



BURN BAN ENFORCEMENT GUIDANCE

Legal Questions:

1. Who can legally enforce a burn ban?
2. Can a fireman enter property to put out a fire?

Response:

Pursuant to R.S. 40:1602, the state fire marshal can institute a burn ban to prohibit or limit the private outdoor burning. In regards to enforcement, the law states that the state fire marshal or his representative or the commissioner of the Department of Agriculture and Forestry or his representative may impose a civil fine of \$250 for violation of this order. This penalty is civil in nature, not criminal, and is appealable to the Division of Administrative Law in accordance with the Administrative Procedure Act. At this time, the state fire marshal has not designated any entity, including fire prevention bureaus or other fire departments, to issue these types of fines. As to the Office of State Fire Marshal, only fire marshal deputies may issue this civil penalty.

However, the burn ban in and of itself is an order of the OSFM. As such, violation of the burn ban order is a violation of an order of the OSFM and is therefore, a violation of R.S. 40:1621. It provides:

Whoever fails to comply with any order issued by the fire marshal or his authorized representative, under any provisions of Part III of Chapter 7 of Title 40, R.S. 40:1569 excepted, shall be fined not more than five hundred dollars or imprisoned for not more than six months, or both. Each day's violation of an order constitutes a separate offense and may be punished as such at the discretion of the court.

This statute is a criminal statute and can be enforced by commissioned fire marshal deputies and any law enforcement officer. In the fact pattern presented above, the law enforcement officer could have issued the homeowner a criminal summons for violation of 40:1621. Or, the fire department could have contacted the OSFM to send out a deputy to that location. There, the deputy could have issued a criminal summons for violation of R.S. 40:1621 or a civil ticket for violation of R.S. 40:1602.

The remaining questions are whether the fire department is within its right to put out the fire and whether being on the property constituted a violation of some criminal statute. The answer can be found in the criminal trespass statute, R.S. 14:63. In general, it provides that it is a criminal violation for a person to enter a structure, watercraft, or moveable of another without express, legal, or implied authorization. However, the statute makes specific exceptions for fire departments. Subsection (E)(2) of the statute allows for firefighters, whether volunteer or other, to enter and remain upon the structure, watercraft, movable or immovable property of another for purposes of engaging in locating and suppressing fire.

Based upon the limited facts presented above, the fire department was within its legal right to be on the property and could have engaged in the suppression of the fire.