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M E M O R A N D U M**

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To: Chuck Huckleberry, County Administrator  
From: Samuel E. Brown, Chief Civil Deputy Attorney  
Date: August 30, 2021  
Subject: Gun Shows at the Pima County Fairgrounds/Proposed Proclamation Limiting Gun Vendors

**ISSUES:**

1. Can the Board of Supervisors (BOS) impose contract terms on the Southwestern Fair Commission (SFC) to prohibit the use of the Pima County fairgrounds for gun shows?
2. Can the BOS amend the management agreement with the SFC to prohibit events at the fairgrounds regarding the sale of firearms?
3. Can the BOS require that only Federal Firearms License Vendors be allowed to sell firearms at gun shows held on Pima County owned property?

**ANSWER:** No, per A.R.S. § 13-3108.

**DISCUSSION/ANALYSIS:**

The controlling authority with regard to the issues outlined above is A.R.S. §13-3108. That statute is restrictive and would not allow the BOS to impose contract terms on the SFC that would prohibit the use of the fairgrounds for gun shows. Likewise, an action amending the management agreement with the SFC to prohibit the sale of firearms on fairgrounds would likely be considered a violation of the statute. Finally, an action resulting in limiting gun sales on

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county property to federally licensed vendors is also likely prohibited by the statute.

Per the statute's title, any rules, regulations, ordinances of a political subdivision of the state, relating to firearms, shall be superseded by the law as outlined in A.R.S. § 13-3108. Any ordinance, regulation, rule, or similar tool enacted by a political subdivision in violation of A.R.S. § 13-3108, **is subject to serious and significant penalties** as outlined in A.R.S. § 13-3108 (H), (I), (J), (K). The damages/penalties outlined in the statute include declaratory and injunctive relief, a civil penalty up to \$50,000.00, termination from employment, damages to the adversely affected organization bringing suit, attorneys' fees and costs. "It is not a defense that the political subdivision was acting in good faith or on the advice of counsel." *Id.* at (H). Note that A.R.S. § 41-194.01 allows the attorney general to investigate any ordinance, regulation, order, or other official action taken by a governing body. And, if the attorney general concludes that the ordinance, regulation, order, or action violates any provision of state law or the Constitution of Arizona, it may result in the loss of state shared revenue.

Given the above, I cannot recommend as lawful imposing contract terms on SFC that effectively result in gun regulation by the County, unless said regulation was as, or less, restrictive as State regulations. In other words, if the State required a federal license to sell firearms on state property, the County could require the same on County property. Per the law as outlined in A.R.S. § 13-3108, "A political subdivision of this state shall not enact any rule or ordinance that relates to firearms and is more prohibitive than or that has a penalty that is greater than any state law penalty. A political subdivision's rule or ordinance that relates to firearms and that is inconsistent with or more restrictive than state law ....is null and void." A.R.S. § 13-3108(D).

With respect to adding contract terms within the Board's contract with its fairgrounds contractor, which would prohibit gun shows at the fairgrounds, the statute at issue outlines that a political subdivision is not authorized "to regulate the sale or transfer of firearms on property it owns, leases, operates, or controls in a manner that is different than or inconsistent with state law." A.R.S. § 13-3108(G)(3)(a). Therefore, any contract provision between the BOS and the fairgrounds contractor that disallows the use of the fairgrounds for gun shows suffers the same defect – it is likely to be viewed by a reviewing court as an action to regulate the sale of firearms. One could potentially argue that a contract provision is not a "regulation" of the sale or transfer of firearms, as that term is used in A.R.S. § 13-3108(G)(3)(a). That argument, however, will most likely fail because the lease at issue with the fairgrounds' contractor is not a transfer of property, and the fairgrounds would still be considered under the control of the County. *Id.*

Likewise, an action to limit the sale of firearms on Pima County owned property to federal firearms licensed vendors, would likely be viewed as an attempt to enact a rule by a political subdivision that restricts the sale of firearms on county property. "...a political subdivision of this state shall not enact any...rule...relating to the...sale...of firearms or ammunition...in this state." A.R.S. § 13-3108(A).

#### **RECOMMENDATIONS:**

These actions are likely unlawful and therefore not advisable as they will likely expose the county to serious penalties outlined in the statutes referenced above.