Municipal Resolution Relating to Firearm Regulation

Number: INFORMAL

Date: February 07, 2017

Ms. Jacqueline M. Kovilaritch
City Attorney
City of St. Petersburg, Florida
Post Office Box 2842
St. Petersburg, Florida 33731

Dear Ms. Kovilaritch:

On behalf of the City of St. Petersburg City Council ("Council"), you have requested an opinion addressing whether potential resolutions expressing the Council's view with respect to proposed state or federal legislation regulating firearms or ammunition would violate section 790.33(1), (2), Florida Statutes,[1] or potentially subject the Council to a "suit for declaratory and injunctive relief and for actual damages, as limited herein, caused by the violation[,]" as provided for in section 790.33(3)(f). While not describing the proposed language which such potential resolutions might reflect, you characterize the resolutions as non-regulatory, "simply [expressing] support for, or opposition to, proposed legislation that has already been filed and is pending for consideration by the state or federal legislative body."[2] In your letter, you note that, "[i]n passing such a resolution, the City Council would not impose regulations." We comment as follows without knowing the exact content of the proposed resolutions.

As framed by the facts presented, the question is whether a municipal legislative body's resolution expressing support or opposition to proposed state or federal legislation regulating firearms or ammunition would violate section 790.33 or "rights protected under the constitution and laws of this state related to firearms, ammunition, or components thereof[.]"[3] Florida Attorney General Bondi has asked me to respond to your letter.

As the Council acknowledges, section 790.33, Florida Statutes, preempts to the Florida Legislature the "regulation of firearms and ammunition, including the purchase, sale, transfer, taxation, manufacture, ownership, possession, storage, and transportation thereof, to the exclusion of all existing and future county, city, town, or municipal ordinances or any administrative regulations or rules adopted by local or state government relating thereto." Section 790.33 prohibits not only such competing regulations (in their various forms),[4] but also any "violation of rights protected under the constitution and laws of this state related to firearms, ammunition, or components thereof by the abuse of official authority that occurs when enactments are passed in violation of state law or under color of local or state authority."

Given this language, it is clear that *non-regulatory* actions would not infringe on the statute's prohibition against competing unauthorized local or state government *regulations*. The sole issue, then, is whether such a non-regulatory government action would violate "rights protected under the constitution and laws of this state related to firearms, ammunition, or components thereof[.]"

To answer this question, we must examine the provision of the State Constitution to which section 790.33(2)(b) refers. Article I, section 8(a) of the Florida Constitution provides that "[t]he right of the people to keep and bear arms in defense of themselves and of the lawful authority of the state shall not be infringed, except that the manner of bearing arms may be regulated by law." As observed by the appellate court in *Florida Carry, Inc. v. University of North Florida*, "[t]he phrase 'by law' indicates that the regulation of the state right to keep and bear arms *is assigned to the legislature and must be enacted by statute*."[5] Consistent with this restriction, the potential Council resolutions, as described—by "simply [expressing] support for, or opposition to, proposed legislation"—would not constitute prohibited regulation of the preempted subject matter. The Council's proposed resolutions expressing its views would not deny, impair, or interfere in any way with the right to bear arms, or the Legislature's regulation of such right. Because the Council's proposed actions would not appear to violate section 790.33, Florida Statutes, or the constitutional right to bear arms, the Council would not be subject to penalties under section 790.33(3)(f), Florida Statutes, for adopting such non-regulatory resolutions.

These informal comments are limited to the particular facts presented in your letter. I trust they will be helpful to you in advising your client.

Sincerely,

Teresa L. Mussetto
Senior Assistant Attorney General

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[1] *See generally* Ch. 790, Fla. Stat. (2016) ("Weapons and Firearms").

[2] Letter dated December 22, 2016, from City Attorney Jacqueline M. Kovilaritch to Attorney General Pam Bondi at 3-4.

[3] *See* § 790.33(2)(b), Fla. Stat. (2016).

[4] Although § 790.33 refers variously to "municipal ordinances or any administrative regulations or rules adopted by local or state government" [§ 790.33(1),(3)], "ordinances and regulations…enacted by any jurisdictions other than state and federal" [§ 790.33(2)], and "any ordinance, regulation, measure, directive, rule, enactment, order, or policy promulgated or caused to be enforced in violation of this section" [§ 790.33(3)(f)], the clear intent is to prohibit unauthorized competing local or state government regulation of firearms and ammunition. See § 790.33(1) (declaring "null and void" all "existing and future county, city, town, or municipal ordinances or any administrative regulations or rules adopted by local or state government" relating to the "regulation of firearms and ammunition.").

[5] 133 So. 3d 966, 972 (Fla. 1st DCA 2013) (italicized emphasis added) (citing *Grapeland Heights Civic Ass'n v. City of Miami*, 267 So. 2d 321, 324 (Fla. 1972) (considering the enactment clause language of article III, section 6, of the Florida Constitution and interpreting the term "law" in the phrase "authorized by law" to mean an enactment by the legislature, and not by a city

commission or any other political body).