Recreational Discharge of Firearms

Number: INFORMAL

Date: February 25, 2014

The Honorable Michael J. Ryan
Office of the Mayor
10770 West Oakland Park Boulevard
Sunrise, Florida 33351

Dear Mayor Ryan:

Thank you for your letter of January 30, 2014, requesting an Attorney General's Opinion relating to the authority of a municipality to "limit outdoor firearm ranges in urban residential neighborhoods and/or the discharge of firearms for the purposes of shooting practice." You have also written to Governor Scott to request assurances from that office that the Governor would not exercise his authority under section 790.33, Florida Statutes, to remove from office those officials who seek to legislate restrictions on outdoor firearm target shooting in residential neighborhoods. Attorney General Bondi has asked me to respond to your letters.

After reviewing the information you have submitted, it does not appear that this is a matter upon which this office may comment. This office is currently involved in litigation in the Second Judicial Circuit dealing with the constitutionality of provisions of section 790.33, Florida Statutes.[1] As our Statement of Policy provides:

"In order not to intrude upon the constitutional prerogative of the judicial branch, opinions generally are not rendered on questions pending before the courts or on questions requiring a determination of the constitutionality of an existing statute or ordinance."

Under these circumstances it would be inappropriate for this office to comment on the issues you have raised.[2]

This office, in a series of Attorney General's Opinions has considered whether local governments, both counties and municipalities, may regulate the recreational discharge of firearms in residential areas. Based on the language of the statutes and the clearly expressed legislative intent for adoption of section 790.33, Florida Statutes, previously issued opinions of this office have concluded that local governments have no authority to regulate in the area of firearms.[3]

I regret that this office could not be of more direct assistance to you in this matter and trust that the opinions issued previously by this office (which I have enclosed) will provide some direction to you in considering future legislative actions by the City of Sunrise.

Sincerely,

Gerry Hammond

Senior Assistant Attorney General

GH/tsh

Enclosures: Ops. Att'y Gen. Fla. 2011-20, 2011-17, 2008-34,
2005-40; Inf. Op. to Gibson, dated August 6, 2008;
Department of Legal Affairs Policy Statement

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[1] *See Marcus v. Scott*, No. 37-2012-CA-001260 (Fla. 2nd Jud. Cir., Leon County).

[2] *See* Department of Legal Affairs Statement Concerning Attorney General Opinions (copy enclosed).

[3] *See* Ops. Att'y Gen. Fla. 11-20 (2011), 11-17 (2011), and 05-40 (2005). *And see* s. 1, Ch. 2011-109, Laws of Fla. (the language of preemption contained in s. 790.33[1], Fla. Stat., providing that the Legislature has determined to occupy 'the whole field' of firearms regulation is expansive). *See also National Rifle Ass'n of America, Inc. v. City of South Miami*, 812 So. 2d 504 (Fla. 3rd DCA 2002). *Cf. Penelas v. Arms Technology, Inc.*, 778 So. 2d 1042, 1045 (Fla. 3rd DCA 2001), *cert. denied, review denied*, 799 So. 2d 218 (Fla. 2001) (county's request for injunctive relief against firearm manufacturers and dealers found to be an attempt to regulate firearms and ammunition through the judiciary denied; power to legislate in area of firearm regulation belongs to the legislative branch).