

OPINION NO. 88-040

Syllabus:

1. **R.C. 3743.65(F) prohibits a seller of fireworks from advertising fireworks for sale but does not prohibit a sign located on a seller's premises identifying him as a seller of fireworks.**

2. When a seller of fireworks whose company name includes the word "fireworks" erects, on a site other than the business premises, a sign containing the company name and directions to the place of business, that sign is an advertisement for the sale of fireworks in violation of R.C. 3743.65(F).

To: Robert L. Herron, Columbiana County Prosecuting Attorney, Lisbon, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, June 15, 1988

I have before me your request for an opinion concerning the application of R.C. 3743.65(F), which states: "No person shall advertise fireworks for sale. A sign located on a seller's premises identifying him as a seller of fireworks is not the advertising of fireworks for sale." You have described the following situation:

There exists a company engaged in the business of selling fireworks. Such company's name contains the word "fireworks." The company has erected a sign not on its premises but only within its home-based county on which the company name appears, and which gives directions to the place of business. The sign does not indicate that fireworks are for sale at the premises, but only a company name and directions for getting to the place of business.

Your question is whether the sign is an advertisement of fireworks for sale within the meaning of R.C. 3743.65(F).

R.C. 3743.65(F) sets forth a blanket prohibition against the advertisement of fireworks for sale. It contains a single qualification, specifying that a sign located on a seller's premises identifying him as a seller of fireworks does not constitute the advertising of fireworks for sale for purposes of this prohibition. The inclusion of this qualification indicates an awareness that, in the absence of express exemption, a sign located on a seller's premises identifying him as a seller of fireworks might be considered to constitute the advertising of fireworks for sale. The express allowance of an on-site sign thus indicates that the term "advertise fireworks for sale" is to be construed to cover any activity that might reasonably be considered an advertisement that fireworks are available for purchase.

R.C. Chapter 3743 does not contain a definition of the term "advertise...for sale." The word "advertise" is, in general use, a broad term, encompassing a myriad of ways of imparting information. As was stated in *Rast v. Van Deman & Lewis Co.*, 240 U.S. 342, 365 (1915): "Advertising is merely identification and description, apprising of quality and place. It has no other object than to draw attention to the article to be sold...." The concept of advertising carries with it the idea of a sale. See, e.g., *Webster's New World Dictionary 20* (2d college ed. 1978) (defining "advertise" as "to tell about or praise (a product, service, etc.) publicly, as through newspapers, handbills, radio, etc., so as to make people want to buy it"). R.C. 5516.01(A) contains a definition of "advertising device," adopted for purposes of the law governing advertising on interstate highways, that is not directly applicable to your question but is, nonetheless, instructive:

"Advertising device" includes any *outdoor sign*, display, device, figure, painting, drawing, message, placard, poster, billboard, or any other contrivance *designed, intended, or used to advertise or to give information in the nature of advertising, or any part thereof*, which advertisement is visible from the traveled way of any highway on the interstate system or primary system in this state. (Emphasis added.)

It is, thus, clear that, in ordinary use, the word "advertise" encompasses a wide variety of means of bringing a product to the attention of prospective purchasers. See generally *Central Outdoor Advertising Co. v. Village of Evendale*, 54 Ohio Op. 354, 358, 124 N.E.2d 189, 194 (C.P. Hamilton County 1954) ("[t]he purpose of both of these forms of advertising [on-site and off-site signs] is to attract attention...").

The sign that you have described contains the name of a company that includes the word "fireworks" and also contains directions to the place of business.

Such a sign does, in common understanding, constitute an advertisement for the fireworks company. The sign identifies the article to which it applies and apprises the reader of the place at which such article may be obtained.

Your question raises the issue of whether such advertisement may be excluded from the prohibition of R.C. 3743.65(F) because it does not include the word "sell" or "sale." It is true that R.C. 3743.65(F) prohibits only the advertisement of fireworks "for sale." It does not, however, appear that, for an advertisement to come within that prohibition, it must include the word "sell" or "sale." As discussed above, the concept of a commercial advertisement carries with it the prospect of a sale. Use of the term "for sale" in R.C. 3743.65(F) is not required to indicate that advertising has, as its purpose, the promotion of sales. Rather, the term "for sale" appears to be used to distinguish the advertisement of fireworks for sale from the advertisement of fireworks in other forms - as, for example, a fireworks display or exhibition that might be part of a civic celebration, a sporting event, or some other sort of amusement or attraction. See, e.g., R.C. 3743.50-55 and R.C. 3743.64 (governing public fireworks exhibitions and the licensing of fireworks exhibitors). A sign containing the name of a fireworks company and directions to the company's place of business clearly indicates that fireworks are available for sale at that site and, accordingly, constitutes an advertisement of fireworks for sale. In fact, there appears to be no other reason for the fireworks company to erect such a sign. If such a sign is located on a site other than the seller's premises, it is an advertisement for the sale of fireworks in violation of R.C. 3743.65(F).

The construction of R.C. 3743.65(F) adopted herein follows directly from the language of the statute. It is consistent with the position taken by the Ohio Supreme Court in *Pizza v. Sunset Fireworks Co.*, 25 Ohio St. 3d 1, 494 N.E.2d 1115 (1986), that statutes governing fireworks should be liberally construed so as to promote the health, safety, and welfare of the people of the state. The *Sunset Fireworks Co.* case states:

The very fact that this chapter [R.C. Chapter 3743] was placed within Title 37 of the Revised Code which relates to health, safety and morals lends support to the...conclusion [that it is entitled to a liberal construction in order to achieve its end]. Further, the principle of giving liberal construction to a statute intended to promote the public good is applicable, notwithstanding the fact that a violation of the statute may incur a penal sanction.

25 Ohio St. 3d at 4, 494 N.E.2d at 1118 (citation omitted); accord, *Van Camp v. Riley*, 16 Ohio App. 3d 457, 476 N.E.2d 1078 (Clermont County 1984), *motion to certify overruled*, No. 84-980 (Ohio Sup. Ct. Sept. 12, 1984); see also R.C. 3743.99. 1982 Op. Att'y Gen. No. 82-068 and 1979 Op. Att'y Gen. No. 79-031 took the position that, because statutes governing fireworks are penal in nature, they must be strictly construed. That position is inconsistent with existing case law, and I am in disagreement with Op. No. 82-068 and Op. No. 79-031 on that point. See also 1950 Op. Att'y Gen. No. 1346, p. 12, at 15 ("statutes [governing fireworks] should be given a liberal interpretation so as to carry out the primary purposes of the statute"). The clear intent of R.C. 3743.65(F) was to prohibit sellers of fireworks from bringing their activity to the attention of the general public, except by the use of an on-site sign. Construing R.C. 3743.65(F) as prohibiting an off-site sign that names a seller of fireworks and provides directions to his place of business serves to carry out the purpose of the statute, even if the sign does not use the word "sell" or "sale."

It is, therefore, my opinion, and you are hereby advised, as follows:

1. R.C. 3743.65(F) prohibits a seller of fireworks from advertising fireworks for sale but does not prohibit a sign located on a seller's premises identifying him as a seller of fireworks.
2. When a seller of fireworks whose company name includes the word "fireworks" erects, on a site other than the business premises, a sign containing the company name and directions to the place of business, that sign is an advertisement for the sale of fireworks in violation of R.C. 3743.65(F).