



**FIREARMS
OWNERS
AGAINST
CRIME**

01/27/2011

*Support the
2nd Amendment*

*'Discere
et
Illuminare'*

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Dear Solicitor:

Pennsylvania communities and their elected representatives continue to be thrust into the debate and presented with arguments in favor of the enactment of local laws to control firearms. This is a subject that is highly complex and, in many ways, difficult to fully understand without a considerable investment of time and resources.

We are aware that several communities in Centre County have enacted an ordinance barring firearms from certain facilities and property within the community and signage is placed at the entrances notifying the public of this ordinance. Not only do these local laws and policies 'illegally' disarm law-abiding citizens and put them at the mercy of criminals should they have business with your community, but they are also clear violations of Pennsylvania law.

Below you will find the section of law from Title 18 Crimes Code (section 6120) showing that no authority exists under the law to establish/maintain this policy.

In addition, there are more subtle but serious grievous concern for firearms owners than the punishment for violating a borough/township ordinance. Placing signage on community property can subject gun owners, who fail to obey this signage for whatever reason, to be **prosecuted for Defiant Trespass!** A successful prosecution under this section of law carries with it a lifelong prohibition on the ownership and purchase and possession of firearms-**all firearms!**

It is important to be clear that the continued presence of these ordinances and/or policies are direct violations of Title 18 PA Crimes Code, §6120. Limitation on the Regulation of Firearms and Ammunition:

§6120. Limitation on the Regulation of Firearms and Ammunition.

(a) General rule.--No county, municipality or township may in any manner regulate the lawful ownership, possession, transfer or transportation of firearms, ammunition or ammunition components when carried or transported for purposes not prohibited by the laws of this Commonwealth.

The penalty for enacting and/or maintaining these type of ordinances is a violation of the above section of law and is a misdemeanor one 'criminal violation', which is connected to Title 18 §6119.

In addition "**Dillon's Rule**" is a doctrine that was adopted by the Commonwealth of Pennsylvania in *Philadelphia v. Fox* and it remains fundamental for the evaluation of local government powers. Dillon's Rule provides that a municipality may exercise **only those powers expressly granted** by the sovereign state, or those powers implied or incidental to those expressed powers. (See e.g. *Hornstein Enterprises, inc. v. Township of Lynn*, 160 Pa.Cwlth. 72, 634 A.2d 704 91993), appeal denied, 648 A.2d 791.)

Other communities have considered ordinances regulating firearms and rejected consideration of them based on the lack of authority and illegality of it as represented by the solicitor's

opinion from the community of Ambler, PA (please see the excerpt below):

“The council then asked borough Solicitor Joseph Bresnan to review the proposed ordinance, and he presented council with a letter advising against adoption. 'The problem I had with it ... was whether it was not a legal problem to take local action where the state has taken action,' Bresnan said. 'It is pre-empted [by the state], and local municipalities cannot make rules to regulate handguns. There's really no legal support for locally adopting the ordinance. I feel very comfortable that there's no authority behind it right now.'

The same law, in the form of House Bill 29, was discussed at the state level in 2007 but never made it out of the House Judiciary Committee.

'The state has created legislation on the state level, so [the ordinance] cannot be enforced in towns,' Bresnan said. 'They have said they're exercising control. **The issue is not whether it makes sense. The issue is whether or not you have the ability on the local level to pass gun control legislation, and you don't.**'

Council President Tony Isabella asked Bresnan what was the worst that could happen if the borough did adopt the ordinance.

Bresnan said **if borough police enforced the ordinance and it later was challenged and declared illegal, anyone cited or convicted under the ordinance could then sue the borough.**”

The solicitor’s opinion above is not the solitary one as this same conclusion has been reached in York PA where the solicitor rendered the opinion below:

“...At this time, based on the state of current statutory and case law, we believe that the City of York is preempted “

The importance of reserving these powers to the state has been clearly and concisely reinforced by the **Ortiz Decision** (See e.g. *Ortiz v. Commonwealth*, 545 Pa. 279, 681 A.2d 152 – 1996) wherein the court upheld the power of the state to reserve the power of legislating firearms issues to the state body. As is detailed in the **advisory** from **Attorney General Corbett (letter attached)**, there are numerous references to additional legal decisions.

The solution to violent crime is a noble and important goal that is to be found in focusing on criminals and their actions including holding accountable those within the system who fail to faithfully execute their responsibilities. We maintain that it is NOT to be found in trying to circumvent the law and constitutional rights to advance the biased agendas of organizations that have readily proven, through their inaction on true crime issues, that limiting the rights of law abiding citizens is their true and only goal.

You, your community and your desire for a safer society are being manipulated the outpouring of information from certain organizations bent on forcing their agenda into the lives of everyone in this Commonwealth without regard for the impact or unintentional consequences of their actions. The gun owners in this state and their organizations have a long track record of working with the legislature on measures to hold criminals accountable such as HB 1845 of 2008 that was signed into law by Governor Rendell.

Philadelphia Chief of Detectives (ret.) – Joseph Fox:

“We have to stop pointing the finger everywhere but at the very people who prey on us each day. Over time we have allowed our value system to erode. We refuse to hold people accountable for their actions and constantly make excuses for their inexcusable behavior. **The incessant cry for tougher gun laws is a good example. Until we're ready to strictly enforce the current laws there is no**

reason for tougher ones.

.....

Time after time these budding killers are arrested with guns, only to be returned to the streets with a slap on the wrist. Is it any wonder we have trouble getting witnesses to speak up? Instead of holding vigils at murder scenes, groups like Men United for a Better Philadelphia and Mothers in Charge should throw a ring around the Criminal *In-Justice* Center and demand that our judges hold the criminals accountable.

More than 80 percent of Philadelphia's cold-blooded killers have criminal records. Most of those records are lengthy, many for violent crimes. Every one of those arrests represents an opportunity to send a clear message, before they take another life." - Philadelphia Inquirer 4-10-2007

"We must insist on zero tolerance for illegal possession of a gun; on mandatory jail time, even for a first offense; and on maximum time for a subsequent offense.

All Philadelphians should be as sick and tired as we in that room are every Tuesday of the leniency of our judges and the refusal of our elected and appointed officials to insist on accountability." - Philadelphia Inquirer 7-8-2007

Pittsburgh Police Officers Murdered by Poplawski:

"Kim.

Speaking as a cop...

What law currently on the books would have stopped this knucklehead??? None that I know of.

He could have done the same thing (shot two officers in the head) with a 30-.06 hunting rifle. In fact even a .410 shotgun.

Body Armor didn't kill anyone either.

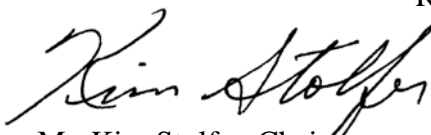
Believe me I would like to kick the crap out of the guy. I was working Saturday XX and heard part of the call on the radio (I work in XXXXX County so we only get some radio coverage.) and I am dealing with shock of our police community. Every officer I talked to stated that nut jobs will do nutty things and if the courts would enforce the laws we have now it would make our job easier and safer.

Thanks for taking time to listen to my rant"

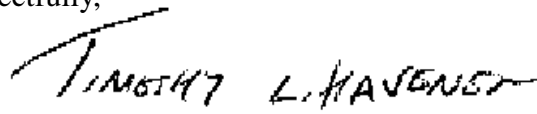
- **(Identity withheld upon request)**

It is our desire to see criminals held accountable and that is a goal that will never be addressed until we can divest ourselves of the attitudes that permeate the discussions over gun control and restrictions of law abiding citizen's rights and freedoms.

Respectfully,



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August 24, 2009

The Honorable Shawn C. Wagner
Adams County Office of the District Attorney
Adams County Courthouse
111-117 Baltimore Street
Gettysburg, PA 17325

Re Local Ordinances Concerning Firearms

Dear District Attorney Wagner:

Recently, my office has received a number of inquiries about the enactment of local ordinances pertaining to the use, possession or acquisition of firearms. These inquiries have chiefly concerned the authority of a political subdivision to legislate in this regard, and the related question of whether an adopted ordinance is legally enforceable. I am writing to share the position that my office has taken because your office, too, may be confronted with these issues and may find this information helpful.

Any review of this issue must, of course, begin with an examination of the Commonwealth's statutory law to determine what, if anything, it provides with respect to a political subdivision's ability to legislate on this subject. Our General Assembly has addressed this matter by enacting, as part of the Crimes Code, the provisions found in 18 Pa.C.S. § 6120 (Limitation on the regulation of firearms and ammunition), which contain this express prohibition: "No county, municipality or township may in any manner regulate the lawful ownership, possession, transfer or transportation of firearms, ammunition or ammunition components when carried or transported for purposes not prohibited by the laws of this Commonwealth." § 6120(a). As used in this statute, "firearms" has, with one exception, the same meaning as in 18 Pa.C.S. § 5515 (Prohibiting of paramilitary training): "Any weapon which is designed to or may readily be converted to expel any projectile by the action of an explosive; or the frame or receiver of any such weapon."¹

In the more than thirty-five years since the enactment of § 6120(a), Pennsylvania's courts, including its Supreme Court, have uniformly interpreted its provisions to preempt local governments from legislating with respect to the ownership, use, possession or transportation of firearms. See, e.g., *Schneck v. City of Philadelphia*, 383 A.2d 227 (Pa. Cmwlth. 1978)(striking down a Philadelphia ordinance that regulated the acquisition and transfer of firearms). In

¹Air rifles are not "firearms" for purposes of § 6120(a). See § 6120(b)(incorporating definition found in 18 Pa.C.S. § 6304). An "air rifle" is: "Any air gun, air pistol, spring gun, spring pistol, B-B gun or any implement that is not a firearm which impels a pellet of any kind with a force that can reasonably be expected to cause bodily harm." It does not include paintball guns or markers. § 6304(g).

Schneck, the Commonwealth Court, sitting *en banc*, held that §6120(a) “clearly preempts local governments from regulating the lawful ownership, possession and transportation of firearms” It declared the ordinance to be invalid and unenforceable.

Nearly two decades later, in *Ortiz v. Commonwealth*, 681 A.2d 152 (Pa. 1996), our Supreme Court provided further guidance when it considered ordinances banning certain types of assault weapons passed by the cities of Philadelphia and Pittsburgh. Although both cities are home rule municipalities, and as such, each “may exercise any power or perform any function not denied by [the Pennsylvania] Constitution, by its home rule charter or by the General Assembly at any time,” PA. CONST. art. IX, § 2, the court explained that, in the area of firearms, the General Assembly has, by enacting §6120(a), acted affirmatively to prohibit local regulation of the ownership, possession, use or transfer of firearms, thus denying all municipalities, including those which operate under a home rule charter, the authority to legislate in this regard. 681 A.2d at 155. The court in *Ortiz* also stressed that “[b]ecause the ownership of firearms is constitutionally protected, its regulation is a matter of statewide concern Thus, regulation of firearms is a matter of concern in all of Pennsylvania . . . and the General Assembly, not city councils, is the proper forum for the imposition of such regulation.” *Id.* at 156.

Given this straightforward explication of Pennsylvania law by its highest court, it is, and continues to be, my understanding that any effort by a municipality to legislate in a way that affects the ownership, use, possession, transfer or transportation of a firearm is not legitimate. On those occasions when my office’s input has been sought, we have communicated this. Rulings to date in ongoing cases involving this issue support that conclusion.

The issue of firearms-related preemption is currently being litigated in three cases pending in the state appellate courts. All of the cases arise from the enactment of ordinances in Philadelphia. In *Clarke, et al. v. House of Representatives, et al.*, 957 A.2d 361 (Pa. Cmwlth. 2008) (“*Clarke P*”), two members of Philadelphia City Council filed suit in the Commonwealth Court against both houses of the General Assembly seeking a declaratory judgment that seven ordinances, dealing with firearms passed by Philadelphia City Council and signed by the Mayor in May of 2007, were legal and enforceable.² In an *en banc* ruling, Commonwealth Court

² The seven ordinances provided as follows:

Bill 040117-A limits handgun purchases to one per month and prohibits straw purchases and sales. **Bill 060700** mandates the reporting of lost or stolen firearms. **Bill 040136-A** requires a license in order to acquire a firearm within Philadelphia or bring a firearm into Philadelphia. **Bill 040137** requires the annual renewal of a gun license. **Bill 040312** states that a firearm can be confiscated from someone posing a risk of harm. **Bill 040315** prohibits the possession or transfer of assault weapons. **Bill 040118-A** requires that any person selling ammunition report the purchase and the purchaser to the Police Department.

sustained preliminary objections to the petition for review and dismissed the action on the basis it did not state a claim as to which relief could be granted. The court concluded that the ordinances were “not materially different from those presented in *Schneck* and *Ortiz*,” and were therefore likewise preempted by §6120(a). The Council members have appealed to the Pennsylvania Supreme Court. Disposition of that appeal, which is docketed at No. 74 MAP 2008, is pending.

Commonwealth Court has addressed the preemption question even more recently in *National Rifle Association, et al. v. City of Philadelphia, et al.* (“NRA”), ___ A.2d ___ 2009 WL 1692390 (Pa. Cmwlth. 06-18-09). That case involved a challenge to five ordinances passed by Philadelphia City Council in April of 2008.³ The court of common pleas determined, as a threshold matter, that the plaintiffs did not have standing to challenge three of the ordinances, specifically, the “imminent danger,” “protection from abuse” and “lost or stolen gun” ordinances.⁴ The remaining two, the “straw purchaser” and “assault weapons” ordinances, it concluded, were preempted by §6120(a) and permanently enjoined city officials from enforcing them. The city appealed that ruling to Commonwealth Court which, in an *en banc* decision issued June 18, 2009, affirmed the lower court’s ruling in all respects. A petition for allowance of appeal seeking review of Commonwealth Court’s ruling was filed in the Pennsylvania Supreme Court on July 17, 2009. The case is docketed in that court at No. 399 EAL 2009.

The petitioners in *Clarke I* filed another suit in Commonwealth Court against the Commonwealth of Pennsylvania also challenging the 2008 ordinances. In that action, *Clarke, et al. v. Commonwealth of Pennsylvania*, No. 284 M.D. 2008 (Pa. Cmwlth.) (“*Clarke II*”), my

³ These five ordinances, the court said,

can be summarized as follows: **Bill No. 080017, “Imminent Danger Ordinance,”** authorizes the temporary removal of firearms from persons found by the court, upon affidavit of two police officers or a district attorney, to pose a risk of imminent harm to themselves or others; **Bill No. 080018-A, “Protection From Abuse Ordinance,”** prohibits persons subject to an active protection from abuse order from acquiring or possessing firearms when such order provides for confiscation of the firearms; **Bill No. 080032-A, “Lost or Stolen Gun Ordinance,”** requires gun owners to report their lost or stolen firearms to law enforcement officials within twenty-four hours after discovery of the loss or theft; **Bill No. 080033, “Assault Weapons Ordinance,”** prohibits the possession, sale and transfer of certain offensive weapons, including assault weapons, as well as certain contraband accessories or ammunition; and finally, **Bill No. 080035-A, “Straw Purchaser Ordinance,”** prohibits any person when purchasing a handgun from acting as a straw purchaser and prohibits the purchase of more than one handgun within any thirty-day period, except for any person who is not a straw purchaser.

2009 WL 1692390, *1 (emphasis added).

⁴ In its decision, the court of common pleas noted that although these three ordinances were not technically at issue in the case because of the lack of standing, it nevertheless felt the same reasoning would apply. In some media accounts of this decision and Commonwealth Court’s affirmance, it was reported that these three ordinances had been “approved” by the courts. That is incorrect. Because of the lack of standing, the courts have never had jurisdiction to rule on these issues. If anything, the court of common pleas’ remarks suggest a contrary outcome.

The Honorable Shawn C. Wagner
August 24, 2009
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office, which represents the Commonwealth, filed preliminary objections seeking to dismiss the case on several grounds, including preemption. On December 3, 2008, Commonwealth Court sustained those objections and dismissed the case, based on its ruling in *Clarke I*. An appeal to the Pennsylvania Supreme Court, where it is docketed at No. 92 MAP 2008, is pending.

Obviously, the Supreme Court's forthcoming decisions in *Clarke I and II*, and any decision it might issue in *NRA*, if it chooses to hear the case, will furnish further guidance on this subject. In our view, the existing body of law, and its consistent application of the principles of preemption, at very minimum, counsels great caution in dealing with locally-enacted ordinances which affect firearm use, ownership, possession and transportation. Given what the courts have said, we believe it would be appropriate to treat such enactments as invalid.

I hope that this discussion of this issue will be helpful to you. Please contact Amy Zapp, Deputy Attorney General, Special Litigation Section, at (717) 705-4487, if my office can be of further assistance.

Sincerely,

A handwritten signature in cursive script, appearing to read "Tom Corbett".

TOM CORBETT
Attorney General