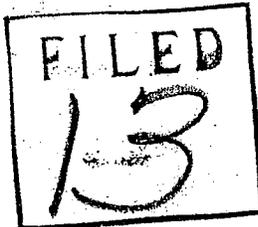


FIREWORKS: County court cannot regulate or prohibit sale  
or use of fireworks, nor limit sale of fireworks  
COUNTY COURT: to location with ~~special~~ permit.



June 18, 1954

Honorable Hilary A. Bush  
County Counselor  
Suite 202 Court House  
Kansas City, Missouri

Dear Mr. Bush:

This is in answer to your letter of recent date requesting  
an official opinion of this office, reading as follows:

"In Jackson County, the promiscuous sale  
of fireworks and the explosion thereof,  
has developed to a point where it is en-  
dangering the health, safety and general  
welfare of the population of the county.  
I would, therefore, like to request an  
opinion from your office on the following  
matters:

- (1) Can the County Court of Jackson  
County make its order regulating or  
prohibiting the sale of fireworks in  
the unincorporated part of the county?
- (2) Can the County Court regulate the  
use and explosion of fireworks within  
the unincorporated area of the county?
- (3) Under the provisions of the Zoning  
Law (Chapter 64 R.S.Mo. '49) can the  
County Court limit the sale of fireworks  
to locations for which a special permit  
has been granted?"

There is no doubt but that the explosion of fireworks en-  
dangers the lives and property of our citizens, and their  
promiscuous use may be considered a nuisance in many respects.  
However, in Missouri we do not have a general law either pro-  
hibiting or regulating the use and sale of fireworks. On the

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other hand, however, several of our cities have ordinances prohibiting or regulating such use and sale. These ordinances have been held valid on the grounds that the regulation of the use and sale of fireworks is a legitimate exercise of the police power. To quote from an opinion in the case of *City of Centralia v. Smith*, 77 S.W. 488, 103 Mo. App. 438:

" \* \* \* We regard it as within the police power of the city to enact the ordinance (prohibiting the exploding of firecrackers). The notorious fact that fires, frightening of horses, serious accidents to both actors and spectators commonly follow such amusement, is ample and reasonable ground justifying the exercise of the supervisory restraining power of the municipality."

(Words in parentheses ours.)

However, there is a distinct difference between the power of a municipality in the exercise of its police power to prohibit or regulate the use and sale of fireworks, and the attempt to exercise such police power by a county court. It is well settled that a county court possesses and can exercise such powers, and such powers only, as are expressly conferred on it by the general law of the state, or such powers as arise by necessary implication from those expressly granted. See *Dumm v. Cole County*, 287 S.W. 445, 315 Mo. 568; *King v. Maries County*, 249 S.W. 418, 297 Mo. 488. The distinction between a city and county with reference to the exercise of police powers has been well stated in the case of *State ex rel. Audrain County v. City of Mexico*, 197 S.W. (2d) 301, where the court said:

"Counties and cities are subdivisions of the State. They have, however, certain fundamental legal distinctions. Counties are involuntary quasi public corporations of a local nature, created by general law and come into existence without regard to the wishes or consent of their respective inhabitants. They are not chartered corporations. They are created as a governmental agency to facilitate the administration of the laws of the State. They do not have political and legislative powers for local self-government. They have been said

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to rank low in the grade of corporate existence. Municipal corporations are the result of a voluntary association of the inhabitants sanctioned by the State primarily for the purpose of local self-government subordinate to the State and at the same time constituting, although secondary, an effective instrumentality for the administration of governmental affairs. A charter, defining their powers and duties, is essential to their creation and existence, which is effected upon 'incorporation.' Cities have been a chief factor in human progress. They exercise policy making authority and have legislative powers for their local government. It is inconsistent with the purposes of their creation that counties exercise jurisdiction over their affairs. Dual authority would tend to create confusion. This is especially true of an exercise of governmental police power. \* \* \* (Emphasis ours.)

The authorities are uniform to the effect that county courts possess only limited jurisdiction. Outside the management of the fiscal affairs of the county (Art. VI, Sec. 7, Constitution of Missouri, 1945), such courts possess no powers except those conferred by statute. (See State v. Johnson, 173 S.W. (2d) 411.) The General Assembly of the State of Missouri has enacted numerous laws conferring administrative powers on the county courts. No law, however, has been enacted which delegates authority to a county court to legislate with respect to local matters relating to the health, safety and general welfare of the public.

In State ex inf. Wallach v. Loesch, 169 S.W. (2d) 675, 350 Mo. 989, the Planning and Zoning Act of 1941 was attacked on the ground, among others, that the act delegated to the county court and the planning commission legislative power in respect to police regulations, and thereby was in violation of the provisions of the constitution vesting the legislative power in the General Assembly. The court conceded that the Legislature must retain unto itself legislative power, and that it cannot delegate such power to the county courts. It was held that the act itself does not delegate any powers to the county courts in violation of our constitution, but that the law in question is a complete framework, but the county courts are given the power to fill in the details. Such details consist in part of rules and regulations to be adopted. In other words, the court concedes that the planning and zoning

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law, for counties outside incorporated areas is a police regulation, that such power may not be delegated to a county court, but holds that there is no delegation of police power to the county courts by the law because only certain details have been necessarily left to the local body to complete.

Chapter 64, V.A.M.S., is an exercise by the Legislature of the police power of the state, and only the essential details are left to the local administrative body. The law authorizes the segregation and fixing of locations of places of businesses, as well as the uses to which property may be put generally. Presumably any lawful business may be classified according to its hazardous nature and restrictions placed on its location by regulations. This does not imply that there is any power in the county court to prohibit or abate a lawful business though it may be considered a nuisance, but rather confers the power to classify, locate and regulate lawful businesses whether or not they are nuisances. The county court cannot abate and destroy a lawful business on the theory that it is not as conducive to public health and fire safety as some other lawful business. See *City of Washington v. Mueller*, 218 S.W. (2d) 801.

As to what ultimate zoning plan may be prepared and put into effect in Jackson County, we, of course, have no way of knowing. Whether or not businesses dealing exclusively with the sale of fireworks would be segregated to any particular area would be one of conjecture on our part. As the Supreme Court pointed out in *Flora Realty and Inv. Co. v. City of Ladue*, 246 S.W. (2d) 771, 362 Mo. 1025, what may be the most appropriate use of any particular property in determining zoning boundaries and restrictions depends not only on all conditions, physical, economic and social, prevailing within the municipality and its needs, present and reasonably prospective, but also on the nature of the entire region in which the municipality is located and the use to which that region has been or may be put most advantageously. Certainly, restrictions imposed by zoning ordinances on use of property must bear some substantial relationship to public health, safety, morals or general welfare.

We are sympathetic with your views that the health, safety and welfare of the people of Jackson County are being endangered by the promiscuous sale of fireworks and the explosion thereof. As a practical matter, the danger resulting from throwing firecrackers at automobiles in 1954 is much greater than the danger resulting from throwing firecrackers at horses in 1903, noted by the court in the *Centralia* case. However, this must be a matter

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for the Legislature to act upon, and we are unable to find any authority for regulation other than by municipalities acting under the police power of their charters.

CONCLUSION

It is the opinion of this office that the county court of Jackson County does not have the power to prohibit or regulate the sale or use of fireworks in the unincorporated area of such county. It is further the opinion of this office that the county court of Jackson County cannot limit the sale of fireworks to locations for which a special permit has been granted.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Ronald S. Reed.

Yours very truly,

JOHN M. DALTON  
Attorney General

RSR:ml