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Opinion No. 03-4-1

Office of the Attorney General
State of Iowa

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April 7, 2003

MUNICIPALITIES; WEAPONS; PREEMPTION: Authority of city to impose restrictions upon carrying weapons. Iowa Code §§ 364.1, 724.4 and 724.28 (2003). The Iowa courts would likely construe the preemption provision contained in Iowa Code section 724.28 narrowly and find that the statute does not interfere with the authority of a city to exercise its home rule power to place restrictions upon the possession of weapons which apply only to buildings owned or directly controlled by the city. (Odell to Wise, State Representative, 4-6-03) #03-4-1

The Honorable Philip Wise
State Representative
State Capitol
LOCAL

Dear Representative Wise:

You have requested an opinion of the Attorney General regarding the validity of an ordinance approved by the West Burlington City Council restricting possession of **firearms** by non-law enforcement or military personnel within municipal buildings. Specifically, you posed the following questions:

1) Can the City of West Burlington enforce this weapons ban without contravening Iowa Code section 724.28?

2) Can the City of West Burlington enforce this ordinance against a person licensed to carry a weapon under Iowa Code section 724.4 and who possesses that weapon in compliance with Iowa Code section 724.4(4)?

Iowa Code section 724.28 includes an express limitation upon the ability of a political subdivision to regulate **firearms**. However, for the reasons that follow, we do not believe that Iowa Code section 724.28 would be interpreted as preempting a political subdivision from enacting and enforcing limitations upon the possession of weapons which are narrowly limited to buildings owned or directly controlled by the political subdivision. Before addressing the questions you posed, it may be helpful to review two concepts which determine the validity of municipal legislation: (1) the city's home rule authority and (2) the state's power to preempt local action. These concepts and their interrelationship are set forth in the Municipal Home Rule Amendment of Iowa's constitution:

Municipal corporations are granted home rule power and authority, not inconsistent with the laws of the General Assembly, to determine their local affairs and government, except that they shall not have power to levy any tax unless expressly authorized by the General Assembly.

The rule or proposition of law that a municipal corporation possesses and can exercise only those powers granted in express words is not a part of the law of this state.

Iowa Const. art III, § 38A. [FN1]

Iowa Code chapter 364 sets forth the powers and duties of cities. The statute essentially mirrors the municipal home rule amendment, providing that

[a] city may, except as expressly limited by the Constitution, and if not inconsistent with the laws of the general assembly, exercise any power and perform any function it deems

appropriate to protect and preserve the rights, privileges, and property of the city or of its residents, and to preserve and improve the peace, safety, health, welfare, comfort, and convenience of its residents....

***2** Iowa Code § 364.1 (2003); see also Iowa Code § 364.2(2) (2003) ("A city may exercise its general powers subject only to limitations expressly imposed by a state or city law"). While the concept of home rule clearly envisions the possibility that both the state and a city may regulate in the same area, a city's power to govern its local affairs may be preempted by state law. The concept of "preemption" finds its source in the constitutional prohibition against the exercise of a home rule power that is "inconsistent with the laws of the general assembly." Iowa Const. art. III, section 38A. An exercise of a city power is inconsistent with a state law only if it is "irreconcilable with the state law." Iowa Code section 364.2(3) (2003); see *Goodell v. Humboldt County*, 575 N.W.2d at 492. Preemption may be express or implied.

Express preemption occurs when the general assembly has specifically prohibited local action in an area. Obviously, any ordinance that regulates in an area the legislature has specifically stated cannot be the subject of local action is irreconcilable with state law. Implied preemption occurs in two ways. When an ordinance prohibits an act permitted by a statute, or permits an act prohibited by a statute, the ordinance is considered inconsistent with state law and preempted. Implied preemption may also occur when the legislature has covered a subject by statutes in such a manner as to demonstrate a legislative intention that the field is preempted by state law.

Goodell v. Humboldt County, 575 N.W.2d at 492 (quotations and citations omitted).

The state statute at issue here is Iowa Code chapter 724, governing weapons. This chapter, comprehensive in scope, defines offenses related to the possession and carrying of weapons, details the procedures for obtaining a permit to carry or to acquire weapons for both professionals - persons employed in law enforcement or security related occupations - and nonprofessionals, and establishes "weapons free zones." A nonprofessional person obtains a permit to carry a weapon, including a **←firearm→**, by applying to the sheriff of the person's resident county. Iowa Code § 724.11 (2003). If issued, the permit identifies the holder and the reason for its issuance, and also details any limits on the authority granted by the permit. *Id.* A permit is issued for a definite period not to exceed twelve months. *Id.*

Except as specifically provided by Iowa Code section 724.4, "a person who goes armed with a dangerous weapon concealed on or about the person, or who, within the limits of any city, goes armed with a pistol or revolver, or any loaded **←firearm→** of any kind, whether concealed or not,... commits an aggravated misdemeanor." Iowa Code § 724.4(1) (2003). However, a person who has a valid permit to carry weapons and whose conduct is within any limits specific in the permit, is not subject to the general prohibition upon carrying a concealed or loaded **←firearm→**. Iowa Code § 724.4(4)(i) (2003). A nonprofessional person with valid permit to carry a weapon is restricted only by any limits specified in the permit and by the "weapons free zones" established by the legislature which include public and private schools, the area within one thousand feet of public or private school, and public parks. Iowa Code § 724.4A (2003).

***3** Iowa Code section 724.28 sets forth the following express limitation upon regulation of **←firearms→** by political subdivisions.

A political subdivision of the state shall not enact an ordinance regulating the ownership, possession, legal transfer, lawful transportation, registration, or licensing of **←firearms→** when the ownership, possession, transfer, or transportation is otherwise lawful under the laws of this state. An ordinance regulating **←firearms→** in violation of this section existing on or after April 5, 1990, is void.

Iowa Code § 724.28 (2001). [FN2]

Although the language of this provision encompasses the local regulation of the ownership, possession, legal transfer, lawful transportation, registration, or licensing of **←firearms→**, the statute does not explicitly restrict all local regulation. Rather the limitation applies only to local regulation of the ownership, possession, legal transfer, lawful transportation,

registration, or licensing of **←firearms→** which "is otherwise lawful under the laws of this state." In essence, the statute incorporates the pre-existing constitutional and statutory restriction upon local legislation which is inconsistent with state law.

As stated in [Art. III, section 38A of the Iowa Constitution], municipal home rule power cannot be "inconsistent with the laws of the general assembly."... A local ordinance, however, is not inconsistent with a state law unless it is irreconcilable with the state law. A local law is irreconcilable with state law when the local law prohibits an act permitted by statute, or permits an act prohibited by a statute.

Beerite Tire Disposal/Recycling, Inc. v. City of Rhodes, 646 N.W.2d 857, 859 (Iowa 2002) (citations omitted, emphasis original). Compare Chelsea Theater Corporation v. City of Burlington, 258 N.W.2d 372 (Iowa 1977) (statute providing that "no municipality, county or other governmental unit within this state shall make any law, ordinance or regulation relating to the availability of obscene materials" found to preempt all local regulation of obscene materials); with 2000 Op. Att'y Gen. ____ (#00-11-5) (concluding that statute expressly providing that Iowa Code chapter regulating smoking "shall supercede any local law or regulation which is inconsistent with or conflicts with [the] chapter" did not preempt all local regulation, but merely reflected the same limitations on home rule authority embodied in the Home Rule Amendments).

Your specific inquiries relate to an ordinance passed by the West Burlington City Council on September 23, 2002. The ordinance establishes "**←firearm→**/weapons free zones" in any municipal building, defined as every "structure, dwelling, garage or shelter owned, leased or otherwise occupied by the City of West Burlington, Iowa and used for any municipal or public purposes by the City." Ordinance No. ____, § 3(1). In Section 2, the ordinance prohibits non-professional persons from carrying or possessing **←firearms→** or weapons in any municipal building, even if the persons are duly licensed to carry and comply with Iowa Code section 724.4(4), providing:

***4** Municipal buildings owned, leased or occupied by the City of West Burlington, Iowa are declared to be **←firearm→**/weapon free zones. It shall be unlawful for any person, except a peace officer, member of the armed forces of the United States or the national guard, a person in the service of the United States, or correctional officer serving in an institution under authority of the Iowa [D]epartment of Corrections to carry, possess or display any weapon or **←firearm→** within any municipal building.

In defining "weapon," the ordinance refers specifically to and incorporates the definitions in Iowa Code sections 724.1 and 724.4. Ordinance No. ____, § 3(2). The term "**←firearm→**" includes "pistols, revolvers, derringers, handguns, pellet guns, rifles, shotguns... or other devices which can expel or may be readily converted to expel any form of projectile so as to strike an object or person." Ordinance No. ____ § 3(3).

Under the state statutory scheme, a nonprofessional person licensed to carry a **←firearm→** is authorized to carry and possess it within any limitations specified in the permit and in any place in the State other than the "weapons free zones" established by the legislature in Iowa Code section 724.4A. It could be argued that the statute allows a person with a valid permit to carry to possess a **←firearm→** in any privately or municipally owned building, provided that he or she produces the permit on demand by a peace officer. We doubt, however, that the legislature intended chapter 724 to limit the ability of a property owner to prohibit the possession of a weapon on their property. Further, we believe it is highly unlikely that chapter 724 would be interpreted by the Iowa courts as granting concealed weapon permit holders an absolute and unqualified right to be in possession of a **←firearm→** at any time or place.

We arrive at this conclusion for several reasons. First, [i]n considering whether a particular ordinance violates the home rule provisions of the Constitution, the Supreme Court attempts to interpret state law to render it harmonious with the ordinance. Sioux City Police Officers' Ass'n v. City of Sioux City, 495 N.W.2d 687, 694 (Iowa 1993). The Court appears especially likely to find harmony between the ordinance and the statutory scheme where the ordinance addresses the health and safety of citizens. See e.g. Kent v. Polk County Board of Supervisors, 391 N.W.2d 220, 223 (Iowa

1986).

2000 Op. Att'y Gen. ___, ___ (#00-11-5 at p. 2). Without question, an ordinance prohibiting the possession of weapons in municipal buildings, which may include city hall, municipal offices frequented by the public, and city-owned auditoriums or events centers, is directly focused upon the health and safety of citizens.

Second, there is no provision included within Iowa Code chapter 724 which explicitly limits, or even addresses, the ability of a property owner to manage property owned or directly controlled by the person. Certainly, the state law does not preclude a private business owner from prohibiting persons from bringing concealed weapons onto the owner's business premises. Nor do we believe that Iowa Code section 724.28 must be interpreted to limit the ability of a municipality to prohibit persons from bringing concealed weapons onto premises owned or directly controlled by the municipality. See *Barrett v. Kunzig*, 331 F. Supp. 266, 271-274 (N.D. Tenn. 1971), cert. denied 409 U.S. 914, 93 S.Ct. 232, 34 L.Ed.2d 1175 (1972) (holding that the "United States as a property owner can control entrance to [federal courthouses] by conditioning the entrant's right of entry on his submitting his packages and briefcase to a visual inspection"); 1989 N.Y. Op. Att'y. Gen. (Inf.) 169 [# 89-75] (concluding that preemption provision within state **←firearms→** statute did not preclude a village from enacting a local law prohibiting a person from entering city hall with a **←firearm→**). As the Attorney General for the State of New York reasoned:

***5** Although section 400.00(6) of the Penal Law [providing that a **←firearm→** license issued under state statutes shall be effective throughout the state, except in the city of New York] prohibits [a] village from regulating the licensing of **←firearms→**, there is support for the position that these provisions do not preclude [a] village from acting in its proprietary capacity for the safety of its property and persons present thereupon. In its proprietary capacity, like any private individual, [a] village can prohibit persons from entering its property while possessing a **←firearm→**, even if he or she has an unrestricted license to carry the **←firearm→**.

1989 N.Y. Op. Att'y. Gen. (Inf.) 169 [#89-75 at p. 2].

Further, the apparent intention of the legislature in enacting Iowa Code chapter 724, and particularly section 724.28, was to ensure uniform state-wide regulation of weapons. The purpose in doing so was likely to ensure that an individual who was familiar with state weapons laws could freely travel with a weapon from one jurisdiction to another in the state without inquiring as to whether local ordinances place additional limitations upon the ownership, possession, transfer, or transportation of the weapon. A locally enacted restriction upon the possession of weapons within publically-owned or controlled buildings does not itself directly interfere with this purpose.

Finally, we have surveyed cases and opinions from other jurisdictions addressing preemption in the context of weapons regulation. The majority of courts addressing the narrow issue presented here - whether an express statutory preemption of **←firearms→** regulation by a municipality prohibits the municipality from regulating the possession of **←firearms→** on municipally-owned or controlled property - have recognized the inherent authority of a municipality to manage property which it owns or controls.

In *McMann v. City of Tucson*, 202 Ariz. 468, 472, 47 P.3d 672, 676 (Ariz. App. Div. 2002), a gun show promoter challenged a Tucson city ordinance "requiring instant background checks for prospective gun purchasers during gun shows held at the Tucson Convention Center." The plaintiff argued that the ordinance was preempted by an Arizona statute which prohibited a political subdivision from enacting an ordinance "relating to the transportation, possession, carrying, sale or use of **←firearms→**." Id. 202 Ariz. at 470, 47 P.3d at 674. The court, noting that it was "not clear that the legislature intended the statute to apply to the City's control of its own property as opposed to the City's attempt to control third parties," rejected the plaintiff's preemption claim. Id. 202 Ariz. at 471, 47 P.3d at 675.

Similarly, the Supreme Court of California rejected a claim that a state statute articulating legislative intent to "completely occupy the whole field of registration and licensing of... **←firearms→**," compelled a county to allow their property to be used for gun shows. *Great Western Shows, Inc. v. County of Los Angeles*, 27 Cal.4th 853, 44 P.3d 120, 118 Cal. Rptr.

2d 746 (2002). As the Court observed, "[e]ven assuming arguendo that a county is prevented from instituting a general ban on gun shows within its jurisdiction, it is nonetheless empowered to ban such shows on its own property." *Id.* 27 Cal.4th at 868, 44 P.2d at 129, 118 Cal. Rptr.2d at 757. See also 1989 N.Y. Op. Atty. Gen. 169 (*supra*); 25 Okl. Op. Atty. Gen. 245 (public library may ban patrons from bringing concealed weapons into libraries despite statute preempting "any order, ordinance, or regulation [of **firearms**] by any municipality or political subdivision); cf. *Cherry v. Municipality of Metropolitan Seattle*, 116 Wash.2d 794, 808 P.2d 746 (1991) (holding that city could restrict city employee with a concealed weapon permit to carry concealed weapon into the workplace despite statute which expressly pre-empted political subdivisions from all **firearm** regulation and indicated that municipalities could enact "only those laws and ordinances relating to **firearms** that are specifically authorized by state law and are consistent with [state law]"). But see *Doe v. Portland Housing Authority*, 656 A.2d 1200 (Maine), cert. denied 516 U.S. 861, 116 S.Ct. 171, 133 L.Ed.2d 112 (1995) (housing authority, as political subdivision, was preempted from regulating **firearm** possession by tenants of property owned by the authority; the court did not address the issue of property ownership); *HC Gun & Knife Shows, Inc. v. City of Houston*, 201 F.3d 544 (5th Cir. 2000) (concluding that city ordinance which regulated gun shows conducted on city property was preempted by state law which explicitly prohibited municipal regulation of the "transfer, private ownership, keeping, transportation, licensing, or registration of **firearms**, ammunition, or **firearms**," except in the context of specifically delineated areas. The Court rejected the city's claim that the regulation was a proper exercise of the city's ability to regulate the discharge of weapons within the city limits, but did not address the issue of property ownership).

***6** We caution, however, that we believe the authority of a municipality to regulate weapons is narrowly limited to property owned or directly controlled by the municipality. Iowa Code section 724.28 directly preempts any local ordinance attempting to limit the right to possess or transport a weapon in other public areas pursuant to the terms of chapter 724. We believe the Iowa courts would conclude that a local ordinance imposing a jurisdiction-wide restriction upon the possession or transport of a weapon is preempted by section 724.28 and unenforceable. See *Doe v. City and County of San Francisco*, 136 Cal.App.3d 509, 186 Cal.Rptr. 380 (Cal. Ct. App. 1982) (holding that state legislature's express statutory intent to "occupy the whole field of regulation of registration or licensing of... **firearms**" preempted ordinance prohibiting any person from possession a handgun within the city and county); *National Rifle Ass'n of America, Inc. v. City of South Miami*, 812 So.2d 504 (Fla. Ct. App. 2002) (city ordinance regulating **firearms** by establishing certain safety standards preempted by state statute); *Montgomery County v. Atlantic Guns, Inc.*, 302 Md. 540, 489 A.2d 1114 (1985) (holding that statute governing wearing, carrying, and transporting of handguns regulates both loaded and unloaded handguns, and expressly preempts all local laws regulating the same subject); *City of Portland v. Lodi*, 308 Or. 468, 782 P.2d 415 (1989) (local ordinance prohibiting the carrying of any concealed knife found to be preempted by state statute which prohibited the carrying of only certain concealed knives); *Ortiz v. Commonwealth of Pennsylvania*, 545 Pa. 279, 681 A.2d 152 (1996) (city-wide ban on the possession of certain assault weapons found to be preempted by statute which prohibited any manner of local regulation of the lawful ownership, possession, transfer or transportation of **firearms** and ammunition).

Based upon these considerations, we conclude that Iowa courts would likely construe the preemption provision contained in Iowa Code section 724.28 narrowly and would recognize the authority of a city to exercise its home rule power to place restrictions upon the possession of weapons which apply only to buildings owned or directly controlled by the city. Therefore, we believe that the City of West Burlington could enforce its ordinance against a person who is authorized by Iowa Code section 724.4 to carry a **firearm** and may prohibit a nonprofessional person from possessing a **firearm** within a municipal building, even though the person has a valid permit to carry the **firearm** and carries it in compliance both with Iowa Code section 724.4(4)(i) and with any limitations specified in the

permit.

Sincerely,

Cristen C. Odell
Assistant Attorney General

[FN1]. Although this opinion addresses the power of municipalities to limit or prohibit the possession of weapons in certain municipally owned facilities, there are parallel provisions of the Iowa Constitution and Iowa Code that make the analysis virtually identical for counties. See Iowa Const., art. III, § 39A and Iowa Code § 331.301. See also *Goodell v. Humboldt County*, 575 N.W.2d 486, 492 (Iowa 1998) ("we cite to county home rule cases and city home rule cases interchangeably").

[FN2]. We note that this limitation is applicable only to ordinances enacted by political subdivisions of the state. The statute does not affect the authority of the judicial branch to order the installation of metal detectors or similar security devices and restrictions upon the possession of weapons in county courthouses, as the judiciary has inherent power to adopt any measure to ensure the "immediate, necessary, efficient, and basic functioning of the courts." *Webster County Board of Supervisors v. Flattery*, 268 N.W.2d 869, 873 (Iowa 1978). Nor does the statute address the authority of the various branches of state government to prohibit the possession of weapons in state- owned or controlled buildings. 2003 WL 22100958 (Iowa A.G.)
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