



**ROLAND W. BURRIS**

ATTORNEY GENERAL  
STATE OF ILLINOIS  
SPRINGFIELD

March 14, 1991

FILE NO. 91-012

COUNTIES:  
Regulation of the Sale  
and Use of Fireworks

Honorable John T. Robinson  
State's Attorney, Moultrie County  
Moultrie County Courthouse  
Sullivan, Illinois 61951

Dear Mr. Robinson:

I have your letter wherein you inquire whether a non-home-rule county may adopt an ordinance allowing the retail sale, possession, use or discharge of fireworks within the county and if so, whether the ordinance would supersede State statutes governing the sale and use of fireworks generally. For the reasons hereinafter stated, it is my opinion that a non-home-rule county is not authorized to adopt such an ordinance and, further, that a non-home-rule county's regulation of the sale and use of fireworks is limited to the granting of permits for supervised public displays of fireworks.

The sale of fireworks is governed by section 2 of the Fireworks Use Act (Ill. Rev. Stat. 1989, ch. 127 1/2, par. 128) and section 13.1 of the Fireworks Regulation Act of Illinois (Ill. Rev. Stat. 1989, ch. 127 1/2, par. 113.1) which provide, in pertinent part:

"§ 2. Except as hereinafter provided it shall be unlawful for any person, firm, co-partnership, or corporation to knowingly possess, offer for sale, expose for sale, sell at retail, or use or explode any fireworks; provided that city councils in cities, the president and board of trustees in villages and incorporated towns, and outside the corporate limits of cities, villages and incorporated towns, the county board, shall have power to adopt reasonable rules and regulations for the granting of permits for supervised public displays of fireworks. \* \* \*

\* \* \* No permit shall be required, under the provisions of this Act, for supervised public displays by State or County fair associations.

\* \* \*

Possession by any party holding a certificate of registration under 'The Fireworks Regulation Act of Illinois', filed July 20, 1935, or by any employee or agent of such party or by any person transporting fireworks for such party, shall not be a violation, provided such possession is within the scope of business of the fireworks plant registered under that Act."

"§ 13.1. \* \* \* Nothing in this Act shall be construed to prohibit any resident wholesaler, dealer, or jobber to sell at wholesale any fireworks as are not herein prohibited; or the sale of any kind of fireworks provided the same are to be shipped directly out of the state; or the use of fireworks by railroads, public utilities, public and private carriers or other transportation agencies for signal purposes or illumination, or the sale or use of blank

cartridges for a show or theater, or for signal or ceremonial purposes in athletic or sports events, or for use by military organizations." (Emphasis added.)

It is well established that where there are two statutes, one of which is general and designed to apply to cases generally, the other being particular and relating only to one subject, the particular provision must prevail and be treated as an exception to the general provision. (Bowes v. City of Chicago (1954), 3 Ill. 2d 175, 205.) Section 2 of the Fireworks Use Act is a general prohibition against the sale and use of fireworks with three specific exceptions: (1) persons who hold permits issued by local governmental units for supervised public displays; (2) parties holding a certificate of registration for a fireworks plant; and (3) public displays by state or county fair associations. Section 13.1 of the Fireworks Regulation Act of Illinois is a particular provision which allows sales at wholesale of such fireworks as are not "herein prohibited", sales of fireworks for shipment out of the State and excuses certain other specified acts which might otherwise constitute a violation thereof. Accordingly, the particular authorization of section 13.1 should be viewed as creating an additional exception to the general ban imposed upon fireworks by section 2.

The statutes cited above clearly show a legislative intent to create a minimum, uniform State standard for

fireworks regulation. This is evidenced by the fact that the Office of the State Fire Marshal has been given the power to adopt rules and regulations for the enforcement of the provisions of both Acts. (Ill. Rev. Stat. 1989, ch. 127 1/2, pars. 122, 130.1.) Pursuant to statute, county regulation of the sale and use of fireworks is limited to the adoption of regulations governing the granting of permits for supervised public displays of fireworks.

In your letter, you refer to section 24 of the Fireworks Regulation Act of Illinois (Ill. Rev. Stat. 1989, ch. 127 1/2, par. 124) which provides, in pertinent part:

"The provisions of this Act shall not be construed or held to abrogate or in any way affect the power of cities, villages, and incorporated towns to regulate, restrain and prohibit the use of fireworks, firecrackers, torpedoes, Roman candles, skyrockets and other pyrotechnic displays within their corporate limits. \* \* \*" (Emphasis added.)

Section 24, by its express terms, is applicable only to "cities, villages and incorporated towns". Therefore, since counties are not within the purview of this section, it cannot serve to expand the powers of counties in this regard. Moreover, I note that section 24 of the Fireworks Regulation Act of Illinois, in any event, does not appear to empower municipalities to adopt a less restrictive regulatory scheme than authorized by State law, but only to enact more restrictive regulations. (See e.g. 1979 Ill. Att'y Gen. Op. 129, 130-31, wherein

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Attorney General Scott construed the terms "prohibit" and "regulate" in a similar statutory context.)

It is well established that non-home-rule counties can exercise only those powers which are expressly delegated by the Constitution or by statute or those which arise by necessary implication from expressly granted powers. (Heidenreich v. Ronske (1962), 26 Ill. 2d 360, 362.) Therefore, it is my opinion that a non-home-rule county may not adopt an ordinance allowing the retail sale, or possession or use of fireworks generally. Such counties are limited solely to the adoption of regulations governing the granting of permits for supervised public displays of fireworks. Because of my response to your first question, there is no need to address your second inquiry.

Respectfully yours,

A handwritten signature in cursive script, appearing to read "Roland W. Burris".

ROLAND W. BURRIS  
ATTORNEY GENERAL