

GEORGIA CARRY.ORG

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January 25, 2007

Commissioner Charles Bannister
Commissioner Lorraine Green
Commissioner Bert Nasuti
Commissioner Mike Beaudreau
Commissioner Kevin Kenerly
75 Langley Drive
Lawrenceville, Georgia 30045

Re: Gwinnett County's Preempted Ordinance 78-32

Dear Commissioner:

This letter is written in response to the enclosed correspondence of January 17, 2007 from Phil Hoskins, Director of the Gwinnett County Department of Community Services. Mr. Hoskins wrote to Mr. Steve Neisler, a member of GEORGIA CARRY.ORG ("GCO"), after Mr. Neisler contacted his county commissioner with concerns over Gwinnett County's ban on the carry or possession of firearms in county parks. Mr. Neisler correctly pointed out that such county ordinances are strictly forbidden under state law. See O.C.G.A. § 16-11-173.

The Gwinnett County Ordinance at issue is Section 78-32, and it states:

Sec. 78-32 Weapons prohibited

It shall be unlawful for any person to take on a recreational facility any weapon, or to shoot, use, carry or employ any weapon or similar device in a recreation facility.

Section 78-32 is completely preempted by Georgia law. O.C.G.A. § 16-11-173 bars regulation "in any manner" of the possession and carrying of firearms.

No county . . . by zoning or by ordinance, resolution, or other enactment, shall regulate in any manner . . . the possession . . . [or] carrying . . . of firearms . . .

O.C.G.A § 16-11-173(b)(1). There are three exceptions, contained in subsections 173(c), (d), and (e), but none of those exceptions apply to the Gwinnett County ordinance. In short, the ordinance is completely preempted by state law.

This is not an issue of first impression in the courts. The Georgia Court of Appeals has already addressed Georgia's preemption statute. In Sturm Ruger Co. v. City of Atlanta, 253 Ga. App. 713, 560 S.E.2d 525 (2002), the court ruled that *only* the General Assembly has the authority to regulate firearms. Accordingly, Mr. Hoskins'

expressed opinion that “the County ordinance as written is consistent with State law restrictions” is both untrue and completely irrelevant. The preemption statute simply does not allow Gwinnett County to pass ordinances relating to the carrying and possession of firearms in county parks, even if Gwinnett County thinks the ordinance mimics a state law restriction. “The practical effect of the preemption doctrine is to preclude all other local or special laws on the same subject.” *Id.* at 718 (emphasis added). Even though the only “regulation” at issue in the Sturm Ruger case was the City of Atlanta’s lawsuit, the Court of Appeals held that the lawsuit should be dismissed because the lawsuit did not fall within one of the three limited and well defined exceptions left to municipal or county authority. “No claims survive because of the legislature’s clear directive that municipalities may not attempt to regulate the gun industry in any way except in the limited manner prescribed in [subsections] (c), (d), and (e).” *Id.* at 722.

Gwinnett County’s ordinance is not limited to one of the three exceptions prescribed in the statute.

In addition to case law, the Attorney General issued an opinion on Georgia’s preemption statute at the request of Muscogee County in 1998. Muscogee County had proposed a “safe storage” ordinance, but the Attorney General for the State of Georgia opined that the “ordinance is preempted by Georgia law” because it was not limited to one of the three narrow exceptions left to county authority. See U98-6.

Because the Gwinnett County ordinance at issue is not limited to one of the narrow and well defined exceptions contained in the preemption statute, this ordinance is preempted. GCO requests that you immediately repeal ordinance 78-32, or at least modify it to regulate only what is allowed to Gwinnett County by O.C.G.A. 16-11-173(c), (d), and (e). Please be aware that Gwinnett County is one of only seven counties statewide that have such an ordinance on the books. I request that the commission or the county attorney contact me prior to February 2, 2007 to discuss whether the Board of Commissioners will consider voluntarily complying with state law. You may reach me with the contact information above or by calling me at (404) 376-1111.

Sincerely,



Edward A. Stone

President

GEORGIACARRY.ORG

Cc: Karen Gilpin Thomas, Esq.
County Attorney

Mr. Phil Hoskins
Director, Department of Community Services

Mr. Steve Neisler