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December 23, 2014

ATTORNEY GENERAL OPINION NO. 2014- 22

Sharon Dickgrafe
Interim City Attorney and Director of Law
City Hall
455 North Main, 13th Floor
Wichita, KS 67202-1635

Re: Cities and Municipalities–Miscellaneous Provisions–Firearms and Ammunition; Regulation by City or County, Limitations

State Departments; Public Officers and Employees–Firearms–Personal and Family Protection Act

Synopsis: A city may not invoke the federal Gun-Free School Zones Act (GFSZA) to prohibit the carrying of firearms inside city buildings located within a school zone. A city may not prohibit the carrying of concealed handguns by persons licensed to do so except as provided by the Personal and Family Protection Act and K.S.A. 2014 Supp. 12-16,124. A city may not adopt regulations governing the carrying of firearms into city buildings except as provided by K.S.A. 2014 Supp. 12-16,124. Cited herein: K.S.A. 2013 Supp. 12-16,124; K.S.A. 2014 Supp. 12-16,124; 75-7c01; 75-7c05; 75-7c10; 75-7c17; K.S.A. 2013 Supp. 75-7c20; K.S.A. 2014 Supp. 75-7c20; K.A.R. 16-11-7; 16-13-1; 18 U.S.C. § 921; 18 U.S.C. § 922.

* * *

Dear Ms. Dickgrafe:

As the Interim City Attorney and Director of Law for the City of Wichita, you ask our opinion on whether a city may post signage based on federal law to prohibit the carrying

of firearms into city owned or leased buildings located within 1000 feet of a school, without providing adequate security measures as required by the Kansas Personal and Family Protection Act (PFPA).¹

Your question involves various provisions of state and federal law, which we address below.

Personal and Family Protection Act

We turn first to the PFPA, commonly known as the concealed carry law, which generally requires a city to allow concealed carry licensees to carry concealed handguns inside city owned or leased buildings. Pursuant to K.S.A. 2014 Supp. 75-7c20, a city generally may only restrict the licensed concealed carry of handguns within a city owned or leased building by providing “adequate security measures” to ensure that no weapons, including firearms, are permitted to be carried into such building.² Cities are, however, allowed to exempt city owned or leased buildings from the adequate security measures requirement for a period of four years.³

A city that has exercised either of the above options must post certain signs at all exterior public entrances to each city owned or leased building that prohibits the licensed concealed carrying of handguns inside the building.⁴ These signs serve to notify the public of whether Kansas law permits the carrying of firearms inside each building.

Your question is whether a city can avoid the requirements of the PFPA and instead rely on the federal Gun-Free School Zones Act⁵ (GFSZA) to prohibit the carrying of all firearms inside city buildings located within 1,000 feet of a school.

Gun-Free School Zones Act

The GFSZA generally prohibits the knowing possession of a firearm within an area the person knows or has reason to know is a school zone.⁶ “School zone” means in or on the grounds of a public, parochial or private elementary or secondary school, or within 1,000 feet from the grounds of such a school.⁷

¹ K.S.A. 2014 Supp. 75-7c01 *et seq.* “Adequate security measures” is defined as “the use of electronic equipment and personnel at public entrances to detect and restrict the carrying of any weapons into the state or municipal building, including, but not limited to, metal detectors, metal detector wands or any other equipment used for similar purposes to ensure that weapons are not permitted to be carried into such building by members of the public. Adequate security measures for storing and securing lawfully carried weapons, including, but not limited to, the use of gun lockers or other similar storage options may be provided at public entrances.” K.S.A. 2014 Supp. 75-7c20(l)(1).

² K.S.A. 2014 Supp. 75-7c20(a).

³ K.S.A. 2014 Supp. 75-7c20(i) and (j).

⁴ See K.S.A. 2014 Supp. 75-7c10. See also K.A.R. 16-11-7 and 16-13-1.

⁵ 18 U.S.C. § 922(q).

⁶ 18 U.S.C. § 922(q)(2)(A).

⁷ 18 U.S.C. § 921(a)(25).

There is an exception to the GFSZA that is relevant to your question. The GFSZA does *not* apply “if the individual possessing the firearm is licensed to do so by the State in which the school zone is located . . . and the law of the State . . . requires that, before an individual obtains such a license, the law enforcement authorities of the State . . . verify that the individual is qualified under law to receive the license.”⁸ Kansas concealed carry licensees fall within this exception because the PFPA requires an applicant for a concealed carry license to submit to fingerprint-based state and national criminal history checks to determine whether the applicant is disqualified from possessing a firearm.⁹

This means that a Kansas concealed carry licensee may knowingly possess a firearm within a school zone in Kansas without violating the GFSZA. Consequently, a city may not rely solely on the GFSZA to prohibit all firearms from being carried within a city owned or leased building located within 1,000 feet of an elementary or secondary school.

Kansas law preempts most efforts by municipalities to regulate the possession or carrying of firearms

Currently, a city’s ability to regulate or restrict the carrying of firearms is limited. Prior to the 2014 legislative session, K.S.A. 2013 Supp. 12-16,124(a) generally prohibited a city or county from adopting or enforcing any “ordinance, resolution or regulation . . . governing the . . . transporting of firearms or ammunition.” K.S.A. 2013 Supp. 12-16,124(b) provided exceptions to that general rule, and permitted a city to regulate the manner of openly carrying a firearm on one’s person, and to regulate in any manner the carrying of a firearm in any jail, juvenile detention facility, prison, courthouse, courtroom or city hall.

During the 2014 legislative session, K.S.A. 2013 Supp. 12-16,124(a) was amended to remove the ability of cities to regulate the *carrying* of firearms, and the exceptions in K.S.A. 2013 Supp. 12-16,124(b) described above were stricken.¹⁰ However, the amended statute expressly provides that cities and counties are still authorized to adopt any ordinance, resolution, or regulation pursuant to K.S.A. 2014 Supp. 75-7c20.¹¹ This means that notwithstanding the 2014 amendments to K.S.A. 2013 Supp. 12-16,124, a city may continue to enact and enforce exemptions adopted pursuant to K.S.A. 2013 Supp. 75-7c20 that prohibit the licensed carrying of concealed handguns into certain city owned or leased buildings. However, a city may not enact any new ordinance not permitted by K.S.A. 2014 Supp. 12-16,124 which regulates the carrying or transporting of firearms.¹²

⁸ 18 U.S.C. § 922(q)(2)(B)(ii). Under this provision, persons licensed to carry a concealed handgun by a state other than Kansas cannot lawfully possess a firearm inside a school zone in Kansas, even if the State of Kansas recognizes the out-of-state license for the purposes of the PFPA.

⁹ K.S.A. 2014 Supp. 75-7c05(c) and (d).

¹⁰ L. 2014, Ch. 97, § 7.

¹¹ K.S.A. 2014 Supp. 12-16,124(d)(2).

¹² K.S.A. 2014 Supp. 12-16,124(a).

Analysis

Turning to your question, K.S.A. 2014 Supp. 12-16,124(a) now prohibits a city or county from adopting or enforcing any “ordinance, resolution or regulation . . . governing the . . . carrying or transporting of firearms or ammunition.” In our opinion, this statute clearly preempts the adoption and enforcement of local laws governing the carrying of firearms inside city buildings, except as provided by the PFPA. This statute does not prohibit a city from posting some sort of signage that merely advises the public when they are within a school zone as defined by federal law. However, the signage approved by the Attorney General pursuant to K.S.A. 2014 Supp. 75-7c10 cannot be used for this purpose, and no other signage would have any legal effect under the PFPA. The adoption or enforcement of a city ordinance or other regulation prohibiting the carrying of firearms would violate K.S.A. 2014 Supp. 12-16,124(a).

Because the GFSZA includes an exception for Kansas concealed carry licensees, a city could not rely on that law to prohibit licensed concealed carry inside city buildings located within a school zone. Any attempt to limit licensed concealed carry inside city buildings located within a school zone would have to comply with K.S.A. 2014 Supp. 75-7c20.¹³

If a city building located inside a school zone was posted to advise the public that the possession of a firearm at that location is unlawful under the GFSZA except for Kansas concealed carry licensees, and a non-licensed person carried a firearm into the building anyway, the city would have to refer that violation to federal law enforcement for prosecution.

Sincerely,

Derek Schmidt
Attorney General

Sarah Fertig
Assistant Attorney General

DS:AA:SF:sb

¹³ K.S.A. 2014 Supp. 75-7c17(a) (“No city . . . shall regulate, restrict or prohibit the carrying of concealed handguns by persons licensed under [the PFPA] except as provided in K.S.A. 75-7c20, and amendments thereto . . .”).