Fireworks -- Municipalities -- Ordinances

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Subject:
Fireworks -- Municipalities -- Ordinances

Mr. James A. (“Skip”) Fowler
City Attorney
Fowler, O’Quinn, Feeny & Sneed P.A.
28 West Central Boulevard, 4th Floor
Orlando, Florida 32801

RE: FIREWORKS – MUNICIPALITIES– ORDINANCES – municipality prohibited by s. 10(5), Ch. 2007-67, Laws of Fla., from issuing new permits for permanent or temporary facilities to sell fireworks pursuant to s. 791.07, Fla. Stat.

Dear Mr. Fowler:

On behalf of the City of Altamonte Springs Fire Marshal/Building Official, you have asked for an opinion on the following question:

Does section 791.07, Florida Statutes, including the note from Chapter 2007-67, Laws of Florida, prohibit the City of Altamonte Springs from issuing a permit for the sale of fireworks in the next calendar year?

In sum:

Section 791.07, Florida Statutes, prevents the City of Altamonte Springs from permitting a new permanent or temporary retail sales facility to engage in sales of fireworks authorized by section 791.07, Florida Statutes, because the city had not issued any such permits before March 8, 2007.

Section 791.02, Florida Statutes, generally prohibits individuals from selling fireworks.[1] Section 791.07, Florida Statutes, however, authorizes individuals to sell fireworks for “frightening birds from agricultural works and fish hatcheries.” According to your request, the City of Altamonte Springs has been asked to issue a permit for the sale of fireworks pursuant to this provision. The city has never previously issued a permit for the sale of fireworks for any purpose.

Section 791.07, Florida Statutes, provides:

“Agricultural and fish hatchery use.—Nothing in this chapter shall prohibit the importation, purchase, sale, or use of fireworks used or to be used solely and exclusively in frightening birds from agricultural works and fish hatcheries; and such use shall be governed entirely by the rules prescribed by the Department of Agriculture and Consumer Services.”[2]

Appended to this provision is a note quoting section 10(5), Chapter 2007-67, Laws of Florida, which was part of an enactment creating the Consumer Fireworks Task Force within the Department of Agriculture and Consumer Services. The Legislature created the task force in 2007 to study and take public input and testimony on multiple factors related to the sale, regulation, and use of consumer fireworks. The Task Force was directed to present its report to the Legislature by January 15, 2008, whereupon the task force would be dissolved. The enactment closed with paragraph (5), which is now appended to section 791.07 and provides:

"Pending completion of the Legislature's review of the task force's report and to ensure that fire prevention and safety standards are uniform, *a new permanent retail sales facility engaged in sales otherwise permitted under s. 791.07, Florida Statutes, may not be opened in this state after March 8, 2007, unless the permanent retail sales facility has received site-plan approval and construction has begun on or before March 8, 2007; the number of permits for temporary retail sales facilities, such as tents, engaged in sales otherwise permitted by s. 791.07, Florida Statutes, which are issued after March 8, 2007, by a county, municipality, or other unit of local government may not exceed the number of permits that such governmental entity issued for such facilities during the previous calendar year*; and a municipality, county, or other unit of local government may not adopt an ordinance, rule, regulation, or other law after March 8, 2007, which directly prohibits or directly interferes with the safety standards established by state law or the right to purchase, sell, use, or possess consumer fireworks in this state. *However, if the Legislature enacts legislation to provide for the comprehensive regulation of fire prevention and safety standards for the use of consumer fireworks to replace this subsection on or before July 1, 2008, this subsection does not prohibit opening any such facility, permitting any such temporary facility, or adopting any such ordinance or other law after such legislation is enacted*." (e.s.)

The task force presented its report to the Legislature on January 15, 2008.[3] The Legislature, however, did not enact legislation providing comprehensive regulation regarding the use of consumer fireworks by the deadline of July 1, 2008, nor has it repealed the moratorium.[4]

By the plain language of section 10(5), Chapter 2007-67, Laws of Florida, which is quoted in full in the note accompanying section 791.07, Florida Statutes,[5] local governments are precluded from allowing a new facility to be opened for sale of fireworks, and each local government may now only issue as many permits allowing temporary facilities to engage in such sales as it had issued in calendar year 2006. Having never issued a permit for fireworks sale in the City of Altamonte Springs, the city is now barred from issuing any such permit.

In Attorney General Opinion 2009-18, this office concluded that the City of Coral Springs was precluded from enacting an ordinance imposing any limits on state fireworks laws, because the city had no ordinances regulating fireworks sale or use prior to the moratorium of section 10(5), Chapter 2007-67, Laws of Florida. The opinion concluded by stating that section 10(5) "prohibition remains in effect until the Legislature takes action to remove the prohibition."

Accordingly, it is my opinion, in light of the language in section 10(5), Chapter 2007-67, Laws of Florida, that the City of Altamonte Springs, which has issued no prior permits for the sale of fireworks, is precluded from issuing any permits for the sale of fireworks in the next calendar year.

Sincerely,

Pam Bondi
Attorney General

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[1] “Fireworks” are defined in section 791.01(4), Fla. Stat., as, in part, “any combustible or explosive composition or substance or combination of substances[.]” The term does not include “sparklers,” defined in paragraph (8) as, in part, “a device which emits showers of sparks upon burning[.]”

[2] The Department of Agriculture and Consumer Services has enacted two rules implementing s. 791.07, Fla. Stat. Rules 5A-3.001 and 5A-3.002, Fla. Admin. Code, set forth the procedure for obtaining permission from the county sheriff for use of fireworks under s. 791.07, Fla. Stat.

[3] *See* Op. Att’y Gen. Fla. 09-18 (2009), fn. 4, which sets forth some of the recommendations the task force made in its report.

[4] A bill was proposed in 2008 but died in committee, and is described in fn. 6 of Op. Att’y Gen. Fla. 09-18 (2009). *And see* Inf. Op. to City Attorney Maryanne Downs, City of Orlando, dated June 18, 2000.

[5] Section 11.242(4)(d), Fla. Stat., provides that “[t]he published edition of the Florida Statutes shall contain … matters, notes, data, and other material as may be deemed necessary or admissible by the Office of Legislative Services for reference, convenience, or interpretation.”