ALAN WILSON
ATTORNEY GENERAL

March 4, 2016

Mr. Dante Russo
Vice Chairman, Greenville Arena District
650 North Academy St.
Greenville, SC 29601

Dear Mr. Russo:

We are in receipt of your opinion request concerning the regulation of firearms in the Greenville Arena District ("the District" or "the Arena"). Specifically, you ask "whether [the District] can prohibit off-duty law enforcement officers, who are paying customers, from carrying firearms into the Bon Secours Wellness Arena during events[.]" We believe it cannot.

I. Law/Analysis

Your question appears to focus on whether the District could restrict off-duty law enforcement officers from carrying concealed weapons into the Arena pursuant to Section 23-31-215(M)(4) of the Code on the basis that the District serves as "the office of or the business meeting of the governing body of a . . . public service district." Because we have previously advised that: (A) this State's concealed weapons laws do not apply to law enforcement officers; and (B) Section 23-31-510(1) of the Code[1] does not authorize political subdivisions to regulate the carrying of concealed weapons, we believe the District cannot prohibit off-duty law enforcement officers from carrying firearms into the Arena.

A. S.C. Code Ann. § 23-31-215(M)(4) Cannot be Used to Restrict Off-Duty Law Enforcement Officers from the District since State Concealed Weapons Laws do not Apply to Law Enforcement Officers

As indicated in your letter, South Carolina's concealed weapon permit laws exempt law enforcement officers from its requirements. See S.C. Code Ann. § 23-31-215(O)(1) ("A permit issued pursuant to this article is not required for a person . . .specified in Section 16-23-20, items (1) through (5) and items (7) through (11)); S.C. Code Ann. § 16-23-20(1) (2015 Supp.) (excepting, among others, "regular, salaried law enforcement officers" from Section 16-23-20's

[1] Section 23-31-510(1) of the Code states, "[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 the transfer, ownership, possession, carrying, or transportation of firearms, ammunition, components of firearms, or any combination of the things." S.C. Code Ann. § 23-31-510(1) (2015 Supp.).

prohibition on carrying "about the person any handgun, whether concealed or not").[2] Indeed, a prior opinion of this Office explained that pursuant to Section 16-23-20(1), "law enforcement officers . . . are authorized to carry a handgun, whether concealed or not." Op. S.C. Att'y Gen., 2007 WL 1934797 (June 4, 2007). Continuing, the opinion confirmed that, "the restrictions of this State's concealed weapons law are inapplicable to law enforcement officers . . . ." Op. S.C. Att'y Gen., 2007 WL 1934797 (June 4, 2007). In light of this, it follows that Section 23-31-215(M)(4) cannot be used to restrict off-duty law enforcement officers from carrying concealed weapons into the District since Section 23-31-215(M)(4) simply does not apply to law enforcement officers.

B. S.C. Code Ann. § 23-31-510(1) Prohibits Political Subdivisions from Regulating the Carrying of Firearms

Moreover, even assuming Section 23-31-215(M)(4) did apply to law enforcement officers, we do not believe it authorizes a special purpose district to regulate the "carrying . . . of firearms" as doing so is restricted by the terms of Section 23-31-510. See S.C. Code Ann. § 23-31-510 (restricting counties, municipalities and political subdivisions from regulating, among other things, the "carrying" . . . of firearms[.]"). In particular, Section 23-31-215(M)(4) states only that a concealed weapons permit "does not authorize a permit holder to carry a concealable weapon into a[n] . . . office of or the business meeting of the governing body of a . . . special purpose district." S.C. Code Ann. § 23-31-215(M)(4) (2015 Supp.). However, it does not provide such entities with regulatory authority to enforce these provisions via additional regulation, instead creating a criminal offense for failing to abide by the statute's restrictions. Indeed, a review of Section 23-31-215(M) reflects that item (4) is simply a state criminal prohibition on bringing a weapon into the office or business meeting of, among others, a "special purpose district[;]" a prohibition punishable by a fine of "not less than one thousand dollars" imprisonment of "not more than one year, or both." Thus, Section 23-31-215(M)(4) is not a legislative grant of power to the political subdivisions of the State to regulate the carrying of firearms, but is instead a mere criminal prohibition on concealed weapons permit holders bringing concealed weapons into the office or business meeting of a governing body. Indeed, to find otherwise would be inconsistent with the terms of Section 23-31-510's wholesale reservation of authority to regulate the carrying of firearms.

Additionally, and as you are aware, our prior opinions advance the same interpretation of Section 23-31-510. For instance, in 1991, we explained a local ordinance regulating the sale of firearms was clearly preempted from local control pursuant to Section 23-31-510(1)'s terms. Op. S.C. Att'y Gen., 1991 WL 633056 (October 3, 1991). Further, in 2010, we said Section 23-31-510 preempted a county from regulating the carrying of concealed weapons in a county park,

[2] While Section 16-23-20(1) admittedly contains the limiting language, "when they are carrying out official duties while in this State," this Office has previously interpreted such language as applying only to "law enforcement officers of the Federal government or other states." Op. S.C. Att'y Gen., 1995 WL 803315 (February 1, 1995).

again, because of Section 23-31-510's wholesale reservation of regulatory authority related to the carrying of firearms. Op. S.C. Att'y Gen., 2010 WL 5578965 (December 7, 2010). Thereafter, in 2012, we advised "it is clear to us § 23-31-510 expressly indicates that the Legislature intended to preclude any local regulation concerning the carrying of concealed weapons[;]" Op. S.C. Att'y Gen., 2012 WL 1260182 (April 2, 2012) a conclusion we reiterated in both 2014 and 2015. See Op. S.C. Att'y Gen., 2014 WL 5073495 (September 30, 2014) (quoting Op. S.C. Att'y Gen., 2012 WL 1260182 (April 2, 2012) ("[I]t is clear to us § 23-31-510 expressly indicates that the Legislature intended to preclude any local regulation concerning the carrying of concealed weapons.")); Op. S.C. Att'y Gen., 2015 WL 4596713 (July 20, 2015) ((quoting Op. S.C. Att'y Gen., 2012 WL 1260182 (April 2, 2012) ("[I]t is clear to us § 23-31-510 expressly indicates that the Legislature intended to preclude any local regulation concerning the carrying of concealed weapons.")). Thus, and as we explained in our 2014 opinion, "because our prior opinions have already addressed this issue and our research indicates there have been no amendments modifying Section 23-31-510's wholesale reservation of regulatory authority to the Legislature concerning the subject matter of 'transfer, ownership, possession, carrying, or transportation of firearms, ammunition, components of firearms, or any combinations of the things,' we reaffirm our prior opinions on this issue." Op. S.C. Att'y Gen., 2014 WL 5073495 (September 30, 2014). Accordingly, it remains the opinion of this Office that Section 23-31-510(1) preempts local legislation[3] on the subject matter of "transfer, ownership, possession,

[3] We note our analysis concerning the application of Section 23-31-510(1) is not changed by the Arena's special purpose district status for two reasons. First, since the statute extends to "political subdivisions" and prior opinions of this Office have found special purpose districts are political subdivisions, Op. S.C. Att'y Gen., 2003 WL 21043507 (April 21, 2003); Op. S.C. Att'y Gen., 2015 WL 5254329 (August 24, 2015) we believe the Legislature, by using the phrase "political subdivisions" intended the statute's prohibitions to apply to all types of local legislation. Second, were we to interpret Section 23-31-510(1) as prohibiting county and municipal regulation concerning the carrying of firearms, but permitting special purpose district regulation on the same subject matter, doing so would lead to an absurd result wherein a reservation of state legislative authority is turned into a limited delegation of legislative authority. See Roche v. Young Bros., Inc., of Florence, 332 S.C. 75, 81, 504 S.E.2d 311, 314 (1998) ("In construing a statute, this Court is constrained to avoid an absurd result."). We believe this was not the Legislature's intent in passing Section 23-31-510, which, like many state's concealed weapons laws, are considered to be comprehensive legislative acts reserving state legislative power over this particular subject matter in order to maintain statewide uniformity. See e.g., Schneck v. City of Philadelphia, 383 A.2d 227 (Pa. Cmwlth. 1978) (finding local ordinance requiring police permit for firearm purchase was preempted by state law reserving authority to regulate the lawful ownership, possession and transportation of firearms on a statewide level); Schwanda v. Bonney, 418 A.2d 163, 166 (Me. 1980) (concluding local legislation placing additional restrictions on seeking concealed weapons permits was preempted by state legislation on the same subject matter as the subject was a comprehensive legislative scheme aimed at achieving statewide uniformity); Doe v. City and County of San Francisco, 136 Cal.App.3d 509, 186 Cal.Rptr. 380, 385 (1982) (explaining that where state law does not require permit for firearm, local ordinance requiring registration of existing handguns and prohibiting new handguns is preempted); Dwyer v. Farrell, 193 Conn. 7, 475 A.2d 257 (1984) (finding local legislation "placing . . . restrictions on the sale of handguns, . . .[is preempted as it] effectively prohibits what the state statutes clearly permit."); Montgomery County v. Atlantic Guns, Inc., 302 Md. 540, 489 A.2d 1114 (1985) (holding ordinance restricting ammunition sales are preempted by state law); Michigan Coalition for Responsible Gun Owners v. City of Ferndale, 256 Mich. App. 401, 418, 662 N.W.2d 864, 874 (Ct. App. 2003) (concluding state concealed weapon permit laws prohibited local legislation on the subject matter of carrying firearms as they showed state legislature intended to create uniform state regulatory scheme thereby preempting local legislation on the subject matter); see also, Baca v.

carrying, or transportation of firearms, ammunition, components of firearms, or any combinations of the things."

II. Conclusion

As noted in our prior opinions, "[t]his Office strongly supports the Second Amendment to the United States Constitution and citizens' right to bear arms." Op. S.C. Att'y Gen., 2012 WL 1260182 (April 2, 2012). It is in keeping with this tradition that we conclude Section 23-31-215(M)(4), a concealed weapons statute that does not apply to South Carolina's law enforcement officers and is intended only as a criminal prohibition on concealed weapons permit holders carrying weapons into the office or business meeting of a governing body, cannot be used to prohibit off-duty law enforcement officers from carrying firearms into the Arena. Indeed, were we to find otherwise, doing so would be completely at odds without our previous interpretations of Section 23-31-510(1) of the Code, a statute we have repeatedly said "indicates that the Legislature intended to preclude any local regulation concerning the carrying of concealed weapons." As a result, we reaffirm our prior opinions and conclude the District lacks authority to pass local legislation concerning the subject matter of the "transfer, ownership, possession, carrying, or transportation of firearms, ammunition, components of firearms, or any combinations of the things."

Sincerely,

Brendan McDonald
Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
Solicitor General

New Mexico Dept. of Public Safety, 132 N.M. 282, 285, 47 P.3d 441,444 (N.M. 2002) (invalidating state statute that delegated to localities the power to prohibit the carrying of concealed weapons by permittees).