

Opinion No. 67-52

March 30, 1967

BY: OPINION OF BOSTON E. WITT, Attorney General

TO: Mr. John May Industrial Economist Department of Development 302 Galisteo Street
Santa Fe, New Mexico

QUESTION

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Is possession of fireworks illegal in New Mexico?

CONCLUSION

See analysis.

OPINION

{*72} ANALYSIS

Section 40A-17-4, N.M.S.A., a portion of the Criminal Code, provides that whoever commits possession of fireworks is guilty of a petty misdemeanor.

Possession of fireworks is defined as follows in the same section:

"Possession of fireworks consists of either selling, offering to sell, owning, **possessing** or discharging any firecracker, roman candle, skyrocket, torpedo, bomb, blank cartridge or any other type or form of explosive commonly known as "fireworks," **unless such item has been declared by the state fire marshal as not dangerous to persons or property.**" (Emphasis added).

We understand that this inquiry is prompted because an important manufacturer of fireworks is considering establishing a plant in New Mexico. All of the fireworks manufactured by this plant would be sold out-of-State.

{*73} It is a basic rule that one State cannot enact legislation which has an extra-territorial effect. We conclude therefore that the use of the phrase "not dangerous to persons or property" used by our Legislature in Section 40A-17-4, supra, has reference to persons or property in New Mexico.

This means to us that the office of the State Fire Marshal must find that the particular fireworks, or the **possession** thereof, are not dangerous to persons in **New Mexico** or to property in **New Mexico** in order for the proposed plant to operate in a legal manner.

Where a statute is clear and unambiguous there is no room for interpretation or construction thereof. **Hendricks v. Hendricks**, 55 N.M. 51, 226 P.2d P.2d 464; **Brown v. Bowling**, 56 N.M. 96, 240 P.2d 846; **State v. Thompson**, 57 N.M. 459, 260 P.2d 370. Thus, in our opinion, ultimate designation of fireworks as dangerous or not dangerous to persons or property in New Mexico rests with the State Fire Marshal. Our suggestion would be that the State Fire Marshal meet with the prospective fireworks' manufacturer in order that he will be in a better position to make this "dangerous or non -- dangerous" determination.

By: Oliver E. Payne

Deputy Attorney General