



NATIONAL RIFLE ASSOCIATION OF AMERICA
INSTITUTE FOR LEGISLATIVE ACTION
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January 5, 2011

Keokuk City Council
415 Blondeau Street
Keokuk, IA 52632

Dear Council Member,

This letter is to inform you of the National Rifle Association's opposition to the Keokuk City Council's proposed ordinance that purports to ban firearms from commonly-accessible public property, including parks. The proposal contradicts the plain terms of Iowa state law and infringes upon the rights of law-abiding Iowans.

As you are undoubtedly aware, Iowa law prohibits a political subdivision of the state from "enact[ing] an ordinance regulating the ...possession...of firearms when...possession...is otherwise lawful under the laws of this state."¹ Moreover, "[a]n ordinance regulating firearms in violation of this section existing on or after April 5, 1990, is void."²

In 2010, the legislature also amended state law governing the issuance of nonprofessional permits to carry weapons. The amendments repealed the power of the issuing officer to "limit[] ... the authority granted by such permit" and stated that "[a]ll permits ... shall be valid throughout the state except where the possession or carrying of a firearm is prohibited by state or federal law."³

These statutes express with unmistakable clarity the intent to reserve to the state legislature the exclusive authority to limit the issuance and scope of non-professional permits to carry weapons.

Nevertheless, some insist on reading imaginary exceptions into these laws that would allow local officials to ban firearms, including those carried by permit holders, on generally-accessible public property. In so doing, these officials are apparently relying on state case law from other jurisdictions that in limited circumstances has found a "proprietary" exception to the preemptive effects of state firearm preemption and permitting laws. Yet these cases focused on situations in which the locality had a special

¹ Iowa Code Ann. § 724.28.

² *Id.*

³ Iowa S.F. 2379, Sec. 5 (2010) (amending Iowa Code Ann. § 724.7).

relationship with the person being regulated, such as a public entity's internal rules governing its own employees while they are on the job⁴ or the conditions under which a locality issued permits to conduct commercial events (including gun shows) on public property.⁵

The proprietary exemption theory has been rejected, however, when the local enactment (however styled) has the effect of a general law by creating a regulation that applies to all persons within the jurisdiction. A court in Seattle recently found that a proprietary exemption did not apply where the municipality had created a "rule" under which firearms that were lawfully possessed and carried under state law were banned from the municipality's parks.⁶ According to the court:

If I were to accept the City's argument that every time it deals with property that it manages and controls, that it is acting in a proprietary capacity, there would not be any place that the city didn't have that power over. We would wash away the preemption language entirely. Nothing would prevent the City from preventing people from being on the street with their firearms, being on the waterway with their firearms, being on any part of a park with their firearms, or being in any other place that the City of Seattle has control over.⁷

The court accordingly concluded, "it is clear that this rule is preempted by the Washington [S]tate statute and that only the legislature has the power to pass the kind of regulation that the City has attempted to implement in this case."⁸ It also enjoined further enforcement of the rule.⁹

Even the Iowa Attorney General Office's opinion that validates its own version of the "proprietary authority" exception implicitly recognizes that its reasoning has the potential to create an exception that would swallow the rule of preemption. It suggests that a "jurisdiction-wide restriction" would likely be unenforceable and that its exception is "narrowly limited to property owned or directly controlled by the municipality" or perhaps just to the carrying of a firearm "within a municipal building."¹⁰ Yet it does not

⁴ *Cherry v. Municipality of Metro. Seattle*, 808 P.2d 746 (Wash. 1991) (en banc)

⁵ *Pacific N.W. Shooting Park Assoc. v. City of Sequim*, 144 P.3d 276, 283 (Wash. 2005) (en banc); *McMann v. City of Tucson*, 47 P.3d 672 (Ariz. Ct. App. 2002).

⁶ *Chan v. City of Seattle*, No. 09-2-39574-8 SEA (Wash. Super. Ct. 2010), *appeal docketed*, No. 65-123-4-I (Wash. Ct. App. Apr. 12, 2010).

⁷ *Id.* Tr. of Hr'g on Mot. for Summ. J. at 47, *available* at <http://www.saf.org/legal.action/seattle.parks.lawsuit/HearingTranscript21210.pdf>. (last visited Jan. 4, 2011).

⁸ *Id.* Hr'g tr. at 49-51.

⁹ *Id.* Hr'g tr. at 51.

¹⁰ Op. Iowa Att'y Gen. No. 03-4-1, at 6 (2003).

and cannot articulate an intelligible limiting principle that adequately distinguishes between the public places where firearms can and cannot be banned. In essence, the opinion rewrites state statutes with exceptions that do not exist and then creates exceptions to its own phantom exceptions that it cannot even explain.

The whole point of § 724.28 is to avoid a patchwork of local regulation that would prevent the effective exercise of a right recognized by the state. Because all decisions about where firearms possession may be curbed are made at the state level, they will apply equally to all state citizens. The proposed ordinance would bring about the very evil the state legislature meant to prevent with the preemption and permitting statutes by allowing persons to be convicted under a local ordinance in circumstances where their behavior was legal under state law.

The NRA intends to notify its Iowa members of this and any other infringements on the lawful right to bear arms and will oppose these efforts with every means at our disposal.

Respectfully,

A handwritten signature in black ink, appearing to read "Chris Rager". The signature is fluid and cursive, with the first name "Chris" and the last name "Rager" clearly distinguishable.

Christopher L. Rager
Iowa State Liaison
National Rifle Association