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OAG 93-71

October 19, 1993

Mr. Vic Hellard, Director

Kentucky Legislative Research Commission

State Capitol

Frankfort, Kentucky 40601

Dear Mr. Hellard:

You recently requested an opinion from this office concerning the regulation of firearms by cities of the first class. Specifically, the questions you posed are as follows:

Would an ordinance enacted by a city of the first class regulating the registration of firearms and requiring notification of the sale of firearms to the local governing body be valid given the prohibition against such regulation in KRS 65.870?

Is KRS 83.520 special legislation under Sections 59 and 60 of the Constitution if it is used to allow cities of the first class to regard KRS 65.870 as permissive rather than mandatory in the field of firearm regulation?

It is the opinion of this office that current law does not authorize a city of the first class to enact a local ordinance regulating the registration of firearms and requiring notification to the local governing body of all firearms sales. KRS 65.870 prohibits local governments from enacting firearms control ordinances. Specifically, KRS 65.870 provides as follows:

No city, county or urban-county government may occupy any part of the field of regulation of the transfer, ownership, possession, carrying or transportation of firearms, ammunition, or components of firearms or a combination thereof.

The language of KRS 65.870 is unambiguous. No exceptions to the positive terms of this statute are set forth in the statute. Where the Kentucky General Assembly makes no exceptions to the positive terms of a statute, it is presumed to have intended to make none. *Com. ex rel. Cowan v. Wilkinson, Ky.*, 828 S.W.2d 610, 614 (1992); *Bailey v. Reeves, Ky.*, 662 S.W.2d 832, 834 (1984). An unambiguous statute must be applied without resort to outside aids. *Coursey v. Westvaco Corp., Ky.*, 790 S.W.2d 229, 230 (1990).

Chapter 82 of the Kentucky Revised Statutes sets forth a number of general provisions applicable to all Kentucky cities. One of those statutes, KRS 82.082, states as follows:

(1) A city may exercise any power and perform any function within its boundaries, including the power of eminent domain in accordance with the provisions of the Eminent Domain Act of

Kentucky, that is in furtherance of a public purpose of the city and not in conflict with a constitutional provision or statute.

(2) A power or function is in conflict with a statute if it is expressly prohibited by a statute or if there is a comprehensive scheme of legislation on the same general subject embodied in the Kentucky Revised Statutes including, but not limited to, the provisions of KRS Chapters 95 and 96.

Chapter 83 of the Kentucky Revised Statutes applies only to cities of the first class. KRS 83.410(3) states that the authority granted to cities of the first class to govern themselves is to be construed in light of the express legislative purpose set forth in KRS 83.410(1) and (2). KRS 83.410(1) and (2) state as follows:

(1) This chapter is intended by the general assembly of the Commonwealth of Kentucky to grant the citizens living within a city of the first class the authority to govern themselves to the full extent required by local government and not in conflict with the Constitution or laws of this state or by the United States.

(2) The powers herein granted shall be in addition to all other powers granted to cities by other provisions of law.

Should there be any doubt, KRS 83.410(2) makes it clear that cities of the first class share in the grant of power made to cities of all classes in KRS 82.082. Moreover, since KRS 82.082 expressly applies to *all* cities, the limitation on the exercise of power by all cities contained in KRS 82.082(2) also circumscribes the exercise of power by cities of the first class. Hence, cities of the first class, like any other city in the Commonwealth of Kentucky, may not exercise a power or function if it is expressly prohibited by a statute or if there is a comprehensive scheme of legislation on the same general subject embodied in the Kentucky Revised Statutes. This limitation on the power of municipalities set forth in KRS 82.082(2) represents nothing more than a codification of rules of law developed by the courts of this Commonwealth in construing the validity of municipal ordinances. See, e.g., *Boyle v. Campbell*, Ky., 450 S.W.2d 265 (1965). Viewing KRS 65.870 in light of these principles leads to the conclusion that a city of the first class may not enact local firearms ordinances.

KRS 65.870 is nearly identical in language to a statute enacted by the neighboring state of Tennessee, TCA § 39-17-1314. The only difference is that the Tennessee statute expressly excludes from its provisions any local ordinance enacted before April 8, 1986. The interpretation given the statute of a foreign jurisdiction is often persuasive in interpreting a Kentucky statute which is nearly identical. *Kentucky Commission on Human Rights v. Commonwealth, Department of Justice, Bureau of State Police*, Ky.App., 586 S.W.2d 270 (1979). The commentary to the Tennessee statute is enlightening. It reflects that the State of Tennessee adopted its statute preempting local firearms ordinances in response to the decision of the United States Sixth Circuit Court of Appeals in *Quilici v. Village of Morton Grove*, Ill., 695 F.2d 261 (6th Cir. 1982), *cert. den.*, 464 U.S. 863, 104 S.Ct. 194, 78 L.Ed.2d 170. That case upheld a handgun ban enacted by the City of Morton Grove, Illinois, pursuant to "home rule" authority.

In construing a statute, it may also be helpful to look to the circumstances under which it was enacted. *City of Owensboro v. Noffsinger*, Ky., 280 S.W.2d 517, 519 (1955). The 1984 session of

the Kentucky General Assembly adopted KRS 65.870 after the United States Supreme Court had denied a petition for writ of certiorari in the *Morton Grove* case on October 3, 1983.

When KRS 65.870 was enacted into law, KRS 83.520 had been on the statute books of the Commonwealth of Kentucky for over a decade. KRS 83.520 sets forth the grant of legislative power by the Kentucky General Assembly to the legislative bodies of cities of the first class. The statute grants to legislative bodies of cities of the first class what is commonly known as "home rule" authority. Although two minor amendments not relevant to the present discussion were made to KRS 83.520 in the 1984 session of the Kentucky General Assembly, it is noteworthy that the 1984 session of the Kentucky General Assembly made no express exception to the provisions of KRS 65.870 for cities of the first class.

The Kentucky General Assembly is presumed by law to have known of the earlier statute, KRS 83.520, when it enacted the latter, KRS 65.870. *Haven Point Ent. v. United Kentucky Bank*, Ky., 690 S.W.2d 393, 395 (1985). Given this presumption, if there is any conflict between KRS 65.870 and KRS 83.520, then the latter statute, KRS 65.870, is given effect over the earlier statute, KRS 83.520. *Troxell v. Trammell*, Ky., 730 S.W.2d 525, 528 (1987).

Moreover, a special or specific statute preempts a general statute to the extent that there is any conflict. *Troxell v. Trammell*, *supra*, 730 S.W.2d at 528. Since KRS 65.870 deals specifically with the attempt of local governments to enact firearms ordinances, and since KRS 83.520 makes no mention whatsoever of firearms ordinances, it is reasonable to conclude that KRS 65.870 preempts the provisions of KRS 83.520 to the extent that there is any conflict between the provisions of the two statutes.

No conflict exists between the provisions of KRS 83.520 and KRS 65.870. KRS 83.520 states in relevant part as follows:

Nothing therein contained to the contrary, the provisions of KRS Chapters 65 . . . shall be considered permissive rather than mandatory . . . and any restrictions therein set forth shall not be considered abridging in any manner the complete grant of home rule set forth in this grant of power

(Emphasis added).

KRS 83.520 clearly states that the provisions of KRS Chapter 65 are permissive rather than mandatory only if there is *nothing* contained in those provisions to the contrary. Since the clear and unambiguous statement of the Kentucky General Assembly in KRS 65.870 that no local government may enact firearms control ordinances is to the contrary, the provisions of KRS 65.870 are mandatory, even for cities of the first class.

Neither do the restrictions imposed by KRS 65.870 abridge the legislative grant of "home rule" to cities of the first class. The provisions of KRS Chapter 83 pertaining to "home rule" for cities of the first class are to be construed so as not to conflict with the Constitution or laws of this Commonwealth. KRS 83.410(1) and (2); KRS 83.520. Hence, any conflict between KRS 65.870 and KRS 83.520 should be resolved in favor of the preeminence of KRS 65.870. KRS 83.410(1).

Section 1 of the Kentucky Constitution states that the constitutional right of Kentucky citizens to bear arms "in defense of themselves and of the state" is "subject to the power of the general assembly to enact laws to prevent persons from carrying concealed weapons." This constitutional provision expressly grants to the General Assembly the authority to enact laws with respect to the right to bear arms, a constitutional right deemed important enough to be placed in the very first section of the Kentucky Constitution's Bill of Rights. This express grant of legislative authority is unique. The Kentucky General Assembly derives its power to legislate with respect to virtually every other subject matter from the general grant of legislative power vested in it pursuant to Section 29 of the Kentucky Constitution. It therefore is reasonable to conclude that if the Kentucky General Assembly may delegate to a municipal body its authority to legislate with respect to the right to bear arms and it wishes to do so, then it must do so with specificity.

Indeed, the failure of the Kentucky General Assembly to set forth expressly those powers it was delegating was one of the reasons given by the Kentucky Supreme Court for holding the greater part of a statute granting "home rule" authority to counties unconstitutional. *Fiscal Court, Etc. v. City of Louisville, Ky.*, 559 S.W.2d 478 (1977). The Kentucky Supreme Court noted that ". . . counties and cities have only those powers expressly delegated by state legislation." (Citations omitted). *Fiscal Court, Etc. v. City of Louisville, supra*, 559 S.W.2d at 482. The Kentucky Supreme Court continued:

The metallic thread which history and tradition weave through the warp and woof of our Constitution is that while the General Assembly may grant governmental powers to counties it must do so with the precision of a rifle shot and not with the casualness of a shotgun blast. The thoughtful, purposeful and deliberate delegation of a known power is required of the General Assembly.

Fiscal Court, Etc. v. City of Louisville, supra, 559 S.W.2d at 482.

It is a long-standing rule of statutory construction in the Commonwealth of Kentucky that any doubt concerning the existence of a power of a municipality is to be resolved against the municipality. *George v. City of Raceland, Ky.*, 130 S.W.2d 825, 826 (1939). This is because a municipality possesses "only such powers as the state through its legislature has expressly or impliedly conferred upon it." *George v. City of Raceland, supra*, 130 S.W.2d at 826. Hence, in *Stansbury v. Maupin, Ky.*, 599 S.W.2d 170 (1980), the Kentucky Supreme Court held that the "home rule" powers granted by KRS 83.520 did not encompass the subpoena power. The court in *Stansbury v. Maupin* reasoned that the Kentucky General Assembly ". . . may easily grant the [subpoena] authority to city legislative bodies if it intends for them to have it." *Stansbury v. Maupin, supra*, 599 S.W.2d at 172.

While it is true that KRS 83.410(3) states that the provisions of Chapter 83 are to be broadly construed, it also states that the provisions of Chapter 83 are to be construed and considered "in light of the express legislative purpose set forth in subsections (1) and (2) hereof." As previously noted, KRS 83.410(1) and (2) both expressly and by implication make it clear that the grant of "home rule" authority to cities of the first class is not so broad as to permit a municipal ordinance to conflict with a statute.

KRS 82.082(2) expressly provides that "[a] power or function is in conflict with the statute if it is expressly prohibited by a statute or there is a comprehensive scheme of legislation on the same

general subject embodied in the Kentucky Revised Statutes." The application of numerous rules of statutory construction support the conclusion that a local municipal firearms ordinance is precluded by the provisions of KRS 65.870. Therefore, any doubt concerning the breadth of the legislative grant of power contained in KRS 83.520 should in this case be resolved against the municipal ordinance and in favor of KRS 65.870. Given that this office has arrived at this conclusion, it is unnecessary to consider the question of whether KRS 83.520 constitutes special legislation if it allows cities of the first class to regard KRS 65.870 as permissive, rather than mandatory with regard to firearms regulations.

Sincerely,

CHRIS GORMAN

ATTORNEY GENERAL

Kent T. Young

Assistant Attorney General