ALAN WILSON
ATTORNEY GENERAL

April 2, 2020

The Honorable Ross Turner, Member
South Carolina Senate
District No. 8
Post Office Box 142
Columbia, SC 29202

Dear Senator Turner:

Attorney General Alan Wilson has referred your letter to the Opinions section. Your letter states the following:

> I am requesting an opinion from the Attorney General regarding knife laws in South Carolina. I have a Greenville County constituent who believes that the City of Greenville has an ordinance that violates the state constitution. I have sent him a reply from the Judiciary staff, but he is in disagreement.
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> According to [the constituent]:
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> "The City of Greenville has an ordinance that plainly violates our state Constitution and for that matter the US Constitution.
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> The State Constitution Article VIII Section 14 allows for municipal governance but provides municipalities may not 'set aside' certain general statewide protections including (1) the freedoms guaranteed to every person, and (5) criminal laws and the penalties for the transgression thereof.
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> Greenville ordinance 24-261 purports to prohibit 'any knife' concealed or otherwise. Columbia and Charleston have similar unconstitutional ordinances 14-102 and 21-215 respectively."

The request letter attaches correspondence from the constituent with a copy of proposed legislation to address his concerns. Because the attached correspondence indicates that the constituent is particularly concerned with Greenville City Code § 24-261, this opinion's analysis will address its constitutionality as well as the common elements in Charleston City Code § 21-215 and Columbia City Code § 14-102.

Law/Analysis

I. A court may well find that the listed local knife ordinances are inconsistent with S.C. Code Ann. § 16-23-460 and, as a result, are constitutionally suspect.

An ordinance is, of course, a legislative act that is entitled to a presumption of constitutionality. See S. Bell Tel. & Tel. Co. v. City of Spartanburg, 285 S.C. 495, 497, 331 S.E.2d 333, 334 (1985) ("An ordinance is a legislative enactment and is presumed to be constitutional. The burden is on the [challenger] to prove unconstitutionality beyond a reasonable doubt."). It is, however, this Office's opinion that the ordinances listed in the request letter may well conflict with the South Carolina Constitution's requirement for statewide uniformity regarding its criminal laws. See S.C. Const. art. VIII, § 14. While this Office may comment on perceived constitutional conflicts, we may not declare legislation void as that authority is reserved to the courts.

Each of the ordinances listed in the request letter make it "unlawful for any person to carry" any of the listed weapons within their respective municipal limits. The Greenville City Code states:

> It shall be unlawful for any person to carry about the person, whether concealed or not, any dirk, slingshot, metal knuckles, razor or other weapon usually used for the infliction of personal injury. Possession of a locked blade knife or sporting knife in excess of three inches or greater gives rise to an inference that the device is a weapon used for the infliction of personal injury. This section shall not apply to law enforcement officers while in the discharge of their duties.

Greenville City Code § 24-261.[1] A violation of Section 24-261 is punishable "by a fine of not more than $500.00 and/or by imprisonment for not more than 30 days." Greenville City Code § 1-5.[2]

In materials attached to the request letter, the constituent argues that these ordinances conflict with the State's general criminal law; namely Section 16-23-460 which concerns carrying concealed weapons in the State. Section 16-23-460 reads as follows:

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[1] The Columbia and Charleston city codes also prohibit carrying concealed weapons with some variation in the listed items. See Columbia City Code § 14-102 ("It shall be unlawful for any person to carry about his person any pistol, dirk, butcher knife, case knife, sword or spear, cane, metal knuckles, razors or other weapons of offense within the corporate limits of the city."); Charleston City Code § 21-215 ("It shall be unlawful for any person to carry concealed about his person any ice pick, razor, knife, dagger or stiletto, the blade of which exceeds three (3) inches in length.").

[2] The Columbia and Charleston city codes likewise permit sentences of up to thirty days in jail, fines up to $500, or both, for violations of their respective concealed weapons ordinances. See Columbia City Code § 1-5(a); Charleston City Code § 1-16(a).

> (A) A person carrying a deadly weapon usually used for the infliction of personal injury concealed about his person is guilty of a misdemeanor, must forfeit to the county, or, if convicted in a municipal court, to the municipality, the concealed weapon, and must be fined not less than two hundred dollars nor more than five hundred dollars or imprisoned not less than thirty days nor more than ninety days.
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> (B) The provisions of this section do not apply to:
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> > (1) A person carrying a concealed weapon upon his own premises or pursuant to and in compliance with Article 4, Chapter 31 of Title 23; or
> > (2) peace officers in the actual discharge of their duties.
>
> (C) The provisions of this section also do not apply to rifles, shotguns, dirks, slingshots, metal knuckles, knives, or razors unless they are used with the intent to commit a crime or in furtherance of a crime.

S.C. Code Ann. § 16-23-460. Each of the listed ordinances reference this statute as supportive state law authority.

The constituent's materials argue, however, that that these ordinances conflict with Section 16-23-460 in a way that cannot be reconciled, and, as a result, they violate South Carolina Constitution Article VIII, § 14. In relevant part, Article VIII, § 14 states, "[G]eneral law provisions applicable to the following matters shall not be set aside: ... (5) criminal laws and the penalties and sanctions for the transgression thereof." S.C. Const. art. VIII, § 14. The South Carolina Supreme Court explained this section prohibits the State's political subdivisions from varying the State's criminal law:

> Article VIII of the South Carolina Constitution deals generally with the creation of local government. Article VIII, § 14 limits the powers local governments may be granted by state law by providing that, among other things, local governments may not attempt to set aside state "criminal laws and the penalties and sanctions in the transgression thereof...."
> ...
>
> Local governments derive their police powers from the state. S.C. Const. art. VIII, §§ 7, 9. The state has granted local governments broad powers to enact ordinances "respecting any subject as shall appear to them necessary and proper for the security, general welfare and convenience of such municipalities." S.C. Code Ann. § 5-7-30 (1976). This is in recognition that more stringent regulation often is needed in cities than in the state as a whole. Arnold v. City of Spartanburg, 201 S.C. 523, 23 S.E.2d 735 (1943). However, the grant of power is given to local governments with the proviso that the local law not conflict with state law. City of Charleston v. Jenkins, 243 S.C. 205, 133 S.E.2d 242 (1963). A city ordinance

> conflicts with state law when its conditions, express or implied, are inconsistent or irreconcilable with the state law.

City of N. Charleston v. Harper, 306 S.C. 153, 155–57, 410 S.E.2d 569, 570-71 (1991). The Court held a local ordinance cannot "forbid what the legislature expressly has licensed, authorized, or required" or it will be declared void. 306 S.C. at 157, 410 S.E.2d at 571; see also Foothills Brewing Concern, Inc. v. City of Greenville, 377 S.C. 355, 365, 660 S.E.2d 264, 269 (2008) ("We have observed that this subsection of the Constitution requires 'statewide uniformity' regarding the criminal law of this State, and therefore, 'local governments may not **criminalize** conduct that is legal under a statewide criminal law.'") (emphasis in original); Connor v. Town of Hilton Head Island, 314 S.C. 251, 254, 442 S.E.2d 608, 609 (1994) ("We now construe article VIII, § 14 to prohibit a municipality from proscribing conduct that is not unlawful under State criminal laws governing the same subject."). With these principals in mind, this opinion will address whether the listed ordinances are consistent or reconcilable with state law.

It is this Office's opinion that the listed ordinances forbid conduct that is legal under statewide criminal law. Section 16-23-460 has been amended multiple times since the listed ordinances were enacted. In 1986, the relevant statutory definition of "weapon" read:

> Section 16-23-405. (1) Except for the provisions relating to rifles and shotguns in Section 16-23-460, as used in this chapter, 'weapon' means firearm (rifle, shotgun, pistol, or similar device that propels a projectile through the energy of an explosive), **a knife with a blade over two inches long,** a blackjack, a metal pipe or pole, or any other type of device or object which may be used to inflict bodily injury or death.

1986 Act No. 532, § 6 (emphasis added). Moreover, the listed exceptions in Section 16-23-460 were limited to only rifles and shotguns. Id. ("The provisions of this section do not apply to rifles or shotguns unless they are used with the intent to commit a crime or in furtherance of a crime."). In 1996, the General Assembly passed Act 464 which was titled, in relevant part, "AN ACT ... TO AMEND SECTION 16-23-460 ... SO AS TO REVISE THE TYPE OF CONCEALED WEAPONS THAT MAY BE CARRIED WITH AND WITHOUT A PERMIT." 1996 Act No. 464. The act extended the list of weapons that are excluded from the statute to read, "The provisions of this section do not apply to rifles, shotguns, dirks, slingshots, metal knuckles, or razors unless they are used with the intent to commit a crime or in furtherance of a crime." 1996 Act No. 464, § 4. Finally, in 2008, the General Assembly explicitly removed knives with a blade over two inches long from the definition of "weapon" and excluded knives from the concealed weapons statute unless used with the intent to commit a crime.[3]

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[3] The Act is titled in part:

> AN ACT TO AMEND SECTION 16-23-405, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE DEFINITION OF "WEAPON" AND THE HANDLING OF WEAPONS USED IN THE COMMISSION OF A CRIME, SO AS TO

These amendments plainly demonstrate a shift in legislative intent regarding whether knives should be considered "deadly weapon[s] usually used for the infliction of personal injury." S.C. Code Ann. § 16-23-460(A). In fact, an unpublished decision from the South Carolina Court of Appeals found that the mere possession of the items which are included in the listed exceptions, S.C. Code Ann. § 16-23-460(C), would not violate the statute. See State v. Knight, No. 2006-UP-109, 2006 WL 7285728, (S.C. Ct. App. Feb. 21, 2006).[4] Because the subsequent 2008 amendment expressed a clear intent to exclude knives from the concealed weapons statute, it is this Office's opinion that a court would similarly find that the possession of a knife, whether concealed or not, without the additional element of being used in the furtherance of a crime is not unlawful under general state law. While Greenville City Code § 24-261 does not directly state that possession of a knife with a blade in excess in three inches is unlawful, it does establish an inference that such a knife is included within that list as a "weapon usually used for the infliction of personal injury." Please note that in addition to knives, all listed items, including dirks, slingshots, metal knuckles, and razors, are likewise explicitly listed exceptions. The mere possession of any of these weapons is not unlawful under Section 16-23-460 unless they are used with the "the intent to commit a crime or in furtherance of a crime." State v. Knight, supra. Because the ordinances criminalize conduct that the State has made lawful, a

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> REMOVE "KNIFE WITH A BLADE OVER TWO INCHES LONG" FROM THE DEFINITION; TO AMEND SECTION 16-23-460, RELATING TO CARRYING CONCEALED WEAPONS, SO AS TO PROVIDE FOR THE EXCLUSION OF KNIVES WITHIN THE PURVIEW OF THE OFFENSE UNLESS THEY ARE USED WITH THE INTENT TO COMMIT A CRIME ...

2008 Act No. 337.

[4] The Court found that the possession of concealed brass knuckles would not violate Section 16-23-460 without the additional element of being used with the intent to commit a crime or in the furtherance of a crime.

> The concealed weapon statute provides that it is illegal for a person to carry a "deadly weapon usually used for the infliction of personal injury" concealed on his person. S.C. Code Ann. § 16–23–460 (2003). However, the section further provides that it does not apply to "rifles, shotguns, dirks, slingshots, metal knuckles, or razors unless they are used with the intent to commit a crime or in furtherance of a crime." Id. There are no South Carolina cases discussing this exception to the concealed weapon statute or what constitutes evidence that the weapon was used with "the intent to commit a crime or in furtherance of a crime."
>
> The parties do not dispute that the mere possession of brass knuckles, without more, does not violate the concealed weapon statute. Thus, we must focus our analysis on whether probable cause existed for a warrantless arrest of Knight pursuant to the portion of the statute criminalizing possession of concealed brass knuckles when used in furtherance of a crime.

Id. at *2-3 (emphasis added).

court would likely hold they are void. See Connor v. Town of Hilton Head Island, 314 S.C. at 254, 442 S.E.2d at 610 ("Since Town has criminalized conduct that is not unlawful under relevant State law, we conclude Town exceeded its power in enacting the ordinance in question.").

II. The proposed legislation would address when the State has preempted local knife ordinances.

The request letter attached 2015 House Bill 3115. Your constituent suggests this legislation, if adopted, may address the issue of inconsistency between S.C. Code Ann. § 16-23-460 and various local knife ordinances. The bill would amend Section 23-31-510 to preempt local regulation of knives by adding, "No 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 knives, firearms, ammunition, components of firearms, or any combination of these things ..."

Generally, this legislation may remedy the issue of inconsistencies by preempting local ordinances addressing the possession or carrying of knives. The South Carolina Supreme Court explained that the determination of whether an ordinance is valid into a two-step process. In Foothills Brewing Concern, Inc. v. City of Greenville, the Court stated:

> A two-step process is used to determine whether a local ordinance is valid. Denene, Inc. v. City of Charleston, 352 S.C. 208, 212, 574 S.E.2d 196, 198 (2002); Bugsy's v. City of Myrtle Beach, 340 S.C. 87, 93, 530 S.E.2d 890, 893 (2000). First, the 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.

377 S.C. at 361, 660 S.E.2d at 267. This opinion has addressed the second step in Foothills Brewing Concern; whether the ordinance is consistent with the Constitution and state law. The language of the amendment would address the first step by preempting the area of legislation from local regulation. This Office has consistently construed Section 23-31-510 to preempt the regulation of possession or carrying a firearm by political subdivisions. See Op. S.C. Att'y Gen., 2017 WL 6940255, at 3 (December 29, 2017). If Section 23-31-510 were amended to add knives, it is this Office's opinion that political subdivisions would similarly be preempted from regulating the possession or carrying of knives.

Conclusion

It is this Office's opinion that a court would likely hold the local knife ordinances listed in the request letter are inconsistent with state criminal law and, therefore, violate S.C. Const. art. VIII, § 14; City of N. Charleston v. Harper, supra. It is this Office's understanding that the listed ordinances were enacted prior to the 1996 and 2008 amendments to S.C. Code Ann. §§ 16-23-405, -460. At the time the ordinances were enacted, the statutory definition of weapon included "a knife with a blade over two inches long." S.C. Code Ann. § 16-23-405 (Supp. 1987). Further, Section 16-35-460(C) was subsequently amended to list "dirks, slingshots, metal knuckles, knives, or razors" as exceptions to the prohibition against carrying concealed weapons. S.C. Code Ann. § 16-23-460(C) (2015). When the ordinances were adopted, the cities certainly drafted the ordinances to comply with the general state law. However, due to the amendments discussed above, the ordinances continue to criminalize conduct that the General Assembly has since authorized.

Sincerely,

Matthew Houck
Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
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