

Fireworks Regulation

Number: INFORMAL

Date: June 18, 2008

Ms. Maryanne Downs
Attorney for the City of Orlando
Orlando City Hall
400 South Orange Avenue
Orlando, Florida 32801

Dear Ms. Downs,

You have asked this office for assistance in determining whether the moratorium established in section 10, Chapter 2007-67, Laws of Florida, currently affects the ability of the City to issue permits for temporary fireworks retail facilities.

Section 10, Chapter 2007-67, Laws of Florida, is entitled "Consumer Fireworks Task Force" and creates within the Florida Department of Agriculture a task force to study:

"the proper use of consumer fireworks, the regulation of sales and temporary sale facilities for consumer fireworks, the regulation of the hours and location of the use of consumer fireworks, the property zoning classifications for sale facilities for consumer fireworks, the property zoning classifications for sale facilities for consumer fireworks, the funding options for fire official training and education, and funding options for cleanup of expended consumer fireworks products."

The task force was directed to review and evaluate the above-cited issues, take public input and testimony relevant thereto, and submit a report to the Legislature by January 15, 2008. The report was issued on January 15, 2008, recommending a clear definition of consumer fireworks (including a list of all permitted and prohibited types of fireworks), recommending exemptions for transportation, industrial, and entertainment ceremonial uses, as well as an exemption for agricultural use, and establishing statewide minimum threshold requirements for use, sale and possession of fireworks.[1]

Section 10(5), Chapter 2007-67, Laws of Florida, 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.)

During the 2008 Legislative Session, Senate Bill 2270 was filed. Entitled, "An Act Relating to Fireworks," the proposed bill amended parts of Chapter 791, Florida Statutes, designating those responsible for enforcement of the fireworks statutes, providing definitions, requiring registration, providing penalties and administrative procedures, and regulating the sale and use of fireworks. The legislation specifically provided for the "nonpreemption" of the regulation of fireworks and sparklers by the state, allowing any authority having jurisdiction to enact an ordinance or rule more stringent or providing a higher degree of safety than provided in Chapter 791. Senate Bill 2270, however, died in committee.[2] No other proposed or passed legislation has been brought to my attention.

By its plain language, section 10(5), Chapter 2007-67, Laws of Florida, imposes a moratorium on the opening of any new permanent retail sales facilities for fireworks after March 8, 2007 and restricts the number of permits for temporary retail sales facilities, such as tents, engaged in fireworks sales otherwise permitted by s. 791.07, Florida Statutes, to the number of permits issued by a governmental entity during the previous calendar year. Further, 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. The specified triggering event for ending the moratorium is the enactment of comprehensive fireworks legislation by the Legislature before July 1, 2008. No other conditions are prescribed, nor may this office provide any. To do so would be an act of legislation which is exclusively the prerogative of the Legislature.[3] As noted above, the Legislature entertained comprehensive fireworks legislation during the 2008 legislative session, but the proposed bill did not pass.

While you have proposed that the only express condition to end the moratorium is the complete review of the task force report by the Legislature, the language of the legislation imposing the moratorium clearly lifts the restrictions on local governments if the Legislature were to enact comprehensive fire works regulations on or before July 1, 2008. While that date has not been reached, it does not appear that the Legislature will be enacting such legislation prior to July 1, 2008.

As noted above, this office may not supply an ending date to the moratorium in the absence of a legislative directive.[4] You may wish to seek a declaratory statement from a court of competent jurisdiction in order to resolve this matter.

Sincerely,

Lagran Saunders
Assistant Attorney General

[1] See <http://consensus.fsu.edu/Fireworks-Task-Force/index.html>

[2] See <http://www.flsenate.gov>, selecting Session 2008, SB 2270.

[3] See *Chaffee v. Miami Transfer Co. Inc.*, 288 So. 2d 209 (Fla. 1974).

[4] See *Evans et ux. v. Hillsborough County* 186 So. 193, 196 (Fla. 1938)(statue is presumed to be valid and given effect until judicially declared otherwise); *White v. Crandon* 156 So. 303, 305 (Fla. 1934)(authority of public officers to proceed in a particular manner or only upon specific conditions implies a duty not to proceed in any manner than that which is authorized by law); *and Belk-James, Inc. v. Nuzum* 358 So. 2d 174, 177 (Fla. 1978)(acts of the Legislature are presumed to be constitutional, with all reasonable doubts resolved in favor of their validity).