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.	)	

REPLY BRIEF IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

Plaintiffs in the above referenced action file this reply 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

Although Defendant will not concede that the facts are "admitted," Defendant agrees that the material facts are not in dispute, which for purposes of Plaintiffs' motion brings us to the same position in this case. See Coweta County's Rule 6.5 Statement of Material Facts in Dispute. The result is that this Court is left to determine legal issues only. On the legal issues, Defendant seriously misrepresents the state preemption

statute, adopting a position that crosses the line from zealous advocacy to legal frivolity. Defendant also seriously misrepresents the state public gathering statute. Neither statute supports Defendant's position.[1] Accordingly, Plaintiffs' motion for summary judgment should be granted.

As before, the legal issue is merely whether a state law expressly providing that Defendant may not regulate in any manner the carry or possession of firearms ***really*** means that Defendant may not regulate the carry and possession of firearms. Rather than addressing this issue squarely, Defendant has chosen an alternative argument. Defendant contends that this state preemption statute does not relate to the carry and possession of firearms!

II.

ARGUMENT AND CITATION OF AUTHORITY

"If there is reasonable doubt of the existence of a particular power [of a county], the doubt is to be resolved in the negative." Mobley v. Polk County, 242 Ga. 798, 801-02

[1] Defendant's case law citations appear, for the most part, to be inserted in support of its motion for summary judgment, rather than in response to anything in Plaintiffs' motion. Accordingly, Plaintiffs will address Defendant's cases in their response brief to Defendant's motion. This reply brief will focus only upon Defendant's response to Plaintiffs' motion.

(1979). Of course, the express preemption declared by statute removes all doubt. Defendant's ordinance is preempted.

Defendant'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). The State gives, and the State taketh away.

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

The text of the preemption statute, O.C.G.A. § 16-11-173(b)(1), states, in pertinent part:

> 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.

(emphasis added). This statute quite clearly preempts county regulation "in any manner" of the "possession," "ownership," "transport," and "carrying" of firearms, among a great many other things. "Where the language of a statute is plain and unambiguous, judicial construction is not only unnecessary but forbidden. All words, except words of art, shall be given their ordinary significance." Wheeler County Bd. of Tax Assessors v. Gilder, 256 Ga. App. 478, 479, 568 S.E.2d 786, 788 (2002).

O.C.G.A. § 16-11-173(b), with its laundry list of all possible efforts Defendant and other local governments might dream up to regulate firearms, is the paradigm of a broadly drafted statutory provision. In spite of the breadth of the statute, Defendant feebly attempts to squeeze it into extremely narrow limits.

Deliberately ignoring the emphasized language above, relating to "possession" and "carrying" of firearms, Defendant contends that this statute "deals with the transfer and purchase of firearms" and does not put into effect preemption of county ordinances banning the possession or carrying of firearms. Defendant's brief, p. 5 (emphasis in original). Defendant reaches this result in its response brief by ignoring the plain language of the text (which quite clearly preempts county regulation "in any manner" of the "possession" or "carrying" of firearms) and instead arguing to this Court that it is the title of the Part that supersedes the actual text of the statute. Not that it makes any difference to the ultimate determination, but the title of Part 5, in which Section 173(b) is found, is "Brady Law Regulations," not "Transfer and Purchase of Firearms." Anyway, Defendant's novel argument completely ignores the text of the statute.

Defendant also overlooks the fact that headings in the O.C.G.A. are not part of the law. "[T]he descriptive headings or catchlines immediately preceding or within the text of the individual Code sections of this Code…and the title and chapter analyses to not constitute part of the law and shall in no manger limit or expand the construction of any Code section." O.C.G.A. § 1-1-7. A Code heading cannot create a legal requirement. *South v. Bank of America,* 250 Ga. App. 747, 749, 551 S.E.2d 55, 56 (2001). The Code heading Defendant cites, even if it were correctly cited, is not relevant.

Consistent with its position, Defendant also ignores through its silence the county exemption language contained in O.C.G.A. § 16-11-173 (c), (d), and (e), none of which have anything to so with the "transfer and purchase" of firearms. The three exceptions to preemption are:

(1) regulation of the carrying or transportation or possession by Defendant's employees (but only 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). None of these exceptions, which are all that is left to Defendant to regulate, even mention the "purchase and transfer" of a firearm. Defendant completely fails to address this issue in his brief, and the reason is clear. The Georgia Court of Appeals has emphasized "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. § [16-11-173 (c), (d), and (e)]." Sturm, Ruger & Co. v. City of Atlanta, 253 Ga. App. 713, 722. 560 S.E.2d 525 (2002) (emphasis added). "[T]he State has also expressly preempted the field of firearms regulation in [O.C.G.A. § 16-11-173], 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. It simply does not say that the regulation of firearms is an issue of local, county concern.

Defendant's ordinance is preempted because it does not seek to regulate "the transport, carrying, or possession of firearms by employees" of Defendant while they are at work[2]; it does not require heads of households to own and maintain firearms; and it

[2] Can it seriously be contended that the language "transport, carrying, or possession" does not pertain to transport, carrying or possession? The language of this statute is not limited to the "purchase and transfer" of firearms, as Defendant contends.

does not pertain to the discharge of firearms within county limits.

The legislature made no exception for ordinances regarding possession of firearms on recreational facilities, and "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).

While the Sturm Ruger case was an appeal from a lawsuit over the marketing of firearms, as Defendant states, Defendant overlooks the reason ***why*** the city lost. The reason is simple. The lawsuit did not fall into one of the three narrow exceptions listed. See id. at 722.

This holding is consistent with the Attorney General Opinion, U98-6, in which the Attorney General concluded:

> 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.

State Attorney General opinions, while not binding on appellate courts, are persuasive authority. See State v. Durr, 274 Ga. App. 438, 442 n.3, 618 S.E.2d 117 (2005). Defendant completely ignores the import of the Attorney General's opinion, failing

even to address the statement that the ordinance 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.[3] Defendant's ordinance, like the ordinance in the Attorney General Opinion, also impacts the possession, transport, and carrying of weapons and is inconsistent with O.C.G.A. § 16-11-126. In fact, this is the thrust of Defendant's argument. "Because the ordinance involves the ***regulation of the carrying of firearms in public places***, the proper statute for the Court to consider . . . is O.C.G.A. § 16-11-127 . . ." Defendant's Brief, p. 6 (emphasis added).

THE PUBLIC GATHERING LAW DOES NOT AID DEFENDANT'S POSITION

Defendant's reliance on O.C.G.A. § 16-11-127, the public gathering law, is odd, to say the least. This statute lists six places as specifically off limits, one of which is "publicly owned or operated buildings," as Defendant points out more than once. Defendant quoted all but the last sentence of subsection 127(b), which would have shown Defendant's argument to be legally frivolous.

[3] It seems that since the Attorney General of the State of Georgia, like Plaintiffs, "mistakenly" believes that the preemption statute relates to the carry of concealed weapons, Defendant would have seen fit to address this portion of Plaintiffs' brief.

> Nothing in this Code section shall otherwise prohibit the carrying of a firearm in any other public place by a person licensed or permitted to carry such firearm by this part.

(emphasis added). Once could safely assume, based on its repetition on almost every page of Defendant's brief, that Defendant contends that the areas controlled by its ordinance are, in fact, a "public place." By restricting carry at all times in the areas controlled by Defendant's ordinance, the ordinance conflicts with the *very state law* upon which Defendant relies for its argument.

Thus, even if one were to assume that the preemption law did not exist, as Defendant apparently has, O.C.G.A. § 16-11-127(b) states that unless there is a public gathering, "a person licensed or permitted to carry" a firearm can carry a firearm at any other public place around the state (i.e., other than the specific places listed).

Because Defendant, on page 6 of its brief, underlined the words "but shall not be limited to" in subsection 127(b), in a blatant attempt to expand the scope of the public gathering provision,[4] it is necessary to point out that this language is not the free-for-all that Defendant hopes. Rather, the Georgia

[4] Likewise, Defendant apparently omitted the express authority to carry in public places in an obvious attempt to expand the impact of the public gathering provision's prohibitions.

Court of Appeals has strictly circumscribed this language, under the theory that criminal laws are strictly construed against the state and in favor of the citizenry.

> [I]t appears from reading subsection (b) and giving the words their ordinary meaning that the statute should apply, in addition to the situations described therein, when people *are* gathered or will be gathered for a particular function and ***not when a weapon is carried lawfully to a public place***, where people *may* gather. Accordingly, the focus is not on the "place" but on the "gathering" of people, and in our view, the court did not err in dismissing the accusation because appellee's possession of a weapon and mere presence in a public place did not constitute a violation of O.C.G.A. § 16-11-127.

State v. Burns, 200 Ga. App. 16, 406 S.E.2d 547, 548 (1991) (emphases in italics in original, emphases in bold italics added). Like Coweta County, the State in Burns argued to the Court of Appeals that its interpretation was the one that "sought to protect people from injury." Id. The Court of Appeals soundly rejected that argument, however, noting that "this broad interpretation equates 'public gathering' to 'public place' and ***blurs the distinction we must assume the legislature intended*** to make in specifically referring to gatherings in O.C.G.A. § 16-11-127 and by ***limiting its restriction to gatherings as opposed to proscribing the carrying of deadly weapons in public places*** as defined by O.C.G.A.§ 16-1-3 (15)." Id. (emphasis added). "We agree with appellee that such a

construction would render licensing statutes unnecessary because of the potential of violating the statutes by carrying a weapon outside one's household, in public . . .” Id.

Of course, Georgia does have a licensing statute, and the criminal statute quoted by Defendant (even if quoted only in part) expressly allows “the carrying of a firearm ***in any other public place*** by a person licensed or permitted to carry such firearm by this part.” O.C.G.A. § 16-11-127(b) (emphasis added). It is undisputed that Plaintiff Stone possesses a license issued by the Coweta County Probate Judge pursuant to O.C.G.A. § 16-11-129. Stone Aff., ¶ 5; Complaint, ¶ 17; Answer, ¶ 17. It is undisputed that the areas to which Defendant’s ordinance applies are public places, as Defendant assiduously reminds us.

Defendant may not “seek[] to punish conduct which the State, through its regulatory and statutory scheme, expressly allows and licenses.” Sturm, Ruger, 253 Ga. App. at 719.

Even if Defendant’s expansive interpretation of O.C.G.A. 16-11-127(b) were correct, however, as banning carry in public places, this, by itself, would give no sanction to Defendant’s ordinance. The Court of Appeals has stated that the “effect of the preemption doctrine is to preclude ***all other local or special laws on the same subject***.” Id. (emphasis added).

Defendant is not permitted to attempt to duplicate the State's regulatory system on this matter. "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).

(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." Defendant argues that because the constitution grants to the General Assembly the power to regulate the right to carry firearms, then Defendant must necessarily have that power, too. Of course, Defendant cites not a single case in support of this argument. The "General Assembly" is not the "County Commission."

"The General Assembly has exercised this power given by the constitution to create a regulatory scheme for the distribution and use of firearms." Sturm, Ruger, 253 Ga. App. at 718. Part

of this regulatory scheme for the distribution and ***use*** of firearms was the enactment of 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") (citation omitted). The General Assembly did, of course, leave three exceptions to Defendant for regulation, but Defendant is dissatisfied because none of those exceptions authorizes Defendant's ordinance.

(C) PREEMPTION THROUGH A COMPREHENSIVE REGULATION

"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 O.C.G.A. § 16-11-125, and O.C.G.A. § 16-11-126 through 134 . . ." Sturm, Ruger, 253 Ga. App. at 718. Of course, code sections 16-11-126 through 129 are where the concealed carry, public gathering, open carry, and licensing provisions are located (in that order). Thus, contrary to Defendant's dogmatic assertion that "Sturm, Ruger in no way involves the issue of carrying of firearms in public places," (Defendant's Brief, p. 6) Sturm, Ruger relied upon the statutes relating to the licensing of the carry of pistols and defining the places where such licensed (and unlicensed) pistols may be

carried (and not carried) for its holding that the State had completely preempted the field of firearms regulation by implication, in addition to the express statutory preemption.

In addition, the General Assembly also has 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. See O.C.G.A. §§ 16-11-173 and 16-3-21(c).

III.

CONCLUSION

Defendant contends that it may somehow "supplement" state laws when its ordinance is both expressly and implicitly preempted. This is not the rule that the Court of Appeals applies to the preemption of firearms regulations by counties, however. "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). Defendant simply may not pass local laws on the same subject. In the words of the preemption statute, Defendant may not regulate "in any manner" the "possession," "transport," or "carrying" of "firearms."

Defendant's response brief failed to address this statutory preemption language or the cases addressing it, preferring

instead to dismiss it with a declaration that the statute applies only to "transfer and purchasing" of firearms. The statute is, instead, a complete preemption of the field, with the three narrow exceptions left to Defendant's authority already stated, and no others. Since Defendant's ordinance does not fall within one of the three exceptions, the statute's complete preemption of the field entitles Plaintiffs to summary judgment.

Contrary to Defendant's belief, Defendant's Board of Commissioners is not the General Assembly. Under the Georgia Constitution, only the General Assembly, and not Defendant's Board of Commissioners, may regulate the manner in which firearms are borne.

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Certificate of Service

I certify that on June 4, 2007, I served Plaintiffs' Reply in Support of Their Motion for Summary Judgment via U.S. Mail upon:

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