

1978 S.C. Op. Atty. Gen. 22 (S.C.A.G.), 1978 S.C. Op. Atty. Gen. No. 78-12, 1978 WL 22498

Office of the Attorney General

State of South Carolina

Opinion No. 78-12

January 13, 1978

*1 Mr. James R. Cook

Director

Codes Administration

Beaufort County Department of Inspections

P. O. Box 1031

Beaufort, South Carolina 29902

Dear Mr. Cook:

You have requested an opinion from this Office as to whether or not Beaufort County is authorized to enact an ordinance banning the sale of fireworks pursuant to the provisions of Regulation 19-62(12) of the State Fire Marshal. In my opinion, it is not so authorized.

The State Fire Marshal is empowered to issue rules and regulations 'regarding the storage, transportation, sale and use of permissible fireworks within this State.' § 23-35-140, [CODE OF LAWS OF SOUTH CAROLINA](#), 1976. By this language, he can issue rules and regulations relating to the sale of fireworks but he cannot ban the sale of any fireworks that are permitted to be sold by the provisions of [Section 23-35-10 of the 1976 Code](#) of Laws nor is he authorized to permit the sale of any fireworks not specifically mentioned in [Section 23-35-10](#). Accordingly, the language in Regulation 19-62(12) that '[l]ocal ordinances can be more stringent and will prevail' does not authorize a local ordinance banning the sale of any fireworks permitted to be sold by State law, *i.e.*, by the provisions of [Section 23-35-10 of the 1976 Code](#) of Laws. In other words, because the State Fire Marshal himself cannot prohibit the sale of permissible fireworks, he cannot delegate to another public official or body the authority to do so. In my opinion, an example of an allowable local ordinance more stringent than a regulation of the State Fire Marshal would be one specifying that the separation of a fireworks storage area from other areas of the same building shall not be less than two-hour fire rated construction with a separate combination exit/entrance instead of the one-hour fire rated construction required by Regulation 19-62(4) of the State Fire Marshal.

With kind regards,

Karen LeCraft Henderson

Assistant Attorney General

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