

Date Issued: March 6, 1981 (AGO 81-22)

Requested by: Representative Richard W. Kloubec

- QUESTION PRESENTED -

Whether an out-of-state corporation which offers to sell or sells fireworks through the mails, at retail, to persons within North Dakota is subject to the requirements of chapter 23-15 of the North Dakota Century Code.

- ATTORNEY GENERAL'S OPINION -

It is my opinion that an out-of-state corporation which offers to sell or sells fireworks through the mails, at retail, to persons within North Dakota is subject to the requirements of chapter 23-15, N.D.C.C.

- ANALYSIS -

Section 23-15-05, N.D.C.C., states, in part, that "except as otherwise provided in this chapter, no person shall offer for sale, expose for sale, sell at retail, bring into this state, or cause to be brought into this state or use or explode any fireworks."

Section 23-15-01, N.D.C.C., regulates the retail sales of fireworks within the state and requires a retail license. This section provides, in part, that:

Any person, firm, or corporation having operated a retail business wherein merchandise was assessed by the local taxing authority, on April first immediately preceding thereto, and having a retail license as provided in section 23-15-04 may offer for sale and sell at retail, to persons of twelve years of age or more, only during the period beginning June 27 and ending July 5, both dates inclusive. . . .

Section 23-15-04, N.D.C.C., sets out the licensing procedure.

. . . Application for a license as a retailer shall be made to the county sheriff on forms prescribed by the state fire marshal. . . . Such distributors' and retailers' licenses shall be in addition to any other license required by law or municipal ordinance. Provided, however, that the licensing provisions of this section shall not apply to a retailer who is required to become licensed by any municipality and any license fee levied by such municipality shall be deposited in the municipality's general fund. . . .

If an out-of-state corporation makes a legally sufficient offer to sell fireworks at retail which is communicated to an offeree within the State of North Dakota, then that corporation must comply with the above-mentioned requirements. Further, if such an offer is accepted within the State of North Dakota, then a sale has occurred within the state and these same

requirements must be met. See Storing v. National Surety Co., 215 N.W. 875 (N.D. 1927), and Douglas County State Bank v. Sutherland, 204 N.W. 683 (N.D. 1925), stating that an offer is considered to have been accepted and the contract binding when and where that acceptance is mailed.

An out-of-state corporation may offer to sell or sell fireworks, at retail, within North Dakota if it (1) operated a retail business where merchandise was assessed by the local taxing authority on the immediately preceding April first; (2) has a retail license as provided in section 23-15-04, N.D.C.C.; and (3) offers to sell or sells, at retail, to persons of twelve years of age or more, only during the period beginning June twenty-seventh and ending July fifth, inclusive, only those fireworks not prohibited by chapter 23-15, N.D.C.C.

Section 23-15-06, N.D.C.C., provides that "Any person violating the provisions of this chapter shall be guilty of a class B misdemeanor."

- EFFECT -

This opinion is issued pursuant to section 54-12-01, N.D.C.C. It governs the actions of public officials until such time as the question presented is decided by the courts.

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