), as amended by Act No. 138 of 1983, commences to run from the date a schedule was last filed with the Public Service Commission.

QUESTIONS:

1. Do the provisions of § 23-35-50 only apply to licenses issued to wholesale distributors as defined by § 23-35-70(1)? If so, would a jobber licensed under § 23-35-70(2) who stores Class 'B' fireworks also be required to secure a wholesale distributor license?
2. Is a wholesale distributor (one corporation) licensed under § 23-35-50 which has two places of business in different cities required to have one or two licenses?
3. Do the provisions of § 23-35-50 apply to a company located out of state which stores Class 'B' fireworks out of state and is licensed as a wholesale distributor under § 23-35-70?

APPLICABLE LAW:

[§§ 23-35-10, 23-35-40, 23-35-50, 23-35-60](#) and [23-35-70](#), [coDe of laWs of soUth Carolina](#), 1976.

DISCUSSION:

QUESTION 1:

[Section 23-35-10](#) provides in part that:

'It shall be unlawful for persons to possess, sell, offer for sale, store, transport or use within this State any fireworks other than the permissible fireworks herein enumerated. The permissible fireworks consist of ICC Class C, 'Common Fireworks' only, * * *.'

[Section 23-35-40](#) excludes Class 'B' fireworks from the limitations of [§ 23-35-10](#). The relevant portion of [§ 23-35-40](#) states: 'Nothing in this chapter shall apply:

- (1) To the shipping, sale, possession and use of fireworks for public displays, and such items of fireworks which are to be used for public display only and which are otherwise prohibited for sale and use within the State shall include display shells designed to be fired from mortars and display set pieces of fireworks classified by the regulations of the Interstate Commerce Commission as 'Class B Special Fireworks,' * * *.'

Although [§ 23-35-40](#) allows Class ‘B’ fireworks to be shipped, sold, possessed and used in South Carolina, it does not permit the storage of such. The storage of Class ‘B’ fireworks is controlled by [§ 23-35-50](#) wherein it is stated:

‘Nothing in this chapter shall prohibit a licensed wholesale distributor from storing for sale where legal all Class ‘B’ fireworks used for display or agricultural purposes after first obtaining a license therefore from the South Carolina Tax Commission. The cost of such license shall be seven hundred fifty dollars.

Such agricultural and display fireworks shall be stored in an appropriate building and a record of purchases and sales shall be kept for inspection by the Tax Commission.’

Pursuant to the above language, licensed wholesalers alone are granted authority to store Class ‘B’ fireworks. Where the terms of a statute are clear and unambiguous, they must be applied according to their literal meaning. [Green v. Zimmerman](#), 269 S. C. 535, 238 S. E. 2d 323 (1977).

*2 There is no provision similar to [§ 23-35-50](#) for jobbers. Unless jobbers qualify and are licensed as wholesalers, they cannot store Class ‘B’ fireworks.

Furthermore, to conclude that jobbers may store Class ‘B’ fireworks outside of the parameters of [§ 23-35-50](#) would be nonsensical. Not only does [§ 23-35-50](#) provide for a license fee, it also mandates appropriate storage facilities and record keeping. It would be illogical to hold licensed wholesalers to these standards but exclude jobbers. In construing a statute, it must be presumed that the General Assembly did not intend to do a futile thing. [Gaffney v. Mallory](#), 186 S. C. 337, 195 S. E. 840 (1938); [State ex rel. McLeod v. Montgomery](#), 244 S. C. 308, 136 S. E. 2d 778 (1964).

Additional support for the above may be found in [§ 23-35-60](#). That statute sets forth the requirements one must follow in conducting a display of Class ‘B’ fireworks. The relevant portion of [§ 23-35-60](#) states:

‘All fireworks display materials shall be purchased through a manufacturer or wholesaler licensed in South Carolina who will supply insurance protection for any accidents that might take place during the display, except as otherwise provided for in this chapter.’

The above language infers that only manufacturers and wholesalers licensed in South Carolina are allowed to deal in Class ‘B’ fireworks. This would preclude jobbers from the same.

QUESTION 2:

[Section 23-35-50](#) states that a licensed wholesale distributor may store Class ‘B’ fireworks upon acquiring the appropriate license from the South Carolina Tax Commission. The question presented is whether a licensed wholesaler must purchase a license for each place wherein Class ‘B’ fireworks are stored.

It would appear that only one license is necessary. [Section 23-35-50](#), itself, refers to the license in a singular sense while giving no indication that such is to be a location license. In point of fact, nowhere in [§ 23-35-50](#) is it required that the license be displayed on the premises.

Although the above is not free from doubt, any such doubt must be resolved for the taxpayer. The general rule with regard to the same is that:

‘* * * any doubt as to the meaning and scope of language imposing a license tax should be resolved in favor of the taxpayer. * * *.’ 51 Am.Jur. 2d, [Licenses and Permits](#), § 2.

QUESTION 3:

[Section 23-35-10](#) limits the type of fireworks that can be stored in South Carolina to Class ‘C’ fireworks. [Section 23-35-50](#) is in direct response to [§ 23-35-10](#) as it allows licensed wholesalers to store Class ‘B’ fireworks upon obtaining the proper license.

Nowhere in [§ 23-35-10](#) is there an attempt made to regulate the fireworks stored in any state other than South Carolina. Absent such a limitation, it is not necessary to rely upon [§ 23-35-50](#) for authority to store Class ‘B’ fireworks. In light of such, [§ 23-35-50](#) does not apply to wholesalers storing Class ‘B’ fireworks outside of South Carolina.

***3** To construe the application of [§ 23-35-50](#) in any other manner would raise serious due process questions that could place the constitutionality of that statute in doubt. In construing statutes, it is a cardinal rule that the constitutional construction of a statute is mandatory. [Peoples National Bank v. South Carolina Tax Commission](#), 250 S. C. 187, 156 S. E. 2d 769 (1976); [Henderson v. Evans](#), 268 S. C. 127, 232 S. E. 2d 331 (1977).

CONCLUSIONS:

1. The provisions of [§ 23-35-50](#) are applicable only to licensed wholesale distributors. Furthermore, jobbers cannot store Class ‘B’ fireworks in South Carolina without first becoming licensed wholesalers.
2. A licensed wholesale distributor maintaining two or more places wherein Class ‘B’ fireworks are stored need only purchase one [§ 23-35-50](#) type license.
3. The provisions of [§ 23-35-50](#) do not apply to an out-of-state company that stores Class ‘B’ fireworks out of state but is licensed as a wholesale distributor in accordance with [§ 23-35-70](#).

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