

MAINE STATE LEGISLATURE

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Fireworks Municipal Limits
8 BR 1211

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DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04333

October 3, 1977

Arthur R. Emerson
Director-Fire Prevention
Brunswick Fire Department
Brunswick, Maine 04011

Dear Mr. Emerson:

This is in response to your letter of September 16, inquiring as to whether the Town of Brunswick may prohibit the sale of sparklers in view of Chapter 237 of the Laws of Maine of 1977, which removes a state-wide prohibition on such sales. Ordinarily, the Attorney General's Office would not respond to questions of this kind since it is not authorized by statute to provide legal advice to the municipalities of the State. The Office is willing to respond to such questions, however, in the spirit of providing information to the public, when the answer to the question appears relatively clear.

It would seem that such is the case in the problem which you present. Municipalities in Maine are authorized under the "home rule" statute, 30 M.R.S. §1917, to adopt ordinances with regard to any function which the Legislature has the power to confer upon them, "which is not denied either expressly or by clear implication." In the case at hand, it was the clear intention of the Legislature, in enacting Chapter 237, to permit, by excluding from a general prohibition on fireworks, the sale of sparklers which do not contain magnesium chlorates or perchlorates. Thus, it would appear that the Town of Brunswick could not prohibit the sale of such sparklers, since to do that would be to negate the clear implication of the Legislature's action that such sparklers may be sold. Interestingly, this exact issue was recently litigated in the State of Florida, with the same result. Dade County v. Acme Specialty Company, 292 So. 2d 378 (Fla. 3rd Dist. Ct. of App., 1974).

Arthur R. Emerson

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October 3, 1977

I hope this answers your question. Please let me know if I can be of any further assistance.

Sincerely,

A handwritten signature in cursive script that reads "Cabanne Howard". The signature is written in dark ink and is positioned above the typed name.

CABANNE HOWARD
Assistant Attorney General

CH/bls