

Cases on conflicts between state firearms statutes and municipal ordinances

“It is a fundamental and universal rule that any ambiguity or doubt as to the extent of a power attempted to be exercised by a municipality out of the usual range, or which may affect the common-law right of a citizen or inhabitant, should be resolved against the municipality.”¹

Introduction

This digest of cases and attorney general opinions was produced as part of my background research in preparation for possible litigation against Minnesota local governments that have, in the face of exquisitely clear statutory prohibition, enacted resolutions and ordinances banning guns from public buildings under their jurisdiction, or have otherwise exceeded their legitimate authority in their hoplophobic zeal.

When I began reading Minnesota cases on conflicts between state statutes and local ordinances (on various topics—we have no such firearms cases), I was bewildered by the variety of different standards applied. It seemed that, as with the canons of statutory construction, one could be selected to give the desired result. I wanted to learn more about the general principles by which a court should properly address such a question.

I also wanted to find cases in other states with fact patterns as similar as possible to Minnesota’s. There are precious few. But along the way I noticed a fairly large number of interesting cases and AG opinions dealing with firearms statutes and ordinances in alleged conflict. I thought it would be useful to have a précis of them readily available to me, and I might as well do it now, rather than having to retrace my steps later.

This digest is by no means complete, but I’m confident it’s a large percentage of what a comprehensive search would find, and certainly has enough cases that a reader can see just about every possible approach to resolving the disputes.

¹ Anderson v. Shackelford, 76 So. 343, 345 (Fla. 1917), citing 1 Dillon on Municipal Corp. (4th Ed.) § 91 (overturned in part on other grounds by Sunad, Inc. v. City of Sarasota, 122 So. 2d 611 (Fla. 1960)).

Inclusion of cases, and the length of treatment they receive, is a result of purely subjective judgments on my part as to how interesting the cases were—in facts, legal reasoning, or outcome.

The cases do not all come from shall-issue states, nor even all from states with strong preemption laws. These conflicts arise in all sorts of statutory environments.

I have not altered any text quoted, though I have often silently removed citations, footnotes, internal quotation marks, emphasis, etc. As always, check the original sources before quoting this material anywhere that a high degree of accuracy is required.

I welcome any observations of overlooked cases, different opinions, errors, etc.

Robert J. Woolley
September 30, 2003

Alabama

Ex Parte Childers, 640 So. 2d 16 (Ala. 1994)

State statute provided: “No 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. The entire subject matter of handguns is reserved to the state legislature.” In spite of this, the city of Muscle Shoals passed an ordinance criminalizing the possession of a firearm “upon a premises of a business establishment maintaining a lounge retail liquor license.” The ordinance made no exception for holders of a state license to carry a pistol. Childers was on trial for manslaughter for an incident he claimed was self-defense. The trial judge allowed into evidence, over defendant’s objection, that Childers was in violation of this ordinance when the altercation took place. The Alabama Supreme Court held that (1) the ordinance was invalid for being in conflict with the preemptive state statute, and (2) Childers was entitled to a new trial because the jury could have been misled in its deliberations by the false information that he had no legal right to have the pistol on his person at the time of the shooting.

Alabama Attorney General Opinion #2001-267

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....

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.

Arizona

McMann v. City of Tucson, 47 P. 3d 672 (Ariz. App. Div. 2, 2002)

The city enacted an ordinance requiring that a condition of renting the Tucson Convention Center for gun shows would be that all sales of firearms must be subject to an instant background check. The state’s preemption statute prohibited local governments from enacting any ordinance “relating to the transportation, possession, carrying, sale or use of firearms.” The court reasoned, however, that the ordinance in question was not a regulation of the sale of firearms under the city’s general police powers. Arizona charter cities are deemed to be sovereign in all of their “municipal affairs.” This has been construed to mean those matters of “solely local concern.” Included in this general field is the sale and disposition of city property. The court held that the leasing of the convention center constituted a temporary “disposition” of city property, and was a matter of solely local concern, and therefore in the sphere in which the city could enact regulations free from legislative interference. **Note:** As a result of this decision, the Arizona legislature in 2003 revised the preemption statute to close the loophole. It added language specifically prohibiting municipalities from regulating, in a manner different from state law, the sale or transfer of firearms on property that it owns or operates; and forbids leases or use permits to be considered a “disposition” of city property.

Note: I do not include here a discussion of City of Tucson v. Rineer, 971 P. 2d 207 (Ariz. App. Div. 2, 1998) because it dealt with an earlier and much less complete preemption statute—one that explicitly provided that local ordinances regulating various matters related to firearms would not be construed to be in conflict with state law.

California

People v. Jenkins, 24 Cal. Rptr 410 (Cal. Super. 1962)

State statutes on firearms, though intricate, did not fully occupy the field, nor demonstrate any clear legislative intent to preclude more restrictive local legislation. A Los Angeles ordinance that prohibited conduct not prohibited by statute was, therefore, valid and enforceable.

Galvan v. Superior Court of City and County of San Francisco, 76 Cal. Rptr. 642 (Cal. 1969)

State supreme court held that local ordinance requiring registration of almost all firearms was not preempted by complex mass of state statutes, because the statutes dealt with and precluded further local legislation with respect to licenses and permits for *people* but not registration of *guns*. The city could not impose additional requirements or restrictions on state-issued licenses or permits, but could compile a catalog of firearms owned by persons granted licenses or permits. (Two years later the legislature amended the firearms statutes so as to more completely occupy the entire field, thus preempting this type of local ordinance.)

Doe v. City and County of San Francisco, 186 Cal. Rptr. 380 (Cal. App. 1982)

San Francisco enacted an ordinance prohibiting the possession of handguns within the city, excepting persons possessing a state-issued handgun carry permit (which permits were not exactly given out freely). Because the ordinance did not establish a licensing or permitting system, or have any effect on persons possessing state permits, the city argued that it did not conflict with the state statutes preempting local regulation on those matters. The court observed, however, that the effect of the ordinance was to require citizens to obtain a carry permit merely to continue possessing handguns in their homes, and required people who wished to purchase handguns to obtain such a state permit, where none was previously required. Therefore, the court held that

in substance [the ordinance] creates a licensing requirement where one had not previously existed. It violates the Legislature's statement of intention that the provisions of the Penal Code "shall be exclusive of all local regulations, *relating to* registration or licensing of commercially manufactured firearms, ..." (Emphasis added.) If not a direct licensing requirement, the San Francisco Handgun Ordinance is at least a local regulation *relating to licensing*.

The court also held, in the alternative, that even if the ordinance did not enter an area preempted by the state, it conflicted with a specific provision of the state penal code. The statute provided that "no permit or license...shall be required" to keep a handgun at one's home or place of business. Because the ordinance had the effect of requiring a permit to

keep a handgun in one's home, it conflicted with the statute and was therefore invalid:

A restriction on requiring permits and licenses necessarily implies that possession is lawful without a permit or license. It strains reason to suggest that the state Legislature would prohibit licenses and permits but allow a ban on possession.

Great Western Shows, Inc. v. County of Los Angeles, 44 P. 3d 120 (Cal. 2002)

State statutes regulating gun shows did not wholly occupy the field or preempt further local regulation of gun shows.

Nordyke v. King, 44 P. 3d 133 (Cal. 2002)

Alameda County enacted an ordinance banning all firearms from county property. It excluded from the scope of the ban the principal buildings in which county business is conducted, because those are covered in a state statute. (Basically, the statute prohibits bringing guns into the main business buildings of state and local governments; one of many exceptions is that people with carry permits are exempted from this prohibition.) The effect of this ordinance on the plaintiffs was to make a gun show in a county building impossible or at least unfeasible. The state supreme court rejected the argument that the ordinance was invalid because it effectively disallowed gun shows, which the statutes expressly allowed. Because the state legislature had left room for counties to regulate or even ban gun shows on their property, the court said, the ordinance was not preempted. The court declined to comment on whether the ordinance conflicted with state law or was otherwise invalid for circumstances beyond the narrow ones presented by the facts of this case.

Comment: There are actually many more preemption cases in California. They generally don't merit much comment, because they all revolve around the fact that the California legislature has never occupied or preempted the field of firearms generally, but has occupied it a piece at a time. The courts therefore have to struggle with whether a local ordinance is or is not intruding into the specific sub-topic of some part of the complex state penal code related to firearms. In other words, the California cases are intensely fact-specific, and don't shed much light on the larger questions of preemption doctrine as it relates to firearms.

Connecticut

Dwyer v. Farrell, 475 A. 2d 257 (Conn. 1984)

The City of New Haven enacted an ordinance basically limiting firearm sales to federally licensed dealers with storefront operations, properly zoned as businesses. State statutes already placed severe regulatory restrictions on private sales of firearms—including requiring a permit for each gun to be sold, the application for which had to specify even *where* it was to be offered for sale—but did allow them.

Although the statutory pattern evinces a legislative intent to regulate the flow of handgun sales and restrict the right to sell to those establishing the requisite qualifications, it is also clear that the General Assembly anticipated that persons meeting those qualifications, including those living in residential neighborhoods and nondealers, would be permitted to sell at retail a pistol or revolver. The legislature has struck the balance between totally unregulated sales and a complete ban on sales of handguns at retail.

In passing this handgun ordinance, the city has placed two important and substantial restrictions on the sale at retail of handguns which most residents of the city can never overcome: (1) that the seller be a dealer, and (2) that the sale occur on premises located in an area zoned as a business district. By placing these restrictions on the sale of handguns, the ordinance effectively prohibits what the state statutes clearly permit.

...
The fact that a local ordinance does not expressly conflict with a statute enacted by the General Assembly will not save it when the legislative purpose in enacting the statute is frustrated by the ordinance. Here the New Haven ordinance removes an entire class of persons as potential sellers of handguns at retail. The state permit is rendered an illusory right because a casual seller residing in a nonbusiness zone can have no real hope of ever conforming to the local ordinance. In this respect the local ordinance conflicts with the legislative intent as expressed in the applicable statutes. The city has removed a right that the state permit bestows and thus has exceeded its powers.

Florida

Rinzler v. Carson, 262 So. 2d 661 (Fla. 1972)

A state statute prohibited the possession of machine guns, but exempted persons whose firearms had been duly registered in accordance with federal law. The City of Jacksonville had enacted a similar banning ordinance, but granted no such exemption. The court held that the ordinance could not be enforced against a person who had complied with the state statute and federally registered his weapon:

It is clear that the provisions of the ordinance are contrary to the statute for the reason that the statute excepts from its operation firearms which are lawfully owned and possessed under provisions of federal law. Municipal ordinances are inferior in stature and subordinate to the laws of the state. Accordingly, an ordinance must not conflict with any controlling provision of a state statute, and if any doubt exists as to the extent of a power attempted to be exercised which may affect the operation of a state statute, the doubt is to be resolved against the ordinance and in favor of the statute. A municipality cannot forbid what the legislature has expressly licensed, authorized or required, nor may it authorize what the legislature has expressly forbidden.... In order for a municipal ordinance to prohibit that which is allowed by the general laws of the state there must be an express legislative grant by the state to the municipality authorizing such prohibition. McQuillin, Municipal Corporations, Vol. 5, Section 15.20.

National Rifle Association v. City of South Miami, 812 So. 2d 504 (Fla. App. 3 Dist., 2002)

Florida had an impressively comprehensive preemption statute:

(1) PREEMPTION.--Except as expressly provided by general law, the Legislature hereby declares that it is occupying the whole field of regulation of firearms and ammunition, including the purchase, sale, transfer, taxation, manufacture, ownership, possession, and transportation thereof, to the exclusion of all existing and future county, city, town, or municipal ordinances or regulations relating thereto. Any such existing ordinances are hereby declared null and void.

....

(3) POLICY AND INTENT.--

(a) It is the intent of this section to provide uniform firearms laws in the state; to declare all ordinances and regulations null and void which have been enacted by any jurisdictions other than state and federal, which regulate firearms, ammunition, or components thereof; to prohibit the enactment of any future ordinances or regulations relating to firearms, ammunition or components thereof unless specifically authorized by this section or general law; and to require local jurisdictions to enforce state firearms laws."

The City of South Miami apparently had difficulty comprehending this statute, and enacted an ordinance requiring locks on firearms stored within the city. The court had no difficulty finding the ordinance void, and barely discussed it other than to declare it preempted. The appellate case is really about the timing of declaratory judgment actions; the trial court had erroneously decided that there was not yet a justiciable controversy.

Florida Attorney General Opinion #2000-42

This opinion dealt with the South Miami ordinance, prior to the NRA v. South Miami decision. The AG believed that the ordinance was valid. First, it did not conflict with the intention of the preemption statute, which was to prevent local intrusion on the right to keep and bear arms; since the ordinance did not restrict the right to acquire, own, or use firearms, it did not frustrate the legislature's purpose. Second, complying with the ordinance would not require a person to violate the state firearms statutes, and vice-versa. Third, the statute did not specifically mention *storage* as one of the things local governments were prohibited from regulating, and *possession* did not necessarily include *storage*.

Illinois

Arrington v. City of Chicago, 259 N.E. 2d 22 (Ill. 1970)

Prison guards challenged city ordinance that prohibited them from carrying guns while commuting to and from work, as in conflict with a statute that expressly allowed it. The court reached the obvious conclusion: "the ordinance is invalid to the extent that it prohibits what the statute expressly permits."

Iowa

Iowa Attorney General Opinion #03-4-1

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)?

...

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.”

...

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.

...

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)....

[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).

...

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 [sic] or controlled buildings does not itself directly interfere with this purpose.

...

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.

Comment: This is a very strange opinion, for at least three reasons. First, it seems obvious that the kind of municipal ordinance discussed does, in fact, interfere with the presumed legislative purpose of ensuring uniform regulations in all of the state's jurisdictions—to the detriment of a citizen with a permit to conduct his business anywhere in the state without having to concern himself with special local laws. Second, the reasoning directly contradicts the state supreme court's clear direction on how to assess whether an ordinance conflicts with a statute, quoted in the AG's opinion (though not included in the excerpts above): "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). Here, the statute plainly permits the act of carrying a pistol within public buildings (assuming the person has a permit and is in accordance with its terms), while the ordinance plainly prohibits precisely the same act. Third, the statute preempts cities from regulating the "possession" and "lawful transportation" of firearms; it's difficult to see how a restriction on carrying is *not* a restriction on possession and transportation. Overall, my view is that this AG opinion strains to justify a less-than-obvious conclusion. It could have simply quoted the sentence from the state supreme court, and pointed out that by that standard the ordinance conflicts with the statute and would therefore likely be void. That the opinion goes to such great lengths to avoid the obvious answer strongly suggests to me that a politically motivated conclusion preceded and drove the legal reasoning. This kind of legal sleight-of-hand is possible because the preemption statute invites the invention of loopholes by listing specific sub-topics about firearms that are preempted, rather than declaring the entire subject preempted and fully occupied by the state.

Kansas

Junction City v. Lee, 532 P. 2d 1292 (Kan. 1975)

City ordinance was more restrictive than state firearms statute, because it eliminated the *mens rea* requirement for the crime of carrying a pistol, and criminalized both open and concealed

carry, where the statute forbade only concealed carry. The state supreme court decided that the ordinance did not conflict with the statute:

A test frequently used to determine whether conflict in terms exists is whether the ordinance permits or licenses that which the statute forbids or prohibits that which the statute authorizes; if so, there is conflict, but where both an ordinance and the statute are prohibitory and the only difference is that the ordinance goes further in its prohibition but not counter to the prohibition in the statute, and the city does not attempt to authorize by the ordinance that which the legislature has forbidden, or forbid that which the legislature has expressly authorized, there is no conflict (see 56 Am.Jur.2d, Municipal Corporations, Etc., s 374, p. 408-409).

The court also rejected the argument that the legislature had completely occupied or preempted the entire subject of firearms regulation:

Legislative intent to preempt is not to be so simplistically found. Our state weapons control law is concerned with the protection of human life and well-being. Absent clear expression to that effect, we cannot conceive that the legislature intended by its enactment, comprehensive though it be, to exclude cities' traditional resources from that endeavor. The subject of weapons control is such that an exclusive state policy is not necessarily required; at any time the legislature deems otherwise it still retains optional control of cities' actions under the home rule amendment and can so declare by enacting 'conflicting' law. It can undo that which a city has done.

Kentucky

Kentucky Attorney General Opinion #93-071

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?

...

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).

Kentucky Attorney General Opinion #99-10

This Office has been asked to opine on whether Louisville Ordinance 135.05 regulating concealable firearms (the "Ordinance") conflicts with KRS 65.870....

The Ordinance is invalid under the Home Rule Statute because it broadly attempts to regulate the ownership, possession and carrying of firearms in private homes, which is expressly prohibited by KRS 65.870. To date, there are no cases interpreting KRS 65.870, but, as noted in OAG 93-71, its language is unambiguous. KRS 65.870 expressly prohibits any city from "occupy[ing] any part of the field of regulation of the transfer, ownership, possession, carrying or transportation of firearms, ammunition or components of firearms or combination thereof." Although the Ordinance specifically regulates "concealable firearms," there is no exception in KRS 65.870 that excepts concealable firearms from its general prohibition on municipal firearm legislation. If the statute does not contain any exceptions, then no exceptions can be read into it, and its plain and unambiguous language must be given effect. See *Commonwealth v. Shivley*, Ky., 814 S.W.2d 572, 573-74 (1991).

Another reason for employing the plain meaning of the statute's terms is due to the lack of specific definitions in KRS 65.870. KRS 65.870 does not define the terms "ownership," "possession" or "carrying." Courts have noted that "[w]here there is no specific definition, we must construe the words of the statute within their common usage." *Alliant Health System v. Kentucky Unemployment Insurance Commission*, Ky.App., 912 S.W.2d 452, 454 (1995), citing *Kentucky Unemployment Insurance Commission v. Jones*, Ky.App., 809 S.W.2d 715 (1991). Additionally, KRS 446.080 mandates that words and phrases in a statute "shall be construed

according to the common and approved usage of language.” See *Withers v. University of Kentucky*, 939 S.W.2d 340 (1997).

The common and approved usage of the words in KRS 65.870 highlights the conflict between the statute and the Ordinance. KRS 65.870 prohibits a city from legislating regarding the “ownership” and “possession” of firearms. Webster’s II New Riverside University Dictionary, 1984, defines “own” as “To have or possess.” It defines “possess,” as “1. To have as property: own . . . 5. To control or maintain in a given condition.” The Ordinance conflicts with the statute by mandating that firearms must be kept in a securely locked box, thus limiting citizens’ full rights of ownership and possession of firearms....

In conclusion, because the General Assembly passed KRS 65.870 which expressly prohibits cities from legislating regarding the ownership, possession or carrying of firearms, the Ordinance is invalid under the Home Rule Statute.

Maine

Schwanda v. Bonney, 418 A. 2d 163 (Me. 1980)

The statutory requirement for a municipality to issue a license to carry a concealed firearm was simply that the applicant be “of good moral character.” The Town of Freeport had by ordinance imposed an additional criterion: that the license be “required for the personal safety and protection of the licensee or required in connection with the employment of the licensee.” Plaintiff’s reason for requesting the permit did not fulfill this requirement, and he was denied the license. The state supreme court held that the Freeport ordinance was invalid, as it conflicted with the state statute. Furthermore, the ordinance was not within the scope of authority of municipalities to regulate:

Neither the [State] Constitution, nor the home rule statute, so-called, gives the Town of Freeport the power to regulate, in the manner the defendants claim, respecting the issuance of licenses to carry concealed weapons. The Constitution of the State of Maine, in Article VIII, Part Second, Section 1, provides:

The inhabitants of any municipality shall have the power to alter and amend their charters on all matters, not prohibited by Constitution or general law, which are local and municipal in character (Effective November 17, 1969).

The licensing act has statewide application; it does not involve “matters... which are local and municipal in character.”

Maryland

Montgomery County v. Atlantic Guns, Inc., 489 A. 2d 1114 (Md. 1985)

The Montgomery County Council, against the advice of the county attorney, enacted an ordinance requiring that any sale of ammunition take place in person, that the purchaser provide the retailer with a valid firearm certificate, and that the caliber of ammunition match that of the firearm described in the certificate. A retailer challenged the ordinance, arguing that it violated the state's preemption statute, which provided that

all restrictions imposed by the law, ordinances, or regulations of the political subdivisions on the wearing, carrying, or transporting of handguns are superseded by this Act, and the State of Maryland hereby preempts the right of the political subdivisions to regulate said matters.

The county argued that an ordinance restricting the sale of ammunition did not tread on preempted ground, because selling ammunition was not a regulation “on the wearing, carrying, or transporting of handguns.” The state supreme court disagreed. It reasoned that the state's complex firearms laws—particularly those on the carrying of handguns—could not plausibly be thought to refer only to unloaded guns, while leaving the carrying of loaded guns as a valid area of local regulation. Ammunition is therefore impliedly included whenever statutes describe and control the usage of firearms. Thus, a restriction on ammunition sales is, *de facto*, a restriction on people's ability to wear and carry (loaded) handguns, and the ordinance is preempted.

Massachusetts

Town of Amherst v. Attorney General, 502 N.E. 2d 128 (Mass. 1986)

The town enacted an ordinance (called a “by-law” there) severely restricting conditions under which a firearm could be discharged. The court had to determine whether the ordinance was valid, in light of the Attorney General's declaration that it irreconcilably conflicted with state hunting statutes—prohibiting, in some circumstances, what the statute would allow. He had also opined that such an ordinance could be allowed in a densely populated city—in fact, he had approved of similar ordinances in other municipalities—but not in Amherst, which had some very sparsely populated areas suitable for hunting. The court rejected this argument, saying that there was nothing in the hunting code to allow distinguishing between municipalities on the basis of population density. “The Attorney General is not free to make a distinction which the Legislature has not made.” The court

said it was bound by the principal that “every presumption is to be made in favor of the validity of municipal by-laws.” The court then held that there was no clear legislative intention to preclude municipal legislation. Therefore, the ordinance was valid unless it conflicted with a statute.

A local enactment must prevent the achievement of a clearly identifiable purpose of State legislation in order to be struck down as inconsistent with that State legislation.... Merely [the] existence of legislation on a subject... is not necessarily a bar to the enactment of local ordinances and by-laws exercising powers or functions with respect to the same subject. If the State legislative purpose can be achieved in the face of a local ordinance or by-law on the same subject, the local ordinance or by-law is not inconsistent with the State legislation.

The court acknowledged that the hunting statutes were detailed and comprehensive. Nevertheless,

there is no indication in [them] that a municipality cannot prohibit the use of firearms.... [T]he Amherst by-law in no way frustrates [the purpose of] those sections. The mere existence of statutory provision for some matters within the purview of the by-law will not render [the by-law] invalid as repugnant to law.

Michigan

Michigan Coalition for Responsible Gun Owners v. City of Ferndale, 662 N.W. 2d 864 (Mich. App. 2003)

Michigan’s Home Rule Act allows a chartered city to provide for

the exercise of all municipal powers in the management and control of municipal property and in the administration of the municipal government, whether such powers be expressly enumerated or not; for any act to advance the interests of the city, the good government and prosperity of the municipality and its inhabitants and through its regularly constituted authority to pass all laws and ordinances relating to its municipal concerns subject to the constitution and general laws of this state.

Michigan case law uses standard language for determining the validity of an ordinance alleged to be impermissible under a general statute:

[A] municipal ordinance is preempted by state law if 1) the statute completely occupies the field that ordinance attempts to regulate, or 2) the

ordinance directly conflicts with a state statute.

The plaintiffs in this case maintained that the ordinance was void on both grounds. Addressing the first, the court recited the four-part test previously established by the state supreme court:

First, where the state law expressly provides that the state's authority to regulate in a specified area of the law is to be exclusive, there is no doubt that municipal regulation is pre-empted.

Second, pre-emption of a field of regulation may be implied upon an examination of legislative history.

Third, the pervasiveness of the state regulatory scheme may support a finding of pre-emption. While the pervasiveness of the state regulatory scheme is not generally sufficient by itself to infer pre-emption, it is a factor which should be considered as evidence of pre-emption.

Fourth, the nature of the regulated subject matter may demand exclusive state regulation to achieve the uniformity necessary to serve the state's purpose or interest.

As to this last point, examination of relevant Michigan cases indicates that where the nature of the regulated subject matter calls for regulation adapted to local conditions, and the local regulation does not interfere with the state regulatory scheme, supplementary local regulation has generally been upheld.

However, where the Court has found that the nature of the subject matter regulated called for a uniform state regulatory scheme, supplementary local regulation has been held pre-empted.

The statute in question in this case provided:

A local unit of government shall not impose special taxation on, enact or enforce any ordinance or regulation pertaining to, or regulate in any other manner the ownership, registration, purchase, sale, transfer, transportation, or possession of pistols or other firearms, ammunition for pistols or other firearms, or components of pistols or other firearms, except as otherwise provided by federal law or a law of this state.

In 2000, Michigan adopted a shall-issue permit system. The statutory amendments included this provision:

Subject to section 5o and except as otherwise provided by law, a license to carry a concealed pistol issued by the county concealed weapon

licensing board authorizes the licensee to carry a pistol concealed on or about his or her person anywhere in this state.

§50 listed places in which a permit holder was not allowed to carry a pistol. Municipal buildings were not on the list. Nevertheless, the City of Ferndale enacted an ordinance prohibiting firearms within its buildings, even those carried by state-licensed individuals. The court appropriately noted:

Indisputably, if not preempted by state law, this ordinance would be a lawful exercise of the city of Ferndale's power to enact an ordinance that regulates the use of property it owns or controls.

In spite of this observation, the court had no difficulty finding that the preemption language prevented municipalities from regulating the carrying of firearms:

With the pronouncement in § 1102, the Legislature stripped local units of government of all authority to regulate firearms by ordinance or otherwise with respect to the areas enumerated in the statute, [FN10] except as particularly provided in other provisions of the act and unless federal or state law provided otherwise.

[FN10] Although the areas enumerated in the statute do not specifically include the "carrying" of a firearm, defendants do not suggest that the language of § 1102 does not encompass that concept. Indeed, it would be disingenuous to argue that the broad terms "transportation" and "possession" do not encompass "carrying."

The court thus dispensed with the need to consider the other three factors used to determine when the legislature has preempted a subject. However, the court paused to address an additional preemption argument put forward by amicus curiae, the Michigan Municipal League (an organization representing the interests of cities):

In the present case, it is readily apparent that the Ferndale ordinance regulates areas that § 1102 expressly prohibits. Section 1102 provides that a local unit of government shall not enact an ordinance pertaining to the transportation or possession of firearms, but the city of Ferndale does just that. Despite the clear language of the Legislature, amicus curiae contends in a conclusory fashion that § 1102 should not preempt ordinances like the Ferndale ordinance because the statute "is not clearly aimed at municipal control of activities within the confines of its own public buildings." However, the language of § 1102 is broad and all-encompassing. A state statute that prohibits a local unit of government from enacting "any ordinance or regulation" or regulating "in any other manner" the transportation or possession of firearms cannot reasonably be interpreted to exclude local ordinances that address the carrying of firearms in municipal buildings.

Because it concluded that the city was preempted from enacting the ordinance, the court did not reach the question of whether the specific provisions of the ordinance conflicted with any statute.

New York

New York Attorney General Opinion #89-75

You have requested an opinion as to whether the Village of Ellenville is preempted from enacting a local law which would prohibit persons from entering the village hall while possessing a firearm, gun or dangerous weapon of any description, including but not limited to handguns, pistols, target pistols, revolvers, rifles and shotguns.

A village is empowered to adopt local laws for the “government, protection, order, conduct, safety, health and well-being of persons or property therein” (Municipal Home Rule Law, § 10[1][ii][a][11]; see NY Const, Art IX, § 2 [c][10]; Village Law, § 4-412[1]). The power of a municipality to enact local laws which regulate the possession of firearms for the protection and safety of its inhabitants, however, must be considered in light of section 400.00(6) of the Penal Law.

...

“Any license issued pursuant to this section shall be valid notwithstanding the provisions of any local law or ordinance. ... A license to carry or possess a pistol or revolver, not otherwise limited as to place or time of restriction, shall be effective throughout the state, except that the same shall not be valid within the city of New York [except in certain circumstances] unless a special permit granting validity is issued by the police commissioner of that city”.

A license to carry a firearm, therefore, is valid anywhere in the State notwithstanding “the provisions of any local law or ordinance”. On its face, section 400.00(6) precludes a municipality from enacting a local law adding restrictions or limitations to licenses provided for in article 400.

...

Although section 400.00(6) of the Penal Law prohibits the village from regulating the licensing of firearms, there is support for the position that these provisions do not preclude the 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, the 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.

A municipal corporation possesses two kinds of power: (1) governmental and (2) proprietary. "In the exercise of the former the corporation is a municipal government, while as to the latter it is a corporate legal individual" (County of Herkimer v Village of Herkimer, 251 App Div 126, 128 [4th Dept, 1937]). Municipal corporations "in their private character as owners and occupiers of lands and houses, are regarded in the same light as individual owners and occupiers, and dealt with accordingly" (Bailey v Mayer, etc., of New York, 3 Hill 531, 541 [1842]).

...

In this light, section 400.00(6) of the Penal Law may be construed to preempt municipalities only to the extent that they act in their governmental capacities. So construed, the village in its proprietary capacity can prohibit in the village hall possession of firearms by persons who have unrestricted licenses, as well as all other weapons. Such a construction serves to protect the public interest. Section 400.00(6) should not be read to preclude the village from, for example, prohibiting possession of licensed firearms in the village court where violent felons may be arraigned. Should the village decide to prohibit possession of firearms in its village hall by those who have an unrestricted permit, it should do so in its proprietary, as opposed to its governmental, capacity. It may, for example, do so by resolution as an extension of its rules dealing with the use and maintenance of municipal buildings.

We conclude that a village may in its proprietary capacity prohibit a person who has an unrestricted license to carry a firearm from entering the village hall carrying or possessing a firearm covered by the license.

The Attorney General renders formal opinions only to officers and departments of the State government. This perforce is an informal and unofficial expression of views of this office.

Comment: As with the Iowa AG opinion, this one strains to avoid what it admits to be the facial reading of the statute. It cites no case law on point, and has apparently not been subsequently cited by any court, in New York or elsewhere.

Oregon

The leading relevant decision would be City of Portland v. Lodi, 782 P.2d 415 (Ore. App. 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). However, this decision was later overturned by the court sitting en banc in a sweeping

revision and clarification of how it would analyze conflicts between statutes and ordinances. The reversal does not say that the opposite conclusion should have been reached—only that the underlying analytical approach was erroneous. The Lodi decision therefore has no precedential or persuasive value for foreign jurisdictions.

Pennsylvania

Schneck v. City of Philadelphia, 383 A. 2d 227 (Pa. Cmwlth. 1978)

A Pennsylvania statute provided for the issuance of permits to carry concealed firearms. It also preempted local authority on the subject:

No county, municipality or township may in any manner regulate the lawful ownership, possession or transportation of firearms when carried or transported for purposes not prohibited by the laws of this commonwealth.

In spite of this prohibition, the City of Philadelphia enacted an ordinance establishing additional criteria for issuance of such a permit. The court noted that the city's home rule charter limited its powers:

Notwithstanding the grant of powers contained in this act, no city shall exercise powers contrary to, or in limitation or enlargement of, powers granted by acts of the General Assembly which are ...

- (b) Applicable in every part of the Commonwealth.
- (c) Applicable to all the cities of the Commonwealth.

The court held that enactment of the ordinance clearly exceeded the city's legislative grant of authority, and the ordinance itself irreconcilably conflicted with controlling state law.

Ortiz v. Commonwealth, 681 A. 2d 152 (Pa. 1996)

The cities of Philadelphia and Pittsburgh enacted ordinances banning "assault weapons." The legislature quickly responded by amending the state Uniform Firearms Act as follows:

No county, municipality or township may in any manner regulate the lawful ownership, possession, transfer or transportation of firearms, ammunition or ammunition components when carried or transported for the purposes not prohibited by the laws of this Commonwealth.

The cities filed suit to have this amendment declared in violation of the state constitutional and statutory provisions for the authority of home-rule chartered cities. The state supreme court pointed out that the home-rule provisions of both the state constitution and statute

explicitly made home-rule powers subject to preemption by the legislature, and easily reached the obvious conclusion:

The sum of the case is that the Constitution of Pennsylvania requires that home rule municipalities may not perform any power denied by the General Assembly; the General Assembly has denied all municipalities the power to regulate the ownership, possession, transfer or possession of firearms; and the municipalities seek to regulate that which the General Assembly has said they may not regulate. The inescapable conclusion, unless there is more, is that the municipalities' attempt to ban the possession of certain types of firearms is constitutionally infirm.

The cities insisted that there was indeed "more":

Next, appellants claim that various decisions of this court require that home rule municipalities may be restricted in their powers only when the General Assembly has enacted statutes on matters of statewide concern. Although we agree with appellants that the General Assembly may negate ordinances enacted by home rule municipalities only when the General Assembly's conflicting statute concerns substantive matters of statewide concern, this does not help the municipal appellants, for the matters at issue in this case are substantive matters of statewide concern.

The court disposed of this argument by citing the state constitution:

The right of the citizens to bear arms in defense of themselves and the State shall not be questioned.

Because the ownership of firearms is constitutionally protected, its regulation is a matter of statewide concern. The constitution does not provide that the right to bear arms shall not be questioned in any part of the commonwealth except Philadelphia and Pittsburgh, where it may be abridged at will, but that it shall not be questioned in any part of the commonwealth. Thus, regulation of firearms is a matter of concern in all of Pennsylvania, not merely in Philadelphia and Pittsburgh, and the General Assembly, not city councils, is the proper forum for the imposition of such regulation.

Texas

HC Gun & Knife Shows, Inc. v. City of Houston, 201 F. 3d 544 (5th Cir. 2000)

Houston enacted an ordinance requiring that all firearms on display at gun shows at city-

owned facilities had to be disabled by either trigger locks or removal of the firing pin, and all persons bringing firearms into the facility had to declare (register) them. The state preemption statute provided that a

municipality may not adopt regulations relating to the transfer, private ownership, keeping, transportation, licensing, or registration of firearms, ammunition, or firearm supplies.

Cities were still permitted to regulate the discharge of firearms, and the city asserted that this was the purpose of the ordinance, and it was therefore not preempted by the statute.

The district court rejected this contention, reasoning that, although the ordinance's disabling requirement (removal of firing pins or installation of trigger locks) prevents the discharge of firearms, the ordinance also seeks to regulate the transfer, private ownership, or keeping of firearms, which is prohibited by § 215.001(a). It concluded that, through the ordinance, the City "attempts to occupy all but a hair's width of the entire field of the regulation of gun shows"; and that, if the City's interpretation of § 215.001(b)(2) (discharge-exception) were accepted, it would "swallow [] the general rule preempting municipal regulation of firearms". We agree.

The court also easily found that the declaration/registration requirement directly conflicted with the statute, which expressly prohibited cities from registering firearms.

Vermont

State v. Rosenthal, 55 A. 610 (Vt. 1903)

This is the famous case that began Vermont's century-old practice of having no crime of carrying a firearm in public, open or concealed, no governmental permission needed, provided only that one not have criminal intent. That is what the state statute provided. The City of Rutland, acting under its city charter, had enacted a more restrictive ordinance, requiring a person to obtain permission from the mayor or chief of police to carry any weapon concealed within the city. If one had such permission, one could have criminal intent and carrying the weapon would not violate the ordinance. Although not couched so concisely, the court reasoned that the ordinance thus prohibited what the statute allowed, and allowed what the statute prohibited. The ordinance was thus in conflict with the statute, and void, because the charter limited the city's authority to enact ordinances to those "not repugnant to the Constitution or laws of this state."

Washington

Second Amendment Foundation v. City of Renton, 668 P. 2d 596 (Wash. App. 1983)

In 1961, Washington amended its 1935 Uniform Firearms Act to include this provision: “All laws or parts of laws of the state of Washington, its subdivisions and municipalities inconsistent herewith are hereby preempted and repealed.” The Foundation challenged a city ordinance prohibiting the possession of a firearm in an establishment where liquor is sold by the drink, whether the gun was concealed or not, and whether or not the person had a state permit to carry a concealed pistol. The Foundation argued that the Renton ordinance was preempted by the 1961 amendment to the UFA. The court rejected this argument: “This provision served only to repeal inconsistent municipal legislation in effect in 1961, and has no bearing on the present case.” Thus disposing of the preemption question, the court turned to the issue of conflict: “The other test of preemption is whether the ordinance permits or licenses that which the statute forbids, or the statute permits or licenses that which the ordinance forbids.” Although a state permit would not prohibit its holder from carrying a pistol into a bar, the court held that there was no conflict, and, apparently, that there would be a conflict only if an ordinance prohibited *all* of the conduct allowed under the statutes: “While an absolute and unqualified local prohibition against possession of a pistol by the holder of a state permit would conflict with state law, an ordinance which is a limited prohibition reasonably related to particular places and necessary to protect the public safety, health, morals and general welfare is not preempted by state statute.” The opinion notes that, during the pendency of the case, the legislature had again amended the UFA to prohibit any local ordinance inconsistent with state gun laws. (The court probably should have declared the case to be moot, in light of that statutory amendment.)

City of Seattle v. Ballsmider, 856 P. 2d 1113 (Wash. App. Div. 1, 1993)

This isn't really a good case for the study of preemption doctrine, because the central legal question was an apparent conflict between two statutes—or at least very poor drafting of them—one preempting local authority to regulate the discharge of firearms and one seeming to allow such regulation, in spite of the preemption statute.

Washington Attorney General Opinion #82-14

On the question of whether a municipality may validly enact an ordinance prohibiting the sale or possession of a handgun, the AG gave an answer similar to that of the SAF v. Renton court:

This perception of the statutes thus led us, in turn, to the recognition of a distinction between the validity of (a) an absolute, unqualified, local

prohibition against possession of a concealed handgun by the holder of a state concealed weapon permit--at any time or place--and (b) a limited prohibition related only to particular times or places. The former is invalid under state law but the latter is not.

For the same reason, the AG opined that a local ordinance banning all firearms from school grounds would not conflict with state law, even though the statutes would allow a permit-holder to carry a pistol on school property.

Washington Attorney General Opinion #83-14

This basically repeated the conclusions of the previous opinion, now bolstered by the SAF v. Renton decision.