

July 25, 2005
Opinion Number 05-0183

Louisiana Air Control Law
Open Burning Statute
Statutes: R.S. 30: 2057; LAC 33: III.1109

Mr. Jason Simon
Fire Chief
Youngsville Fire Department
P.O. Box 279
Youngsville, LA 70592

1. A private property owner in a parish with a population of 300,000 or less may burn yard waste if the landowner attends the burning at all times. 2. Due to the population size of Lafayette Parish, landowners are restricted to burning only leaves, grass, twigs, branches, and vines. 3. Non-commercial purpose means that the landowner is not charging money or services in exchange for his burning of another person's yard waste. 4. A landowner engaged in land-clearing activities may burn a pile of trees as long as certain conditions are met. 5. The governing authorities in municipalities with a population of less than 5,000 are allowed to burn trees, brush, grass, or other vegetable matter on property that it owns or leases. 6. Bonfires are prohibited within the municipal city limits of the Town of Youngsville.

Dear Mr. Simon,

You have requested the Attorney General's opinion as to six questions regarding the interpretation and enforcement of the Louisiana Air Pollution Control Statute. Your questions are addressed individually below. Please note that the questions are answered on the basis of state law alone; no reference has been made to local ordinances.

1. May a private property owner within the municipal limits of the Town of Youngsville burn "yard waste" defined as leaves, grass, twigs, branches, and vines provided that the property owner attends the burning of said yard waste at all times?

Yes. The provisions of the Louisiana Air Control Law do not prohibit a private property owner from burning yard waste on his own property in parishes with a population of three hundred thousand or less, provided that the property owner attends the burning of yard waste at all times and the burning must not be performed for a commercial purpose.¹ According to the 2000 U.S. Census Bureau, the total population of Lafayette Parish is 190,503.

2. May a private property owner also burn trees, brush, or other vegetable matter or is he restricted to burning only leaves, grass, twigs, branches, and vines?

Due to the population size of the Lafayette Parish, private property owners in the Town of Youngsville are restricted to burning only leaves, grass, twigs, branches, and vines. Private property owners in parishes having a population of 90,000 or less may burn

¹ LSA—R.S. 30:2057(c)(1)-(2) (2005). See also LAC 33: III. § 1109 (2005).

trees, brush, or other vegetable matter as long as the burning does not occur within the city limits.

3. What is the meaning of the word “non-commercial purposes” as used in subsection C of the statute?

The statute does not define the phrase “non-commercial purpose.” However, a commercial purpose is generally understood to mean the charging of money or something of monetary value in exchange for services. For example, a landowner is prohibited from being paid by someone else to burn wastes on his property.

4. If a private property owner is clearing his land of trees and debris in order to market the property for sale or development or otherwise, may he burn the pile of trees within the municipal city limits as long as someone attends the fire?

The regulations enacted by the Department of Environmental Quality provide an exception to the Open Burning Law that allows the outdoor burning of trees, brush, grass, and other vegetable matter in certain land-clearing operations.² Specifically, the landowner may burn a pile of trees within the municipal city limits as long as the following conditions are met:

- (a) No public nuisance is or will be created;
- (b) The burning is not prohibited by and is conducted in compliance with other applicable laws (such as local ordinances);
- (c) Prevailing winds at the time of the burning must be away from any city or town, the ambient air of which may be affected by smoke from the burning;
- (d) The location of the burning must be at least 1,000 feet from any dwelling other than a dwelling or structure located on the property on which the burning is conducted;
- (e) Care must be used to minimize the amount of dirt on the material being burned;
- (f) Heavy oils, asphaltic materials, items containing natural or synthetic rubber, or any materials other than plant growth which produce unreasonable amounts of smoke may not be burned; nor may these substances be used to start a fire;
- (g) The burning may be conducted only between the hours of 8 a.m and 5 p.m. Piles of combustible material should be of such size to allow complete reduction in this time interval; and
- (h) The burning must be controlled so that a traffic hazard as prohibited by Subsection E of this Section is not created

² See LAC 33: III.1109(D)(6) (2005).

Note that “other debris” is not included in the list of items that are allowed to be burned.

5. Does the Town of Youngsville have the authority to burn trees, brush, grass, or other vegetable matter on property that it owns or leases within the municipal city limits, and if so, under what conditions may it do so?

According to Louisiana Revised Statute 1:11, the number of inhabitants of a political subdivision is that shown by the latest regular or special federal census.³ The 2000 federal census for the Town of Youngsville indicates a population size of 3,992.⁴ A recent census for the Town of Youngsville has been taken in order to reclassify the municipality from town to city; however, this census does not become the official census for purposes of La. R.S. 1:11 until certain procedures take place. Specifically, the governor must issue a proclamation reclassifying the municipality.⁵ Once this proclamation is received by the mayor, the board of alderman of the municipality shall adopt an ordinance changing the name of the municipality to reflect its new classification.⁶ The reclassification, and thus the new census information, becomes official when a copy of the proclamation and the ordinance is transmitted to the secretary of state for recordation.⁷

As long as the official population size remains at 3,992 the governing authorities of the Town of Youngsville do have this authority. Generally, Louisiana Revised Statute 30:2057(B)(5)(b) states that the governing authority of any municipality having a population of five thousand or less **may** burn trees, brush, grass, or other vegetable matter on property that it owns or leases within the corporate limits of such municipality, provided that all of the following occur: (a) the burning cannot occur within five hundred feet of an occupied house or residence; (b) the municipality enacts an ordinance to prohibit burning of trees, brush, grass, or other vegetable matter within its corporate limits; and (c) the municipality enacts an ordinance to provide for the collection and burning of trees, brush, grass, or other vegetable matter at a controlled site. However, this provision applies only to municipalities having a population of five thousand or less. If and when the Town of Youngsville is reclassified as a city and the official census indicates a population size of greater than 5,000, the governing authorities of Youngsville will no longer be authorized to burn trees, brush, grass, or other vegetable matter on property that it owns or leases.

6. Does a private citizen or the Town of Youngsville have the right to burn trees, branches, limbs, or other wood as a bonfire within the municipal city limits, and if so, under what conditions?

³ Louisiana R.S. 1:11 (2005).

⁴ See <http://www.state.la.us/census/2000/plplaces.htm>.

⁵ Louisiana R.S. 33:342(B).

⁶ La. R.S. 33:342(C).

⁷ *Id.*

According to R.S. 30:2057(B)(6), the burning of trees, branches, limbs, or other wood as a bonfire is prohibited in the Town of Youngsville. The exemption for bonfires under the Open Burning Statute applies only to bonfires that are specifically authorized by ordinance in the parishes of St. James, St. John the Baptist, or St. Charles.

Yours truly,

CHARLES C. FOTI, JR.
Attorney General

By: _____
Megan K. Terrell
Assistant Attorney General

CCF/MKT:mlc

Enclosure

cc: Mayor Wilson R. Viator
Mr. George R. Knox, Esq.

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Date Received:
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Megan Terrell
Assistant Attorney General