Firearm permit and additional restrictions

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Subject:
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FIREARMS--COUNTY COMMISSION MAY NOT IMPOSE ADDITIONAL RESTRICTIONS WHEN ISSUING FIREARM PERMIT

To: Alton M. Towles, Gadsden County Attorney, Quincy

Prepared by: Michael M. Parrish, Assistant Attorney General

QUESTION:

May the County Commissioners of Gadsden County, when granting a license to carry a pistol or Winchester or other repeating rifle under s. 790.06, F. S., impose restrictions on such license respecting the times and/or circumstances under which it will be valid?

SUMMARY:

When granting a license to carry a pistol or Winchester or other repeating rifle under s. 790.06, F. S., the Board of County Commissioners of Gadsden County is without authority to impose restrictions on such license respecting the times and/or circumstances under which it will be valid and effective.

Section 1(f), Art. VIII, State Const. states in pertinent part:

"Counties not operating under county charters shall have such power of self-government as is provided by general or special law. The board of county commissioners of a county not operating under a charter may enact, in a manner prescribed by general law, county ordinances not inconsistent with general or special law . . . ."

The powers of counties respecting the granting of licenses to carry firearms are found at s. 790.06, F. S., which provides:

"The county commissioners of the respective counties of this state may at any regular or special meeting grant a license to carry a pistol, Winchester or other repeating rifle, only to such persons as are over the age of 21 [now 18, AGO 073-378] years and of good moral character, for a period of 2 years, upon such person giving a bond payable to the Governor of the state in the sum of $100, conditioned for the proper and legitimate use of said weapons, with sureties to be approved by the county commissioners. The county commissioners shall keep a record of the names of the persons taking out such a license, the name of the maker of the firearm so licensed to be carried, and the caliber and number of the same."

And s. 790.01, F. S., which, *inter alia*, makes it a felony of the third degree to carry a concealed firearm, provides in its last subsection: "Nothing in this section shall relate to persons licensed as set forth in ss. 790.05 and 790.06."

Further, s. 790.05, F. S., provides, in pertinent part:

"Whoever shall carry around with him, or have in his manual possession, in any county in this state, any pistol, Winchester rifle, or other repeating rifle, without having a license from the county commissioners of the respective counties of this state shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083 . . . ."

It is clear from the language quoted above from ss. 790.01 and 790.05, F. S., that the legal effect of the granting of a license to carry a firearm under s. 790.06, F. S., is established by statute. *Cf*. AGO 074-45. Any action by the county commissioners to limit or restrict the operation of ss. 790.01 and 790.05 would be in conflict with, and inconsistent with, those statutory provisions. As noted in AGO 071-223, which discusses, *inter alia*, the meaning of the phrase "not inconsistent with general or special law" as used in s. 1(f), Art. VIII, State Const.:

"According to Webster, the term 'inconsistent' means 'not compatible with another fact or claim.' In the home rule context, it means that when the legislature has, by general or special law, spoken upon a matter in terms that evidence an intent that the provisions of such law should control the matter in question, a county may not, by home rule ordinance, provide to the contrary."

Therefore, in view of the constitutional limitations on the exercise of county power found at s. 1(f), Art. VIII, State Const., I am of the view that the Board of County Commissioners of Gadsden County is without authority to impose restrictions respecting the times and/or circumstances under which a firearms license issued by it under s. 790.06, F. S., would be valid and effective. *Cf*. AGO 071-54, concluding that a noncharter county may not require a bond in an amount other than that prescribed by s. 790.06. Under the statute, the commission's sole power is to grant or deny the license to those persons otherwise eligible or qualified therefor by the terms of s. 790.06.

Accordingly, your question is answered in the negative.