

01-014

FIRE PROTECTION: STATEWIDE FIRE PREVENTION CODE ACT — FIREWORKS.

Storage of items such as sparklers, fountains and similar types of displays on private property is not prohibited by Act or Fire Prevention Code, unless locality adopts more restrictive provisions.

The Honorable Paul Clinton Harris Sr.
Member, House of Delegates
February 16, 2001

You ask several questions regarding the Virginia Statewide Fire Prevention Code Act, §§ 27-94 through 27-101 of the *Code of Virginia* (the "Act"). You first ask whether the Act requires a citizen to obtain a permit for the storage of sparklers, snap and pops, and fountains. You next ask whether the Act regulates the storage of sparklers, snap and pops, and fountains.

You relate that, for the past seven years, certain residents of Albemarle County have sold fireworks at three separate locations in the county. County fire investigators routinely inspected the fireworks stands and issued permits to sell fireworks to the residents. You advise further that a county fire investigator executed a warrant to search the residents' home pursuant to an affidavit alleging that they were storing fireworks without a permit, in violation of the Albemarle County Code. You advise that, while searching the residence, the county fire investigator seized fireworks consisting primarily of sparklers, snap and pops, and fountains. Finally, you advise that the residents were charged with storing unapproved fireworks, failing to obtain a permit for the storage of fireworks, and storing fireworks in an unapproved structure.

Section 27-97 empowers the Board of Housing and Community Development to adopt a Statewide Fire Prevention Code ("Fire Prevention Code" or "Code"). The Board has adopted such a set of regulations designed to provide statewide standards to protect life and property from conditions arising from the unsafe storage, handling and use of fireworks that may tend to cause fire or explosion.¹ The Act also authorizes counties to provide for the enforcement of the Fire Prevention Code and to adopt fire prevention regulations more restrictive than the Code.² Section F-101.5 of the Fire Prevention Code specifically permits local governing bodies to "adopt fire prevention regulations that are more restrictive or more extensive in scope than the [Code]."³ Section F-108.2 of the Code

authorizes local code officials to require permits for the storage of fireworks.⁴ Section 59.1-147 and Fire Prevention Code § F-3102.1 specifically exclude from the definition of "fireworks" items such as sparklers, fountains and similar types of displays when stored on private property with the consent of the owner.⁵ Consequently, it is my opinion that the storage of items such as sparklers, fountains and similar types of displays on private property is not prohibited by the Act or the Fire Prevention Code, unless a locality adopts more restrictive provisions, as authorized by §§ 27-97 and 59.1-148.

Article III of Chapter 6 of the Albemarle County Code provides the "administrative procedures for the regulation of the use and sale of fireworks" in Albemarle County.⁶ The County Code makes it unlawful to store any substance or thing containing any explosive or inflammable compound or substance that is intended as fireworks.⁷ The Attorney General has long followed a policy of responding to official opinion requests only when such requests concern an interpretation of federal or state law, rule or regulation.⁸ In instances when a request requires an interpretation of a local ordinance, the Attorney General has declined to respond in order to avoid becoming involved in matters solely of local concern and over which the local governing body has control.⁹ Any ambiguity that may exist in a local ordinance is a problem that can and should be rectified by the local governing body rather than by an interpretation by the Attorney General.¹⁰

Accordingly, I am required to limit my comments to application of the Act and the Fire Prevention Code. I have not attempted to resolve any ambiguity that may exist in the specific language of the Albemarle County Code governing this matter.

¹Bd. Hous. & Cmty. Dev., Va. Statewide Fire Prevention Code, at iii (2000) [hereinafter SFPC] (on file with Department of Housing and Community Development, Division of Building and Fire Regulation).

²See Va. Code Ann. §§ 27-97, 27-98 (Michie Supp. 2000); see also Va. Code Ann. § 59.1-148 (Michie Repl. Vol. 1998) (stating that local ordinances are not affected by laws governing fireworks in Chapter 11 of Title 59.1).

³SFPC, *supra*, at 1.

⁴See *id.* at 6.

⁵See *id.* at 16.

⁶Albemarle County, Va., Code § 6-300 (1998), <http://www.albemarle.org/attorney>.

⁷*Id.* § 6-301.

⁸See Op. Va. Att'y Gen.: 1999 at 90, 93; 1991 at 237, 238; 1986-1987 at 347, 348; 1977-1978 at 31, 33; 1976-1977 at 17.

⁹See *id.*: 1999 at 69, 69; 1995 at 240, 241; 1991 at 30; 1986-1987, *supra*; 1981-1982 at 471, 472; 1976-1977, *supra*.

¹⁰See *id.*: 1986-1987, *supra*; 1976-1977, *supra*.

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