

OAG 96-39

October 4, 1996

Subject: Power of county judge/executive and fiscal court to regulate the open and concealed possession and carrying of firearms in public parks

Written By: Scott White, Assistant Deputy Attorney General

Requested By: Mark A. Treesh, State Representative, 14th Legislative District (Daviess County)

Syllabus: A county may not ban or regulate the open or concealed carry of firearms in public parks it controls, *except a fiscal court may by ordinance prohibit or limit the carrying of concealed firearms in the buildings, or portions of buildings, the county controls located in such parks.*

Statutes Construed: KRS 15.025(2); 65.870; 67.075(1); 67.710; 1996 H.B. 40

Opinion of the Attorney General

The Office of the Attorney General has been asked to render an opinion regarding an Executive Order of the Daviess County Judge/Executive which prohibits possession of firearms in a park owned by the Fiscal Court. Specifically, we address whether this Executive Order, No. 287-96, is allowable under existing Kentucky law. The Attorney General provides this opinion on a public question of law submitted by a member of the Legislature. KRS 15.025(2).

Rep. Mark A. Treesh propounds the following questions:

- May a county judge/executive or other local official ban the possession or carrying in a public park of firearms, whether concealed or not?
- May the fiscal court or other legislative body ban in a public park the possession or carrying of firearms which are not concealed, or those which are concealed and are not carried within a building?
- May the carrying of concealed weapons in park buildings by holders of state licenses for carrying concealed weapons be prohibited by the county judge/executive or must this be done by the local legislative body pursuant to the provisions of 1996 HB 40.
- Can the county judge/executive be considered the custodian of the parks as per the suggestion of the Daviess County Attorney?
- If the county judge/executive can serve as custodian of county property, does this give him the authority to regulate firearms in county parks or on other county property?

Rep. Treesh's five questions fall into two categories. The first category concerns the ability of a county to ban either the open or concealed carry of firearms on its property. The second category deals with the proper authority, the county judge/executive acting alone or the fiscal court as a body, to regulate open or concealed carry of firearms on county property.

LEGAL ANALYSIS

Our legal analysis must begin with KRS 65.870, “Local firearms control ordinances prohibited.” This statute provides:

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 combinations thereof.

It is clear from this statute that the Legislature has set forth their intent that no form of local government is permitted to regulate in the area of firearm possession. The language of this statute is unambiguous. No exceptions to the positive terms of the statute are set forth in the statute. Where the Kentucky General Assembly makes no exceptions to the positive terms of the statute, it is presumed to have intended to make none. *Bailey v. Reeves*, 662 S.W.2d 832, 834 (1984). An unambiguous statute must be applied without resort to outside aids. *Coursey v. West Vaco Corp.*, 790 S.W.2d 229, 230 (1990). Moreover, it is a long-standing rule that municipalities possess “only such powers as the state through its legislature has expressly or impliedly conferred upon it.” *George v. City of Raceland*, 130 S.W.2d 825, 826 (1939).

Thus, it is clear that unless expressly delegated to it, a county government cannot regulate firearm possession since the General Assembly has chosen to prohibit such regulation. The General Assembly has made this public policy determination, and we have no power to ignore or overrule this decision.

However, in 1996, the General Assembly passed, and Governor Patton signed into law, House Bill 40 which dealt with the licensing and regulation of concealed weapons. 1996 H.B. 40. Section 5 of that Act creates a new section of chapter 237 of the Kentucky Revised Statutes. That chapter deals with firearms and destructive devices. Subparagraph (2) of that section provides:

The legislative body of a . . . county . . . may by statute, administrative regulation, or ordinance, prohibit or limit the carrying of concealed deadly weapons by licensees in that portion of the building owned, leased, or controlled by that unit of government. That portion of the building in which the carrying of concealed deadly weapons is prohibited or limited shall be clearly identified by signs posted at the entrance to the restricted area. . . . *The provisions of this section shall not be deemed to be in violation of KRS 65.870 if the requirements of this section are followed.*

1996 H.B. 40, Section 5(2).

It is clear with the enactment of this new statute that the General Assembly has made a limited delegation of power concerning the regulation of the carrying of concealed weapons to local governments. Specifically, a local government, without otherwise violating the statutory prohibition contained in KRS 65.870, may prohibit or limit the carrying of concealed deadly weapons in buildings or portions of buildings owned, leased, or controlled by a county. Since counties and cities have only those powers expressly delegated by legislation, then clearly a county has the power to regulate concealed deadly weapons as *specifically* set forth in 1996 H.B. 40, Section 5(2).

Thus, a county may indeed prohibit or limit the carrying of concealed deadly weapons in park buildings or portions of park buildings which it owns, leases or controls.

The next inquiry concerns the proper governmental body or officer who is empowered by 1996 H.B. 40, Section 5(2), to regulate in this field. Given the specific statutory language chosen by the legislature in enacting 1996 H. B. 40, we do not need to perform any analysis of the powers of fiscal courts and county judge/executives. Again, reference to the actual language is helpful. The statute states: “the legislative *body* of a . . . county . . . may, by . . . ordinance” Thus, the General Assembly has specifically stated that *only* a legislative body of a county can regulate in this field by ordinance.

The county judge/executive is not a “legislative body,” but is the chief executive of the county. KRS 67.710. A county judge/executive cannot promulgate an ordinance. Only the fiscal court can enact county ordinances. *See*, KRS 67.075(1). Moreover, specific statutes exist concerning the manner and method by which county ordinances become effective laws. Thus, given the specific statutory language of 1996 H.B. 40, Section 5(2), only the fiscal court can regulate the carrying of concealed weapons in park buildings owned, leased or controlled by a county.

The last two specific questions asked of us by Rep. Treesh concern whether the county judge/executive is the custodian of county parks and whether, under that custodianship, he may regulate firearms. We need not address these questions. Our opinion on the authority for county regulation of concealed weapons is dispositive and renders an opinion on these two questions unnecessary.

CONCLUSION

To summarize, and to apply this analysis to the specific facts presented, it is our opinion that neither the Daviess County Fiscal Court nor its County Judge/Executive, or any other local official, can ban the possession or carrying in a public park the open or concealed carrying of firearms, *except* the Daviess County Fiscal Court, which if it properly passes an ordinance, may prohibit or limit the carrying of concealed firearms in park buildings or portions thereof owned, leased or controlled by it. The statutes discussed herein clearly prescribe the authority of a fiscal court in this field. Based upon this, it is our opinion that Executive Order 287-96 promulgated by Daviess County Judge/ Executive W. M. Morris, Jr., undated, was unauthorized and has no legal effect.

A. B. CHANDLER III

ATTORNEY GENERAL

SCOTT WHITE

ASSISTANT DEPUTY ATTORNEY GENERAL