

FIREARMS INDUSTRY CONSULTING GROUP

A Division of Prince Law Offices, P.C.

Warren H. Prince
Karl P. Voigt IV
Joshua Prince
Thomas R. Beveridge
Eric E. Winter
Alexander Elliker
Phillip Alan Simon
Thomas H. Odom
Allen R. Thompson
Ian Friedman
Stanley Kuter



Bechtelsville 1-610-845-3803
Allentown 1-610-770-1151
Bethlehem 1-610-814-0838
Camp Hill 1-717-731-0100
Lancaster 1-717-393-7002
Lebanon 1-717-274-9250
North Wales 1-215-412-0800
Pottstown 1-610-326-4200
Pottsville 1-570-621-8828
Reading 1-610-375-8425
Toll Free 1-888-313-0416
Fax 1-610-845-3903

November 11, 2013

RE: Pennsylvanians for Self Protection v. Falls Township, et al
Chapter 199

Dear Board of Supervisors,

Please be advised that I have been retained by Pennsylvanians For Self Protection in relation to an ordinance currently under consideration, Chapter 199. This letter is to advise you that the proposed ordinance, as drafted, would violate, both civilly and criminally, state law and will result in legal action being taken against the Township and those Board members and employees individually responsible for the enactment and enforcement of any such ordinance.

As I have handled and litigated several of these matters in the past, I understand that another resident has submitted a similar letter, utilizing text from a letter that I previously submitted to another township. While I am generally not a fan of duplication, because of the issues involved and the possibility of further litigation, I want to ensure that Pennsylvanians For Self Protection's objections are preserved. Therefore, for the reasons specified below, please note Pennsylvanians for Self Protection's objections.

Falls Township, as a township of the second class, is limited to the powers bestowed upon it by the General Assembly under 53 PA.C.S. § 65101, et seq. and may not discriminate against certain individuals, organizations or entities nor may it violate the constitutional rights of those within its boundaries.

Many townships, as well as their respective solicitors, are unaware of the numerous protections afforded pursuant to (1) the Second Amendment to the United States Constitution; (2) Article 1, Section 21 of the Pennsylvania Constitution; and (3) additional protections provided by statutory law, which preclude any governmental entity from encroaching upon the possession, transport, and use of firearms and ammunition. Chapter 199 seeks specifically to limit the

FIREARMS INDUSTRY CONSULTING GROUP

possession and transport of firearms.

Pursuant to 18 Pa.C.S. § 6120, which carries with it civil and criminal liability,

(a) General rule. No county, municipality or township may in any manner regulate the lawful ownership, possession, transfer or transportation of firearms, ammunition or ammunition components when carried or transported for purposes not prohibited by the laws of this Commonwealth." Pursuant to 18 PA.C.S. 6119, a violation of Section 6120, is a misdemeanor of the first degree. As mentioned in further detail below, the Pennsylvania Supreme Court has interpreted § 6120 as the Commonwealth's explicit and complete preemption of firearms regulation.

The Legislature went even further to ensure that it was crystal clear that all municipalities were preempted, including home rule charter and optional plan municipalities, when it enacted 53 PA.C.S. § 2962. "A municipality shall not enact any ordinance or take any other action dealing with the regulation of the transfer, ownership, transportation or possession of firearms." Additionally, while not directly applicable here, although evidencing that the entire field of firearm regulation is preempted, 16 P.S. § 6107-C(k) places the same restrictions on home rule charter counties: "No county shall enact any ordinance or take any other action dealing with the regulation of the transfer, ownership, transportation or possession of firearms."

Chapter 199 declares, "...it shall be unlawful for any person to possess, carry, utilize, bear or otherwise cause to be present any firearm on, in, within or at any property owned by Falls Township," which facially violate Section 6120 by prohibiting any person from possessing and transporting a firearm. Furthermore, the language proposed would include all township sidewalks, roads, and other forms of property; thereby, seeking to invalidate all Pennsylvania Licenses to Carry Firearms, issued pursuant to 18 Pa.C.S. § 6109, and which are valid throughout the Commonwealth.

In turning to the case law interpreting Section 6120, as mentioned above, the Pennsylvania Supreme Court has been "crystal clear" that only the General Assembly can regulate firearms, as the entire field is preempted. See Nat'l Rifle Ass'n v. City of Philadelphia, 977 A.2d 78, 82 (Pa. Cmwlth. 2009). The Court stated in Ortiz v. Commonwealth that "[b]ecause the ownership of firearms is constitutionally protected, its regulation is a matter of statewide concern. . . . [T]he General Assembly, not city councils, is the proper forum for the imposition of such regulation." 681 A.2d 152, 156 (Pa. 1996). (Emphasis added). Continuing, the Ortiz Court stated that:

. . . the Constitution of Pennsylvania requires that home rule municipalities may not perform any power denied by the General Assembly; the General Assembly has denied all municipalities the power to regulate the ownership, possession, transfer or transportation of firearms; and the municipalities seek to regulate that which the General Assembly has said they may not regulate. The inescapable conclusion, unless there is more, is that the municipalities' attempt to ban the possession of certain types of firearms

FIREARMS INDUSTRY CONSULTING GROUP

is constitutionally infirm.

The Court continued: "Although we agree with [the municipalities] that the General Assembly may negate ordinances enacted by home rule municipalities only when the General Assembly's conflicting statute concerns substantive matters of statewide concern, this does not help municipal appellants, for the matters at issue in this case [municipal regulation of firearms] are substantive matters of statewide concern."

Likewise, the Commonwealth Court has invariably held that Section 6120 and the Ortiz decision prohibit the regulation of the possession, ownership, transfer, and transportation of firearms by municipalities. See National Rifle Ass'n v. City of Philadelphia, 977 A.2d 78 (Pa. Cmwlth. 2009) (holding that a Straw Purchaser Ordinance and an Assault Weapons Ordinance were preempted by § 6120); Clarke v. House of Rep. of Commonwealth, 957 A.2d 361, 365 (Pa. Cmwlth. 2008) (holding that "practical considerations do not alter the clear preemption imposed by the legislature"); Ortiz v. Commonwealth, 655 A.2d 194 (Pa. Cmwlth. 1995) (holding municipal assault weapons ban invalid and unenforceable); Schneck v. City of Philadelphia, 383 A.2d 227 (Pa. Cmwlth. 1978) (holding that municipal regulations on the acquisition and transfer of firearms was preempted by § 6120).

In addition to the statutes and case law, on August 24, 2009, then-Attorney General Tom Corbett issued a letter to the Adams County Office of the District Attorney regarding the issue of Section 6120's preemption and informing District Attorney Wagner that local municipalities are precluded from enacting ordinances regarding the possession of firearms.

Furthermore, the United States Supreme Court considers the right to keep and bear arms, especially for the purpose of self-defense, a fundamental right. See McDonald v. City of Chicago, 130 S.Ct. 3020 (2010); District of Columbia v. Heller, 554 U.S. 570 (2008). Pennsylvania's General Assembly has, through passage of 18 Pa.C.S.A. § 505, agreed that a person has a fundamental right to defend him/herself. Disallowing the ability of an individual to possess a firearm on or in "Township Owned Property" inherently infringes on the fundamental right to self-defense with a firearm. As such, it cannot be constitutionally enforced and will not survive a challenge in the courts.

In relation to these statutes and holdings, numerous municipalities have found themselves in violation of these legal protections and have taken immediate corrective action.

1. In August of 2007, District Township, Berks County, wanted to consider enacting restrictions on the carrying of firearms in the township building. Ed Overberger, Supervisors Chairman, was quoted as saying, "Our solicitor, the state police and the state association of township supervisors all have told us that we can't adopt an ordinance regulating firearms." <http://readingeagle.com/article.aspx?id=53999>
2. In September of 2012, Centre Township was considering passing a firearms discharge

FIREARMS INDUSTRY CONSULTING GROUP

ordinance, which would have precluded the discharge of firearms in the township; however, when presented with the above-listed statutes and holdings, the Township opted to enact a discharge protection ordinance, declaring, "It shall be lawful for any person to discharge a firearm within the Township, except if discharged in violation of all local, state and federal laws, rules and regulations, including but not limited to the Air Rifles Law, Game Commission Rules and Regulations and the Game Law." Ordinance 145-2012, November 12, 2012.

<http://www.centretownship.com/wp-content/uploads/2012/11/Firearms-Ordinance.pdf>

3. In 2012, both Chestnut Hill Township, Monroe County, and Lower Saucon Township, Northampton County, adjusted their ordinances to comply with the preemption of Section 6120.
<http://www.nbcphiladelphia.com/news/politics/Pa-Towns-Repeal-Gun-Bans-as-Philly-Forges-Ahead-201097011.html>
4. In October of 2012, in Washington Township, Berks County, PA, the Township Board, in addition to refusing to move forward on Firearm/Archery Ordinance, unanimously voted to strike Ordinance 76-5(B) (relating to the possession of firearms in the parks) and repeal Ordinance 79-3 (relating to carrying firearms in the township buildings without a license to carry firearms). See,
<http://blog.princelaw.com/2012/11/16/washington-township-decides-to-table-firearmsarchery-ordinance-and-modify-existing-ordinances/>
5. In April of 2013, the Borough of Quakertown, PA was made aware of its illegal ordinance precluding individuals from possessing firearms on its public lands and repealed its ordinance.
<http://www.nbcphiladelphia.com/news/politics/Pa-Towns-Repeal-Gun-Bans-as-Philly-Forges-Ahead-201097011.html>
6. Additionally, on April 16, 2013, East Rockhill Township, Montgomery County, removed its prohibition on the possession of firearms in parks and township-owned property, because of Section 6120.
http://www.montgomerynews.com/articles/2013/04/22/perkasie_news_herald/news/doc5175802b6e10b567707758.txt
7. On May 12, 2013, in Morrisville, Pennsylvania, Chief Thomas Herron of the Morrisville Police Department, in relation to a pro-gun rally, where firearms were present in Morrisville's Williamson Park, was quoted as saying, "Though a borough ordinance forbids firearms in the park, state law allows citizens the right to carry firearms and state

FIREARMS INDUSTRY CONSULTING GROUP

law supersedes the borough ordinance.”

http://www.phillyburbs.com/my_town/falls/rally-for-gun-safety-draws-hundreds/article_2775a9b5-a509-5f6f-8049-29c0883f61b2.html

8. On May 24, 2013, in relation to a recent ordinance passed by the Philadelphia City Council in March of 2013 banning firearms from city-owned or -occupied recreation centers and parks and a Gun Rights Rally scheduled for May 25, 2013, in the City and its parks, Tasha Jamerson, the Director of Communications for the Philadelphia District Attorney's Office, responded to a question by Bob Sklar inquiring whether the DA intends to enforce the city ordinance by stating, "The District Attorney applauds the Mayor and City Council for their efforts in fighting the gun violence that plagues our city, unfortunately this ordinance is preempted by state law. The DA, however, would welcome new measures by the Legislature that would give power to local municipalities to combat gun crime."
9. Most recently, South Heidelberg Township was considering passing a no-discharge ordinance in relation to a resident's complaint about gunfire. On September 12, 2013, the Board elected not to proceed with the discharge ordinance when presented with information regarding Section 6120 and the residents' outrage.
<http://readingeagle.com/article.aspx?id=510781>

These are but a few recent instances in which local municipalities have considered similar ordinances and have taken corrective action in light of the aforementioned Constitutional and legislative protections, as well as, the potential civil and criminal ramifications.

Oley Township, on the other hand, elected to charge Mr. Matthew Duda, when he carried a firearm into the Oley Township Police Department, pursuant to a valid License to Carry Firearms. The charges were thrown out by the Berks County Court of Common Pleas and I, thereafter, represented him in a federal civil rights action against Oley Township and the police officers involved, including Chief David White. The matter was settled shortly thereafter.

Furthermore, it must be noted that Fall Township, as a township of the second class, is limited to the powers bestowed upon it by the state legislature under 53 PA.C.S. 65101, et seq. and may not discriminate against certain organizations or entities nor may it violate the constitutional rights of those within its boundaries. Violations of either can result in liability at both the state and federal level, including under 42 U.S.C. § 1983 for civil rights deprivations, as Oley Township learned.

Before the Board considers enacting any ordinance relating to firearms or ammunition or their use, the Board should spend some time reviewing statistics of firearm, ammunition and discharge-related injuries in relation to other, statistically more dangerous, activities. While zoning has long been a recognized power of local government, the establishment of ordinances

FIREARMS INDUSTRY CONSULTING GROUP

may not be arbitrary and must relate to the protection of the health, safety, and general welfare of the people. See Village of Euclid v. Ambler Realty Co., 272 U.S. 365 (1926). Relevant statistics are generally available through reputable organizations such as the National Safety Council (NSC). With regards to the present issue of firearms safety, the following comparison is used: the NSC's 2008 edition of Injury Facts, reflected that there were 529,837 basketball injuries requiring emergency hospital care in 2006 alone. The same report, however, found only 649 firearms-related injuries during the same time period.

Lastly, it bears mentioning that neither an ordinance nor a statute providing for a felony conviction has precluded criminals from entertaining and committing criminal acts. At best, a criminal ordinance only duplicates charging, which is already provided by the Crimes Code; at worst, a law-abiding citizen is undeservingly and unknowingly charged with a crime for which he/she never intended to commit and had no knowledge that he/she was committing. A patchwork of laws across the Commonwealth serves no purpose but to ensnare those, who have no intention of violating the law but who unwarily find themselves in a jurisdiction, which imposes restrictions on their rights that the Commonwealth otherwise allows.

Lastly, as Pennsylvanians For Self Protection will be present at the meeting on November 19, 2013, please accept this as a request to be heard during that meeting. Thanking you for your time and consideration in this request, I am

jp/web
Matter No. 32270

Yours truly,
Prince Law Offices, P.C.,


Joshua Prince
joshua@princelaw.com
Extension: 81114

That Try Men's Souls