ALAN WILSON
ATTORNEY GENERAL

April 2, 2012

M. Bryan Turner, Chief of Police
Mauldin Police Department
P.O. Box 249
Mauldin, SC 29662

Dear Chief Turner:

We received your letter requesting an opinion of this office to address whether an elected official, who has a concealed weapons permit, may at any time and specifically, during meetings of city council, lawfully carry a concealable weapon inside a building that also houses City Hall, the Police Department, and the Courthouse. If the elected official is not permitted to do so, you ask whether city council may pass an ordinance allowing elected officials or other municipal employees to carry a concealable weapon inside the building.

Law/Analysis

1. ***Possession of a concealable weapon in certain premises***

The Law Abiding Citizens Self-Defense Act of 1996 (the "Act"), codified at S.C. Code Ann. §23-31-205 *et seq.*, requires that if an individual meets certain criteria, a concealed weapons permit must be issued. Significantly, the Act refers to a number of places where a concealable weapon may not be carried, notwithstanding the issuance of a permit. Specifically, §23-31-215(M) provides, in pertinent part, that:

> [a] permit issued pursuant to this section does not authorize a permit holder to carry a concealable weapon into a:
>
> (5) office of or the business meeting of the governing body of a . . . municipality . . .

Based on the above provision, it is the opinion of the office that an elected official may not carry a concealable weapon into a city council meeting. It is irrelevant to the resolution of this question that the city council member also possesses a concealed weapons permit, because the carrying of a concealable

weapon into the office of or any meeting of the governing body of a municipality is expressly prohibited.[1] A person willfully violating this provision is guilty of a misdemeanor and, if convicted, must be imprisoned for up to one year and/or fined not less than one thousand dollars, at the discretion of the court. The conviction further results in the revocation of the permit for five years.

We do note that exceptions may apply under very limited circumstances. Specifically, §23-31-217 states that "[n]othing in this article shall affect the provisions of Section 16-23-20." In other words, as we have previously concluded, the Act does not apply to those individuals carrying a weapon in manner allowed by §16-23-20. See Ops. S.C. Atty. Gen., January 5, 2000; April 19, 1999; October 9, 1998. Section 16-23-20 defines the act of unlawfully carrying a pistol, and provides in pertinent part that: "[i]t shall be unlawful for anyone to carry about the person, whether concealed or not, any pistol, except as follows. . . ." The statute then enumerates twelve exceptions. Among the exceptions most common is the exception for regular, salaried law enforcement officers.[2]

For example, we refer to an opinion of this office dated January 16, 2007, where we concluded that a county council member, who was also a constable appointed by the Governor, and could thus carry a handgun anywhere in this State, was thereby authorized to carry a handgun to county council meetings pursuant to §§23-31-217 and 16-23-20(1). Moreover, in an opinion of this office dated June 4, 2007, we noted that pursuant to the authority granted by §16-23-20 to carry a weapon:

> . . . there is no requirement that the officer be on duty. Similarly, the statute does not require the officer to be in uniform. The reference in the statute to "when they are carrying out official duties while in this State" regards only law enforcement officers of the federal government or other states . . . Therefore,

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[1]For purposes of this opinion, we presume the elected official does not wish to carry a concealed weapon into either the Police Department or the courtroom situated in the building you describe, which is also expressly prohibited by §23-31-215(M), and subject to the same criminal penalties.

[2]Section 16-23-20 provides, in pertinent part:

> It is unlawful for anyone to carry about the person any handgun, whether concealed or not, except as follows, unless otherwise specifically prohibited by law:
>
> (1) regular, salaried law enforcement officers, and reserve police officers of a state agency, municipality, or county of the State, uncompensated Governor's constables, law enforcement officers of the federal government or other states when they are carrying out official duties while in this State, deputy enforcement officers of the Natural Resources Enforcement Division of the Department of Natural Resources, and retired commissioned law enforcement officers employed as private detectives or private investigators . . .

The other exceptions set forth in §16-23-20 are not likely to be applicable to the situation described in your letter.

> the restrictions of this State's concealed weapons law are inapplicable to law enforcement officers and reserve police officers.

We note another provision allowing certain persons with a valid concealed weapons permit to carry a concealable weapon anywhere in the State "when carrying out the duties of their office." See §23-31-240. This exception applies only to active judges, solicitors and assistant solicitors, and workers' compensation commissioners.

In addition to the proscriptions set forth in §23-31-215(M), we note the Act goes to great lengths to preserve existing State law. The Act makes clear that the existing statutory prohibitions whereby firearms may not be possessed are preserved. See §23-31-215(M). This includes prohibiting the possession of firearms in publicly owned buildings. Id. ["Nothing contained herein may be construed to alter or affect the provisions of Section . . . 16-23-420 . . ."]; see Ops. S.C. Atty. Gen., April 17, 2001; August 23, 1996 [advising that the Act preserves prohibitions against possession of firearms on the capitol grounds, school property, the premises of establishments selling alcohol for consumption, and public buildings].

Specifically, §16-23-420 provides as follows:

> (A) It is unlawful for a person to possess a firearm of any kind on any premises or property owned, operated, or controlled by a private or public school, college, university, technical college, other post-secondary institution, or in any publicly owned building, without the express permission of the authorities in charge of the premises or property. The provisions of this subsection related to any premises or property owned, operated, or controlled by a private or public school, college, university, technical college, or other post-secondary institution, do not apply to a person who is authorized to carry a concealed weapon pursuant to Article 4, Chapter 31, Title 23 when the weapon remains inside an attended or locked motor vehicle and is secured in a closed glove compartment, closed console, closed trunk, or in a closed container secured by an integral fastener and transported in the luggage compartment of the vehicle.
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> (B) It is unlawful for a person to enter the premises or property described in subsection (A) and to display, brandish, or threaten others with a firearm.
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> (C) A person who violates the provisions of this section is guilty of a felony and, upon conviction, must be fined not more than five thousand dollars or imprisoned not more than five years, or both.
>
> (D) This section does not apply to a guard, law enforcement officer, or member of the armed forces, or student of military science. A married student residing in an apartment provided by the private or public school whose presence with a weapon in or around a particular building is authorized by persons legally

> responsible for the security of the buildings is also exempted from the provisions of this section.
>
> (E) For purposes of this section, the terms "premises" and "property" do not include state or locally owned or maintained roads, streets, or rights-of-way of them, running through or adjacent to premises or property owned, operated, or controlled by a private or public school, college, university, technical college, or other post-secondary institution, which are open full time to public vehicular traffic.
>
> (F) This section does not apply to a person who is authorized to carry concealed weapons pursuant to Article 4, Chapter 31 of Title 23 when upon any premises, property, or building that is part of an interstate highway rest area facility. [Emphasis added].

In reviewing the legislative history of §16-23-420, we note that it was a crime to carry firearms in publicly owned buildings long before the Act was enacted in 1996.

In the situation described in your letter, it is the opinion of this office that no person, including municipal employees, may bring a firearm in any publicly owned building. Only if the relevant authorities give express permission to allow such weapons in the building may a person with a concealed weapons permit be allowed to carry a firearm into the building. See Op. S.C. Atty. Gen., February 16, 2007 [advising that a technical college could implement a credit certificate program in gunsmithing]. Of course, these persons remain subject to the prohibitions set forth in §23-31-215(M), noted above. In addition, §16-23-420 creates a separate and distinct offense for a violation of the statute. A person violating this provision is guilty of a felony and, if convicted, must be fined not more than five thousand dollars or imprisoned not more than five years, or both. See §16-23-420 (C).

Further, as discussed with reference to §§23-31-217 and 16-23-20 above, it is specifically provided in §16-23-420(D) that "[t]his section does not apply to a guard, law enforcement officer . . . or member of the armed forces. . ." These persons would therefore not be prohibited from possessing a firearm in a publicly owned building. See State v. Shelton, 270 S.C. 577, 243 S.E.2d 455, 457-58 (1978) [where defendant was in courthouse to respond to civil process he was not authorized, as a matter of law, to bring his pistol with him, nor was he authorized to do so under §16-23-420 permitting certain persons, such as a guard at a courthouse, to carry pistol on the premises].

2. *Validity of proposed municipal ordinance*

We must begin our analysis with the basic principle that a local ordinance, just like a state statute, is presumed to be valid as enacted unless or until a court declares it to be invalid. Scranton v. Willoughby, 306 S.C. 421, 412 S.E.2d 424 (1991); Op. S.C. Atty. Gen., May 7, 2003 [citing Casey v. Richland County Council, 282 S.C. 387, 320 S.E.2d 443 (1984)]. An ordinance will not be declared invalid unless it is clearly inconsistent with general state law. Hospitality Ass'n of S.C. v. County of Charleston, 320 S.C. 219, 464 S.E.2d 113 (1995). Only the courts, and not this office, would possess the authority to declare

such ordinance invalid. Therefore, any ordinance would have to be followed until a court sets it aside. Ops. S.C. Atty. Gen., July 1, 2004; June 4, 2003. As noted in a prior opinion of this office dated January 3, 2003, ". . . keeping in mind the presumption of validity and the high standard which must be met before an ordinance is declared invalid, while this office may comment upon constitutional problems or a potential conflict with general law, only a court may declare an ordinance void as unconstitutional, or preempted by or in conflict with a state statute. Thus, . . . an ordinance may continue to be enforced unless and until set aside by a court of competent jurisdiction."

With this background in mind, we have noted the "Home Rule" amendments to Article VIII of the South Carolina Constitution state:

> [t]he provisions of this Constitution and all laws concerning local government shall be liberally construed in their favor. Powers, duties, and responsibilities granted local government subdivisions by this Constitution and by law shall include those fairly implied and not prohibited by this Constitution.

Ops. S.C. Atty. Gen., January 11, 2006; April 13, 1998.

Section 5-7-30, conveying the powers conferred upon municipalities, provides in relevant part:

> [e]ach municipality of the State, in addition to the powers conferred to its specific form of government, may enact regulations, resolutions, and ordinances, not inconsistent with the Constitution and general law of this State, including the exercise of powers in relation to roads, streets, markets, law enforcement, health, and order in the municipality or respecting any subject which appears to it necessary and proper for the security, general welfare, and convenience of the municipality or for preserving health, peace, order, and good government in it, including the authority to levy and collect taxes on real and personal property and as otherwise authorized in this section, make assessments, and establish uniform service charges relating to them. . . .

We note, however, that the Legislature has the prerogative to limit a municipality's ability to enact their own vested rights ordinances. A municipality's authority is limited by the Constitution and the general laws of this State. Ops. S.C. Atty. Gen., April 11, 2006; April 21, 1997. In Williams v. Town of Hilton Head Island, 311 S.C. 417, 429 S.E.2d 802, 805 (1993), the South Carolina Supreme Court interpreted the "Home Rule" amendments and §5-7-30 to:

> . . . bestow upon municipalities the authority to enact regulations for government services deemed necessary and proper for the security, general welfare and convenience of the municipality or for preserving health, peace, order and good government, obviating the requirement for further specific statutory authorization so long as such regulations are not inconsistent with the Constitution and general law of the state. [Emphasis added].

In Barnhill v. City of North Myrtle Beach, 333 S.C. 482, 511 S.E.2d 361, 363 (1999), the South Carolina Supreme Court declared that pursuant to §5-7-30, ". . . municipalities enjoy a broad grant of power regarding ordinances that promote public safety. . . . The exercise of a municipality's police power is valid if it is not arbitrary and has a reasonable relation to a lawful purpose." Thus, while the powers bestowed by "Home Rule" upon municipalities are now broad, it is clear not only from the language of Art. VIII itself, but the decisions of the Court, that neither Article VIII nor the concept of "Home Rule" bestows unlimited powers upon municipalities. Pursuant to S.C. Const. art. III, §1, the Legislature remains vested with "the legislative power of this State." The purpose behind "Home Rule" was simply to remove the Legislature from interference in the day-to-day local affairs of municipalities.

In an opinion dated May 15, 2006, we advised that the South Carolina Supreme Court has applied much the same analysis with respect to the Legislature's limitation upon the exercise of power by municipalities in a particular area. It is clear that the rule to be derived from these decisions is that so long as the Legislature exercises its power to limit local governments by general law, the exercise of such legislative authority is valid and does not conflict with "Home Rule." We noted the Court's decision in Town of Hilton Head v. Morris, 324 S.C. 30, 484 S.E.2d 104 (1997), where local governments brought an action challenging the constitutionality of a statute requiring real estate transfer fees collected by local governments to be remitted to the State. One argument mounted by the local governments was that the statute conflicted with Art. VIII, §17 of the "Home Rule" Amendment. However, the Court rejected such contention, concluding as follows:

> [t]his argument is without merit. Under Home Rule, the General Assembly is charged with passing general laws regarding the powers of local government. S.C. Const. art. VIII, §7 (counties); §9 (municipalities). The authority of a local government is subject to general laws passed by the General Assembly. See S.C. Code Ann. §5-7-30 (municipalities); §4-9-30 (counties) (Supp. 1995). The General Assembly can therefore pass legislation specifically limiting the authority of local government. In this case, although §6-1-70 does not prohibit the imposition of real estate transfer fees, it prohibits local governments from retaining the revenue generated by them. This limitation on revenue-raising does not violate article VIII, §17, since the General Assembly is constitutionally empowered to determine the parameters of local government authority. [Emphasis added].

Morris, 484 S.E.2d at 106-107.

The Court's ruling is consistent with the generally recognized principle that the "Home Rule" power exercised by a municipality cannot result in legislation which conflicts with an act of the Legislature, and it cannot be exercised in any area which has been preempted by the State. See Goodell v. Humboldt County, 575 N.W.2d 486, 494 (Iowa 1998) [simply because local government regulation is permissible in an area "does not prevent the legislature from imposing uniform regulations throughout the state, should it choose to do so, nor does it prevent the state from regulating this area in such a manner to preempt local control"]. As we recognized in the May, 2006, opinion: "[a]fter Home Rule, while the

Legislature now cannot legislate as to a specific [municipality], it certainly retains virtually plenary power to limit [municipalities'] power and authority by general law."

Accordingly, we stated in the opinion that "Home Rule" does not prevent the Legislature from exercising its broad constitutional power to preempt municipalities' power to regulate altogether in a given area. Of course, preemption is often thought of as "the principle (derived from the Supremacy Clause) that a federal law can supersede or supplant any inconsistent state law or regulation." Op. S.C. Atty. Gen., April 7, 2011 [quoting Horizon Homes of Davenport v. Nunn, 684 N.W.2d 221, 228 (Iowa 2004)]. However, preemption by the State of local government regulation can occur just as well, and in that context, "[p]reemption takes a topic or a field in which local government might otherwise establish appropriate local laws and reserves that topic for regulation exclusively by the legislature." Id. [citing Phantom of Clearwater, Inc. v. Pinellas County, 894 So.2d 1011, 1018 (Fla. App. 2005)].

Determining whether an ordinance is valid is a two-step process. Denene, Inc. v. City of Charleston, 352 S.C. 208, 574 S.E.2d 196, 198 (2002); Bugsy's v. City of Myrtle Beach, 340 S.C. 87, 530 S.E.2d 890, 893 (2000). First, a court must consider whether the municipality had the power to enact the ordinance. If the State has preempted a particular area of legislation, a municipality lacks power to regulate the field, and the ordinance is invalid. Id. If, however, the municipality had the power to enact the ordinance, the court must then determine whether the ordinance is consistent with the Constitution and the general law of the State. Id. To preempt an entire field, "an act must make manifest a legislative intent that no other enactment may touch upon the subject in any way." Id. [citing Town of Hilton Head Island v. Fine Liquors, Ltd., 302 S.C. 550, 397 S.E.2d 662 (1990)]. Furthermore, "for there to be a conflict between a state statute and a municipal ordinance 'both must contain either express or implied conditions which are inconsistent or irreconcilable with each other. . . . If either is silent where the other speaks, there can be no conflict between them. Where no conflict exists, both laws stand.' " Id., 397 S.E.2d at 664 [quoting McAbee v. Southern Rwy., Co., 166 S.C. 166, 164 S.E. 444, 445 (1932)].

At least two decisions of the South Carolina Supreme Court have concluded that the Legislature intended expressly to preempt local regulation of specific areas. In Barnhill, the Court found that a state statute "manifests a clear legislative intent to preempt the entire field of regulation regarding the use of watercraft on navigable waters" when such regulation must, except under certain special circumstances, "in fact be identical to state law. . . ." Id., 511 S.E.2d at 363. In Wrenn Bail Bond Service, Inc. v. City of Hahahan, 335 S.C. 26, 515 S.E.2d 521, 522 (1999), the Court held that a provision in the bail bondsman licensure law, which provided that "[no] license may be issued to a professional bondsman except as provided in this chapter," served to make it "clear from the plain language of §38-53-80 that the legislature intended to preempt the entire field of professional licensing for bail bondsmen."

Likewise, in an opinion of this office dated February 27, 1990, we commented upon proposed legislation which would expressly preempt local regulation of smoking in public places. We noted that the legislation was "general in form" and contained an express preemption clause. There, we concluded:

> First: If the bill is adopted in its present form, with the proposed preemption clause, you have asked whether counties and municipalities would be barred from enacting and/or enforcing stricter ordinances, such as an

> outright ban on smoking in government-owned buildings within their boundaries, or ordinances to regulate smoking in the private sector. The proposed preemption clause expressly provides: "This act expressly pre-empts the regulation of smoking by all government entities and subdivisions including boards and commissions to the extent that regulation is more restrictive than state law."
>
> The preemption clause speaks for itself. With the preemption clause as proposed, the plain language of the clause would appear to preclude the adoption of an ordinance, by a county or municipality, more restrictive than state law. ....
>
> Second: Under the provisions of the State Constitution and existing statutes, you have asked whether the legislature could preempt a local government's authority to enact or enforce such stricter standards. This question was addressed in the opinion of February 8, 1990, particularly in the discussion of constitutional and statutory provisions .... Political subdivisions may not vary from the provisions of general law unless such variance is specifically authorized. In the context of your proposed bill, this would mean that the legislature could, if it wished, preempt further regulation in the same matter by local political subdivisions.

Other decisions are also relevant in considering the issue. In Foothills Brewing Concern, Inc. v. City of Greenville, 377 S.C. 355, 660 S.E.2d 264 (2008), the Court held local public smoking bans were not preempted by the regulation of indoor smoking pursuant to the Clean Indoor Air Act. The Court emphasized that "[t]here is simply no expressly stated intent in the statute that the State chose to exclusively regulate the subject of indoor smoking." Id., 660 S.E.2d at 268 [emphasis in original]. Likewise, in Sandlands C & D, LLC v. County of Horry, 394 S.C. 451, 716 S.E.2d 280 (2011), the Court held an ordinance regulating the county-wide flow of solid waste was not preempted by State law imposing a statewide, coordinated solid waste management scheme to be overseen at the state level by DHEC. The Court found no express language in the Solid Waste Policy and Management Act ("SWPMA") evincing the intent to preclude local regulation over the flow of solid waste. Although, the Court noted, the express language of provisions in the SWPMA granted DHEC exclusive authority to make certain decisions and determinations with regards to permitting, no such language was found in the SWPMA concerning the flow of solid waste within counties. Id., 716 S.E.2d at 287.

In the situation presented by your letter, it is significant that included within the Act is §23-31-510, which specifically provides, in pertinent part, that:

> [n]o governing body of any county, municipality, or other political subdivision in the State may enact or promulgate any regulation or ordinance that regulates or attempts to regulate:

> (1) the transfer, ownership, possession, carrying, or transportation of firearms, ammunition, components of firearms, or any combination of these things . . .

Consistent with the above authority, it is clear to us §23-31-510 expressly indicates that the Legislature intended to preclude any local regulation regarding the carrying of concealable weapons. Thus, to the extent that a proposed municipal ordinance attempts to regulate matters expressly preempted from local control by the Legislature, such ordinance would not be authorized and is invalid.

We note an opinion of this office dated December 7, 2010, where we addressed a county ordinance prohibiting the possession of a firearm in a county park. Therein we referenced an earlier opinion, which advised that §23-31-510 must be read in conjunction with §23-31-220, which provides public or private employers, private property owners, and persons in legal possession or control the right to prohibit the carrying of a concealed weapon on their premises. We stated that the county could prohibit the carrying of concealed weapons in county parks. We superseded this opinion, explaining that §23-31-220 was applicable only to private property owners, as nothing in this provision could be read to broaden its application to include a local governing body. We advised that §23-31-510 predominates and, as a result, a local governing body, such as a county, may not enact any regulation dealing with the carrying of concealed weapons. In another opinion of this office dated October 3, 1991, we advised that a municipal ordinance regulating the sale of firearms, a matter clearly preempted from local control by §23-31-510, would not be authorized.

Lastly, an ordinance as referenced in your letter would appear to be in conflict with State law. Any conflict between the Act and a municipal ordinance, as where an ordinance permits that which the Act expressly prohibits, such ordinance is void. See State v. Solomon, 245 S.C. 550, 141 S.E.2d 818 (1965); Law v. City of Columbia, 148 S.C. 229, 146 S.E. 12 (1928); Op. S.C. Atty. Gen., September 22, 2008.

Conclusion

This Office strongly supports the Second Amendment to the United States Constitution and citizens' right to bear arms. We also wholeheartedly endorse the Law Abiding Citizens Self-Defense Act. However, it is the Legislature which determines the places where concealable weapons can and cannot be carried, notwithstanding the issuance of a concealed weapons permit. Clearly, the Legislature has deemed it a crime to carry a concealable weapon into the office of or any meeting of the governing body of a municipality. It is also a crime to carry a concealable weapon into law enforcement agencies, and courthouses and courtrooms, and other locations specified in §23-31-215(M). Therefore, an elected official who has a concealed weapons permit may not do so.[3] In addition and pursuant to §16-23-420, the Legislature has long deemed it a crime to carry firearms in publicly owned buildings. The Legislature also

[3]However, as previously explained, there are exceptions for, *inter alia*, regular, salaried law enforcement officers. There is also an exception for active judges, solicitors and assistant solicitors, and workers' compensation commissioners when carrying out the duties of their office.

provided that nothing contained in the Act may be construed to alter or affect the provisions of this prohibition. The law is clear and there is no room for doubt or interpretation. Only if express permission is given by relevant authorities may a person with a concealed weapons permit, including municipal employees, carry a firearm of any kind in a publicly owned building.[4] Lastly, the Legislature has expressly preempted any local regulation dealing with the carrying of concealable weapons. It is the opinion of this office that any attempt to regulate this area through a municipal ordinance is not authorized and would be deemed invalid by a court.

If you have any further questions, please advise.

Very truly yours,

N. Mark Rapoport
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
Deputy Attorney General

[4]As noted, this prohibition does not apply to, *inter alia*, a guard, law enforcement officer, or member of the armed forces.