

STATE OF TENNESSEE

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Opinion No. 13-66

Local Government Prohibition of the Discharge of Firearms

QUESTION

May a local government entity prohibit by ordinance the discharge of firearms within its jurisdiction?

OPINION

Yes, so long as the local ordinance does not conflict with Tennessee statutes or regulations that regulate the discharge of firearms, including proclamations, rules, and regulations of the Tennessee Wildlife Resources Commission related to permitted hunting in areas under its jurisdiction.

ANALYSIS

The law of Tennessee recognizes “[t]he police power of a state, or of a municipality as an arm of the state, extends to the making of such laws and ordinances as are necessary to secure the safety, health, good order, peace, comfort, protection, and convenience of the state or municipality.” *Porter v. City of Paris*, 184 Tenn. 555, 557, 201 S.W.2d 688, 689 (1947) (citations omitted). A municipality has wide discretion and broad authority in exercising its police powers. *Id.* However, a municipality “cannot adopt ordinances which infringe the spirit of a state law or are repugnant to the general policy of the state.” *Capitol News Co., Inc. v. Metro. Gov’t of Nashville and Davidson County*, 562 S.W.2d 430, 434 (Tenn. 1978). *See also Nichols v. Tullahoma Open Door, Inc.*, 640 S.W.2d 13, 18 (Tenn. Ct. App. 1982). A state statute preempts a municipal ordinance when either the language in the ordinance contradicts the language in the statute or when the legislature has intended to thoroughly occupy the field. The preemption doctrine flows from the principle that municipal legislation is invalid if it is repugnant to, or inconsistent with, state law. 56 Am. Jur. 2d *Municipal Corporations* § 316 (May 2013).

The General Assembly has expressly preempted local regulation of the “transfer, ownership, possession or transportation” of firearms and ammunition under Tenn. Code Ann. § 39-17-1314(a), which provides:

Except as provided in § 39-17-1311(d), which allows counties and municipalities to prohibit the possession of handguns while within or on a public park, natural

area, historic park, nature trail, campground, forest, greenway, waterway or other similar public place that is owned or operated by a county, a municipality or instrumentality thereof, no city, county, or metropolitan government shall occupy any part of the field of regulation of the transfer, ownership, possession or transportation of firearms, ammunition or components of firearms or combinations thereof; provided, that this section shall be prospective only and shall not affect the validity of any ordinance or resolution lawfully enacted before April 8, 1986.

A basic principle of statutory construction is to ascertain and give effect to legislative intent, derived whenever possible from the natural and ordinary meaning of the language used, without forced or subtle construction that would limit or extend the meaning of the language. *Owens v. State*, 908 S.W.2d 923, 926 (Tenn. 1995); *Carson Creek Vacation Resorts, Inc. v. State, Dept. of Revenue*, 865 S.W.2d 1, 2 (Tenn. 1993). If a statute is clear and unambiguous, courts will find the intent in the plain and ordinary meaning of its language. *Brown v. Erachem Comilog, Inc.*, 231 S.W.3d 918, 921 (Tenn. 2007). One well-established canon, expressed under the maxim “expressio unius est exclusio alterius,” is that the mention of one thing implies the exclusion of all things not expressly mentioned. *Limbaugh v. Coffee Med. Ctr.*, 59 S.W.3d 73, 84 (Tenn. 2001).

By the plain language of Tenn. Code Ann. § 39-17-1314(a), the General Assembly removed from local governments the authority to regulate the “transfer, ownership, possession or transportation” of firearms, except as specifically provided therein. The statute’s failure to include any reference to the *discharge* of firearms, or otherwise indicate its intent to occupy the entire field of firearms regulation, supports an inference that the General Assembly intentionally excluded that area from the preemption statute. *Compare* Tenn. Code Ann. § 39-17-1314(a) *with* Ariz. Rev. Stat. Ann. § 13-3108 (“Except as provided in subsection F 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.”) (emphasis added); Fla. Stat. Ann. § 790.33 (“[t]he 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, storage, and transportation thereof, to the exclusion of all existing and future county, city, town, or municipal ordinances.”) (emphasis added) *and* Wash. Rev. Code Ann. § 9.41.290 (“The state of Washington hereby fully occupies and preempts the *entire field of firearms regulation* within the boundaries of the state, including the registration, licensing, possession, purchase, sale, acquisition, transfer, *discharge*, and transportation of firearms.”) (emphasis added).

Accordingly, the exclusion of the discharge of firearms from those areas expressly delineated within the preemption statute indicates the General Assembly’s intent that local governments should retain the authority to regulate that matter within their respective jurisdictions. This interpretation is consistent with the general rule that a municipality may exact additional requirements in the exercise of its general police powers beyond those imposed under general law so long as there is no conflict between the two. *See, e.g., Southern Ry. Co. v. City of Knoxville*, 223 Tenn. 90, 98-99, 442 S.W.2d 619, 622 (1968).

However, the local authority to regulate the discharge of firearms is limited to the extent that such local legislation cannot conflict with any other State statute or regulation. For example, this Office previously opined that a municipal ordinance prohibiting firearms discharges would not be enforceable against an individual who has been lawfully permitted to engage in hunting within the city limits by the Tennessee Wildlife Resources Agency pursuant to its exclusive authority to administer and enforce Tennessee wildlife statutes, regulations, and proclamations. Tenn. Att’y Gen. Op. 98-038 (Feb. 9, 1998). *See also* Tenn. Att’y Gen. Op. 78-248 (June 16, 1978) (concluding that proclamations of Tennessee Wildlife Resources Commission prevail over city ordinances in determining permitted hunting usage of areas in question).

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