IN THE SUPERIOR COURT OF COWETA COUNTY
STATE OF GEORGIA

GEORGIACARRY.ORG, INC. and EDWARD A. STONE,	)	
Plaintiffs,	)	CIVIL ACTION FILE NO. 07-V-215
v.	)	
COWETA COUNTY, GEORGIA,	)	
Defendant.	)	

BRIEF IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

Plaintiffs in the above referenced action file this brief in support of their motion for summary judgment pursuant to O.C.G.A. 9-11-56(a) and Uniform Superior Court Rule 6.5, showing the court that there is no genuine issue as to any material fact and Plaintiffs are entitled to judgment as a matter of law.

I.

INTRODUCTION

This is a case about a gun ban in Coweta County. The position of the Plaintiffs with respect to such matters, in general, is that gun bans are bad as a matter utility and of public policy.

> Laws that forbid the carrying of arms . . . disarm only those who are neither inclined nor determined to commit crimes. Such laws make things worse for the assaulted and better for the assailants; they serve rather to encourage than prevent homicides, for an

> unarmed man may be attacked with greater confidence than an armed one.

Thomas Jefferson, Manuscript of Legal Commonplace Book, Library of Congress, item #828, quoting Cesare Beccaria, *Dei Delitti e delle Pene* [Of Crimes and Punishments] (1766), chap. 40. The recent events at Virginia Polytechnic Institute and State University tragically and vividly demonstrate the gross error of setting aside certain areas to be fertile fields for vicious criminals resolved to commit acts of violent brutality, unhampered by the dread of encountering an armed and determined citizen. Were this issue in Georgia a simple matter of public policy, however, this court would be constrained not to act in favor of either the Defendant or Plaintiffs, as matters of policy are not, generally, susceptible of judicial determination.

The policy determination on this issue has already been made by the General Assembly in Plaintiff's favor. As a result, the issue in this case is not a matter of mere policy, but a matter of law, and legal determinations are emphatically within the province of the judiciary.

This litigation is in the rather unusual situation of having all of the operative facts admitted by Defendant, leaving purely legal issues for this Court's determination. In the

present case, the legal issue is a simple one: Does a state law expressly providing that Coweta County may not regulate in any manner the carry or possession of firearms ***really*** mean that Coweta County may not regulate the carry and possession of firearms? O.C.G.A. § 16-11-173(b)(1) provides, "No county . . . by zoning or by ordinance, resolution, or other enactment, shall ***regulate in any manner*** . . . the possession, . . . transport, [or] carrying, . . . of firearms . . ." (emphasis added).

In spite of this express state preemption law, Coweta County has an ordinance, 46-33(c), that flatly prohibits the possession, transport, or carrying of firearms "on or about Coweta County recreational facilities, sports fields, or any surrounding areas being property of the county." This county ordinance is expressly preempted by state law, in addition to being implicitly preempted by state law, and there being no factual dispute whatsoever, Plaintiffs are entitled to summary judgment as a matter of law on their Complaint.

II.

STATEMENT OF FACTS

Plaintiff Edward A. Stone ("Stone") is a natural person who resides in Coweta County, Georgia, and he is a member of Plaintiff Georgiacarry.Org, Inc. ("GCO"), a non-profit corporation organized under the laws of the State of Georgia.

See Affidavit of Edward Stone, ¶ 3. GCO is a member-oriented corporation whose goals include protecting the right of its members, including Mr. Stone, to own and carry firearms. Stone Aff., ¶ 4. Mr. Stone possesses a valid firearms license issued by the Coweta County Probate Court pursuant to O.C.G.A. § 16-11-129. Stone Aff., ¶ 5; Complaint, ¶ 17; Answer, ¶ 17. As a Coweta County resident with a family, including a six year old child, Mr. Stone is also a frequent user of Coweta County recreation facilities, sports fields, or any surrounding areas being property of the county, and he desires to exercise his right to carry a firearm in compliance with state law while visiting Coweta County recreation facilities, sports fields, or any surrounding areas being property of the county, but he is in fear of unlawful arrest and prosecution under Defendant's preempted ordinance for doing so. Stone Aff., ¶ 6; Complaint, ¶ 19; Answer, ¶ 19.

In August of 2006, Mr. Stone contacted by telephone the Coweta County Solicitor's Office to inquire into whether Coweta's preempted ordinance was even enforced. Stone Aff., ¶ 7. The Coweta County Solicitor's office assured Mr. Stone that it would prosecute him for a violation of the preempted ordinance. Id. His discontent manifest at this point, Mr. Stone resolved to have this preempted ordinance repealed in the

normal manner, through contacting his duly elected representatives and soliciting their assistance with bringing Coweta County into compliance with state law. Accordingly, on August 25, 2006, Mr. Stone wrote a letter to his Coweta County Commissioner, Paul Poole, pointing out that Coweta County Ordinance 46-33(c) (the "Ordinance") is preempted by O.C.G.A. § 16-11-173(b)(1) and requesting that the Board of Commissioners repeal the ordinance. Stone Aff., ¶ 8 (and a copy of the August 25, 2006 letter, attached to the affidavit as Exhibit A); Complaint, ¶ 5; Answer, ¶ 5. Two days later, on August 27, 2006, presumably the day the letter arrived, Coweta County's administration called Mr. Stone at his residence to inform him that Coweta County would be investigating the issue by turning the letter over to Coweta County's attorney for evaluation of the ordinance. Stone Aff., ¶9.

Almost two months later, on October 25, 2006, in reply to email inquiries from Mr. Stone, Commissioner Poole sent an email to Stone advising him that Commissioner Poole had forwarded the August 25, 2006 letter to the county attorney. Stone Aff., ¶ 10 (and a copy of the email exchange between Stone and Commissioner Poole attached to the affidavit as Exhibit B); Complaint, ¶ 6; Answer, ¶ 6. After another month passed, County Administrator L. Theron Gay wrote Mr. Stone a letter on November 30, 2006

advising Mr. Stone that the county attorney's opinion was that Defendant "is within its right to prohibit firearms on its own property," and enclosing the county attorney's opinion on the matter. Stone Aff., ¶ 11 (and a copy of the November 30, 2006 correspondence and county attorney opinion attached to the affidavit as Exhibit C); Complaint, ¶ 7; Answer, ¶ 7.

The actual opinion was dated October 31, 2006, almost a month earlier, and it asserted, in three short paragraphs, first, that the "county's regulation is constitutional." Second, it reviewed in one dismissive sentence a case cited in Mr. Stone's letter without examining how the case may or may not affect Defendant's preempted ordinance. Third, the opinion erroneously and frivolously asserted that the state preemption law had "been ***repealed***." Stone Aff. at Exh. C (emphasis added). The county attorney's opinion cited an old statute number for Georgia's preemption statute, which was re-numbered in 2005 but *not* repealed. Id. In any event, the re-numbering occurred well before the attorney issued her opinion.

On December 4, 2006, the first business day following receipt of the county attorney's opinion, Mr. Stone wrote the county attorney by facsimile pointing out that his first letter, from August of 2006, stated twice that the statute had simply been re-numbered and providing her ***again*** the correct statute

number. Stone Aff., ¶ 12 and Exhibit D; Complaint, ¶ 8; Answer, ¶ 8. The letter requested that she reconsider her opinion and advice to the county government in light of the existence of the state preemption statute, O.C.G.A. § 16-11-173, which had ***not*** been repealed. Id. The letter offered assistance and informed her that Mr. Stone would be speaking "to the Board of Commissioners on this ordinance on Thursday, December 7, 2006." Id. The county attorney opinion was never revised.

As promised, Mr. Stone addressed the Coweta County Board of Commissioners at its regular meeting on December 7, 2006 and requested repeal of the ordinance. Stone Aff., ¶ 13; Complaint, ¶ 9; Answer, ¶ 9. In his remarks to the Board, Mr. Stone explained why he believed the county attorney's opinion was incorrect and hand delivered to each county commissioner a copy of the preemption statute and an opinion by the Attorney General of the State of Georgia, U98-6, regarding the preemption statute, as well as copies of the correspondence between Mr. Stone and the county. Id. Attorney Conner stated at the Board meeting that she would review the arguments and materials presented by Mr. Stone to the Board, and revise her opinion if appropriate. Complaint, ¶ 10; Answer, ¶ 10. No such revision was ever forthcoming.

On December 8, 2006, Stone sent Attorney Conner an email with additional arguments against Attorney Conner's opinion and including a copy of an opinion of the Lee County attorney (who opined that a Lee County ordinance with striking similarity to Defendant's ordinance was preempted by state law)[1]. Stone Aff., ¶ 14 (a copy of the email is attached to the affidavit as Exhibit E); Complaint, ¶ 11; Answer, ¶ 11. Mr. Stone never received a reply to this email. Stone Aff., ¶ 14.

On January 19, 2007, Stone left a voice mail message for Attorney Conner, requesting an update on the status of her 6 subsequent weeks of research and requesting a return call. Stone Aff., ¶ 15; Complaint, ¶ 12; Answer, ¶ 12.[2] Stone never received a reply to this message as of the date of this filing. Id.

Believing his efforts to work through his representatives on the county commission on his own were proving futile, Mr.

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[1] As an aside, the Lee County ordinance was further amended on the urging of Plaintiff GCO, and the county adopted an ordinance fully in compliance with O.C.G.A. § 16-11-173 by unanimous vote at its April 26, 2007 meeting. The current ordinance bans only the discharge of firearms, and then with an exception "as otherwise authorized by law." Forsyth County repealed a similar ordinance at the urging of Plaintiff GCO at its regular board meeting on December 7, 2006.

[2] Oddly, Defendant's Answer asserts no knowledge of this particular allegation. It is worth noting that county attorney Jerry Ann Conner and the attorney signing Defendant's pleadings in this action are employed by the same law firm.

Stone retained counsel to assist him, and, on January 23, 2007, Mr. Stone's attorney wrote a letter to Attorney Conner, requesting that she respond regarding the status of her research relating to the preempted ordinance. Stone Aff., ¶ 16 (a copy of the email is attached to the affidavit as Exhibit F); Complaint, ¶ 13; Answer, ¶ 13. In response, a week later, on January 29, 2007, a different attorney from Attorney Conner's firm called Mr. Stone's attorney to request basic information about Mr. Stone's concerns with Defendant's ordinance. Complaint, ¶ 14; Answer, ¶ 14.[3] Mr. Stone's attorney provided the requested information on the very same day via email. Id. This information consisted of the very same things that had previously been provided to the county commission at its meeting and to the county attorney.

When the county and its new attorney again refused to act, or even respond with any substance, Plaintiffs filed the instant lawsuit. Defendant has not repealed its ordinance as requested by Mr. Stone, nor has Defendant's counsel changed its opinion that the ordinance is valid. Complaint, ¶ 15; Answer, ¶ 15.

[3] Again, oddly, the Answer asserts a lack of knowledge, but, in this case, it was the ***very same lawyer*** signing Defendant's pleadings who made the telephone call and received the email responding to his telephone inquiry.

Mr. Stone is entitled to have the ordinance declared void for preemption, so that he need not fear unlawful arrest.

III.

STANDARD OF REVIEW

"To prevail at summary judgment under OCGA § 9-11-56, the moving party must demonstrate that there is no genuine issue of material fact and that the undisputed facts, viewed in the light most favorable to the nonmoving party, warrant judgment as a matter of law." Lau's Corp. v. Haskins, 261 Ga. 491, 405 S.E.2d 474 (1991). "The movant has the original burden of making this showing. Once the movant has made a prima facie showing that it is entitled to judgment as a matter of law, the burden shifts to the respondent to come forward with rebuttal evidence." Kelly v. Pierce Roofing Co., 220 Ga. App. 391, 392- 393, 469 S.E.2d 469 (1996). "In rebutting this prima facie case, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in O.C.G.A. § 9-11-56 must set forth specific facts showing that there is a genuine issue for trial." Entertainment Sales Co. v. SNK, Inc., 232 Ga. App. 669-670, 502 S.E.2d 263 (1998).

IV.

ARGUMENT AND CITATION OF AUTHORITY

Except for Defendant's ordinance, Mr. Stone is entitled under law to carry a firearm in Coweta County recreation facilities, sports fields, or any surrounding areas being property of the county, subject only to applicable state law regulating his carry of a firearm. Defendant's Answer fails to assert even a single substantive legal defense to Mr. Stone's Complaint, and it admits the material facts alleged in Mr. Stone's Complaint.

The standard applicable to the discussion of whether Defendant's county ordinance is preempted was provided in Mobley v. Polk County, 242 Ga. 798, 801-02 (1979), in which it was stated, "If there is reasonable doubt of the existence of a particular power [of a county], the doubt is to be resolved in the negative." In addition, it has been noted, "Counties are creatures whose limited powers must be ***strictly construed***." Wood v. Gwinnett County, 243 Ga. 833, 834 (1979) (emphasis added). "The powers of county commissioners are strictly limited by law, and they can do nothing except under express authority of law." Taylor v. Bartow County, 860 F. Supp. 1526, 1536 (N.D. Ga. 1994) (citations and punctuation omitted). With this in mind, let us

turn to an examination of Defendant's ordinance and applicable state law regarding preemption.

(A) STATE STATUTORY PREEMPTION: Defendant's Ordinance is Preempted by O.C.G.A. § 16-11-173

Defendant's ordinance states, "The following are prohibited on or about Coweta County recreation facilities, sports fields, or any surrounding areas being property of the county: …(c) Firearms, air (or spring loaded) rifles/pistols, fireworks, and any device[s] firing or propelling a projectile are strictly prohibited." The field of firearms regulation, however, has been entirely preempted by the state, with some narrow exceptions that are not applicable to this lawsuit. Accordingly, Coweta County may not regulate in any manner the possession or carrying of firearms. Coweta County's ordinance is "an application of power which has been primarily entrusted to the state, and which the state may reclaim at its discretion." Sturm, Ruger & Co. v. City of Atlanta, 253 Ga. App. 713, 720-21, 560 S.E.2d 525, 531 (2002)

(A)(1) *The Ordinance Is Expressly Preempted by Statute*

O.C.G.A. § 16-11-173(a) states, "It is declared by the General Assembly that the regulation of firearms is properly an issue of general, state-wide concern." Thus, the General Assembly has declared its policy that firearms regulation is not

a local concern but that firearms laws are to have uniform operation throughout the state.[4] More to the point, O.C.G.A. § 16-11-173(b)(1) states:

> 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, purchase, licensing, or registration of firearms or components of firearms; firearms dealers; or dealers in firearms components.

This state statute expressly preempts Defendant's ordinance. As if to emphasize the point, the General Assembly left to counties only three very narrow exceptions to the state law preemption of firearms regulation, none of which are applicable here. Those three exceptions are:

(1) regulation of Defendant's employees while they are actually working;

(2) regulations *requiring* heads of households within the county to own and maintain a firearm, and

(3) reasonable regulation of the actual discharge of weapons within the county.

See O.C.G.A. § 16-11-173 (c), (d), and (e). Defendant's ordinance is preempted because it does not seek to regulate

[4] To GCO's collective knowledge, Coweta County is one of only 6 counties, out of 159 in the entire state, that have such an ordinance. GCO is diligently working on reducing that number to zero.

Defendant's employees while they are at work; it does not require heads of households to own and maintain firearms; and it does not pertain to the discharge of firearms.[5] The legislature made no exception for ordinances regarding possession of firearms on recreational facilities. "It is a well-established canon of statutory construction that the inclusion of one implies the exclusion of others." Sturm, Ruger & Co. v. City of Atlanta, 253 Ga. App. 713, 721, 560 S.E.2d 525, 531 (2002). "By expressly authorizing local governments" to exercise one power, "the legislature impliedly preempted all other" powers. Id. City of Atlanta v. SWAN Consulting & Security Servs., Inc., 274 Ga. 277, 553 S.E.2d 594 (2001) ("By expressly authorizing additional local regulation . . . in that limited instance, the Act impliedly preempts the City's regulation" outside of that instance).

(A)(2) *The Attorney General Weighs In*

The Attorney General of the State of Georgia reached the same conclusion when Columbus (Muscogee County consolidated government) requested his opinion on a proposed safe storage ordinance for firearms. In U98-6, the Attorney General concluded:

[5] Defendant does impose strict regulations on the discharge of firearms, but that is a separate ordinance not at issue in this lawsuit.

> Because the proposed ordinance is not limited to employees of Columbus government in the course of their employment, is not a firearm ownership requirement for heads of households within Columbus, and is neither limited to nor even addresses the discharge of firearms within the boundaries of Columbus, it is my opinion that the ordinance is preempted by Georgia law.

U98-6 (a courtesy copy is attached hereto for this Court's convenience). The Attorney General is of course referring to the three narrow exceptions previously outlined from O.C.G.A. § 16-11-173(c), (d), and (e). The opinion also noted that the proposed ordinance was in direct conflict with O.C.G.A. § 16-11-173(b), in that it would "impact the possession, ownership, transport, and carrying of firearms," and that it was not consistent with O.C.G.A. § 16-11-126, the state law regarding carrying concealed firearms.[6] Defendant's ordinance suffers from all of the same defects.

(A)(3) *The Georgia Court of Appeals Weighs In*

The Georgia Court of Appeals has also addressed Georgia's firearms preemption statute. In Sturm Ruger Co. v. City of Atlanta, 253 Ga. App. 713, 560 S.E.2d 525 (2002), the Court of Appeals held that the City of Atlanta's action violated preemption because it was an exercise of power not fitting

[6] As will be seen later, the opinion also noted that in addition to violating preemption, the ordinance was ultra vires and beyond the constitutional and statutory limitations on home rule.

within one of the three narrow and well defined categories of authority left to cities and counties in O.C.G.A. § 16-11-173(c), (d), and (e). Id. at 722 ("No claims survive because of the legislature's clear directive that municipalities may not attempt to regulate the gun industry ***in any way except in the limited manner*** prescribed in O.C.G.A. § 16-11-184(b)(2), (c), (d), and (e)" [now re-numbered as O.C.G.A. § 16-11-173 (c), (d), and (e)]) (emphasis added). The Court of Appeals noted that "state law may preempt local law expressly, by implication, or by conflict," and held, "More importantly, the State has also ***expressly preempted the field of firearms regulation*** in O.C.G.A. § 16-11-184 [now 173], which, even before its amendment in 1999, provided "that the regulation of firearms is properly an issue of general, state-wide concern." Id. at 718 (emphasis added).[7] The Court of Appeals also held that the City of Atlanta "seeks to punish conduct which the State, through its regulatory and statutory scheme, expressly allows and licenses." Id. at 719. Similarly, Defendant's ordinance in the instant case seeks to punish conduct which the State, through its regulatory and statutory scheme, expressly allows and licenses. See O.C.G.A. §§ 16-11-126 through 129. As will be noted below, the General

[7] The Court of Appeals also addressed implied preemption, and this will be addressed later in the brief.

Assembly preempted the field of firearms regulation through a comprehensive statutory scheme regarding how and where one may carry a firearm even without the express preemption stated in O.C.G.A. § 16-11-173, but the express preemption adopted in section 173 certainly leaves Defendant with no arguable basis on which to prosecute its preempted ordinance.

The Court of Appeals stated that the "effect of the preemption doctrine is to preclude ***all other local or special laws on the same subject***." Id. (emphasis added). This would include Defendant's preempted ordinance. Simply put, Defendant's ordinance, as a local law on the same subject, that of possessing, transport, and carry of firearms, is preempted. "Because the City sought to establish a duplicate regulatory system which was not authorized by the comprehensive general law . . . the trial court was correct in its limited holding that the Act preempts by implication the City's enforcement . . . of the municipal Code . . ." City of Atlanta v. SWAN Consulting & Security Servs., Inc., 274 Ga. 277, 280, 553 S.E.2d 594, 596 (2001).

> By this ordinance, the county has enacted a local ordinance dealing with the same subject as a general law. As a result, the general preemption rule controls unless the county ordinance falls within the exception to the uniformity clause. Under that exception, the General Assembly must have authorized local governments to enact regulations and the local

ordinance must not conflict with the state's general laws.

Franklin County v. Fieldale Farms Corp., 270 Ga. 272, 276, 507 S.E.2d 460, 463 (1998). The court went on to state that "the General Assembly expressly granted local governments limited authority to act," but by "explicitly granting this narrow power to local governments, the statute by implication precludes counties from exercising broader powers." Id. at 277.

In sum, O.C.G.A. § 16-11-173(b) expressly preempts the field of firearms regulation with three narrow exceptions that are ***not*** applicable to Defendant's ordinance. Because Defendant's ordinance does not fall within one of the three exceptions the General Assembly left to municipal and county authority, Defendant's ordinance is expressly preempted by O.C.G.A. § 16-11-173.

(B) THE GEORGIA CONSTITUTION AUTHORIZES ONLY THE GENERAL ASSEMBLY TO REGULATE THE CARRY OF WEAPONS

Article I, Section I, Paragraph VIII of the Georgia Constitution states, "The right of the people to keep and bear arms shall not be infringed, but the General Assembly shall have the power to prescribe the manner in which arms may be borne." In Georgia, it is clear that the words in the Constitution, "bear" and "borne," connote their ordinary meaning, which is to ***carry***. See Strickland v. State, 137 Ga. 1 (1911) (discussing

"bear" interchangeably with "carry"; see also the dissent, "Whatever else might be said of this statute, it ought not to be held that it does not infringe the right to carry a pistol or revolver"); Hill v. State, 53 Ga. 472 (1874) (discussing the "bearing" of arms in various locations); Stockdale v. State, 32 Ga. 225 (1861) (pistol "with the barrel inserted beneath the pantaloons in front," is to "bear about his person a pistol"); Nunn v. State, 1 Ga. 243 (1846) (the right to bear arms openly protects the right to carry a "breast pistol" in the hand). The General Assembly also expressed the same idea in O.C.G.A. § 16-11-173. See Sturm, Ruger & Co. v. City of Atlanta, 253 Ga. App. 713, 719 n.1, 560 S.E.2d 525, 529 n.1 (2002) (the preemption statute "gives the General Assembly the sole power to regulate the right to keep and bear arms") (citing the concurring opinion in Smith & Wesson Corp. v. City of Atlanta, 273 Ga. 431, 432-36, 543 S.E.2d 16 (2001)). With respect to the state constitutional provision on the right to bear arms, it is clear that the power to prescribe the manner of bearing belongs to the General Assembly alone. "The General Assembly has exercised this power given by the constitution to create a regulatory scheme for the distribution and use of firearms." Id. at 718. Accordingly, Defendant may not attempt to usurp that power with its own regulation.

(C) CONSTITUTIONAL PREEMPTION

Article I, Section II, Paragraph V of the Georgia Constitution states, "Legislative acts in violation of this Constitution or the Constitution of the United States are void, ***and the judiciary shall so declare them***." (emphasis added). Article IX, Section II, Paragraph I(a) of the Georgia Constitution, known as the home rule authority for Georgia counties, states, in pertinent part, "The governing authority of each county shall have legislative power to adopt clearly reasonable ordinances…for which no provision has been made by general law….This, however, shall not restrict the authority of the General Assembly by general law to further define this power or to … limit … the exercise thereof." Defendant's ordinance both violates the constitution and attempts to usurp authority for which provision has been made by general law. The General Assembly has made provision in general law for the carrying and possession of firearms through a comprehensive statutory framework. O.C.G.A. §§ 16-11-126 through 135. This includes not only how weapons are to be possessed and carried, but ***where***. See, e.g., O.C.G.A. §§ 12-3-10, 16-11-34.1, 16-11-127, 16-11-127.1, 16-11-127.2, 16-12-123, 16-12-127, 27-3-1.1. Because provision has been made in general law, Defendant may not also attempt to regulate this issue. Pursuant to its constitutional

power listed above, the General Assembly has also exercised its authority to define even further and limit the exercise of Defendant's governing authority relating to the carrying and possession of firearms and the use of firearms in self defense. O.C.G.A. §§ 16-11-173 and 16-3-21(c).

(D) IMPLICIT PREEMPTION

The Sturm, Ruger case, in discussing express statutory preemption, held that through the statute "the State has ***also*** expressly preempted the field of firearms regulation . . ." 253 Ga. App. at 718 (emphasis added). The emphasized word alludes to the earlier language wherein the court noted that the Georgia Firearms and Weapons Act and other statutes implicitly preempted the local government's authority. "In this case, preemption can be inferred from the comprehensive nature of the statutes regulating firearms in Georgia . . ." Id. As can be seen from the extensive list of statutes above regulating the ***places*** where a Georgia citizen may carry a firearm, the State has heavily and comprehensively regulated the locations where one may carry a firearm.[8] Cf. Franklin County v. Fieldale Farms Corp., 270 Ga. 272, 276, 507 S.E.2d 460, 463-64 (1998) ("Preemption may inferred generally from the comprehensive nature of [the

[8] GCO's extensive research has revealed that no other State in the union that actually allows the carry of firearms places as many locations off limits to carry as does the state of Georgia.

statute] and its implementing regulations"); Cotton States mut. Ins. Co. v. DeKalb County, 251 Ga. 309, 312, 304 S.E.2d 386 (1983). As a result of the State's comprehensive regulation, Defendant may not also regulate the places where one may carry a firearm.

The Georgia Attorney General, in the aforementioned U98-6, noted that "a person could fully comply with O.C.G.A. § 16-11-126 and still violate the proposed ordinance." Similarly, a person could fully comply with the extensive list of state statutes provided above and still violate Defendant's ordinance in this case.

V.

CONCLUSION

"The practical effect of the preemption doctrine is to preclude all other local or special laws on the same subject." Sturm, Ruger & Co. v. City of Atlanta, 253 Ga. App. 713, 718, 560 S.E.2d 525, 530 (2002). Since all other local or special laws on the same subject are precluded, Defendant may not be heard to argue that its regulation is coextensive with any state laws on the subject or contend that its ordinances actually mimic state laws on the subject.[9] Even assuming such an assertion to be true, the ordinances are nonetheless preempted.

[9] They don't.

"Because the State has reserved to itself the right to prescribe the manner in which firearms may be regulated, the [county] may not attempt to usurp that power, whether by litigation or regulation . . ." Id. at 719. The exercise of the power to prescribe regulations on the right to keep and bear arms is reserved exclusively to the General Assembly, completely preempting Defendant's ordinance, and Plaintiffs are entitled to judgment as a matter of law.

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UNOFFICIAL OPINION U98-6

To: City Attorney
Columbus, Georgia

June 18, 1998

Re: The proposed Columbus ordinance regulating the manner and location in which a firearm may lawfully be placed in a home, building, trailer, vehicle, or boat would be ultra vires in that the ordinance conflicts with the general laws of the State of Georgia and because the regulation of firearms, with exceptions not relevant hereto, has been preempted by the General Assembly.

You have requested my unofficial opinion as to whether a proposed Columbus ordinance concerning the restriction of access to handguns by unsupervised minors conflicts with Georgia law. Section 1 of the proposed ordinance provides that "[i]t shall be unlawful for any person to leave any handgun in any place within any home or other building or in any trailer or vehicle or boat where children under the age of 18 years and who are not under the supervision of an adult will have ready access to it."

Initially, it should be noted that Columbus, as a consolidated government, contains elements of both a municipality and a county. See O.C.G.A. § 36-68-1 et seq. With regard to the home rule legislative power of municipalities, O.C.G.A. § 36-35-3(a) states that "[t]he governing authority of each municipal corporation shall have legislative power to adopt clearly reasonable ordinances, resolutions, or regulations relating to its property, affairs, and local government for which no provision has been made by general law and which are not inconsistent with the Constitution or any charter provision applicable thereto." Likewise, O.C.G.A. § 36-35-6(a) states that "[t]he power granted to municipal corporations in subsections (a) and (b) of Code Section 36-35-3 shall not be construed to extend to . . . any other matters which the General Assembly by general law has preempted or may hereafter preempt." Article 9, Section 2, Paragraph 1 of the 1983 Constitution of the State of Georgia sets forth similar provisions regarding the home rule authority of counties. In construing the validity of a local ordinance, the Supreme Court of Georgia has determined that the test is whether the local government had the power to enact the ordinance and whether the exercise of its power is clearly reasonable. See City of Atlanta v. McKinney, 265 Ga. 161, 163 (1995).

In 1995, the General Assembly enacted O.C.G.A. § 16-11-184. That Code Section provides that "[n]o 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, purchase, licensing, or registration of firearms, components of firearms, firearms dealers, or dealers in firearms components." O.C.G.A. § 16-11-184 (b). In enacting Subsection (a) of that statute and declaring that "the regulation of firearms is properly an issue of general, state-wide concern," the General Assembly appears to have codified, with certain exceptions, its intent to preempt the regulation of firearms. See Cotton States Mut. Ins. Co. v. DeKalb County, 251 Ga. 309,

312 (1983) (preemption implied from language and scope of general regulating act). The statutory exceptions to the preemption of the regulation of firearms allow local governments to regulate the possession of firearms by local government employees in the course of their employment, to require ownership of firearms by heads of households within the political subdivisions, and to regulate the discharge of firearms within their boundaries. O.C.G.A. § 16-11-184(c)-(e).

Because the proposed ordinance is not limited to employees of Columbus government in the course of their employment, is not a firearm ownership requirement for heads of households within Columbus, and is neither limited to nor even addresses the discharge of firearms within the boundaries of Columbus, it is my opinion that the ordinance is preempted by Georgia law. Specifically, by regulating the manner and location in which a firearm may be lawfully placed in a home, building, trailer, vehicle, or boat, the proposed ordinance conflicts with O.C.G.A. § 16- 11-184(b) in that the ordinance would directly impact the possession, ownership, transport, and carrying of firearms.

The proposed Columbus ordinance is also not consistent with O.C.G.A. § 16-11-126, a criminal statute dealing with the carrying of concealed weapons. Among other things, that Code Section specifically allows any person who is eligible for a license to carry handguns to transport a loaded firearm in a private motor vehicle in an open manner and fully exposed to view or in the glove compartment of the vehicle, or to transport an unloaded firearm enclosed in a case and separated from its ammunition. O.C.G.A. § 16-11-126(d). The 1998 amendment to the statute, effective July 1, 1998, will expand the transportation of a loaded firearm in a private motor vehicle beyond plain view or the glove compartment to include the placement of a firearm in a console or similar compartment. Although the proposed Columbus ordinance purports to exempt instances where access to a handgun is obtained through burglary, larceny, or other acts beyond the control of the owner, it nevertheless appears that a person could fully comply with O.C.G.A. § 16-11-126 and still violate the proposed ordinance.

For these reasons, it is my opinion that the regulation of firearms, with exceptions not relevant hereto, has been preempted by the General Assembly and that the proposed Columbus ordinance regulating the manner and location in which a firearm may be lawfully placed in a home, building, trailer, vehicle, or boat conflicts with the general laws of the State of Georgia. Accordingly, the Council is without the power to enact the proposed ordinance because it would be ultra vires and beyond the constitutional and statutory limitations on home rule.

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I note that a bill similar in many respects to the proposed Columbus ordinance, Senate Bill 407, was introduced and considered by the General Assembly during the 1998 session. That bill, however, did not pass.