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ATTORNEY AT LAW

January 4, 2008

Mr. Larry H. Hanson
Valdosta City Manager
POB 1125
Valdosta, GA 31603-1125

Via email at hanson@valdostacity.com

RE: Ordinance banning firearms in parks

Dear Mr. Hanson:

I am writing on behalf of my client, the organization Georgiacarry.org (http://www.georgiacarry.org) to bring to your attention one of Valdosta's ordinances, section 74-4. Section 74-4 states that, "It shall be unlawful for any person to possess while on city park property a revolver, pistol, shotgun, rifle, air rifle, air gun, or any gun or bow or other weapon that discharges projectiles either by air, explosive substance or any other force. No person shall discharge or set off anywhere on park property any explosive, revolver, pistol, shotgun, rifle, air rifle, bow, or other weapon that discharges projectiles either by air, explosive substance or any other force." This ordinance is in violation of the Georgia General Assembly's well established preemption of firearm regulations and the State Constitution.

Valdosta is prohibited by the laws of the State of Georgia from either enforcing or enacting such an ordinance. It is important to note that there already exists a comprehensive state regulatory scheme for the possession of firearms. Many of the activities that were undoubtedly in the minds of the Mayor and Council members when the ordinance was enacted are already made illegal or highly regulated by the laws of the State of Georgia. The State of Georgia does not require and, in fact, has specifically prohibited municipalities from exercising their police powers in this particular sphere.

GCO asks that Valdosta repeal Section 74-4 because it is in violation of state law. I will point you to three sources of law supporting the contention that this ordinance is preempted by state law. These sources of law are:

(1) a state statute and the state constitution,

(2) case law, and

(3) the opinion of the Attorney General for the State of Georgia.

The state statute expressly forbids the ordinance at issue. The State Constitution provides for a right and only gives the General Assembly the ability to circumscribe that right. The case law declares that, even without such a statute, the city is without authority to pass such an ordinance because the field of firearms has been preempted by the General Assembly's extensive regulation on the subject. The Attorney General opinion reinforces those points in response to a question from a county on the legality of a firearms ordinance.

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1. THE STATUTE

The General Assembly has, by law, prohibited counties and municipal corporations from engaging in the regulation of firearms. Nowhere is the intent more clearly stated than in the first sentence of the state preemption statute, "It is declared by the General Assembly that the regulation of firearms is properly an issue of general, state-wide concern." O.C.G.A. § 16-11-173(a)(1) (2006). Specifically counties and cities are restricted by the following language:

> "**No** county or **municipal corporation, by zoning or by ordinance, resolution, or other enactment, shall regulate in any manner** gun shows; **the possession**, ownership, transport, **carrying**, transfer, sale, purchasing, licensing, or regulation **of firearms** or components of firearms; firearms dealers; or dealers in firearms components." O.C.G.A. § 16-11-173(b)(1) (2006) (emphasis supplied).

The language of the statute is clear and unambiguous. By the passage of the statute, the General Assembly excluded counties and cities from regulating the possession and carrying of firearms. The ordinance at issue prohibits possession of firearms. It cannot be denied that through the ordinance Athens-Clarke County intends to regulate the possession of firearms and that the General Assembly specifically prohibits any local government from regulating the possession of firearms.

Further, Section 16-11-173 **did** set forth three specific instances in which cities and counties are permitted to regulate firearms. Valdosta **is** permitted to (1) "**regulate the transport, carrying, or possession of firearms by employees of the local unit of government while in the course of employment** with such local unit of government," (2) "require the ownership of guns by heads of household," (3) limit or prohibit the **discharge** of firearms within city boundaries. O.C.G.A. § 16-11-173(c)-(e) (2006) (emphasis supplied). The ordinance at issue here does not fall within any of the three narrowly defined exceptions set out by the General Assembly. The ordinance is not (1) limited to city employees, (2) a regulation requiring the ownership of firearms, or (3) a regulation on the discharge of firearms within city limits.

Applying the well-established canon of statutory construction that the inclusion of one implies the exclusion of others it is clear that the ordinance is preempted by state law. Here, the inclusion of the "one" is clear from Section 16-11-173 which includes not just "one" but three specific instances where cities have the right to regulate firearms. Clearly, if the General Assembly's intent was to allow unspecified additional regulations it would have enacted a provision that gives cities and municipalities additional powers. However, the exact opposite of this intent is evidenced from the first statement in the statute. No where does Section 16-11-173 make exceptions for instances where the issue pertaining to firearms affects property owned by the municipality or any other reason, except for, of course, where the regulations falls within the three narrowly defined exceptions.

In addition, the State Constitution recognizes that, "The right of the people to keep and bare arms shall not be infringed, but the **General Assembly shall have power to prescribed the manner in which arms may be borne**." GA. Const. art. 1, § 1, Par. VIII (emphasis supplied). In this sentence the State Constitution recognizes the rights of citizens to keep and bare arms. More, importantly it specifies how and by whom that right can be restricted. Generally speaking, the State Firearms and Weapons Act does not violate the state constitution. *Carson v. State*, 241 Ga. 622, 627 (1978). The State Firearms and Weapons Act is a legitimate exercise of the **state's** police powers. *Id.* at 628. Nowhere in the State Constitution are Georgia's counties and cities given the power, police or otherwise, to infringe upon the rights of the people to keep and bare arms. A clear, constitutional regulatory scheme can be evidenced by the mass of legislation codified in the State Firearms and Weapons Act. Not only does the State Constitution prohibit the ordinance in question, but also the very act the State Constitution allows for prohibits the ordinance as well.

2. CASE LAW

State courts have routinely upheld the scope of Section 16-11-173 and its predecessors in actions both by and against counties and cities.

In 2007 GCO sued Coweta County over a similar ordinance. The case was dismissed by the Superior Court of Coweta County, but reversed by the Court of Appeals. In reversing, the court held "the plain language of [O.C.G.A. § 16-11-173]" prohibits Coweta County from regulating the carry of firearms, even in Coweta County's parks. A copy of the opinion of the Court of Appeals is enclosed for your convenience.

In 1999 the City of Atlanta brought suit against fourteen gun manufacturers and three trade associations for alleged damages brought on by the business practices of the defendants. *Sturm, Ruger & Co. v. City of Atlanta*, 253 Ga.App. 713, 713 (2002). The Court of Appeals found that the Atlanta's suit was preempted by state law, not only because of the preemption statute, but also because of the clear grant of powers in the constitution and the comprehensive nature of firearms laws in Georgia. *Id.* at 718.

The Court of Appeals found that preemption precludes all other local or special laws in the subject area. *Id.* (citing Ga. Const. Art. III, § 6, Par. IV(a)). This preemption applies regardless of whether the regulation is attempted through a lawsuit (as in *Sturm, Ruger*) or an ordinance (as here). *Id.* The General Assembly has broad powers to limit a city's powers of home rule. *Id.* at 720 (citing O.C.G.A. § 36-35-3).

In addition, the Supreme Court of Georgia recognizes that the General Assembly has the **sole** power to regulate firearms. *Id.* at 717 n.1 (citing *Smith & Wesson Corp. v. City of Atlanta*, 273 Ga. 431, 435 (2001) (Fletcher, P.J., concurring)).

Here, the ordinance at issue is a regulation of firearms, the judicially recognized sole dominion of the General Assembly. The General Assembly possesses the power to restrict the rights of cities and counties and has done so through statutorily and constitutionally granted powers. The General Assembly alone has the power to regulate firearms.

Under the State Firearms and Weapons Act it is a misdemeanor for a person to carry a firearm to a "public gathering," a term which includes publicly owned and operated buildings. O.C.G.A. 16-11-127 (2006). It is important to note that the ordinance at issue goes beyond the regulations contained in Section 16-11-127. The ordinance at issue prohibits the possession of firearms in city parks. This includes locations not contemplated by Section 16-11-127. Per the language of the statute not all public places are off limits to those carrying firearms. O.C.G.A. § 16-11-127(b) (2006). The ordinance at issue exposes GFL holders to criminal liability under the code of ordinances of Valdosta that does not exist under the State Firearms and Weapons Act. This is in contravention of state law.

Finally, "state law can preempt local law expressly, by implication, **or by conflict**." *Franklin County v. Fieldale Farms Corp.*, 270 Ga. 272, 273 (1998) (emphasis supplied).

3. THE ATTORNEY GENERAL OPINION

The Attorney General for the State of Georgia routinely gives legal opinions to local governments on matters of law. The Attorney General has previously authored an opinion concerning Section 16-11-173. The opinion, requested by the City Attorney of Columbus, found that a proposed ordinance regulating the placement of firearms in homes, buildings, trailers, vehicles, or boats was *ultra vires* because it conflicted with the general laws of the state and the aforementioned preemption statute. Ga. Op. Atty. Gen. No. U98-6, *available at* http://www.state.ga.us/ago/read.cgi?searchval=firearm&openval=U98-6. The Attorney General reasoned that by enacting the predecessor to Section 16-11-173, "the General Assembly appears to have codified with certain exceptions its intent to preempt the regulation of firearms." *Id.* The Attorney General also found that the three exceptions were the only allowable ways in which a city or county can regulate firearms. *Id.* The Attorney General determined that because the proposed Columbus ordinance did not fall within any of the three exceptions and it regulated the possession, ownership, transport, and carrying of firearms it was preempted by state law. Further, the proposed Columbus ordinance conflicted with the State Firearms and Weapons Act's provisions concerning the carrying of firearms by those licensed to carry firearms. *Id.*

The ordinance at issue is substantially similar to the proposed Columbus ordinance at issue in the Attorney General opinion. The Valdosta ordinance at issue is *ultra vires*. It conflicts with the general laws of the state and the preemption statute the same as the proposed Columbus ordinance. As previously discussed, none of the three narrowly defined exceptions give Valdosta the ability to enforce the ordinance. The ordinance at issue concerns the possession of firearms and is in conflict with the rights given to those with GFLs.

The ordinance at issue is not a necessity of city governance. In Fulton County, the cities of Alpharetta, College Park, Hapeville, Mountain Park, and Palmetto do not have similar ordinances in their respective code of ordinances. In addition, numerous counties and cities across the state do not have similar ordinances in their code of ordinances either.

GCO asks that you recommend to the Mayor and Council that the ordinance at issue, Section 74-4, be repealed. If a recommendation to repeal the ordinance has not been made

within the next three weeks, GCO will seek legal action against Valdosta in Lowndes County Superior Court.

Moreover, I observe that Valdosta Ordinance Section 70-13 purports to regulate (rather heavily) the sale of firearms. This ordinance also is preempted by state law and should be repealed.

Sincerely,

John R. Monroe