

or combustibles offered or exposed for sale, stored, or held in violation of this act."

It is to be noted that the word "confiscation" does not appear in the body of the statute, and that the legislature only used this word in the headnote which they assigned to this section. See Sec. 6, Ch. 143, Laws of 1947.) However, it is a cardinal rule of statutory construction that "the arrangement and classification of statutes, their titles and headnotes, are all proper and available means from which to determine legislative intent." *McLaughlin vs. Bardson*, 50 Mont. 177, 145 Pac. 945.

The meaning of "confiscation" has become settled in the law "The verb 'confiscate' is derived from the Latin 'con', with, and 'fiscus', a basket or hamper in which the Emperor's treasure was formerly kept. The meaning of the word 'confiscate' is to transfer property from private to public use, or to forfeit property to the prince or state." *Ware vs. Hylton*, 3 U. S. 199, 1 L. Ed. 568, 584. Since the meaning of the word is definite, the rule of statutory construction announced in *Osterholm vs. Boston and Montana Consolidated Copper and Silver Mining Co.*, 40 Mont. 508, 107 Pac. 499, is applicable: "Where the words of a statute have a definite and precise meaning, it is not possible to conjecture, restrict, or extend their meaning, but they should be read and understood to the natural and most obvious import of the language without resorting to subtle and forced construction to limit or extend their operation." Therefore, upon the seizure, the property interest became vested in the confiscator, the county.

Since the fireworks may be lawfully used they are not illegal per se. "The term 'per se' means by itself; simply as such, in its own nature without reference to its relations." *Keller vs. Safeway Stores*, D. C. Mont., 15 Fed. Supp. 716, 724. Therefore, such property is to be distinguished from property, such as gambling equipment, which is illegal per se, and as such is to be destroyed when confiscated. Section 94-2411, R. C. M., 1947.

In *Hersey vs. Neilson*, 47 Mont. 132, 131 Pac. 30, the court declared:

Opinion No. 3.

County Commissioners — Confiscation —Fireworks—Sale of Confiscated Fireworks.

HELD: 1. Fireworks, which are acquired by a county through confiscation are to be sold in accordance with the provisions of Section 16-1009, Revised Codes of Montana, 1947.

2. Fireworks are not illegal per se; however, since they are prohibited, except as authorized by statute, it is the duty of the county commissioners to ascertain that the fireworks sold by the county do not once again become contraband.

January 26, 1953.

Mr. Gerald L. Crowley
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Dear Mr. Crowley:

It has been requested by your predecessor that I issue an official opinion as to the manner in which the county is to dispose of fireworks confiscated under the provisions of Section 69-2705, Revised Codes of Montana, 1947, which provides:

"Confiscation. The state fire marshal or any sheriff, police officer or constable shall seize, take, remove, or cause to be removed at the expense of the owner all stocks of fireworks

"A board of county commissioners is one of limited powers and must in every instance, justify its action by reference to the provisions of law defining and limiting these powers. If, however, there is any question of the existence of the power to do the act proposed, and the mode of its exercise is not pointed out, the board is left free to use its own discretion in selecting the mode it shall adopt or the result it shall pursue, and the result cannot be called in question if the course pursued is reasonably well adopted to the accomplishment of the end proposed."

The manner which the county is to dispose of property is enunciated in Section 16-1009, R. C. M., 1947:

"Sale of Property. (1) The board of county commissioners of the several counties in this state shall have the power to sell any property, real or personal, however acquired, belonging to the county, and which is not necessary to the conduct of the county's business or to the preservation of its property. If the property, real or personal, sought to be sold, is reasonably of a value in excess of one hundred (\$100.00) dollars, the sale shall be at public auction at the courthouse door after previous notice given by publication . . .

* * *

(3) If no bid or offer is made for any property offered for sale at public auction, after appraisal and notice given, as provided herein, the board of county commissioners may, at any time thereafter, sell such property at private sale. . . . If at a private sale, notice shall be posted in five public places in the county at least five days before the date of sale . . ."

In exercising its power to sell the fireworks the board of county commissioners must limit the sale in such a manner that the fireworks will not again become contraband.

It is therefore my opinion that fireworks which are acquired by a county, through confiscation, are to be sold in accordance with the provisions of Section 16-1009, Revised Codes of Montana, 1947.

It is further my opinion that fireworks are not illegal per se; however, since they are prohibited except when authorized by statute, it is the duty of the county commissioners to ascertain that such property will not become contraband after the county sale.