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August 14, 2006

Mr. Bradley J. Liggett
Fire Chief
City of Beloit
1111 Church Street
Beloit, WI 53511

Re: Fireworks Regulation and Enforcement

Dear Chief Liggett:

Roy Korte, Director of our Criminal Litigation Unit, has asked me to reply to your letter concerning fireworks regulation and enforcement, received in our office on July 24, 2006.

The incident you describe, in which Roman candles were fired at your firefighters and apparatus, and persons were having Roman candle wars across a public street, is obviously very serious. There are numerous potential criminal charges that could apply in addition to the less serious penalties for possession and use of illegal fireworks. Enforcement in such a situation is within the authority of the local police or sheriff's department.

The variation in enforcement of fireworks restrictions and the misleading information provided by vendors have created some misconceptions about fireworks laws in Wisconsin. A review of the law, which in reality is quite plain, may be helpful.

Fireworks are "anything manufactured, processed or packaged for exploding, emitting sparks or combustion which does not have another common use." Wis. Stat. § 167.10. Some items are excluded from the definition and are not governed by state fireworks law. They are listed in section 167.10(a) through (n). They include tobacco products, fuel, firearm cartridges and shells, traffic flares, and matches and lighters. Other items excluded from the term "fireworks," meaning they are legal unless prohibited by local ordinance, are sparklers, toy snakes, cylindrical or cone fountains, smoke "bombs" and certain items having less than one-quarter grain of explosive. *Everything else that explodes, burns or emits sparks and does not have another common use is a firework and its sale, possession and use is prohibited, with a few very narrow exceptions.* A person may possess or use fireworks in Wisconsin only with a legal

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permit or for certain specified purposes. Wis. Stat. § 167.10(3). A seller may sell fireworks only to a holder of a valid permit or for certain allowed purposes. Wis. Stat. § 167.10(2).

A permit is valid only if it is issued by the mayor, village president or town chair of the locality where the fireworks will be possessed or used. Wis. Stat. § 167.10(3)(a). The permit may only be issued to a group, fair association, public authority, fair association, park board or amusement park. Wis. Stat. § 167.10(3)(c). The only individual permit allowed is for hazing wildlife for crop protection. Wis. Stat. § 167.10(3)(c)7. *Permits issued to individuals, other than for crop protection, have no legal validity.* See also *City of Wisconsin Dells v. Dells Fireworks, Inc.*, 197 Wis. 2d 1, 539 N.W.2d 916 (Ct. App. 1995).

The permit must be issued by the elected official or a designated employee of the unit of government. Wis. Stat. § 167.10(3)(a). The authority to issue a permit cannot be delegated to vendors. *Permits sold by vendors to individual purchasers at the point of purchase have no legal validity at all;* vendors have no authority to issue them on behalf of the elected officials.

In addition to sales to groups with proper permits, fireworks can be sold to persons for blasting, for disposal of hazardous waste, for use in a manufacturing process, for use in classes in an educational institution, to a federally licensed manufacturer or distributor, and to be transported to a city, town or village from which the person has a legal permit. Wis. Stat. §§ 167.10(2)(c) and 167.10(3)(b).

There is no exception for sales to non-residents. The sale of fireworks to nonresidents who do not have a valid Wisconsin permit is illegal. In *State v. Victory Fireworks, Inc.*, 230 Wis. 2d 721, 725, 602 N.W.2d 128 (Ct. App. 1999) the Court of Appeals held that the statutory authorization of sales to persons who are “outside of this state,” Wis. Stat. § 167.10(4), meant just that. “The purchaser must be outside of the boundaries of Wisconsin. Had the legislature desired to permit the sale of restricted fireworks to nonresidents within this state it could have used the term “nonresident,” a term that is utilized in other statutes with great frequency” instead “the legislature intentionally chose to only permit sales to purchasers who were physically outside of this state's boundaries.” *Id.* at 725. Thus, there is no exception for nonresidents who purchase fireworks in Wisconsin and intend to take them to their home state.

You submitted for our review a “Shippers Bill of Lading.” Apparently, the fireworks vendor seeks to legalize a fireworks sale by having the purchaser sign this document. It states that the purchase is being made “under one or more of the following conditions.” There follows a preprinted list of conditions, though it appears the purchaser does not have to specify which condition he claims applies. That the buyer does not specify which condition he says applies is only one of many defects that make the document legally meaningless as an instrument to legitimize a fireworks sale.

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For example, there is no exception in Wisconsin law for sale of fireworks for “ceremonial purposes, athletic or sporting events, military operations, emergency traffic control or transportation signal purposes.” The military presumably does not acquire ordnance for its operations at roadside stands and so would not need such an exception. Traffic and safety flares are specifically exempted from the fireworks definition, but other nonexempt fireworks cannot be possessed, used or sold for that purpose. Neither is there any exception for sales for use “in the practice of religious beliefs and/or during the course of religious ceremonies.”

This document cannot legalize the sale of fireworks to someone who is not authorized by law to possess or use them. The vendor cannot simply rely on the seller’s statement that he is an authorized buyer, anymore than a bartender gains immunity from prosecution for sales to minors by relying on a drinker’s statement that he is of legal drinking age. A fireworks vendor who wishes to comply with the law must ask to see the purchaser’s permit or other license which allows the purchase, and he or she would be prudent to make and retain a copy of that permit.

The document also seems to contemplate allowing sales to someone who does not have a permit but who agrees “to obtain any necessary permits.” There is no exception for sales to persons who promise to obtain a permit.

You note that Beloit is drafting a new local ordinance. Your letter describes the proposed ordinance as “making it illegal to sell to Wisconsin residents in the City of Beloit.” This may imply that the city does not intend to address sales to nonresidents, or perhaps even intends to authorize sales to nonresidents. Municipalities can enact fireworks ordinances more restrictive than the state statute, but they cannot authorize anything that is prohibited by state law. Because state law prohibits sales to nonresidents in Wisconsin, except under the limited conditions described above, a local ordinance cannot authorize the sale of fireworks to nonresidents.

If you have any questions or if I can be of any more help, please feel free to contact me.

Sincerely,

Juan B. Colas
Assistant Attorney General

JBC:mld