

Seizure of fireworks

Number: INFORMAL

Date: January 05, 2004

Chief Donald L. Carey
Melbourne Police Department
650 North Apollo Boulevard
Melbourne, Florida 32935

Dear Chief Carey:

This is in response to your inquiry as to whether a police officer may seize fireworks found in the possession of a private individual who has been arrested for use of illegal fireworks.

Section 791.02(1), Florida Statutes, makes it unlawful for "*any person*, firm, copartnership, or corporation *to offer for sale, expose for sale, sell at retail, or use or explode any fireworks*" except as provided therein.[1] (e.s.) The chapter imposes criminal penalties for violations of its terms.[2] In addition, the sheriff, or his appointee, or any other police officer is authorized to "seize, take, remove or cause to be removed at the expense of the owner, all stocks of fireworks or combustibles offered or exposed for sale, stored, or held" in violation of Chapter 741, Florida Statutes.[3]

The plain language of the statute allows a police officer to seize "stocks" of fireworks. This suggests that the statute applies only to persons who are selling fireworks. As you note in your correspondence, there is no provision in the Florida Statutes that makes it unlawful for an individual merely to possess fireworks. This has been acknowledged by the courts of the state. In *Kane v. State*,[4] the court, in making a distinction between explosives and fireworks, noted that "it is not illegal to possess fireworks, only to sell or explode them." [5]

This office has been informed by the State Fire Marshal's office that it is preparing legislation for the 2004 session to address the possession of illegal fireworks by individuals. You may wish to contact your legislative delegation to provide input for the next legislative session.

In this instance, you indicate that the individual is subject to arrest for illegally using fireworks and incidentally possesses fireworks that have not been exploded. It is generally considered permissible for a police officer to seize a weapon or other evidence of a criminal offense found during a search incident to an arrest, if an officer has reasonable belief that the object is a weapon.[6] If the object is not a weapon, seizure is permissible if the officer has probable cause to believe that the object is contraband or evidence of a crime.[7] A determination of whether an object, such as unexploded fireworks, constitutes contraband or evidence of a crime depends upon the facts of the individual situation and involves resolution of a mixed question of law and fact that may not be resolved by this office.

I trust that these informal comments may be of assistance in resolving the issues you have raised. Please do not hesitate to contact this office at any time, should you have additional

concerns.

Sincerely,

Lagran Saunders
Assistant Attorney General

ALS/tgk

[1] See s. 791.01(4), Fla. Stat., defining "Fireworks."

[2] Section 791.06, Fla. Stat., which provides that any firm, copartnership or corporations violating Ch. 791, Fla. Stat., is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.083 or, in the case of individuals, the members of a partnership and the responsible officers and agents of an association or corporation, punishable as provided in s. 775.082 or s. 775.083, Fla. Stat.

[3] Section 791.05, Fla. Stat.

[4] 358 So. 2d 53 (Fla. 2d DCA 1978).

[5] 358 So. 2d at 55.

[6] *Walker v. State*, 514 So. 2d 1149 (Fla. 2d DCA 1987).

[7] *Doctor v. State*, 596 So. 2d 442 (Fla. 1992).