

OPINION NO. 82-068**Syllabus:**

1. The prohibition set forth in R.C. 3743.321 against the sale of fireworks at wholesale without a permit does not apply to any person, either an individual or corporation, who has been issued a certificate pursuant to R.C. 3743.39, regardless of where such person wholesales fireworks and regardless of whether the fireworks are manufactured at the person's fireworks plant or are imported strictly for wholesaling purposes.
2. A corporation which has not been issued a certificate under R.C. 3743.39 is not exempt from the permit requirement of R.C. 3743.321, even though another corporation under common ownership has been issued such a certificate.
3. Manufacturers of fireworks are exempt from the requirement set forth in R.C. 3743.29(D) that stores used for the wholesale sale of fireworks be located in fireproof buildings, whether or not the stores are located on the manufacturing premises, and even though fireworks sold in the stores are imported by the manufacturer for wholesaling purposes.
4. Pursuant to R.C. 3743.29(D) where any person, other than a manufacturer, keeps fireworks in a store for sale at wholesale, such store must be located in a fireproof fixed structure and must be kept open to the public for a portion of each week throughout the year.

5. The term "store" as used in R.C. 3743.29(D) includes any establishment kept open to the public for the wholesale sale of fireworks, but does not include a storage area, not part of the establishment, where fireworks are merely kept as inventory.

To: Helen W. Evans, Director, Department of Industrial Relations, Columbus, Ohio
By: William J. Brown, Attorney General, September 28, 1982

I have before me your opinion request in which you raise the following questions:

1. Pursuant to the manufacturer's exemption set forth in R.C. 3743.321 may a person who has been issued a certificate under R.C. 3743.39 to operate a fireworks plant sell fireworks at any location in the state without a wholesaler's permit, regardless of whether the fireworks are those manufactured at the "licensed premises" or are imported strictly for wholesaling purposes?
2. If a person who has been issued a manufacturer's certificate under R.C. 3743.39 also has a business for the importation and wholesale sale of fireworks, is such person exempt from the permit requirements of R.C. 3743.321?
3. Does the manufacturer's exemption set forth in R.C. 3743.29(D) apply to stores which are used by the manufacturer for the wholesale sale of fireworks and which are not located on the manufacturing premises, so that such stores need not be located in fireproof buildings?
4. Pursuant to R.C. 3743.29(D) is a manufacturer who sells fireworks which are either manufactured at the "licensed premises" or are imported for wholesaling purposes exempt from the requirement that stores for the wholesale sale of fireworks be located in fireproof buildings?
5. Does R.C. 3743.29(D) prohibit the wholesale sale of fireworks from anything other than a permanent building kept open to the public, such as a semi-trailer?
6. Does the fireproof requirement of R.C. 3743.29(D) apply to a storage building where the fireworks inventory is kept or only to the "store" which is open to the public?

Your first two questions concern the exemption for manufacturers set forth in R.C. 3743.321, which states, in pertinent part: "[n]o person, except a person who has been issued a certificate pursuant to [R.C. 3743.39], shall engage in the business of selling fireworks at wholesale unless the person makes application to the department of industrial relations for, and is issued, a permit to sell fireworks." This section provides generally that no person may sell fireworks at wholesale without first obtaining a permit from the Department of Industrial Relations. Expressly excluded from this prohibition, however, is "a person who has been issued a certificate pursuant to [R.C. 3743.39]" for the operation of a fireworks plant.¹

¹R.C. 3743.39 reads, in part, as follows:

On receipt of an application to operate a fireworks plant, the department of industrial relations shall cause an inspection to be made of the premises described in the application, for the purpose of determining whether they conform to sections 3743.27 to 3743.43, inclusive, of the Revised Code.

(A) If the conditions in the fireworks plant conform to such sections, the department shall issue a certificate of registration. . . .

R.C. 3743.99(A) states that, "[w]hoever violates sections 3743.27 to 3743.41 of the Revised Code shall be fined not less than twenty-five nor more than five hundred dollars." R.C. 3743.321 is, therefore, a penal statute. In construing a statute of a penal nature, one cannot extend the scope of the statute to include limitations not clearly stated in the statute. Accordingly, exemptions from penal statutes are to be liberally construed. State ex rel. Moore Oil Co. v. Dauben, 99 Ohio St. 406, 124 N.E. 232 (1919) (syllabus, paragraph one); see R.C. 2901.04.

In asking under what circumstances this exemption applies, your concern appears to be that manufacturers may be subject to fewer restrictions than other persons engaged in the wholesale sale of fireworks because of the requirements imposed upon persons who must obtain a permit under R.C. 3743.321. In order to obtain a permit to sell fireworks at wholesale, R.C. 3743.321 requires that the applicant intend "to sell and store the fireworks in accordance with [R.C. 3743.29 and 3743.30]" (emphasis added). This requirement, therefore, places certain limitations upon how such fireworks are both sold and stored. A manufacturer, however, may obtain a certificate under R.C. 3743.39, and thus be exempt from the permit requirement of R.C. 3743.321, merely by showing that the place where the fireworks are manufactured conforms to the requirements of R.C. 3743.27 to R.C. 3743.43.

R.C. 3743.321 does not expressly prohibit a manufacturer who has obtained a certificate under R.C. 3743.39 from selling fireworks other than on the plant premises, nor does it specify that a manufacturer is exempt from the permit requirement only when wholesaling fireworks manufactured at the manufacturer's plant. To the contrary, R.C. 3743.321 unconditionally exempts manufacturers from the requirements imposed therein. I appreciate that an unconditional exemption of persons who have secured certificates pursuant to R.C. 3743.39 appears anomalous in light of the fact that such certificates attest only to the safety and security of the premises described in the application for such certificate, the area to which you refer as the "licensed premises." However, in accordance with the rules of construction set forth above, I must conclude that the prohibition in R.C. 3743.321 against the sale of fireworks at wholesale without a permit does not apply to any person who has been issued a certificate pursuant to R.C. 3743.39, regardless of where such person wholesales fireworks and regardless of whether the fireworks are manufactured at the person's fireworks plant or are imported strictly for wholesaling purposes.

Your second question asks whether a person who has been issued a manufacturer's certificate under R.C. 3743.39 and who also has a business for the importation and wholesale sale of fireworks is exempt from the permit requirements of R.C. 3743.321. It is my understanding that you are specifically concerned with the exemption of persons in two situations. The first situation involves an individual or a corporation that operates a business for both the manufacture and importation of fireworks to be sold at wholesale. The second situation involves the application of the manufacturer's exemption to two separate corporations, one which manufactures and wholesales fireworks and the other which imports and wholesales fireworks, where the corporations are under common ownership.

The exemption set forth in R.C. 3743.321 applies to "a person who has been issued a certificate pursuant to [R.C. 3743.39]" (emphasis added). In order to determine whether this exemption applies to the individuals and corporations in the situations you pose it is first necessary to examine the meaning of "person," as that term is used in R.C. 3743.321. R.C. Chapter 3743 does not define the term "person" as used in that chapter. In statutes in which the term "person" is not otherwise defined, that term is intended to include "an individual, corporation, business trust, estate, trust, partnership, and association." R.C. 1.59(C). Thus, the exemption set forth in R.C. 3743.321 may apply to either an individual or corporation.

Although it may appear that the exemption should apply to a person only in his capacity as a wholesaler of fireworks manufactured at his plant, the language of the statute places no such limitation upon the exemption, and in accordance with the requirement that exemptions from penal statutes be liberally construed, no such limitation may be implied. See 1979 Op. Att'y Gen. No. 79-031. As noted

above, a person who has been issued a certificate under R.C. 3743.39 is unconditionally exempted from the permit requirement imposed by R.C. 3743.321. If a particular individual or corporation has been issued a certificate under R.C. 3743.39, such person is not prohibited by R.C. 3743.321 from selling fireworks at wholesale without a permit, even though the person wholesales fireworks which have been imported.

You also ask whether a corporation which has not been issued a certificate under R.C. 3743.39 may sell fireworks at wholesale without a permit if a separate corporation under common ownership has been issued such a certificate. As stated above, the permit requirement of R.C. 3743.321 applies to any person, including a corporation, who has not been issued a certificate under R.C. 3743.39. Because a corporation exists as an entity apart from the identity of its stockholders, Barrick v. Gifford, 47 Ohio St. 180, 24 N.E. 259 (1890), the fact that the stockholders in two corporations are identical does not change the fact that each corporation exists as a distinct entity. Thus, the exemption of one corporation from the operation of R.C. 3743.321 does not also exempt another corporation, even though the stockholders of both corporations are identical.

Your third question asks whether the manufacturer's exemption set forth in R.C. 3743.29(D) applies to stores not located on the manufacturing premises, so that such stores need not be located in fireproof buildings. You also ask whether this exemption applies to manufacturers who sell at wholesale fireworks which have been imported strictly for wholesaling purposes. R.C. 3743.29, which also is a penal statute, states, in pertinent part:

Fireworks shall not be stored or kept for sale in a store:

(D) Which, in the case of fireworks kept for sale at wholesale other than by a manufacturer, is other than a store located in a fireproof building and kept open to the public for a part of each week in every week of the year.

The prohibition against keeping for sale or storing fireworks in a store which is not located in a fireproof building applies only "in the case of fireworks kept for sale at wholesale other than by a manufacturer" (emphasis added). Again, the statute places no limitation upon the exemption granted to manufacturers. In accordance with the requirement that exemptions from penal statutes be liberally construed, I must conclude that R.C. 3743.29(D) does not require that fireworks kept in a store for sale at wholesale by a manufacturer be kept in a store located in a fireproof building. This exemption for fireworks kept for sale at wholesale by a manufacturer applies even though the store in which the fireworks will be sold is not located on the manufacturing premises and even though the manufacturer has imported the fireworks.

Your next question is whether R.C. 3743.29(D) prohibits the wholesale sale of fireworks from anything other than a permanent building kept open to the public, such as a semi-trailer.² The conduct prohibited by R.C. 3743.29(D) is keeping for sale or storing fireworks in a store which is located in any building which is not fireproof and which store is not kept open for a portion of each week during the year. Thus, R.C. 3743.29(D) is applicable only if the place at which the fireworks are sold constitutes a store. The word "store" has not been defined as used in R.C. 3743.29(D). It is, therefore, necessary to examine the common meaning of that word. R.C. 1.42. Black's Law Dictionary 1273 (5th ed. 1979) defines a store as "[a]ny place where goods are deposited and sold by one engaged in buying and selling them." The term "store," as used in R.C. 3743.29(D), therefore, encompasses any place where fireworks are deposited and sold.

²Because I have concluded that the restriction contained in R.C. 3743.29(D) does not apply to manufacturers, I will assume that your question concerns the wholesale sale of fireworks by persons who have obtained a permit to do so under R.C. 3743.321.

R.C. 3743.29(D) requires that stores used by wholesalers other than manufacturers be located in fireproof buildings. Because the term "building" is not defined as used in R.C. 3743.29(D), it is presumed that the legislature intended to use the word "building" according to its common meaning. R.C. 1.42. Webster's New World Dictionary 185 (2d college ed. 1978) states that, "building is the general term applied to a fixed structure in which people dwell, work, etc." R.C. 3743.29(D), therefore, requires that any store used by a person, other than a manufacturer, for the wholesale sale of fireworks must be located in a fireproof fixed structure and must be kept open to the public for a portion of each week throughout the year. Thus, if a semi-trailer or other vehicle qualifies as a store for purposes of R.C. 3743.29(D), because it is a place where fireworks are deposited and sold, R.C. 3743.29(D) prohibits its use for the wholesale sale of fireworks by persons other than manufacturers, because it is not itself a fixed structure, nor is it located in a fixed structure.

In your final question you ask whether R.C. 3743.29(D) applies to a storage building where the fireworks inventory is kept or only to the "store" which is open to the public. As stated above, R.C. 3743.29(D) requires that where fireworks are kept in a store for sale at wholesale by a person other than a manufacturer, the fireworks must be kept in a store which is open to the public for a portion of each week throughout the year and which is located in a fireproof building. It is clear, therefore, that R.C. 3743.29(D) refers to establishments which are kept open to the public for the wholesale sale of fireworks rather than to a storage area, not part of the establishment, where fireworks are merely kept as inventory.

Based on the foregoing, it is my opinion, and you are advised, that:

1. The prohibition set forth in R.C. 3743.321 against the sale of fireworks at wholesale without a permit does not apply to any person, either an individual or corporation, who has been issued a certificate pursuant to R.C. 3743.39, regardless of where such person wholesales fireworks and regardless of whether the fireworks are manufactured at the person's fireworks plant or are imported strictly for wholesaling purposes.
2. A corporation which has not been issued a certificate under R.C. 3743.39 is not exempt from the permit requirement of R.C. 3743.321, even though another corporation under common ownership has been issued such a certificate.
3. Manufacturers of fireworks are exempt from the requirement set forth in R.C. 3743.29(D) that stores used for the wholesale sale of fireworks be located in fireproof buildings, whether or not the stores are located on the manufacturing premises, and even though fireworks sold in the stores are imported by the manufacturer for wholesaling purposes.
4. Pursuant to R.C. 3743.29(D) where any person, other than a manufacturer, keeps fireworks in a store for sale at wholesale, such store must be located in a fireproof fixed structure and must be kept open to the public for a portion of each week throughout the year.
5. The term "store" as used in R.C. 3743.29(D) includes any establishment kept open to the public for the wholesale sale of fireworks, but does not include a storage area, not part of the establishment, where fireworks are merely kept as inventory.