

June 13, 2007 No conflict in definitions of Fireworks Licensing and Safety Act

Honorable James Taylor
N.M. State Senate
3909 Camino Del Valle SW
Albuquerque, NM 87105

Re: Request for Opinion – Regulation of Fireworks

Dear Senator Taylor:

You have requested our advice regarding whether a conflict currently exists in the definitions of the Fireworks Licensing and Safety Act, NMSA 1978, Sections 60-2C-1 to -11 that would prohibit the sale and use in New Mexico of multiple tube device fireworks with a maximum total weight of five hundred grams of pyrotechnic composition. It is our understanding that you successfully sponsored Senate Bill 267, which made several changes to the statute, including providing for a definition of multiple tube devices, during the 2007 legislative session. See N.M. Laws 2007, Ch. 268. According to your letter "a certain city fire marshal in New Mexico has reached the conclusion that the five-hundred gram total weight exception for multiple tube devices created by Senate Bill 267 poses an irreconcilable conflict with the general limitation of two hundred grams required" in Section 60-2C-2(H). Based on our examination of the relevant New Mexico constitutional, statutory and case law authorities, and on the information available to us at this time, we conclude that there is not a conflict and both sections can be read harmoniously together.

The Fireworks Licensing and Safety Act defines a "cylindrical fountain" as a "cylindrical tube containing not more than 75 grams of pyrotechnic composition." NMSA 1978, Section 60-2C-2(H) (2007). The definition further states that when "more than one tube is mounted on a common base, total pyrotechnic composition shall not exceed two hundreds grams." Id. (emphasis added). It is our understanding that the two hundred gram limit was enacted in 1997. See N.M. Laws 1997, Ch. 17. It is also our understanding that Senate Bill 267 left this definition intact.¹ Senate Bill 267 did add a new term "multiple tube devices" and defined it as "a device that contains more than one cardboard tube and the ignition of one external fuse that causes all of the tubes to function in sequence." NMSA 1978, § 60-2C-2(V) (2007) (emphasis added). The definition further states that:

A maximum total weight of five hundred grams of pyrotechnic composition shall be permitted: provided that the tubes are securely attached to a wood or plastic base and are separated from each other on the base by a distance of at least 1/2 inch. The connecting fuses on multiple tube devices shall be fused in sequence so that the tubes fire sequentially rather than all at once.

Id. (emphasis added).

According to the above-cited canons of statutory construction, when the legislature enacts a law, such as Senate Bill 267, the presumption is that that the legislature did not intend the new law to be inconsistent or in conflict with any provision of an existing law. See State ex rel. Quintana v. Schnedar, 115 N.M. 573, 575, 855 P.2d 562 (1993). If the 2007 Legislature had intended to directly repeal the two hundred gram limit found in Subsection (H), it likely would have expressly done so. We cannot presume there has been an implied repeal of the old law or presume that there necessarily must now be an irreconcilable conflict. See id. Instead, the new and old parts of the statute must be examined in connection together to see if they can be harmonized. See Draper v. Mountain States Mut. Cas. Co., 116 N.M. 775, 777, 867 P.2d 1157 (1994). A well-established method of harmonizing sections of a statute is to read one section as the general rule and another more specific section as a permissible exception to that rule. See City of Alamogordo v. Walker Motor, Co., 94 N.M. 690, 692, 616 P.2d 403 (1980). Here, the two hundred gram limit is the general rule. The exception enacted by Senate Bill 267 covers those multiple tube devices that: (a) are securely attached to a wood or plastic base; (b) are separated from each other on the base by a distance of at least 1/2 inch and (c) have connecting fuses that are fused in sequence so that the tubes fire sequentially rather than all at once. These devices are subject to a five hundred gram limit.²

You have requested a formal opinion on the matters discussed above. Please note that such an opinion is a public document available to the general public. Although we are providing you with our legal advice in the form of a letter instead of an Attorney General's Opinion, we believe this letter is also a public document, not subject to the attorney-client privilege. Therefore, we may provide copies of this letter to the general public. If we may be of further assistance, or if you have any questions regarding this opinion, please let us know.

Sincerely,

Zachary Shandler
Assistant Attorney General

cc: Albert Lama, Chief Deputy Attorney General

[1] Senate Bill 267 only re-lettered this provision. See N.M. Laws 2007, Ch. 268.

[2] It is possible that the new law will cover most multiple tube devices, but the interpretation in this letter reflects the legislature's intent according to the rules of statutory construction.