

Opinion No. 176.

Fireworks—War, Duration of—
Pyrotechnics.

Held: The manufacture, display or sale of fireworks as defined in Chapter 86, Laws of 1943, is illegal within the State of Montana, and will remain unlawful until six (6) months after the formal ratification of a peace treaty by the Congress of the United States or an appropriate proclamation by the President of the United States.

June 29, 1946.

Mr. Forrest H. Anderson
County Attorney
Lewis and Clark County
Helena, Montana

Dear Mr. Anderson:

In your letter of June 28, 1946, you request the opinion of this office regarding the sale and display of fireworks within the State of Montana.

Chapter 86, Laws of 1943, provides as follows:

"Section 1. It shall be unlawful for any person to manufacture, display or sell fireworks as defined in this act for the duration of the present world war and six (6) months thereafter.

"Section 2. It shall be unlawful for any person or persons to use or discharge fireworks defined in this act during the present world war and six (6) months thereafter except that pyrotechnic displays may be authorized by the state fire marshal. However, the state fire marshal shall investigate any and all such requests and shall only permit such displays when he feels it to be a safe and sane procedure.

"Section 3. Definition. The term 'fireworks' as used in this act refers to roman candles, firecrackers, rockets, torpedoes, toy pistols, toy cannon, detonating canes, blank cartridges and other devices designed and intended for pyrotechnic display.

"Section 4. Any person violating this act shall be punished by a fine not exceeding five hundred dollars (\$500.00) or by imprisonment in the county jail for a period not exceeding thirty (30) days, or both such fine and imprisonment.

"Section 5. All acts and parts of acts in conflict herewith are hereby repealed.

"Section 6. This act shall be in full forces and effect from and after its passage and approval."

The provisions of the above law, it appears to me, are plain, specific and unambiguous. The only provision of the above chapter which is possibly subject to interpretation is the phrase "the duration of the present world war;" and abundant judicial authority is available to define the duration of a war.

Our Supreme Court in *State ex rel. Mills v. Dixon, et al.*, 66 Mont. 76, 100, 213 Pac. 227, 235, held the first world war was terminated by the treaty of peace and not by the cessation of hostilities.

Mr. Justice Brandeis, speaking for the United States Supreme Court in the case of *Hamilton v. Kentucky Distilleries Company*, 251 U. S. 146, said:

"In the absence of specific provision to the contrary, the period of war has been held to extend to the ratification of the treaty of peace or the proclamation of peace."

67 *Corpus Juris* 429 asserts:

"War in the legal sense continues until, and terminates at the time of some formal proclamation of peace by an authority competent to proclaim it . . . War may come to an end by the simple cessation of hostilities, although this has been said to be not the normal course; but the mere cessation of actual hostilities does not terminate the war in the legal sense, until followed by formal proclamation of declaration of peace."

This office in an official opinion rendered May 21, 1946, (Opinion No. 158, Volume 21, Report and Official

Opinions of the Attorney General) has ruled funds realized from the sale of bonds to be used "after the termination of the war" cannot be used until a formal treaty of peace has been ratified, or by proper act of Congress or proclamation of the President.

Since no formal treaty of peace has been ratified by proper act of Congress and no proclamation has been promulgated by the President of the United States to signify the formal end of World War II, that war in its legal sense is not concluded despite the fact hostilities have ceased.

It is therefore my opinion the manufacture, display or sale of fireworks as defined in Chapter 86, Laws of 1943, is illegal within the State of Montana, and will remain unlawful until six (6) months after the formal ratification of a peace treaty by the Congress of the United States or an appropriate proclamation by the President of the United States.

Sincerely yours,
R. V. BOTTOMLY,
Attorney General