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Honorable Kenneth E. Smith
Personnel Director
City of Decatur Personnel Board
P.O. Box 1984
Decatur, Alabama 35602-1984

Personnel Boards – Firearms –
Employees, Employers, Employment –
Municipalities – Morgan County

The City of Decatur cannot adopt a policy prohibiting the possession of handguns. The City of Decatur may adopt a policy prohibiting city employees from possessing other types of weapons while performing duties as city employees.

Dear Mr. Smith:

This opinion of the Attorney General is issued in response to your request on behalf of the City of Decatur Personnel Board.

QUESTION

Can the City of Decatur legally adopt a policy designated to prevent workplace violence, which contains a prohibition of employees bringing firearms into the city's work areas while performing duties as an employee of the city?

FACTS AND ANALYSIS

Your opinion request indicates that the City of Decatur wishes to adopt a policy in which city employees would be prevented from bringing

weapons into city work areas while performing their duties as employees. The proposed policy states:

Consistent with this Policy, no employee shall have in his/her possession, any weapon or hazardous materials while at work or in his/her work area. Weapons include, but are not limited to handguns, rifles, shot guns, any automatic weapons, knives (four "4" inches), or similar devices. This includes visible and concealed weapons, even those for which the employee/owner has attained the necessary permits. Employees who refuse to cooperate in an inquiry relating to violation of this Policy will be subject to disciplinary action under the Merit System Rules.

City of Decatur Alabama Policy on Threats and Weapons Applicable to City of Decatur Employees and Their Working Environment, Provisionally Adopted July 26, 2001.

Section 11-45-1.1 of the Code of Alabama states that "[n]o incorporated municipality shall have the power to enact any ordinance, rule, or regulation which shall tax, restrict, prevent, or in any way affect the possession or ownership of handguns by the citizens of this state." ALA. CODE § 11-45-1.1 (Supp. 2000). The section goes on to state that "[t]he *entire* subject matter of handguns is reserved to the State Legislature." *Id.* (emphasis added). Based on section 11-45-1.1 of the Code of Alabama, the City of Decatur cannot adopt any kind of policy prohibiting the possession of handguns by city employees on the job in his or her work area. *See Ex parte Childers*, 640 So. 2d 16 (Ala. 1994).

This Office is not aware of any law that would prevent the City of Decatur from adopting a policy that prohibits possession of any kind of weapon other than a handgun on the job in an employee's work area. Generally, "a municipality may exercise those powers that are explicitly granted to it by the Legislature, as well as those powers that are necessarily implied from an express grant of power." *Wilkins v. Haggerty & Assoc., Inc.*, 672 So. 2d 507 (Ala. 1995), quoting *City of Birmingham v. Graffeo*, 551 So. 2d 357, 360 (Ala. 1989). The police powers of a city "extend to all appropriate ordinances for the protection of the peace, safety, health, and good morals of the people affected thereby." *City of Homewood v. Wofford Oil Co.*, 232 Ala. 634, 169 So. 288, 290 (1936). A

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policy falls within a municipality's police powers if it is substantially related to public health and safety, is reasonable, and is not arbitrary. *City of Russellville v. Vulcan Materials Co.*, 382 So. 2d 525 (Ala. 1980). Likewise, a policy that is substantially related to public health and safety is within the police powers of a municipality. Therefore, the City of Decatur may enact, pursuant to its police powers, a policy prohibiting weapons other than handguns on the job in an employee's workplace.

CONCLUSION

The City of Decatur cannot adopt a policy prohibiting the possession of handguns. The City of Decatur may adopt a policy prohibiting city employees from possessing other types of weapons while performing duties as city employees.

I hope this opinion answers your question. If this Office can be of further assistance, please contact Terri Olive Tompkins of my staff.

Sincerely,

BILL PRYOR
Attorney General
By:



CAROL JEAN SMITH
Chief, Opinions Division

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