

Opinion No. 57-122

June 7, 1957

BY: OPINION OF FRED M. STANDLEY, Attorney General Hilario Rubio, Assistant Attorney General

TO: Patrick F. Hanagan, District Attorney, Fifth Judicial District, Roswell, New Mexico

QUESTIONS

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Is attached item identified as "Lady Cracker" a firecracker as is prohibited by Section 40-18-8 through 40-18-10, N.M.S.A., 1953 Compilation?

CONCLUSION

Yes.

OPINION

ANALYSIS

Section 40-18-8, N.M.S.A., 1953 Compilation, reads as follows:

"It shall be unlawful for any person, copartnership, corporation, or other organization to sell, offer to sell, display for sale, own, possess, or discharge within this state, any firecracker, roman candle, skyrocket, torpedo, bomb, blank cartridge or any other type or form of explosive commonly known as 'fireworks.'"

You enclosed a package of "Lady Crackers" in your letter of May 27, 1957 and most of the staff in the office have had a practical demonstration of same. There is no question that these "Lady Crackers" are firecrackers of an explosive nature. They make a loud resounding noise and after cutting one in half we found same to contain gun powder of an explosive nature, capable of causing burns, especially when held in hand at time of explosion by any person.

The above quoted statute definitely prohibits and makes it unlawful for any person, copartnership, corporation, or other organization to sell, offer to sell, display for sale, any firecracker, roman candle, skyrocket, torpedo, bomb, blank cartridge or any other type or form of explosives commonly known as fireworks.

A good definition of the words "fireworks" and "explosive" is found in the case of **Henderson et al. vs. Massachusetts Bonding and Insurance Company**, 84 S.W. 2d at page 922:

"Fireworks' are contrivances of inflammable and explosive materials combined of various proportions for purpose of producing in combustion beautiful or amusing scenic effects, or to be used as night signal on land or sea or for various purposes in war. 'Explosive' is compound or mixture susceptible of explosive chemical reaction, as gunpowder or nitro-glycerine, and has been construed not to cover specific things which do explode or contain explosive materials."

In view of the language of the above quoted statute, authority cited and from our own practical demonstration of the firecracker, we therefore conclude that the use of "Lady Crackers" are prohibited by Section 40-18-8, N.M.S.A., 1953 Compilation, and any person, copartnership, corporation, or other organization selling or offering for sale, display for sale, own, possess or discharge "Lady Crackers" would be in violation of the above quoted statute and subject to penalty as provided in Section 40-18-10, N.M.S.A., 1953 Compilation, which reads as follows:

"any person violating the provisions of section 1 (40-18-8) hereof shall be guilty of a misdemeanor and shall be fined not less than \$ 100.00 nor more than \$ 200.00, or be imprisoned not more than ten (10) days, and each separate sale or offer to sell and each day of any display for sale shall be considered a separate offense."