



## MEMORANDUM

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To: C.H. Huckelberry, Pima County Administrator

From: Andy Flagg, Chief Civil Deputy County Attorney 

Date: April 2, 2018

Subject: Gun Shows on County-Leased Property Including the Pima County Fairgrounds

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In your memorandum dated March 26, 2018, you asked (1) if the County could prohibit gun shows or sales on County property, and (2) if the County could adopt very specific background-check requirements or other rules regarding such sales. The short answer to the first question is very likely no; the short answer to the latter is definitely no. While I add an arguable caveat specific to the Fairgrounds, I ultimately believe the answers with respect to the Fairgrounds are no different.

Under A.R.S. § 13-3108(A), a full copy of which is attached, political subdivisions of the state cannot "enact any ordinance, rule or tax relating to the transportation, possession, carrying, sale, transfer, purchase, acquisition, gift, devise, storage, licensing, registration, discharge or use of firearms or ammunition or any firearm or ammunition components or related accessories in this state." The statute also prohibits a political subdivision from "requir[ing] or maintain[ing] a record in any form, whether permanent or temporary, including a list, log or database, of any of the following . . . [e]xcept in the course of law enforcement investigation, any identifying information of a person who owns, possesses, purchases, sells or transfers a firearm." § 13-3108(C)(2). Finally, as relevant here, the statute further provides 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." § 13-3108(G)(3).

Based on this statute, the County clearly cannot imposed background-check requirements or other rules more stringent than those required by state law on its property. Whether it could ban gun shows entirely on County-owned property is a closer question because one could argue that *banning* gun shows is not "regulat[ing] the sale or transfer of firearms," and that the statute should

not be read to force a government acting as a landowner to let its property to a particular user. In my view, this argument stands little chance of success. The statute is clearly aimed (in part) at stopping local governments from imposing stricter requirements on gun sales than those in state law—it would be a strange result if outright bans were permitted. Moreover, the statute expressly applies to political subdivisions acting in their “proprietary” capacities, which would include acting as a landowner.

There is a possible caveat specific to the Fairgrounds. The Fairgrounds are actually managed by a non-profit, the Southwestern Fair Commission, Inc., under A.R.S. § 11-256.01. Thus, while the Board may specify the uses to which the Fairgrounds are put, it is actually the Southwestern Fair Commission that controls specific uses, under a management agreement with the County. It is conceivable that the Southwestern Fair Commission could attempt to ban gun shows or sales at the Fairgrounds or impose background-check or other requirements of its own accord. In that case, there may be an argument that the Southwestern Fair Commission, acting independently of the County, can do what the County could not. This argument, however, I would also expect to fail. Even if the Southwestern Fair Commission is not a “political subdivision” itself for purposes of § 13-3108, it would likely be viewed as acting as an instrumentality of the County.

Enc.

13-3108. Firearms regulated by state; state preemption; injunction; civil penalty; cause of action; violation; classification; definition

A. Except as provided in subsection G of this section, a political subdivision of this state shall not enact any ordinance, rule or tax relating to the transportation, possession, carrying, sale, transfer, purchase, acquisition, gift, devise, storage, licensing, registration, discharge or use of firearms or ammunition or any firearm or ammunition components or related accessories in this state.

B. A political subdivision of this state shall not require the licensing or registration of firearms or ammunition or any firearm or ammunition components or related accessories or prohibit the ownership, purchase, sale or transfer of firearms or ammunition or any firearm or ammunition components, or related accessories.

C. A political subdivision of this state shall not require or maintain a record in any form, whether permanent or temporary, including a list, log or database, of any of the following:

1. Any identifying information of a person who leaves a weapon in temporary storage at any public establishment or public event, except that the operator of the establishment or the sponsor of the event may require that a person provide a government issued identification or a reasonable copy of a government issued identification for the purpose of establishing ownership of the weapon. The operator or sponsor shall store any provided identification with the weapon and shall return the identification to the person when the weapon is retrieved. The operator or sponsor shall not retain records or copies of any identification provided pursuant to this paragraph after the weapon is retrieved.

2. Except in the course of a law enforcement investigation, any identifying information of a person who owns, possesses, purchases, sells or transfers a firearm.

3. The description, including the serial number, of a weapon that is left in temporary storage at any public establishment or public event.

D. 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, whether enacted before or after July 29, 2010, is null and void.

E. A political subdivision of this state shall not enact any ordinance, rule or regulation limiting the lawful taking of wildlife during an open season established by the Arizona game and fish commission unless the ordinance, rule or regulation is consistent with title 17 and rules and orders adopted by the Arizona game and fish commission. This subsection does not prevent a political subdivision from adopting an ordinance or rule restricting the discharge of a firearm within one-fourth mile of an occupied structure without the consent of the owner or occupant of the structure. For the purposes of this subsection:

1. "Occupied structure" means any building in which, at the time of the firearm's discharge, a reasonable person from the location where a firearm is discharged would expect a person to be present.

2. "Take" has the same meaning prescribed in section 17-101.

F. This state, any agency or political subdivision of this state and any law enforcement agency in this state shall not facilitate the destruction of a firearm or purchase or otherwise acquire a firearm for the purpose of destroying the firearm except as authorized by section 13-3105 or 17-240.

G. This section does not prohibit a political subdivision of this state from enacting and enforcing any ordinance or rule pursuant to state law or relating to any of the following:

1. Imposing any privilege or use tax on the retail sale, lease or rental of, or the gross proceeds or gross income from the sale, lease or rental of, firearms or ammunition or any firearm or ammunition components at a rate that applies generally to other items of tangible personal property.

2. Prohibiting a minor who is unaccompanied by a parent, grandparent or guardian or a certified hunter safety instructor or certified firearms safety instructor acting with the consent of the minor's parent, grandparent or guardian from knowingly possessing or carrying on the minor's person, within the minor's immediate control or in or on a means of transportation a firearm in any place that is open to the public or on any street or highway or on any private property except private property that is owned or leased by the minor or the minor's parent, grandparent or guardian. Any ordinance or rule that is adopted pursuant to this paragraph shall not apply to a minor who is fourteen, fifteen, sixteen or seventeen years of age and who is engaged in any of the following:

(a) Lawful hunting or shooting events or marksmanship practice at established ranges or other areas where the discharge of a firearm is not prohibited.

(b) Lawful transportation of an unloaded firearm for the purpose of lawful hunting.

(c) Lawful transportation of an unloaded firearm for the purpose of attending shooting events or marksmanship practice at established ranges or other areas where the discharge of a firearm is not prohibited.

(d) Any activity that is related to the production of crops, livestock, poultry, livestock products, poultry products or ratites or storage of agricultural commodities.

3. The regulation of commercial land and structures, including a business relating to firearms or ammunition or their components or a commercial shooting range in the same manner as other commercial businesses. Notwithstanding any other law, this paragraph does not:

(a) Authorize a political subdivision 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. For the purposes of this subdivision, a use permit or other contract that provides for the use of property owned, leased, operated or controlled by a political subdivision shall not be considered a sale, conveyance or disposition of property.

(b) Authorize a political subdivision through a zoning ordinance to prohibit or otherwise regulate the otherwise lawful discharge of a firearm or maintenance or improvements directly related to the discharge on a private lot or parcel of land that is not open to the public on a commercial or membership basis.

(c) Authorize a political subdivision to regulate the otherwise lawful discharge of a firearm or maintenance or improvements directly related to the discharge on land that is used for agriculture or other noncommercial purposes.

4. Regulating employees or independent contractors of the political subdivision who are acting within the course and scope of their employment or contract. For the purposes of this paragraph, acting within the course and scope of their employment or contract does not include the lawful possession, carrying, transporting or storing of a firearm or other weapon:

(a) On real property that is owned by the employee or independent contractor.

(b) In or on a private vehicle or craft that is owned or operated by the employee or independent contractor unless the ordinance or rule violates another applicable federal or state law or regulation.

(c) Pursuant to section 12-781.

5. Limiting or prohibiting the discharge of firearms in parks and preserves except:

(a) As allowed pursuant to chapter 4 of this title.

(b) On a properly supervised range as defined in section 13-3107.

(c) In an area approved as a hunting area by the Arizona game and fish department. Any such area may be closed when deemed unsafe by the director of the Arizona game and fish department.

(d) To control nuisance wildlife by permit from the Arizona game and fish department or the United States fish and wildlife service.

(e) By special permit of the chief law enforcement officer of the political subdivision.

(f) As required by an animal control officer in performing duties specified in section 9-499.04 and title 11, chapter 7, article 6.

(g) In self-defense or defense of another person against an animal attack if a reasonable person would believe that deadly physical force against the animal is immediately necessary and reasonable under the circumstances to protect oneself or the other person.

H. Any ordinance, regulation, tax or rule that is enacted by a political subdivision in violation of this section is invalid and subject to a permanent injunction against the political subdivision from enforcing the ordinance, regulation, tax or rule. It is not a defense that the political subdivision was acting in good faith or on the advice of counsel.

I. If a court determines that a political subdivision has knowingly and wilfully violated this section, the court may assess a civil penalty of up to fifty thousand dollars against the political subdivision.

J. If a court determines that a person has knowingly and wilfully violated this section while acting in the person's official capacity through enactment of any ordinance, regulation, tax, measure, directive, rule, enactment, order or policy, the person may be subject to termination from employment to the extent allowable under state law.

K. A person or an organization whose membership is adversely affected by any ordinance, regulation, tax, measure, directive, rule, enactment, order or policy that is in violation of this section may file a civil action for declaratory and injunctive relief and actual damages against the political subdivision in any court of this state having jurisdiction over any defendant in the action. If the plaintiff prevails in the action, the court shall award both:

1. Reasonable attorney fees and costs.

2. The actual damages incurred not to exceed one hundred thousand dollars.

L. A violation of any ordinance established pursuant to subsection G, paragraph 5 of this section is a class 2 misdemeanor unless the political subdivision designates a lesser classification by ordinance.

M. For the purposes of this section, "political subdivision" includes a political subdivision acting in any capacity, including under police power, in a proprietary capacity or otherwise.