

Edward A. Stone

Georgia

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August 25, 2006

**VIA FACSIMILE (770)254-2606**

**ORIGINAL VIA U.S. MAIL**

Hon. Paul Poole  
Commissioner, First District  
Coweta County Board of Commissioners  
Coweta County Administration Building  
22 East Broad Street  
Newnan, Georgia 30263

Re: Coweta Ordinance 46-33(c)

Dear Commissioner Poole,

As you can see from my address, I am your constituent. I had the pleasure of briefly meeting you personally prior to a Board of Commissioners meeting last winter. I apologize in advance for taking your time, but it has come to my attention that Coweta County has an ordinance in effect that violates state law. The purpose of this letter is to ask you, as my commissioner, to take affirmative action to repeal the offensive portion of the ordinance.

The particular ordinance in question is 46-33(c), which purports to prohibit "firearms" "on or about Coweta County recreation facilities, sports fields, or any surrounding areas being property of the county." I have enclosed a copy of the entire ordinance for your use. Regardless of anyone's opinion regarding the desirability of such an ordinance, it is prohibited by the laws of the State of Georgia.

I will point you to three sources supporting the contention that this ordinance is pre-empted by state law. They are:

- (1) a state statute,
- (2) case law, and
- (3) an opinion of the Attorney General for the State of Georgia.

The state statute expressly forbids the ordinance at issue. The case law declares that even without such a statute, the county would be without authority to pass such an ordinance because the

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field of firearms regulation has been preempted by the General Assembly's extensive regulation on the subject, and the Attorney General opinion reinforces those points in response to a question from a county on the legality of a firearms ordinance.

### THE STATUTE

O.C.G.A. § 16-11-173 (b)(1) provides, in pertinent part, that:

No county . . . 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.

So, in addition to the field of firearms regulation having been completely pre-empted by the extensive state laws on the subject, there is a specific statute declaring that Coweta County cannot "regulate in any manner" the "carrying . . . of firearms." As if to reinforce the point, the state statute lists three exceptions on which Coweta County can pass ordinances.

(1) Coweta County may regulate the carry of firearms by its own employees while they are at work, O.C.G.A. § 16-11-173(c);

(2) Coweta County may pass an ordinance requiring the ownership of guns by heads of households within Coweta County, O.C.G.A. § 16-11-173(d); and

(3) Coweta County may *reasonably* limit or prohibit the discharge of firearms within the boundaries of Coweta County (which it has already done, see ordinance section 42-1). O.C.G.A. § 16-11-173(e).

These are the only three things Coweta County may regulate pertaining to firearms. As you can see for yourself, an ordinance like section 46-33(c), pertaining to possession or carrying of a firearm, even on Coweta County property, such as in a county park, is not one of the three things listed by the General Assembly as a matter that Coweta County may regulate.

I have enclosed a complete copy of O.C.G.A. § 16-11-173 for your use.

### CASE LAW

Even if there were no statute prohibiting the ordinance, the courts in Georgia have recognized that the entire field of firearms regulation has been pre-empted by the General Assembly. Please see Sturm Ruger Co. v. City of Atlanta, 253 Ga. App. 713, 560 S.E.2d 525 (2002), in which the Court of Appeals stated very clearly that the "comprehensive nature of statutes regulating firearms in Georgia" means that "preemption can be inferred."

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In this case, preemption can be inferred from the comprehensive nature of the statutes regulating firearms in Georgia, among which are the Georgia Firearms and Weapons Act, codified at OCGA § 16-11-125, and OCGA § 16-11-126 through 16-11-134 . . .

The statutes cited relate to the carrying of firearms and where one may carry them, among other things, which is exactly what Coweta County's ordinance attempts to regulate. The result of preemption is that *only* the General assembly has the authority to regulate the ownership and possession of firearms. "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) (emphasis added).

And a footnote (FN1) in the same opinion commenting on preemption:

. . . considering the unambiguous language in OCGA § 16-11-184 [now re-numbered 173], which gives the General Assembly the **sole** power to regulate the right of the people to keep and bear arms . . .

(emphasis in bold is mine). When the court begins to discuss the pre-emption statute, it uses the word "also." "More importantly, the State has also expressly preempted the field of firearms regulation in O.C.G.A. § 16-11-184, which, even before its amendment in 1999, provided 'that the regulation of firearms is properly an issue of general, state-wide concern'." The court opinion then quotes the Georgia Constitution:

Laws of a general nature shall have uniform operation throughout this state and no local or special law shall be enacted in any case for which provision has been made by an existing general law, except that the General Assembly may by general law authorize local governments by local ordinance or resolution to exercise police powers which do not conflict with general laws.

The *Sturm Ruger* case makes it quite clear that only the General Assembly may regulate the carrying of firearms. The statute cited in the case is now re-numbered as section 173, and it expressly forbids the sort of ordinance passed by Coweta County, which does not fall into any of the three exceptions listed.

### **THE ATTORNEY GENERAL OPINION**

The Attorney General for the State of Georgia routinely gives legal opinions to local governments on matters of state law. The Attorney General has previously given his opinion to a county attempting to exercise its regulatory power outside one of the three things listed above in the statute. See Attorney General Opinion U98-6. The opinion concludes that the county is without authority to pass an ordinance not relating to one of the three exceptions. The Attorney General

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opinion on preemption may be reached in its entirety at the following internet address:

<http://www.state.ga.us/ago/read.cgi?searchval=firearm&openval=U98-6>

The opinion is in response to a question by Muscogee County (Columbus Consolidated Government) about the legality of an ordinance regarding "safe storage" of firearms. The attorney General responded that the ordinance "would be ultra vires . . . because the regulation of firearms, with exceptions not relevant hereto, has been preempted by the General Assembly." In pertinent part, the opinion states:

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).

(Although the opinion cites to section 184, this is now section 173, as the statute has been re-numbered, but not re-written, since this AG Opinion). The Attorney General Opinion may be summarized by stating that there are only three things a county may regulate regarding firearms. Coweta County Ordinance 46-33(c) does not fall into one of the three statutory exceptions.

Accordingly, I would request that you take action to repeal this law. The State has preempted the field of firearms regulation, both through extensive regulation of the subject and a statute declaring preemption, but Coweta County has an ordinance on the very subject preempted. Please note that it is a harsh ordinance, as the penalty for its violation is six months' confinement in jail and a \$1,000.00 fine.

I do not believe my request to be a difficult one. Essentially, I am asking only that Coweta County comply with the laws of the State of Georgia. That should not be a hard sell to the entire commission.

Commissioner Poole, if you need any assistance from me on this matter, I will be happy to lend it. Otherwise, please contact me to inform me of your intended course of action. I may be reached at the phone number and address above, or at my work phone (404)870- or my email address [stone.edward@](mailto:stone.edward@). Thank you in advance for your attention to this matter, and I look forward to hearing from you within the next two weeks.

Sincerely,



Edward A. Stone

