



STATE OF KANSAS

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May 22, 1980

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ATTORNEY GENERAL OPINION NO. 80- 109

Edward C. Redmon
State Fire Marshal
Mills Bldg., Suite 203
109 W. Ninth
Topeka, Kansas 66612

Re: Fire Protection--Fire Safety and Protection--Rules
and Regulations Governing Explosive Materials;
Permit Required for Possession or Use Thereof

Synopsis: Under the authority granted him by K.S.A. 31-
133(a)(1), the State Fire Marshal is authorized
to adopt rules and regulations governing the use,
possession and handling of explosive materials.
The power of the State Fire Marshal to require
that anyone using, possessing or loading and
firing such materials have a valid permit to do
so is necessarily implied by statute, as is the
power of that officer to be in charge of the
issuance of such permits. Cited herein: K.S.A.
31-133, K.A.R. 22-10-1.

* * *

Dear Mr. Redmon:

As Fire Marshal for the State of Kansas, you have requested our opinion on a question dealing with the adoption by your office of a code for the manufacture, transportation, storage and use of explosive materials. Specifically, you inform us that the code issued by the National Fire Protection Association (NFPA) in pamphlet No. 495 (1973) has been incorporated in its entirety into the rules and regulations of this state at K.A.R. 22-10-1. Certain provisions of the code require the issuance of a permit before various enumerated activities involving explosives may be engaged in. You wish to know if your office is empowered to issue such permits.

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(the code is silent on this point), or, if not, who the proper authority would be.

The statutory basis for the adoption of the code is found at K.S.A. 33-133, which in pertinent part states:

"(a) The state fire marshal shall adopt reasonable rules and regulations, consistent with the provisions of this act, for the safeguarding of life and property from the hazards of fire and explosion. Such rules and regulations shall include but not be limited to the following:

"(1) The keeping, storage, use, sale, handling, transportation or other disposition of highly flammable materials, including crude petroleum or any of its products, and of explosives, including gunpowder, dynamite, fireworks and firecrackers; and any such rules and regulations may prescribe the materials and construction of receptacles and buildings to be used for any of said purposes;

"(b) Any rules and regulations of the state fire marshal adopted pursuant to this section may incorporate by reference specific editions, or portions thereof, of nationally recognized fire prevention codes."

The adoption of NFPA pamphlet No. 495 as an official regulation replaces an earlier edition on this same topic which also appeared at K.A.R. 22-10-1.

The new code seeks to regulate the use and possession of explosives by establishing a series of permits which must be obtained before explosive materials (as such are defined by §121 of the code) may be possessed, used or loaded and fired (§221). Such materials may not be sold, given, delivered or transferred to any person who does not have a permit (§222), and while only one type of permit is required for their possession, actual loading and firing requires an additional "Permit to Blast." (§§231, 232.) The code also contains sections on the posting of permits (§§251-53), restrictions on their issuance (§§261-263), grounds for denial or revocation (§§271-273), prescribed record keeping and reporting

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(§§281-285), and how permits may be applied for and renewed (§§291-293). Control over this entire process is given to the "issuing authority," a term which is not further defined, hence your query.

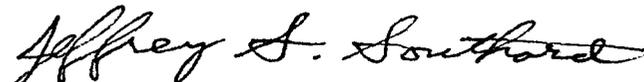
Despite this omission, we have no doubt but that your office is the correct agency to manage the permit system. At §121 of the code, it is stated that the code is "approved" by the "authority having jurisdiction." By the terms of K.S.A. 31-133(a), in Kansas this authority is clearly the Fire Marshal, for that statute empowers him to adopt rules and regulations for the safeguarding of life and property from the hazards of explosives. While there exists no express delegation of power to administer the provisions of any uniform code adopted as a regulation, possession of such power by the Fire Marshal must be necessarily implied, for to find otherwise would negate the clear intent of the statute. Accordingly, it would be entirely consistent with the powers implied by statute for your office to have control of the permit system envisaged by the code. Indeed, we find no authority for any other agency to have control of such a system. However, this is not to say that county or city authorities could not, by exercise of their police powers through local resolution or ordinance, further limit activities such as blasting.

In conclusion, under the authority granted him by K.S.A. 31-133(a) (1), the State Fire Marshal is authorized to adopt rules and regulations governing the use, possession and handling of explosive materials. The power of the State Fire Marshal to require that anyone using, possessing or loading and firing such materials have a valid permit to do so is necessarily implied by statute, as is the power of that officer to be in charge of the issuance of such permits.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Jeffrey S. Southard
Assistant Attorney General

RTS:BJS:JSS:phf