



ALAN WILSON
ATTORNEY GENERAL

December 3, 2019

The Honorable Stephen K. Benjamin, Mayor
City of Columbia
1737 Main Street
Columbia, SC 29201

Dear Mayor Benjamin:

As you may be aware, the Attorney General's Office recently issued opinions concerning the legality of two ordinances adopted by the City of Columbia relating to firearms. One opinion concerns the validity of the City's ordinance regarding the transfer and possession of firearms by those having Extreme Risk Protection Orders issued against them. This ordinance, among other things, authorizes a removal of firearms merely on a finding of extreme risk. The other ordinance prohibits possession of firearms within 1000 feet of a public or private school. Each opinion concludes that the respective ordinance in question would likely be deemed by a court to be preempted by or in conflict with state law and thus invalid. We have enclosed both of these opinions for your review. We are copying the Municipal Association and the Association of Counties for their distribution.

Of course, this Office strongly supports Home Rule, as well as the right of a city or county to protect public safety. A city or county council must have the authority to exercise its police powers to ensure its citizens' wellbeing. Nevertheless, the State Constitution and state statutes must be followed. State law renders certain areas "off limits" to regulation under a county or city's Home Rule powers. As the South Carolina Supreme Court has noted, an Act which "make[s] manifest a legislative intent that no other enactment may touch upon the subject in any way" expressly preempts further regulation by a city or county. Bugsy's v. City of Myrtle Beach, 340 S.C. 87, 94, 530 S.E.2d 890, 893 (2000).

The regulation of firearms is one such area deemed by the Legislature to be beyond the reach of a municipality or county. The General Assembly has mandated, pursuant to § 23-21-510, that a city or county or other political subdivision is prohibited from enacting any ordinance regulating the "transfer, ownership, [or] possession of firearms." We have consistently interpreted this statutory provision to preempt firearm regulation by local governments across the board. Thus, with but a few exceptions, a city or county cannot interject itself into the regulation of firearms.

Yet, the City of Columbia has done so repeatedly. The City has previously adopted other ordinances concerning firearm regulation which we have advised in previous opinions were

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preempted by state law and in violation of the Second Amendment. See Op. S.C. Att’y Gen., 2019 WL 4894126 (September 19, 2019) [regulation of “ghost guns”]; Op. S.C. Att’y Gen., 2015 WL 4596713 (July 20, 2015) [temporary ban of possession of firearms within 250 feet of State House grounds]. Based upon that same analysis, we believe a court would here too likely find the Extreme Risk and School Zone ordinances are violative of state statutes and the Second Amendment. Of course, liability determined by a court against a city or county for a violation of the Second Amendment may result in the payment of costs and attorneys’ fees to the plaintiff. Pembauer v. City of Cincinnati, 479 U.S. 469, 480 (1986) [costs and fees may be assessed for municipality’s adoption of unconstitutional legislation].

Accordingly, in an effort to uphold the rule of law and to ensure protection of taxpayers, this Office strongly urges that these ordinances be repealed. The ordinances not only undermine state law, but undercut the Second Amendment. They are an open invitation to costly litigation for which the municipal taxpayers must pay. Indeed, the Extreme Risks Ordinance legislates its own “red flag” law which only the Legislature may create.

The framers of the State Constitution, in adopting Home Rule, provided that general law provisions (such as gun regulation statutes) may not be set aside by ordinance. A city council is not the state Legislature, capable of superseding state statutes. These ordinances attempt to do exactly that.

Sincerely,



Alan Wilson
Attorney General

Enclosures

cc w/enclosures: The Honorable Dwight Stevens Jr., Chairman
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