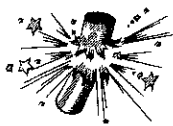


NOTICE: The Wisconsin Fireworks Association disagrees with portions of the Department of Justice's advisory. The Association has indicated that it may send its own mailing containing its interpretation of the law to each recipient of the Law Enforcement Bulletin. We believe that our analysis set forth in the advisory is a correct statement of the law. However, you are encouraged to consult with your own municipal attorney or district attorney with any questions on fireworks law prior to initiating any enforcement action.



Wisconsin Fireworks Law 2009

This memorandum is intended as an advisory to law enforcement to address recurring issues with respect to the possession, sale and use of fireworks in Wisconsin. It summarizes Wisconsin fireworks law, answers common questions and corrects common misunderstandings about the law.

Local ordinances may also regulate fireworks and may be stricter than state law, but cannot be less strict. This advisory discusses only state law, so some devices or materials described as legal in this advisory may be prohibited by a local ordinance.

Legal Without A Permit

State law allows the sale, possession and use, without a permit, of sparklers not exceeding 36 inches in length, stationary cones and fountains, toy snakes, smoke bombs, caps, noisemakers and confetti poppers with less than ¼ grain of explosive mixture. Wis. Stat. § 167.10(1). There is no age restriction on sale, possession or use of these devices and the statute does not classify them as fireworks. Local ordinances may be more restrictive than state statutes and may prohibit any of these items or limit their sale or use. **These are the only kinds of "fireworks," as that word is commonly used, that a person may use or possess without a permit or that may be sold to a person who does not have a permit.**

Illegal Without A Permit

Possessing or using any other fireworks, including, for example, firecrackers, roman candles, bottle rockets and mortars, in Wisconsin without a valid permit is illegal. Wis. Stat. § 167.10(3). A commonly used rule of thumb is that a permit is required if the device explodes or leaves the ground. **The sale of these restricted fireworks to a person without a valid permit is also illegal,** Wis. Stat. § 167.10(2), unless the seller is a wholesaler or jobber selling fireworks to a nonresident for shipment out of state. Wis. Stat. § 167.10(4).

Conditions For A Valid Permit

The requirements for a valid permit are contained in Wis. Stat. § 167.10(3)(a), (c) and (f) and are detailed below.

A permit may only be issued by a mayor, village president or town chair or a municipal employee or official they have designated. Wis. Stat. § 167.10(3)(a) specifies that permits may only be issued by a mayor, village president, or town chair or "an official or employee of that municipality designated by the mayor, president or chairperson." In addition, the purpose of the fireworks statute is to allow municipalities to "carefully control the use and possession of fireworks within its boundaries." *Dells Fireworks, Inc.*, 197 Wis. 2d at 21. Considering the language of the statute, the purpose of the statute and all of the permit requirements, such as specifying the kind and quantity of fireworks and the specific date and location of permitted use (discussed below), the statute clearly contemplates direct involvement in the permit issuance by a government employee or official. Permits issued or sold by fireworks vendors bearing either a printed, stamped or pre-signed signature of a local official in which the permittee's information is completed by the vendor or the buyer has not been issued by an authorized official and is therefore not valid.

A permit is valid only in the city, village or town of the official who issued it. A mayor, village president, town chair, or a municipal official or employee they have designated can only authorize possession or use of fireworks within their jurisdiction. Wis. Stat. § 167.10(3)(a). For example, a permit issued by the town chair of one town cannot and does not authorize possession or use of the fireworks in another town. A person that has a valid permit from one municipality may purchase fireworks in another municipality and transport them to the municipality in which the person has a permit. Wis. Stat. § 167.10(3)(b)7.

A permit may require a bond or insurance. Wis. Stat. § 167.10(3)(e). An official issuing a permit may require a bond or insurance policy to indemnify the issuing municipality for any damages that may result from the possession or use of the fireworks.

(Cont . . .)

A permit may be issued to an individual or group of individuals. Permits, other than for crop protection, may be issued to a public authority, a fair association, an amusement park, a park board, a civic organization, an individual, or a group of individuals. Wis. Stat. § 167.10(3)(c).

Although individuals may obtain permits, a group may also obtain a permit in the group's name. A group with a permit may authorize an individual to make purchases on its behalf, but the permit must be in the name of the group. A person buying for a group should have both a copy of the group's permit and the authorization of the group. A group may not issue a blanket authorization to all of its members to purchase on behalf of the group. *City of Wisconsin Dells v. Dells Fireworks, Inc.*, 197 Wis. 2d 1, 21, 539 N.W.2d 916 (Ct. App. 1995). The authorized buyer may only buy the kind of fireworks specified in the group's permits. The total quantity purchased by all authorized buyers on behalf of the group cannot exceed the quantity of fireworks authorized by the permit. The fireworks purchased on behalf of the group may only be possessed in the municipality which issued the group's permit, except while being transported from the point of sale to that municipality. The fireworks may only be used by the group on the date and location specified on the permit and subject to any other conditions on the permit.

A permit must specify the kind and quantity of fireworks allowed to be used or possessed. Wis. Stat. § 167.10(3)(f)3. The purpose of the fireworks statute is to allow municipalities to "carefully control the use and possession of fireworks within its boundaries." *Dells Fireworks, Inc.*, 197 Wis. 2d at 21. The kind and quantity must be specified in the permit with enough detail to accomplish this purpose. Specifying kind with broad categories, such as "consumer fireworks" does not satisfy this requirement. The quantity must be expressed by the number of each kind of fireworks, not by the dollar value of the fireworks. Dollars are a measure of value, not quantity.

A permit must specify the location at which the fireworks may be possessed or used. Wis. Stat. § 167.10(3)(f)4. As noted above, this location must be within the jurisdiction of the official who issued the permit. It must be a specific location within that jurisdiction, rather than the entire jurisdiction. The statute uses "location" in the singular. A permit that specifies multiple locations is not valid.

The permit must specify the date of the permitted use. Wis. Stat. § 167.10(3)(f)4. The word "date" is in the singular in the statute. A permit that specifies multiple dates or a range of dates of permitted use is not valid. This, in combination with the specification

of location, means that a separate permit is required for each date and location for which use is permitted.

The permit must specify the date on and after which the fireworks can be purchased. Wis. Stat. § 167.10(3)(f)2. Once a permit is issued, the permittee may purchase fireworks up to the date of the permitted use.

A copy of the permit must be given to a fire or law enforcement official in the municipality which issued the permit at least two days before the date of use. Wis. Stat. § 167.10(3)(g).

The permit may contain additional restrictions. Wis. Stat. § 167.10(3)(f)5. A municipality may adopt ordinances imposing special restrictions, e.g. times or manner of use, distances from buildings or spectators, etc. and a permit may specify these additional restrictions.

Permits may not be issued to minors. Wis. Stat. § 167.10(3)(h). Since minors may not be issued fireworks permits there are no conditions under which it is legal for a minor to possess or use any fireworks except those allowed without a permit, e.g. sparklers, snakes, fountains, etc.

Nonresidents must have a valid permit to possess or use fireworks while in Wisconsin. Resident wholesalers or jobbers may sell fireworks to nonresidents. Wis. Stat. § 167.10(4). (Note: fireworks sellers who sell directly to consumers rather than for resale are not considered "wholesalers." *State v. Seigel*, 163 Wis. 2d 871, 472 N.W.2d 584 (Ct. App. 1991).) However, a nonresident person may not possess or use fireworks in Wisconsin without a valid Wisconsin permit. Wis. Stat. § 167.10(3)(a). See also *State v. Victory Fireworks, Inc.*, 230 Wis. 2d 721, 726-27, 602 N.W.2d 128 (Ct. App. 1999). A nonresident who lawfully purchases fireworks under a permit can possess and use those fireworks in Wisconsin pursuant to the terms of the permit or may transport them out of state. A nonresident without a valid Wisconsin permit may order fireworks from a resident wholesaler or jobber for out-of-state delivery. However, the fireworks must be shipped to the buyer by common carrier, contract carrier or private motor carrier. Wis. Stat. § 167.10(4).

Persons with a valid Wisconsin permit may transport fireworks from the place they were purchased to the city, town or village where their possession or use is authorized under the permit. Wis. Stat. § 167.10(3)(b)7. However, persons transporting fireworks may not possess them in a city, town or village without a permit from that jurisdiction if they remain there for more than 12 hours. Wis. Stat. § 167.10(3)(bm).

Penalties

A person who possesses or uses fireworks without a valid permit, or who sells fireworks to a person who does not have a valid permit, is subject to a forfeiture of up to \$1,000 per violation. Wis. Stat. § 167.10(9)(b). Each firework illegally possessed, used or sold may be a separate violation.

A parent or guardian who allows a minor to possess or use fireworks (not including those for which no permits are required) is subject to a forfeiture of up to \$1,000 per violation. Wis. Stat. § 167.10(9)(c).

A city, village or town may obtain an injunction prohibiting a person from violating Wis. Stat. § 167.10(8)(a). Violations of such an injunction are criminal misdemeanors, subject to up to 9 months in jail and a \$10,000 fine. Wis. Stat. § 167.10(9)(a).

Enforcement

The statutes do not give the Department of Justice direct authority to enforce the fireworks law. Enforcement responsibility and authority rest with local law enforcement and district attorneys, or municipal prosecutors in the case of local ordinance violations.

Therefore, law enforcement should consult their local district attorney and municipal prosecutors with respect to specific enforcement questions in their jurisdiction.

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