JOHN R. MONROE
ATTORNEY AT LAW

July 19, 2007

Ms. Elizabeth B. Chandler, Esq.
City Attorney
City of Atlanta, Georgia
68 Mitchell St., Suite 4100
Atlanta, Ga. 30303

RE: City ordinance banning firearms in parks

Dear Ms. Chandler:

I am writing on behalf of my client, the organization Georgiacarry.org (http://www.georgiacarry.org) to bring to your attention one of Atlanta's city ordinances, section 110-66. Atlanta's Section 110-66 states that, "[n]o person in any *park*, except a police officer or other peace officer, shall *possess a firearm* of any size or description or any instrument, appliance or substance designed, made or adapted for use primarily as a weapon." Atlanta, Ga., Code § 110-66 (2007) (emphasis supplied). This ordinance is in violation of the Georgia General Assembly's well established preemption of firearm regulations and the State Constitution.

Atlanta is prohibited by the laws of the State of Georgia from either enforcing or enacting such an ordinance. It is important to note that there already exists a comprehensive state regulatory scheme for the possession of firearms. Many of the activities that were undoubtedly in the minds of the City Council members of Atlanta when the ordinance was 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 municipalities from exercising their police powers in this particular sphere.

GCO asks that Atlanta repeal 110-66 because it is in violation of state law. 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 a right and only gives the General Assembly the ability to circumscribe that right. The case law declares that even without such a statute, the county would be without authority to pass such an ordinance because the field of firearms has been preempted by the General Assembly's extensive regulation on the subject, and the Attorney General opinion reinforces those points in response to a question from a county on the legality of a firearms ordinance.

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1. THE STATUTE

The General Assembly has, by law, prohibited county and municipal corporations from engaging in the regulation of 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) (2006). Specifically counties and cities are restricted by the following language:

> "***No*** county or ***municipal corporation, by zoning or by ordinance, resolution, or other enactment, shall regulate in any manner*** gun shows; ***the possession***, ownership, transport, ***carrying***, transfer, sale, purchasing, licensing, or regulation ***of firearms*** or components of firearms; firearms dealers; or dealers in firearms components." O.C.G.A. § 16-11-173(b)(1) (2006) (emphasis supplied).

The language of the statute is clear and unambiguous. By the passage of the statute the General Assembly excluded counties and cities from regulating the possession and carrying of firearms. The ordinance at issue prohibits possession of firearms. City of Atlanta, Ga., Code § 110-66 (2007). It cannot be denied that through the ordinance Atlanta intends to regulate the possession of firearms and that the General Assembly specifically prohibits any municipal corporation from regulating the possession of firearms.

Further, Section 16-11-173 ***did*** set forth three specific instances in which cities and counties are permitted to regulate firearms. Atlanta ***is*** permitted to (1) "***regulate the transport, carrying, or possession of firearms by employees of the local unit of government while in the course of employment*** with such local unit of government," (2) "require the ownership of guns by heads of household," (3) limit or prohibit the ***discharge*** of firearms within city boundaries. O.C.G.A. § 16-11-173(c)-(e) (2006) (emphasis supplied). The ordinance at issue here does not fall within any of the three narrowly defined exceptions set out by the General Assembly. The ordinance is not (1) limited to city employees, (2) a regulation requiring the ownership of firearms, or (3) a regulation on the discharge of firearms within city limits. Atlanta already has already occupied the permitted regulatory sphere through ordinances such as Section 106-301 (discharge of firearms) and, for example, Section 98-109 (prohibiting the possession of firearms by members of the auxiliary police force). Other cities, most famously Kennesaw, require heads of household to own guns. These are permitted regulatory activities under Section 16-11-173.

Applying the well-established canon of statutory construction that the inclusion of one implies the exclusion of others it is clear that the ordinance is preempted by state law. Here, the inclusion of the "one" is clear from Section 16-11-173 which includes not just "one" but three specific instances where cities have the right to regulate firearms. Clearly, if the General Assembly's intent was to allow unspecified additional regulations it would have enacted a provision that gives cities and municipalities additional powers. However, the exact opposite of this intent is evidenced from the first statement in the statute. No where does Section 16-11-173 make exceptions for instances where the issue pertaining to firearms affects property owned by the municipality or any other reason, except for, of course, where the regulations falls within the three narrowly defined exceptions.

In addition, the State Constitution recognizes that, "The right of the people to keep and bare 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 rights of citizens to keep and bare arms. More, importantly it specifies how and by whom that right can be restricted. Generally speaking, the State Firearms and Weapons Act does not violate the state constitution. *Carson v. State*, 241 Ga. 622, 627 (1978). The State Firearms and Weapons Act is a legitimate exercise of the ***state's*** police powers. *Id.* at 628. Nowhere in the State Constitution are Georgia's counties and cities given the power, police or otherwise, to infringe upon the rights of the people to keep and bare arms. A clear, constitutional regulatory scheme can be evidenced by the mass of legislation codified in the State Firearms and Weapons Act. Not only does the State Constitution prohibit the ordinance in question, but also the very act the State Constitution allows for prohibits the ordinance as well.

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 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). Five days later, the General Assembly passed the predecessor to Section 16-11-173, Section 16-11-184. The Court of Appeals found that the Atlanta's suit 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. Further, preemption of county and state regulation preexists the *Sturm, Ruger* case. *Id.*

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.* Further, the Court of Appeals recognized the General Assembly's 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 city parks. 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 Atlanta 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).

3. THE ATTORNEY GENERAL OPINION

The Attorney General for the State of Georgia routinely gives legal opinions to local governments on matters of law. The Attorney General has previously authored an opinion concerning Section 16-11-173. The opinion, requested by the City Attorney of Columbus, found that a proposed ordinance regulating the placement of firearms in homes, buildings, trailers, vehicles, or boats 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 reasoned that by enacting the predecessor to Section 16-11-173, "the General Assembly appears to have codified with certain exceptions its intent to preempt the regulation of firearms." *Id.* The Attorney General also found that the three exceptions were the only allowable ways in which a city or county can regulate firearms. *Id.* The Attorney General determined that because the proposed Columbus ordinance did not fall within any of the three exceptions and it regulated the possession, ownership, transport, and carrying of firearms it was preempted by state law. Further, 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 ordinance at issue is substantially similar to the proposed Columbus ordinance at issue in the Attorney General opinion. The Atlanta ordinance at issue is *ultra vires*. It conflicts with the general laws of the state and the preemption statute the same as the proposed Columbus ordinance. As previously discussed, none of the three narrowly defined exceptions give Atlanta the ability to enforce the ordinance. The ordinance at issue concerns the possession of firearms and is in conflict with the rights given to those with GFLs.

The ordinance at issue is not a necessity of city governance. In Fulton County, the cities of Alpharetta, College Park, Hapeville, Mountain Park, and Palmetto do not have similar ordinances in their respective code of ordinances. In addition, numerous counties and cities across the state do not have similar ordinances in their code of ordinances either.

GCO asks that you recommend to Atlanta that the ordinance at issue, Section 110-66, be repealed. If a recommendation to repeal the ordinance has not been made within the next three weeks GCO will seek legal action against Atlanta in Fulton County Superior Court.

Sincerely,

John R. Monroe

JOHN R. MONROE
ATTORNEY AT LAW

July 19, 2007

Ms. Nina Hickson, Esq.
City Attorney
City of East Point, Georgia
2777 East Point St.
East Point, GA 30344

RE: City ordinance banning firearms in parks

Dear Ms. Hickson:

I am writing on behalf of my client, the organization Georgiacarry.org (http://www.georgiacarry.org) to bring to your attention one of East Point's city ordinances, section 13-1027(a). East Point's Section 13-1027(a) states that, "[i]t shall be unlawful for any person to *possess* a firearm, knife, or other weapon designed for the purpose of offense or defense upon property or in buildings owned or operated by the city." East Point, Ga., Code § 13-1027(a) (2007) (emphasis supplied). This ordinance is in violation of the Georgia General Assembly's well established preemption of firearm regulations and the State Constitution.

East Point is prohibited by the laws of the State of Georgia from either enforcing or enacting such an ordinance. It is important to note that there already exists a comprehensive state regulatory scheme for the possession of firearms. Many of the activities that were undoubtedly in the minds of the City Council members of East Point when the ordinance was 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 municipalities from exercising their police powers in this particular sphere.

GCO asks that East Point repeal 13-1027(a) because it is in violation of state law. 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 a right and only gives the General Assembly the ability to circumscribe that right. The case law declares that, even without such a statute, the city is without authority to pass such an ordinance because the field of firearms 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 from a county on the legality of a firearms ordinance.

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The language of the statute is clear and unambiguous. By the passage of the statute, the General Assembly excluded counties and cities from regulating the possession and carrying of firearms. The ordinance at issue prohibits possession of firearms. City of East Point, Ga., Code § 13-1027(a) (2007). It cannot be denied that through the ordinance East Point intends to regulate the possession of firearms and that the General Assembly specifically prohibits any municipal corporation from regulating the possession of firearms.

Further, Section 16-11-173 ***did*** set forth three specific instances in which cities and counties are permitted to regulate firearms. East Point ***is*** permitted to (1) "***regulate the transport, carrying, or possession of firearms by employees of the local unit of government while in the course of employment*** with such local unit of government," (2) "require the ownership of guns by heads of household," (3) limit or prohibit the ***discharge*** of firearms within city boundaries. O.C.G.A. § 16-11-173(c)-(e) (2006) (emphasis supplied). The ordinance at issue here does not fall within any of the three narrowly defined exceptions set out by the General Assembly. The ordinance is not (1) limited to city employees, (2) a regulation requiring the ownership of firearms, or (3) a regulation on the discharge of firearms within city limits.

Applying the well-established canon of statutory construction that the inclusion of one implies the exclusion of others it is clear that the ordinance is preempted by state law. Here, the inclusion of the "one" is clear from Section 16-11-173 which includes not just "one" but three specific instances where cities have the right to regulate firearms. Clearly, if the General Assembly's intent was to allow unspecified additional regulations it would have enacted a provision that gives cities and municipalities additional powers. However, the exact opposite of this intent is evidenced from the first statement in the statute. No where does Section 16-11-173 make exceptions for instances where the issue pertaining to firearms affects property owned by the municipality or any other reason, except for, of course, where the regulations falls within the three narrowly defined exceptions.

In addition, the State Constitution recognizes that, "The right of the people to keep and bare 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 rights of citizens to keep and bare arms. More, importantly it specifies how and by whom that right can be restricted. Generally speaking, the State Firearms and Weapons Act does not violate the state constitution. *Carson v. State*, 241 Ga. 622, 627 (1978). The State Firearms and Weapons Act is a legitimate exercise of the ***state's*** police powers. *Id.* at 628. Nowhere in the State Constitution are Georgia's counties and cities given the power, police or otherwise, to infringe upon the rights of the people to keep and bare arms. A clear, constitutional regulatory scheme can be evidenced by the mass of legislation codified in the State Firearms and Weapons Act. Not only does the State Constitution prohibit the ordinance in question, but also the very act the State Constitution allows for prohibits the ordinance as well.

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.

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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 city parks. 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 East Point 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).

3. THE ATTORNEY GENERAL OPINION

The Attorney General for the State of Georgia routinely gives legal opinions to local governments on matters of law. The Attorney General has previously authored an opinion concerning Section 16-11-173. The opinion, requested by the City Attorney of Columbus, found that a proposed ordinance regulating the placement of firearms in homes, buildings, trailers, vehicles, or boats 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 reasoned that by enacting the predecessor to Section 16-11-173, "the General Assembly appears to have codified with certain exceptions its intent to preempt the regulation of firearms." *Id.* The Attorney General also found that the three exceptions were the only allowable ways in which a city or county can regulate firearms. *Id.* The Attorney General determined that because the proposed Columbus ordinance did not fall within any of the three exceptions and it regulated the possession, ownership, transport, and carrying of firearms it was preempted by state law. Further, 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 ordinance at issue is substantially similar to the proposed Columbus ordinance at issue in the Attorney General opinion. The East Point ordinance at issue is *ultra vires*. It conflicts with the general laws of the state and the preemption statute the same as the proposed Columbus ordinance. As previously discussed, none of the three narrowly defined exceptions give East Point the ability to enforce the ordinance. The ordinance at issue concerns the possession of firearms and is in conflict with the rights given to those with GFLs.

The ordinance at issue is not a necessity of city governance. In Fulton County, the cities of Alpharetta, College Park, Hapeville, Mountain Park, and Palmetto do not have similar ordinances in their respective code of ordinances. In addition, numerous counties and cities across the state do not have similar ordinances in their code of ordinances either.

GCO asks that you recommend to East Point that the ordinance at issue, Section 13-1027(a), be repealed. If a recommendation to repeal the ordinance has not been made within the next three weeks, GCO will seek legal action against East Point in Fulton County Superior Court.

Sincerely,

John R. Monroe

JOHN R. MONROE
ATTORNEY AT LAW

July 19, 2007

City Attorney
City of Union City, Georgia
5047 Union St.
Union City, Ga. 30291

RE: City ordinance banning firearms in parks

Dear Sir/Madame:

I am writing on behalf of my client, the organization Georgiacarry.org (http://www.georgiacarry.org) to bring to your attention one of Union City's city ordinances, Section 12-38(2). Section 12-38(2) prohibits the possession of firearms "on or about the premises of all city owned and maintained public parks and recreation areas." Union City, Ga. Code § 12-38(2) (2007). This ordinance is in violation of the Georgia General Assembly's well established preemption of firearm regulations and the State Constitution.

Union City is prohibited by the laws of the State of Georgia from either enforcing or enacting such an ordinance. It is important to note that there already exists a comprehensive state regulatory scheme for the possession of firearms. Many of the activities that were undoubtedly in the minds of the City Council members of Union City when the ordinance was 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 municipalities from exercising their police powers in this particular sphere.

GCO asks that Union City repeal Section 12-38(2) because it is in violation of state law. 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 a right and only gives the General Assembly the ability to circumscribe that right. The case law declares that, even without such a statute, the city is without authority to pass such an ordinance because the field of firearms 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 from a county on the legality of a firearms ordinance.

1. THE STATUTE

The General Assembly has, by law, prohibited counties and municipal corporations from engaging in the regulation of firearms. Nowhere is the intent more clearly stated than

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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) (2006). Specifically counties and cities are restricted by the following language:

> "***No*** county or ***municipal corporation, by zoning or by ordinance, resolution, or other enactment, shall regulate in any manner*** gun shows; ***the possession***, ownership, transport, ***carrying***, transfer, sale, purchasing, licensing, or regulation ***of firearms*** or components of firearms; firearms dealers; or dealers in firearms components." O.C.G.A. § 16-11-173(b)(1) (2006) (emphasis supplied).

The language of the statute is clear and unambiguous. By the passage of the statute, the General Assembly excluded counties and cities from regulating the possession and carrying of firearms. The ordinance at issue prohibits possession of firearms. Union City, Ga. Code Ch. 8, Art. 1, § 12-38(2) (2007). It cannot be denied that through the ordinance Union City intends to regulate the possession of firearms and that the General Assembly specifically prohibits any municipal corporation from regulating the possession of firearms.

Further, Section 16-11-173 ***did*** set forth three specific instances in which cities and counties are permitted to regulate firearms. Union City ***is*** permitted to (1) "***regulate the transport, carrying, or possession of firearms by employees of the local unit of government while in the course of employment*** with such local unit of government," (2) "require the ownership of guns by heads of household," (3) limit or prohibit the ***discharge*** of firearms within city boundaries. O.C.G.A. § 16-11-173(c)-(e) (2006) (emphasis supplied). The ordinance at issue here does not fall within any of the three narrowly defined exceptions set out by the General Assembly. The ordinance is not (1) limited to city employees, (2) a regulation requiring the ownership of firearms, or (3) a regulation on the discharge of firearms within city limits.

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In addition, the State Constitution recognizes that, "The right of the people to keep and bare 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 rights of citizens to keep and bare arms. More, importantly it specifies how and by whom that right can be restricted. Generally speaking, the State Firearms and Weapons Act does not violate the state constitution. *Carson v. State*, 241 Ga. 622, 627 (1978). The State Firearms and Weapons Act is a legitimate exercise of the ***state's*** police powers. *Id.* at 628. Nowhere in the State Constitution are Georgia's counties and cities given the power, police or otherwise, to infringe upon the rights of the people to keep and bare arms. A clear, constitutional

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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).

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John R. Monroe

JOHN R. MONROE
ATTORNEY AT LAW

July 19, 2007

Mr. Wendell K Willard, Esq.
Attorney at Law
Two Ravinia Drive, Suite 1630
Atlanta, GA 30346

RE: City ordinance banning firearms in parks

Dear Mr. Willard:

I am writing on behalf of my client, the organization Georgiacarry.org (http://www.georgiacarry.org) to bring to your attention one of Sandy Springs' city ordinances, Chapter 8, Article 2, Section 4(g). Section 4(g) states that, "[i]t shall be unlawful for any person to *possess any firearm*...in any of the City parks..." Sandy Springs, Ga. Code Ch. 8, Art. 2, § 4(g) (2007) (emphasis supplied). This ordinance is in violation of the Georgia General Assembly's well established preemption of firearm regulations and the State Constitution.

Sandy Springs is prohibited by the laws of the State of Georgia from either enforcing or enacting such an ordinance. It is important to note that there already exists a comprehensive state regulatory scheme for the possession of firearms. Many of the activities that were undoubtedly in the minds of the City Council members of Sandy Springs when the ordinance was 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 municipalities from exercising their police powers in this particular sphere.

GCO asks that Sandy Springs repeal Section 4(g) because it is in violation of state law. 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 a right and only gives the General Assembly the ability to circumscribe that right. The case law declares that, even without such a statute, the city is without authority to pass such an ordinance because the field of firearms 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 from a county on the legality of a firearms ordinance.

1. THE STATUTE

The General Assembly has, by law, prohibited counties and municipal corporations from engaging in the regulation of firearms. Nowhere is the intent more clearly stated than

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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) (2006). Specifically counties and cities are restricted by the following language:

> "***No*** county or ***municipal corporation, by zoning or by ordinance, resolution, or other enactment, shall regulate in any manner*** gun shows; ***the possession***, ownership, transport, ***carrying***, transfer, sale, purchasing, licensing, or regulation ***of firearms*** or components of firearms; firearms dealers; or dealers in firearms components." O.C.G.A. § 16-11-173(b)(1) (2006) (emphasis supplied).

The language of the statute is clear and unambiguous. By the passage of the statute, the General Assembly excluded counties and cities from regulating the possession and carrying of firearms. The ordinance at issue prohibits possession of firearms. It cannot be denied that through the ordinance Sandy Springs intends to regulate the possession of firearms and that the General Assembly specifically prohibits any municipal corporation from regulating the possession of firearms.

Further, Section 16-11-173 ***did*** set forth three specific instances in which cities and counties are permitted to regulate firearms. Sandy Springs ***is*** permitted to (1) "***regulate the transport, carrying, or possession of firearms by employees of the local unit of government while in the course of employment*** with such local unit of government," (2) "require the ownership of guns by heads of household," (3) limit or prohibit the ***discharge*** of firearms within city boundaries. O.C.G.A. § 16-11-173(c)-(e) (2006) (emphasis supplied). The ordinance at issue here does not fall within any of the three narrowly defined exceptions set out by the General Assembly. The ordinance is not (1) limited to city employees, (2) a regulation requiring the ownership of firearms, or (3) a regulation on the discharge of firearms within city limits.

Applying the well-established canon of statutory construction that the inclusion of one implies the exclusion of others it is clear that the ordinance is preempted by state law. Here, the inclusion of the "one" is clear from Section 16-11-173 which includes not just "one" but three specific instances where cities have the right to regulate firearms. Clearly, if the General Assembly's intent was to allow unspecified additional regulations it would have enacted a provision that gives cities and municipalities additional powers. However, the exact opposite of this intent is evidenced from the first statement in the statute. No where does Section 16-11-173 make exceptions for instances where the issue pertaining to firearms affects property owned by the municipality or any other reason, except for, of course, where the regulations falls within the three narrowly defined exceptions.

In addition, the State Constitution recognizes that, "The right of the people to keep and bare 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 rights of citizens to keep and bare arms. More, importantly it specifies how and by whom that right can be restricted. Generally speaking, the State Firearms and Weapons Act does not violate the state constitution. *Carson v. State*, 241 Ga. 622, 627 (1978). The State Firearms and Weapons Act is a legitimate exercise of the ***state's*** police powers. *Id.* at 628. Nowhere in the State Constitution are Georgia's counties and cities given the power, police or otherwise, to infringe upon the rights of the people to keep and bare arms. A clear, constitutional

regulatory scheme can be evidenced by the mass of legislation codified in the State Firearms and Weapons Act. Not only does the State Constitution prohibit the ordinance in question, but also the very act the State Constitution allows for prohibits the ordinance as well.

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 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 suit 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 city parks. 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 Sandy Springs 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).

3. THE ATTORNEY GENERAL OPINION

The Attorney General for the State of Georgia routinely gives legal opinions to local governments on matters of law. The Attorney General has previously authored an opinion concerning Section 16-11-173. The opinion, requested by the City Attorney of Columbus, found that a proposed ordinance regulating the placement of firearms in homes, buildings, trailers, vehicles, or boats 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 reasoned that by enacting the predecessor to Section 16-11-173, "the General

Assembly appears to have codified with certain exceptions its intent to preempt the regulation of firearms." *Id.* The Attorney General also found that the three exceptions were the only allowable ways in which a city or county can regulate firearms. *Id.* The Attorney General determined that because the proposed Columbus ordinance did not fall within any of the three exceptions and it regulated the possession, ownership, transport, and carrying of firearms it was preempted by state law. Further, 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 ordinance at issue is substantially similar to the proposed Columbus ordinance at issue in the Attorney General opinion. The Sandy Springs ordinance at issue is *ultra vires.* It conflicts with the general laws of the state and the preemption statute the same as the proposed Columbus ordinance. As previously discussed, none of the three narrowly defined exceptions give Sandy Springs the ability to enforce the ordinance. The ordinance at issue concerns the possession of firearms and is in conflict with the rights given to those with GFLs.

The ordinance at issue is not a necessity of city governance. In Fulton County, the cities of Alpharetta, College Park, Hapeville, Mountain Park, and Palmetto do not have similar ordinances in their respective code of ordinances. In addition, numerous counties and cities across the state do not have similar ordinances in their code of ordinances either.

GCO asks that you recommend to Sandy Springs that the ordinance at issue, Section 4(g), be repealed. If a recommendation to repeal the ordinance has not been made within the next three weeks, GCO will seek legal action against Sandy Springs in Fulton County Superior Court.

Sincerely,

John R. Monroe

JOHN R. MONROE
ATTORNEY AT LAW

July 19, 2007

Mr. David Davidson, Esq.
City Attorney
City of Roswell, GA
38 Hill Street
Roswell, GA 30075

RE: City ordinance banning firearms in parks

Dear Mr. Davidson:

I am writing on behalf of my client, the organization Georgiacarry.org (http://www.georgiacarry.org) to bring to your attention one of Roswell's city ordinances, section 14.2.4(b). Roswell's Section 14.2.4(b) states that, "Firearms…are prohibited in any of the city parks or historic properties." Roswell, Ga., Code § 14.2.4(b) (2006). This ordinance is in violation of the Georgia General Assembly's well established preemption of firearm regulations and the State Constitution.

Roswell is prohibited by the laws of the State of Georgia from either enforcing or enacting such an ordinance. It is important to note that there already exists a comprehensive state regulatory scheme for the possession of firearms. Many of the activities that were undoubtedly in the minds of the City Council of Roswell when the ordinance was 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 municipalities from exercising their police powers in this particular sphere.

As you may recall I previously contacted you concerning this matter. In between February and June of last year we exchanged several e-mails discussing the prohibition of firearms in Roswell's city parks. Even as I brought this issue to your attention, amendments were made to Roswell's code of ordinances that continued to include the prohibition against firearms in city parks. The preemption statute that I brought to your attention, Section 16-11-173, is still in effect and still preempts Roswell from enacting or enforcing an ordinance such as Section 14.2.4(b). As I will demonstrate to you in the remainder of this letter Roswell does not have the power, police or otherwise, to enforce or enact an ordinance such as this.

GCO asks that Roswell repeal Section 14.2.4(b) because it is in violation of state law. 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 a right and only gives the General Assembly the ability to circumscribe that

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1. THE STATUTE

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The language of the statute is clear and unambiguous. By the passage of the statute, the General Assembly excluded counties and cities from regulating the possession and carrying of firearms. The ordinance at issue prohibits possession of firearms. It cannot be denied that through the ordinance Roswell intends to regulate the possession of firearms and that the General Assembly specifically prohibits any municipal corporation from regulating the possession of firearms.

Further, Section 16-11-173 ***did*** set forth three specific instances in which cities and counties are permitted to regulate firearms. Roswell ***is*** permitted to (1) "***regulate the transport, carrying, or possession of firearms by employees of the local unit of government while in the course of employment*** with such local unit of government," (2) "require the ownership of guns by heads of household," (3) limit or prohibit the ***discharge*** of firearms within city boundaries. O.C.G.A. § 16-11-173(c)-(e) (2006) (emphasis supplied). The ordinance at issue here does not fall within any of the three narrowly defined exceptions set out by the General Assembly. The ordinance is not (1) limited to city employees, (2) a regulation requiring the ownership of firearms, or (3) a regulation on the discharge of firearms within city limits.

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In addition, the State Constitution recognizes that, "The right of the people to keep and bare 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 rights of citizens to keep and bare arms. More, importantly it specifies how and by whom that right can be restricted. Generally speaking, the State Firearms and Weapons Act does not violate the state constitution. *Carson v. State*, 241 Ga. 622, 627 (1978). The State Firearms and Weapons Act is a legitimate exercise of the ***state's*** police powers. *Id.* at 628. Nowhere in the State Constitution are Georgia's counties and cities given the power, police or otherwise, to infringe upon the rights of the people to keep and bare arms. A clear, constitutional regulatory scheme can be evidenced by the mass of legislation codified in the State Firearms and Weapons Act. Not only does the State Constitution prohibit the ordinance in question, but also the very act the State Constitution allows for prohibits the ordinance as well.

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The ordinance at issue is not a necessity of city governance. In Fulton County, the cities of Alpharetta, College Park, Hapeville, Mountain Park, and Palmetto do not have similar ordinances in their respective code of ordinances. In addition, numerous counties and cities across the state do not have similar ordinances in their code of ordinances either.

GCO asks that you recommend to Roswell that the ordinance at issue, Section 14.2.4(b), be repealed. If a recommendation to repeal the ordinance has not been made within the next three weeks, GCO will seek legal action against Roswell in Fulton County Superior Court.

Sincerely,

John R. Monroe

JOHN R. MONROE
ATTORNEY AT LAW

July 19, 2007

Mr. Mark E. Scott, Esq.
Jarrard & Davis LLP
105 Pilgrim Village Drive, Suite 200
Cumming, GA 30040

RE: City ordinance banning firearms in parks

Dear Mr. Scott:

I am writing on behalf of my client, the organization Georgiacarry.org (http://www.georgiacarry.org) to bring to your attention one of Milton's city ordinances, Chapter 8, Article 1, Section 4(b). Section 4(b) states that, "[i]t shall be unlawful for any person to *possess any firearm*...in any of the City parks..." Milton, Ga. Code Ch. 8, Art. 1, § 4(b) (2007) (emphasis supplied). This ordinance is in violation of the Georgia General Assembly's well established preemption of firearm regulations and the State Constitution.

Milton is prohibited by the laws of the State of Georgia from either enforcing or enacting such an ordinance. It is important to note that there already exists a comprehensive state regulatory scheme for the possession of firearms. Many of the activities that were undoubtedly in the minds of the City Council members of Milton when the ordinance was 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 municipalities from exercising their police powers in this particular sphere.

GCO asks that Milton repeal Section 4(b) because it is in violation of state law. 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
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Mr. William F. Riley, Esq.
Riley, Lewis & McLendon LLC
315 Washington Avenue
Marietta, GA 30060

RE: City ordinance banning firearms in parks

Dear Mr. Riley:

I am writing on behalf of my client, the organization Georgiacarry.org (http://www.georgiacarry.org) to bring to your attention one of John's Creek's city ordinances, Chapter 8, Article 2, Section 4(b). Section 4(b) states that, "[i]t shall be unlawful for any person to *possess any firearm*...in any of the City parks…" John's Creek, Ga. Code Ch. 8, Art. 2, § 4(b) (2007) (emphasis supplied). This ordinance is in violation of the Georgia General Assembly's well established preemption of firearm regulations and the State Constitution.

John's Creek is prohibited by the laws of the State of Georgia from either enforcing or enacting such an ordinance. It is important to note that there already exists a comprehensive state regulatory scheme for the possession of firearms. Many of the activities that were undoubtedly in the minds of the City Council members of John's Creek when the ordinance was 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 municipalities from exercising their police powers in this particular sphere.

GCO asks that John's Creek repeal Section 4(b) because it is in violation of state law. 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 a right and only gives the General Assembly the ability to circumscribe that right. The case law declares that, even without such a statute, the city is without authority to pass such an ordinance because the field of firearms 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 from a county on the legality of a firearms ordinance.

1. THE STATUTE

The General Assembly has, by law, prohibited counties and municipal corporations from engaging in the regulation of firearms. Nowhere is the intent more clearly stated than

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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) (2006). Specifically counties and cities are restricted by the following language:

> "***No*** county or ***municipal corporation, by zoning or by ordinance, resolution, or other enactment, shall regulate in any manner*** gun shows; ***the possession***, ownership, transport, ***carrying***, transfer, sale, purchasing, licensing, or regulation ***of firearms*** or components of firearms; firearms dealers; or dealers in firearms components." O.C.G.A. § 16-11-173(b)(1) (2006) (emphasis supplied).

The language of the statute is clear and unambiguous. By the passage of the statute, the General Assembly excluded counties and cities from regulating the possession and carrying of firearms. The ordinance at issue prohibits possession of firearms. It cannot be denied that through the ordinance John's Creek intends to regulate the possession of firearms and that the General Assembly specifically prohibits any municipal corporation from regulating the possession of firearms.

Further, Section 16-11-173 ***did*** set forth three specific instances in which cities and counties are permitted to regulate firearms. John's Creek ***is*** permitted to (1) "***regulate the transport, carrying, or possession of firearms by employees of the local unit of government while in the course of employment*** with such local unit of government," (2) "require the ownership of guns by heads of household," (3) limit or prohibit the ***discharge*** of firearms within city boundaries. O.C.G.A. § 16-11-173(c)-(e) (2006) (emphasis supplied). The ordinance at issue here does not fall within any of the three narrowly defined exceptions set out by the General Assembly. The ordinance is not (1) limited to city employees, (2) a regulation requiring the ownership of firearms, or (3) a regulation on the discharge of firearms within city limits.

Applying the well-established canon of statutory construction that the inclusion of one implies the exclusion of others it is clear that the ordinance is preempted by state law. Here, the inclusion of the "one" is clear from Section 16-11-173 which includes not just "one" but three specific instances where cities have the right to regulate firearms. Clearly, if the General Assembly's intent was to allow unspecified additional regulations it would have enacted a provision that gives cities and municipalities additional powers. However, the exact opposite of this intent is evidenced from the first statement in the statute. No where does Section 16-11-173 make exceptions for instances where the issue pertaining to firearms affects property owned by the municipality or any other reason, except for, of course, where the regulations falls within the three narrowly defined exceptions.

In addition, the State Constitution recognizes that, "The right of the people to keep and bare 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 rights of citizens to keep and bare arms. More, importantly it specifies how and by whom that right can be restricted. Generally speaking, the State Firearms and Weapons Act does not violate the state constitution. *Carson v. State*, 241 Ga. 622, 627 (1978). The State Firearms and Weapons Act is a legitimate exercise of the ***state's*** police powers. *Id.* at 628. Nowhere in the State Constitution are Georgia's counties and cities given the power, police or otherwise, to infringe upon the rights of the people to keep and bare arms. A clear, constitutional

regulatory scheme can be evidenced by the mass of legislation codified in the State Firearms and Weapons Act. Not only does the State Constitution prohibit the ordinance in question, but also the very act the State Constitution allows for prohibits the ordinance as well.

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 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 suit 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 city parks. 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 John's Creek 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).

3. THE ATTORNEY GENERAL OPINION

The Attorney General for the State of Georgia routinely gives legal opinions to local governments on matters of law. The Attorney General has previously authored an opinion concerning Section 16-11-173. The opinion, requested by the City Attorney of Columbus, found that a proposed ordinance regulating the placement of firearms in homes, buildings, trailers, vehicles, or boats 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 reasoned that by enacting the predecessor to Section 16-11-173, "the General

Assembly appears to have codified with certain exceptions its intent to preempt the regulation of firearms." *Id.* The Attorney General also found that the three exceptions were the only allowable ways in which a city or county can regulate firearms. *Id.* The Attorney General determined that because the proposed Columbus ordinance did not fall within any of the three exceptions and it regulated the possession, ownership, transport, and carrying of firearms it was preempted by state law. Further, 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 ordinance at issue is substantially similar to the proposed Columbus ordinance at issue in the Attorney General opinion. The John's Creek ordinance at issue is *ultra vires*. It conflicts with the general laws of the state and the preemption statute the same as the proposed Columbus ordinance. As previously discussed, none of the three narrowly defined exceptions give John's Creek the ability to enforce the ordinance. The ordinance at issue concerns the possession of firearms and is in conflict with the rights given to those with GFLs.

The ordinance at issue is not a necessity of city governance. In Fulton County, the cities of Alpharetta, College Park, Hapeville, Mountain Park, and Palmetto do not have similar ordinances in their respective code of ordinances. In addition, numerous counties and cities across the state do not have similar ordinances in their code of ordinances either.

GCO asks that you recommend to John's Creek that the ordinance at issue, Section 4(b), be repealed. If a recommendation to repeal the ordinance has not been made within the next three weeks, GCO will seek legal action against John's Creek in Fulton County Superior Court.

Sincerely,

John R. Monroe

JOHN R. MONROE
ATTORNEY AT LAW

July 19, 2007

Ms. Overtis Hicks Brantley
County Attorney
141 Pryor St., SW
Atlanta, GA 30303

RE: County ordinance banning firearms in parks

Dear Ms. Brantley:

I am writing on behalf of my client, the organization Georgiacarry.org (http://www.georgiacarry.org) to bring to your attention one of Fulton County's ordinances, section 50-38. Fulton County's Section 50-38 states that, "[n]o person shall use or *possess* within any Fulton County park or recreational facility any rifle, pistol, shotgun." Fulton County, Ga., Code § 50-38 (2005) (emphasis supplied). This ordinance is in violation of the Georgia General Assembly's well established preemption of firearm regulations and the State Constitution.

Fulton County is prohibited by the laws of the State of Georgia from either enforcing or enacting such an ordinance. It is important to note that there already exists a comprehensive state regulatory scheme for the possession of firearms. Many of the activities that were undoubtedly in the minds of the County Commissioners of Fulton County when the ordinance was 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 municipalities from exercising their police powers in this particular sphere.

GCO asks that Fulton County repeal Section 50-38 because it is in violation of state law. 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,
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The state statute expressly forbids the ordinance at issue. The State Constitution provides for a right and only gives the General Assembly the ability to circumscribe that right. The case law declares that, even without such a statute, the city is without authority to pass such an ordinance because the field of firearms 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 from a county on the legality of a firearms ordinance.

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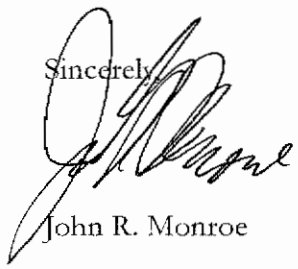
GCO asks that you recommend to Fulton County that the ordinance at issue, Section 50-38, be repealed. If a recommendation to repeal the ordinance has not been made within the next three weeks, GCO will seek legal action against Fulton County in Fulton County Superior Court.

Sincerely,



John R. Monroe