



BREVARD COUNTY
BOARD OF COUNTY COMMISSIONERS

**INTER-OFFICE
MEMORANDUM**

TO: Howard Tipton, County Manager

FROM: Diana Johnson, Assistant County Attorney *DJ*
Morris Richardson, Assistant County Attorney *MR*

THRU: Scott Knox, County Attorney *SK*

SUBJECT: Firearms in County Parks, Preemption

DATE: January 19, 2010

Question:

Whether Brevard County ordinances regulating the possession of firearms in parks, recreational facilities, and lands managed by the Parks and Recreation Department are preempted by state law?

Short Answer:

Section 790.33(1), Florida Statute, expressly preempts the field of firearm regulation. Thus, the County has no authority to regulate firearms in any manner.

Discussion:

You requested that the County Attorney's Office research the issue presented above after receiving a citizen inquiry.¹ Under Florida law, it is illegal for one to carry a firearm on his person,² unless that person has a license to carry a concealed weapon or unless the person's occupation permits it (e.g., a law enforcement officer).³ It is also illegal, under Florida law, for any person to knowingly discharge a firearm in any public place.⁴ For purposes of this memorandum, it is assumed that the citizen's inquiry involves persons *with a valid concealed weapons license* or who are otherwise authorized by state law to *carry* a concealed firearm.

¹ Email from Howard Tipton, County Manager, to Scott Knox, County Attorney, Jan. 15, 2010 10:56AM (on file).

² FLA. STAT. § 790.053 (2009).

³ § 790.06.

⁴ § 790.15.

In the Brevard County Code of Ordinances, a ‘firearm’ is defined as “any weapon (including a starter gun) which will, is designed to, or may readily be converted to expel a projectile; the frame or receiver of any such weapon; any firearm muffler or firearm silencer; any destructive device; or any machine gun, air gun, sling or slingshot.”⁵ The Code requires citizens to receive a permit when one “desires to carry, fire or discharge any weapon, firearm” into a Brevard County park.⁶ A “park” includes a “park, reservation, playground, beach, recreation center, refuge, sanctuary or other area owned, leased, operated or maintained by the county and devoted to active or passive recreation.”⁷

Under Florida law, the regulation of firearms is expressly preempted to the legislature:

Except as expressly provided by general law, the Legislature hereby declares that it is occupying the whole field of regulation of firearms and ammunition, including the purchase, sale, transfer, taxation, manufacture, ownership, possession, and transportation thereof, to the exclusion of all existing and future county, city, town, or municipal ordinances or regulations relating thereto. Any such existing ordinances are hereby declared null and void.⁸

The preemption statute means that the County has no authority to regulate firearms in any manner, despite the County’s concerns for the health, safety and welfare of its citizens.⁹ In enacting the preemption legislation, the legislature declared the sections of the Brevard County Code of Ordinances purporting to regulate firearms are null and void. The County Commission should consider amending the applicable provisions of Chapter 78 of the Code of Ordinances accordingly.

It should be noted that a concealed weapons license does not authorize a person to carry a concealed weapon or firearm into certain enumerated places.¹⁰ Public parks and recreational facilities are not among the listed exceptions. This could be the result of legislative oversight, as

⁵ Brevard County Code of Ordinances sec. 78-76.

⁶ Brevard County Code of Ordinances sec. 78-82; *See also* sec. 78-115.

⁷ 78-76. Brevard County Code of Ordinances sec.

⁸ FLA. STAT. § 790.33(1).

⁹ Fla. Att’y Gen. Op. 2005-40.

¹⁰ § 790.06(12) states: No license issued pursuant to this section shall authorize any person to carry a concealed weapon or firearm into any place of nuisance as defined in s. 823.05; any police, sheriff, or highway patrol station; any detention facility, prison, or jail; any courthouse; any courtroom, except that nothing in this section would preclude a judge from carrying a concealed weapon or determining who will carry a concealed weapon in his or her courtroom; any polling place; *any meeting of the governing body of a county*, public school district, municipality, or special district; any meeting of the Legislature or a committee thereof; *any school, college, or professional athletic event not related to firearms*; any school administration building; any portion of an establishment licensed to dispense alcoholic beverages for consumption on the premises, which portion of the establishment is primarily devoted to such purpose; *any elementary or secondary school facility*; any career center; any college or university facility unless the licensee is a registered student, employee, or faculty member of such college or university and the weapon is a stun gun or nonlethal electric weapon or device designed solely for defensive purposes and the weapon does not fire a dart or projectile; inside the passenger terminal and sterile area of any airport, provided that no person shall be prohibited from carrying any legal firearm into the terminal, which firearm is encased for shipment for purposes of checking such firearm as baggage to be lawfully transported on any aircraft; or any place where the carrying of firearms is prohibited by federal law. Any person who willfully violates any provision of this subsection commits a misdemeanor of the second degree, punishable as provided

the statutes specifically prohibit carrying firearms to similar facilities and events, for example, school, college and professional athletic events and school facilities. It is not apparent why the same exemption would not apply to little league athletic events, children's playgrounds, and like facilities and events in County parks, recreational facilities and managed lands. This may be an issue the County Commission wishes to bring to the attention of Brevard County's legislative delegation, as guns in parks present a legitimate and compelling health, safety and welfare concern.