

JOHN R. MONROE ATTORNEY AT LAW

April 9, 2008

Mr. Thomas C. Gilliland
Chairman
Stone Mountain Memorial Association
POB 689
Stone Mountain, GA 30086

RE: Ordinance banning firearms in Stone Mountain Park

Dear Mr. Gilliland:

I am writing on behalf of my client, the organization [Georgiacarry.org](http://www.georgiacarry.org) (<http://www.georgiacarry.org>), to bring to your attention two of SMMA's ordinances, sections 4-104 and 4-106, both of which prohibit the possession of firearms in Stone Mountain Park. These ordinances are in violation of the Georgia General Assembly's well established preemption of firearm regulations and the State Constitution.

SMMA is prohibited by the laws of the State of Georgia from either enforcing or enacting such ordinances. It is important to note that there already exists a comprehensive state regulatory scheme pertaining to the possession of firearms. Many of the activities that were undoubtedly in the minds of the Board members when the ordinances were enacted are already made illegal or highly regulated by the laws of the State of Georgia. The State of Georgia does not require and, in fact, has specifically prohibited governmental entities besides the General Assembly from exercising their police powers in this particular sphere to prevent a patchwork quilt of confusing special local regulations around the State.

GCO asks that SMMA repeal Sections 4-104 and 4-106 because they are in violation of state law, which preempts all local or special laws on the subject of possession or carrying firearms. I will point you to three sources of law supporting the contention that this ordinance is preempted by state law. These sources of law are:

- (1) a state statute and the state constitution,
- (2) case law, and
- (3) the opinion of the Attorney General for the State of Georgia.

The state statute expressly forbids the ordinance at issue. The State Constitution provides for an individual right and gives only the General Assembly the power or ability to infringe that right in any manner. The case law declares that, even without such a statute, SMMA is without authority to pass such an ordinance because the field of firearms law has been preempted by the General Assembly's extensive regulation on the subject. The

Attorney General opinion reinforces those points in response to a question on the legality of a local firearms ordinance.

1. THE STATUTE

The General Assembly has, by law, prohibited other governmental entities from regulating firearms. Nowhere is the intent more clearly stated than in the first sentence of the state preemption statute, "It is declared by the General Assembly that the regulation of firearms is properly an issue of general, state-wide concern." O.C.G.A. § 16-11-173(a)(1). The language of the statute is clear and unambiguous. By the passage of the statute, the General Assembly reserved for itself the power to regulate the possession of firearms.

The SMMA is not the General Assembly. The State Constitution recognizes that, "The right of the people to keep and bear arms shall not be infringed, but the **General Assembly shall have power to prescribed the manner in which arms may be borne.**" GA. Const. art. 1, § 1, Par. VIII (emphasis supplied). In this sentence the State Constitution recognizes the right of Georgia citizens to keep and bear arms. More, importantly it specifies how and by whom that right can be restricted. Generally speaking, the State Firearms and Weapons Act is a legitimate exercise of the **General Assembly's** police powers and does not violate the state constitution. *Carson v. State*, 241 Ga. 622, 627-28 (1978). Nowhere in the State Constitution are Georgia's other governmental units, including SMMA, given the power, police or otherwise, to infringe upon the right of the people to keep and bear arms.

Authorizing legislation

SMMA's authorizing statute, O.C.G.A. 12-3-194.1, authorizes the SMMA to pass ordinances. It provides in pertinent part:

"The association shall have legislative power to adopt reasonable ordinances relating to the property, affairs, and administration of Stone Mountain Park for which **no provision has been made by general law and which are not inconsistent with the general laws or the Constitution of this state.** . . . Within the limits of Stone Mountain Park . . . peace officers shall have the same authority, powers, and privileges regarding enforcement of laws as peace officers employed by **county and municipal** police departments of this state. Prosecutions . . ."

(emphasis added). SMMA passed ordinances 4-104 and 4-106, for which provision has been made by State law in a comprehensive statutory scheme regulating the possession and carrying of firearms, including the **locations** where the state prohibits carrying and possession of firearms and the public places where the State expressly sanctions and licenses the carry and possession of firearms. See O.C.G.A. § 16-11-127(b) ("in any other public place"). Furthermore, SMMA's ordinances are inconsistent with the general laws and the Constitution of this State and purport to grant powers to its local park police force far beyond those granted to county and municipal police officers.

2. CASE LAW

State courts have routinely upheld the scope of Section 16-11-173 and its predecessors in actions both by and against counties and cities.

In 2007 GCO sued Coweta County over a similar ordinance. The case was dismissed by the Superior Court of Coweta County, but reversed by the Court of Appeals. In reversing, the court held “the plain language of [O.C.G.A. § 16-11-173]” prohibits Coweta County from regulating the carry of firearms, even in Coweta County’s parks. A copy of the opinion of the Court of Appeals is enclosed for your convenience.

In 1999 the City of Atlanta brought suit against fourteen gun manufacturers and three trade associations for alleged damages brought on by the business practices of the defendants. *Sturm, Ruger & Co v. City of Atlanta*, 253 Ga.App. 713, 713 (2002). The Court of Appeals found that the Atlanta’s lawsuit was preempted by state law, not only because of the preemption statute, but also because of the clear grant of powers in the constitution and the comprehensive nature of firearms laws in Georgia. *Id.* at 718.

The Court of Appeals found that preemption “precludes all other local or special laws” in the subject area. *Id.* (citing Ga. Const. Art. III, § 6, Par. IV(a)). This preemption applies regardless of whether the regulation is attempted through a lawsuit (as in *Sturm, Ruger*) or an ordinance (as here). *Id.* The General Assembly has broad powers to limit a city’s powers of home rule. *Id.* at 720 (citing O.C.G.A. § 36-35-3).

In addition, the Supreme Court of Georgia recognizes that the General Assembly has the **sole** power to regulate firearms. *Id.* at 717 n.1 (citing *Smith & Wesson Corp. v. City of Atlanta*, 273 Ga. 431, 435 (2001) (Fletcher, P.J., concurring)).

Here, the ordinance at issue is a regulation of firearms, the judicially recognized sole dominion of the General Assembly. The General Assembly possesses the power to restrict the rights of cities and counties and has done so through statutorily and constitutionally granted powers. The General Assembly alone has the power to regulate firearms.

Under the State Firearms and Weapons Act it is a misdemeanor for a person to carry a firearm to a “public gathering,” a term which includes publicly owned and operated buildings. O.C.G.A. 16-11-127 (2006). It is important to note that the ordinance at issue goes beyond the regulations contained in Section 16-11-127. The ordinance at issue prohibits the possession of firearms in Stone Mountain Park. This includes locations not contemplated by Section 16-11-127. Per the language of the statute not all public places are off limits to those carrying firearms. O.C.G.A. § 16-11-127(b) (2006). The ordinance at issue exposes GFL holders to criminal liability under the code of ordinances of SMMA that does not exist under the State Firearms and Weapons Act. This is in contravention of state law.

Finally, “state law can preempt local law expressly, **by implication, or by conflict.**” *Franklin County v. Fieldale Farms Corp.*, 270 Ga. 272, 273 (1998) (emphasis supplied). An act that is wide in scope, such as the comprehensive Firearms and Weapons Act, preempts all local or special laws on the same subject by implication. *See Cotton States Mut. Ins. Co v.*

DeKalb County, 251 Ga. 309, 312 (1983) (preemption implied from language and scope of general regulating act).

In the words of the Georgia Court of Appeals in the *Sturm, Ruger* case, SMMA's ordinance "is an attempt by the [Association] to usurp the governmental power and authority of Georgia's General Assembly." *Sturm, Ruger*, 253 Ga. App. at 71X (the court held, "We agree.").

3. THE ATTORNEY GENERAL OPINION

The Attorney General for the State of Georgia routinely gives legal opinions to the State of Georgia and local governments on matters of law. The Attorney General has previously authored an opinion concerning preemption of ordinances pertaining to firearms. The opinion, requested by the City Attorney of Columbus, found that a proposed ordinance regulating the safe storage of firearms was *ultra vires* because it conflicted with the general laws of the state and the aforementioned preemption statute. Ga. Op. Atty. Gen. No. U98-6, available at <http://www.state.ga.us/ago/read.cgi?searchval=firearm&openval=U98-6>.

The Attorney General opinion determined that the ordinance at issue was preempted by the statute and also because it "conflicts with the general laws of the State of Georgia." The authorizing statute for the ordinances at issue was startlingly similar to SMMA's authorizing statute. The Attorney General observed that the statute permitted Columbus to adopt ordinances "for which no provision has been made by general law and which are not inconsistent with the Constitution." *Id.* As with the SMMA ordinance, the proposed Columbus ordinance conflicted with the State Firearms and Weapons Act's provisions concerning the carrying of firearms by those licensed to carry firearms. *Id.* The situation with the SMMA ordinance is precisely the same as that noted by the Attorney General, which is that "it appears that a person could fully comply with O.C.G.A. § [16-11-126](#) and still violate the proposed ordinance." *Id.* Similarly, a person could fully comply with O.C.G.A. § 16-11-126 (and all other state statutes) and **still violate the SMMA ordinances.**

GCO asks that the two preempted ordinance sections, 4-104 and 4-106, be repealed. Failing that, GCO will seek legal action against SMMA in Dekalb County Superior Court. If SMMA acts in bad faith, is stubbornly litigious, or causes GCO unnecessary trouble and expense, GCO will seek expenses of litigation under O.C.G.A. §§ 13-6-11.

Sincerely,

John R. Monroe