



HENRY McMASTER
ATTORNEY GENERAL

March 5, 2009

The Honorable William R. Whitmire
Member, House of Representatives
District No. 1 - Oconee County
436-D Blatt Building
Columbia, South Carolina 29211

Dear Representative Whitmire:

We received your letter seeking an opinion of this Office concerning the regulation of carrying concealed weapons in a county park. The attachment to your letter refers to Oconee County Codes and Ordinances, Section 22-115, which prohibits the possession of firearms in county parks, with the exception of park personnel, law enforcement officers, or persons using areas specifically designated for the use of firearms. The attachment to your letter also references S.C. Code Section 23-31-510, which prohibits local governing bodies from regulating certain matters concerning firearms. We understand that you are inquiring whether the Oconee County ordinance, insofar as it affects the holder of a concealed weapons permit, is constitutional given the provisions of S.C. Code Section 23-31-510.

Law/Analysis

As to ordinances generally, as indicated in a prior opinion of this office dated December 14, 2006, an ordinance is a legislative enactment and therefore, is presumed constitutional. Town of Scranton v. Willoughby, 306 S.C. 421, 422, 412 S.E.2d 424, 425 (1991). Our Supreme Court has held that a duly enacted ordinance is presumed constitutional; the party attacking the ordinance bears the burden of proving its unconstitutionality beyond a reasonable doubt. City of Beaufort v. Baker, 315 S.C. 146, 153, 432 S.E.2d 470, 474 (1993). Moreover, while this office may comment upon potential constitutional problems, it is solely within the province of the courts of this State to declare an act unconstitutional. Therefore, the ordinance about which you inquired would be enforceable until declared otherwise by a court. Op. S.C. Atty Gen., September 7, 2007.

The ordinance that you referenced, Oconee County Code Section 22-115, provides as follows:

Sec. 22-115. Prohibited acts.

It shall be unlawful for any person to commit any of the following acts at or in any Hartwell Lake Recreation Area or any public park, recreation area or facility under the jurisdiction of the county:

...

(5) Possessing any firearm, airgun, explosive or firework except by duly authorized park personnel, law enforcement officers or persons using areas specifically designated by the director of the parks and recreation department and or the Corps for use of firearms, airguns, fireworks or explosives.

The statute about which you inquired, S.C. Code Section 23-31-510, provides as follows:

No governing body of any county, municipality, or other political subdivision in the State may enact or promulgate any regulation or ordinance that regulates or attempts to regulate:

(1) the transfer, ownership, possession, carrying, or transportation of firearms, ammunition, components of firearms, or any combination of these things; or

(2) a landowner discharging a firearm on the landowner's property to protect the landowner's family, employees, the general public, or the landowner's property from animals that the landowner reasonably believes pose a direct threat or danger to the landowner's property, people on the landowner's property, or the general public. For purposes of this item, the landowner's property must be a parcel of land comprised of at least twenty-five contiguous acres. Any ordinance regulating the discharge of firearms that does not specifically provide for an exclusion pursuant to this item is unenforceable as it pertains to an incident described in this item; otherwise, the ordinance is enforceable.

While Subsection (1) of the above statute generally prohibits local governing bodies from regulating firearm possession, it must be read in conjunction with S.C. Code Ann. Section 23-31-220, which provides as follows:

Nothing contained in this article shall in any way be construed to limit, diminish, or otherwise infringe upon:

(1) the right of a public or private employer to prohibit a person who is licensed under this article from carrying a concealable weapon upon the premises of the

business or work place or while using any machinery, vehicle, or equipment owned or operated by the business;

(2) the right of a private property owner or person in legal possession or control to allow or prohibit the carrying of a concealable weapon upon his premises.

The posting by the employer, owner, or person in legal possession or control of a sign stating "No Concealable Weapons Allowed" shall constitute notice to a person holding a permit issued pursuant to this article that the employer, owner, or person in legal possession or control requests that concealable weapons not be brought upon the premises or into the work place. A person who brings a concealable weapon onto the premises or work place in violation of the provisions of this paragraph may be charged with a violation of Section 16-11-620. In addition to the penalties provided in Section 16-11-620, a person convicted of a second or subsequent violation of the provisions of this paragraph must have his permit revoked for a period of one year. The prohibition contained in this section does not apply to persons specified in Section 16-23-20, item (1).

While local governing bodies are generally prohibited from regulating firearm possession by S.C. Code Section 23-31-510, reading the statute in conjunction with Section 23-31-220, we see that public or private employers, private property owners, and persons in legal possession or control retain the right to prohibit the carrying of a concealable weapon on their premises. We stated in a prior opinion of this Office as follows:

[T]he primary goal of statutory interpretation is to ascertain the intent of the General Assembly. State v. Martin, 293 S.C. 46, 358 S.E.2d 697 (1987). In determining the meaning of a statute, it is proper to consider other statutory provisions relating to the same subject matter. Southern Ry. Co. v. S.C. State Hwy. Dept., 237 S.C. 75, 115 S.E.2d 685 (1960). A statutory provision should be given a reasonable and practical construction consistent with the purpose and policy expressed in the legislation. Hay v. S.C. Tax Comm., 273 S.C. 269, 255 S.E.2d 837 (1979). The statute's words must be given their plain and ordinary meaning without resort to a forced or subtle construction which would work to limit or expand the statute's operation. State v. Blackmon, 304 S.C. 270, 403 S.E.2d 660 (1991). Different statutes *in pari materia* though enacted at different times, should be construed together as one system and as explanatory of each other. Fishburne v. Fishburne, 171 S.C. 408, 172 S.E. 426 (1934).

Op. S.C. Atty Gen., March 30, 2005.

S.C. Code Sections 23-31-220 and 23-31-510 should be construed together as one system and as explanatory of each other. Although Section 23-31-510 generally prohibits local governing bodies from regulating firearm possession, Section 23-31-220 clarifies that public or private employers,

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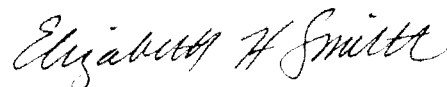
private property owners, and persons in legal possession or control may prohibit the carrying of a concealable weapon on their premises. In a prior opinion of this Office, we recognized that “[t]he ‘Law Abiding Citizens Self Defense Act of 1996,’ codified at S.C. Code Ann. Section 23-31-205, et seq., does allow a public or private employer to prohibit a person licensed to carry a concealable weapon from bringing the weapon onto the premises of the employer. Pursuant to Section 23-31-220, employers need only post a sign stating ‘No Concealable Weapons Allowed’ to give notice to their employees of the prohibition.” Op. S.C. Atty Gen., March 8, 2000.

Conclusion

Although S.C. Code Section 23-31-510 generally prohibits local governing bodies from regulating firearm possession, the statute must be read in conjunction with Section 23-31-220, which gives public or private employers, private property owners, and persons in legal possession or control the right to prohibit the carrying of a concealable weapon on their premises. As Section 23-31-220 states, “[t]he posting by the employer, owner, or person in legal possession or control of a sign stating ‘No Concealable Weapons Allowed’ shall constitute notice to a person holding a permit issued pursuant to this article that the employer, owner, or person in legal possession or control requests that concealable weapons not be brought upon the premises or into the work place.” Assuming that the required notices are posted pursuant to Section 23-31-220, it is our opinion that Oconee County may prohibit the carrying of concealed weapons in County parks. Moreover, as stated above, the Oconee County ordinance prohibiting the possession of firearms in county parks is presumed to be constitutional until declared otherwise by a court.

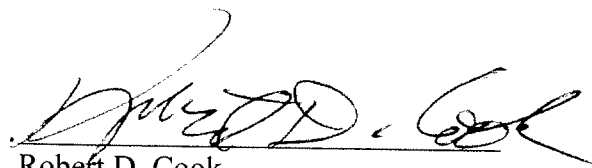
Yours very truly,

Henry McMaster
Attorney General



By: Elizabeth H. Smith
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Deputy Attorney General