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1. FIREWORKS—SPARKLERS, FOUNTAINS, SKY-ROCKETS, SNAKES IN THE GRASS AND SIMILAR DEVICES—VISIBLE EFFECT—SECTION 5904-1 G. C.
2. RETAIL SALE OF FIREWORKS THROUGH MAIL—NOT AUTHORIZED BY SECTION 5904-7, GENERAL CODE, EVEN THOUGH SALE DESIGNATED “WHOLESALE.”

SYLLABUS:

1. Sparklers, fountains, sky-rockets, snakes in the grass and other similar devices, which give a visible effect, are “fireworks” within the meaning of Section 5904-1, General Code.
2. Section 5904-7, General Code, does not authorize the retail sale of fireworks through the mail even though it is designated as a “wholesale” sale.

Columbus, Ohio, January 10, 1950

Hon. Harry J. Callan, State Fire Marshal
Columbus, Ohio

Dear Sir :

Your request for my opinion reads as follows :

"Many times in recent months we have been called upon to define just what legal Fireworks are. Many people claim that sparklers, sky-rockets, fountains, snakes in the grass and other like items, which give only a visible effect, are Legal Fireworks.

"Section 5904-1, Ohio General Code, paragraph a, defines fireworks as follows :

'The term "fireworks" shall mean and include any combustible or explosive compositions, or any substance, or combination of substances, or article prepared for the purpose of producing a visible or an audible effect by combustion, explosion, deflagration or detonation.'

"The same section, paragraph c., defines fireworks factory building as follows :

'The term "fireworks factory building" shall mean any building or other structure in which the manufacture of fireworks, other than sparklers, or in which any processing involving fireworks other than sparklers, is carried on.'

"Section 5904-6 specifically prohibits sale at retail or the use of any fireworks in Ohio.

"Will you please give me your opinion as to just what fireworks are legal and can be sold in Ohio, and especially, are sparklers, fountains, sky-rockets, snakes in the grass and other devices which give a visible effect legal in Ohio? Further, will you please give us your opinion on the meaning—"sold at retail" and "for sale at retail."

"Many fireworks firms in Ohio are selling fireworks to children by advertising in comic books and claiming exemption under the law as wholesalers. It is definitely a retail sale even though it takes place by mail."

Section 5904-6, General Code, states as follows :

"Except as hereinafter provided it shall be unlawful for any person to possess for sale at retail or to sell at retail or for any person to discharge, ignite or explode any fireworks, as defined by this act, within the state of Ohio. The term 'fireworks' shall

not include toy pistols, toy canes, toy guns, or other devices in which paper caps containing twenty-five hundredths grains or less of explosive compound are used, providing they are so constructed that the hand cannot come in contact with the cap when in place for the explosion, and toy pistol paper caps which contain less than twenty-hundredths grains of explosive mixture, the sale and use of which shall be permitted at all times."

Section 5904-7, General Code, provides as follows :

"Upon written permission secured from the fire chief of a city or village, or sheriff, fireworks may be sold and used for public or private exhibitions of fireworks in connection with fairs, carnivals, or other celebrations. In such cases parties in charge of such exhibitions shall be held strictly responsible for any damage to persons or properties resulting from the use of fireworks so used. Fireworks being held in storage for such exhibitions must be kept in a closed wooden box, or tarpaulin, until they are to be used, provided further that nothing in this chapter shall be construed to prohibit any wholesaler, dealer, or jobber to sell at wholesale such fireworks as are permitted to be used by this act or the sale of fireworks to be shipped directly out of the state."

Thus, it can be seen that the retail sale of fireworks is forbidden except as provided in Section 5904-7, General Code.

The effect of sparklers, fountains, sky-rockets, snakes in the grass and other similar devices is too well known to warrant an explanation. They are all prepared to give either a visible or audible effect, or both. They are substances or combinations of substances which are combustible or explosive. Therefore, they are "fireworks" within the meaning of Section 5904-1, *supra*.

As to the sale of fireworks to children through advertisements in comic books, it should be pointed out that Section 5904-12, General Code, prohibits *anyone* from selling *any kind* of fireworks at any time to children under the age of twelve years.

In Words and Phrases, Volume 45, page 107, it is stated as follows :

"The primary and usual meaning of the word 'wholesale' is the sale of goods in gross to retailers who sell to consumers. State vs. Spence, 53 So. 596, 597, 127 La. 336."

"The term 'wholesale' or the selling in or by unbroken parcels is distinguished from 'retail' or dividing into smaller quantities and selling direct to consumers. Continental Baking Co. v.

Campbell, 55 P. 2d 114, 116, 176 Okl. 218.”

In Black’s Law Dictionary, Third Edition, at page 1844, “wholesale” is defined as follows:

“To sell by wholesale is to sell by large parcels, generally in original packages, and not by retail; to sell goods in gross to retailers, who sell to consumers. *Kass v. Hirschberg, Schultz & Co.*, 191 App. Div. 300, 181 N. Y. S. 35, 37. A sale at ‘retail’ and one at ‘wholesale’ are opposed to each other, one being a sale in small quantities, and the other in large quantities. *Kentucky Consumers’ Oil Co. v. Commonwealth*, 192 Ky. 437, 233 S. W. 892, 893. * * *”

In Webster’s New International Dictionary, Second Edition, “wholesale” is defined as:

“Sale of goods by the piece or in large quantity;—distinguished from *retail*.”

In Black’s Law Dictionary, Third Edition, at page 1550, “retail” is defined as follows:

“To sell by small parcels, and not in the gross. To sell in small quantities. *State v. Lowenhaught*, 11 Lea (Tenn.) 13; * * *”

Although you have not given enough information in your inquiry to determine whether the sales mentioned are retail or wholesale, the above definitions indicate the differences. Generally speaking, if the sale is of a piece or large quantities of goods to one who intends to resell the goods, it can be considered wholesale.

The “Fireworks Regulation Act of Ohio” was primarily enacted to protect the general public. Such statutes should be given a liberal interpretation so as to carry out the primary purposes of the statute. The term “such fireworks as are permitted to be used by this act,” as used in Section 5904-7, General Code, should be given the same construction. Thus, the only fireworks permitted to be used in Ohio are those used in connection with “fairs, carnivals, or other celebrations” and then only when written permission has been secured from the fire chief of a city or village, or the sheriff. From this, it can be seen that the legislators intended that wholesalers should sell fireworks only to out of state purchasers and those within the state who have secured the prerequisite written permission.

In conclusion, therefore, it is my opinion that sparklers, fountains, sky-rockets, snakes in the grass and other similar devices which give a visible effect are "fireworks" within the meaning of Section 5904-1, General Code. I further believe that Section 5904-7, General Code, does not authorize the retail sale of fireworks through the mail even though it is designated as a "wholesale" sale.

Respectfully,

HERBERT S. DUFFY,
Attorney General.