Opinion No. 61-134

December 26, 1961

BY: OPINION OF EARL E. HARTLEY, Attorney General William E. Snead, Assistant Attorney General

TO: Mr. C. N. Morris, Assistant District Attorney, Fifth Judicial District, Lovington, New Mexico

QUESTION

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1. Is the construction and launching of small rockets under the supervision of a qualified adult authorized under State law?

2. Is such construction and launching prohibited under the provisions of Sec. 40-18-8, N.M.S.A., 1953 Comp. (PS)?

CONCLUSIONS

1. See analysis.

2. See analysis.

OPINION

ANALYSIS

In answering your letter of November 21, 1961, it is necessary to break your request into the above two questions since the construction and launching of small rockets may be prohibited under other than Sec. 40-18-8, N.M.S.A., 1953 Comp. (PS).

It is assumed, in answering the first question, that there is qualified adult supervision. This office interprets this to mean someone with more qualification than simply a chemistry or physics professor or teacher. In order to be qualified to supervise rocket launching, the adult must be more than casually acquainted with the details of rocketry. The person must have had some specific experience in the field of rocket launching or construction. Otherwise, he is merely experimenting along with the school boys you mention in your letter. If he is merely experimenting also, he is in no position to make a qualified supervision of the boys.

It is the opinion of this office that if rockets are constructed or launched without adequate supervision and without adequate safeguards being provided to protect the persons involved as well as other persons and property which could be harmed by such

a dangerous mechanism, such activity would be a public nuisance under Sec. 40-35-1, N.M.S.A., 1953 Comp.

In explanation of the preceding paragraph it is necessary to point out that in order to adequately protect persons or property which might be harmed by the suggested activities, more protection is necessary than a simple vacant lot or field in the country. Danger from fires or from being struck by the rocket necessitates more adequate protection to the public as well as the persons actually involved with the construction and launching. The many instances of fatal and near-fatal injuries occasioned by rocket launching activities bear witness to the necessity. To the effect that an activity or a structure might be a nuisance where not handled properly although it is not a nuisance per se, see **Phillips v. Allingham,** 38 N.M. 361, 33 P. 2d 910 (1934); **Denny v. U.S.** (C.A.N.M. 1950), 185 F.2d 108.

The answer to the second question cannot be more definite than specific factual situations allow. It is the opinion of this office that if children were in the activity of merely filling up a hollow tube with combustible materials and setting it off for the thrill, the activity would clearly be within the prohibition of the Fireworks statute since skyrockets are specifically covered. On the other hand, if the students, in the company of a recognized rocket expert, studied the construction of rockets, built one under recognized techniques and with adequate safety precautions in some location designed for rocket construction and launching such as the Missile Range at White Sands, the Fireworks statute clearly would not be broad enough to cover the situation. Any determination would depend upon these variable circumstances. Further than this we cannot go.

It might be pointed out that communities are given very broad powers to regulate and even prohibit the presence and handling of combustibles and explosives within their limits. These powers are broad enough to cover rocket fuels. It should also be pointed out that Sec. 40-18-7, N.M.S.A., 1953 Comp., provides for civil damages in double the amount of injury against any person setting fire to another's property.