

Memo

To: Council and David Scott, City Manager
From: Ken Woodrich
CC: File
Date: February 27, 2019
Re: Legal opinion re local enforcement of I-1639 legislation

FOR PUBLIC DISSEMINATION

Question presented: Can the City Council of a Washington non-charter code city such as Washougal declare itself an “I-1639 sanctuary city” and decline to enforce a state firearm statute that opponents claim is constitutionally defective?

Brief Answer: Until a statute is either overturned or stayed by the courts, it is presumptively constitutional and an ordinance or rule adopted contrary to a statute is preempted and legally null and void. Failing to enforce the statute would violate the Oath of Office sworn to by law enforcement officers, elected officials and the City Manager.

Discussion:

Washougal is a non-charter code city operating under the council-manager form of government pursuant to RCW Ch. 35A.13. It consists of an elected body of council members (8 members until 2021) and an appointed City Manager. RCW 35A.21.160 gives code cities broad powers to govern “to the extent to which such laws are appropriate and are not in conflict with the provisions specifically applicable to code cities.”¹

As a code city, Washougal is statutorily mandated to enforce state laws “relating to the conduct, location and limitation on activities as regulated by state law.”²

¹ RCW 35A.21.160

General application of laws to code cities.

A code city organized or reorganized under this title shall have all of the powers which any city of any class may have and shall be governed in matters of state concern by statutes applicable to such cities in connection with such powers to the extent to which such laws are appropriate and are not in conflict with the provisions specifically applicable to code cities.

² RCW 35A.21.161

Regulation of activities and enforcement of penal laws.

Code cities also have inherent police powers to protect the life, health and safety of its residents. However, local ordinances or regulations may not conflict with state laws.

“Article XI, section 11 of the Washington Constitution provides that “[a]ny county, city, town or township may make and enforce within its limits all such local police, sanitary and other regulations as are not in conflict with general laws.” Regarding this “constitutional grant of authority,” we stated in *Hass v. City of Kirkland*, 78 Wash.2d 929, 481 P.2d 9 (1971):

This is a direct delegation of the police power as ample within its limits as that possessed by the legislature itself. It requires no legislative sanction for its exercise so long as the [135 Wn.2d 691] subject-matter is local, and the regulation reasonable and consistent with the general laws.”

Weden v. San Juan County, 135 Wn.2d 678, 690-91, 958 P.2d 273, 279 (1998).

In the *Weden* case, the Court considered an ordinance regulating personal watercraft in San Juan County in relation to the state’s Recreational Vessel Registration laws (RCW Ch. 88.02) and other state statutes. The Court held that the ordinances advanced by San Juan County were permissible, since the state laws were not in direct conflict with the regulation proposed by the ordinance, and there was no language in the state statutes specifically preempting the field.

“In this case, the registration statute does not contain language preempting the regulation of this activity to the State. See RCW 46.08.020. We “will not interpret a statute to deprive a [958 P.2d 282] municipality of the power to legislate on particular subjects unless that clearly is the legislative intent.” *Southwick, Inc. v. City of Lacey*, 58 Wash.App. 886, 891-92, 795 P.2d 712 (1990)”

Weden v. San Juan County, 135 Wn.2d 678, 695, 958 P.2d 273, 282-83 (1998).

Unlike personal watercraft regulation, however, firearms are explicitly preempted by state statute. RCW 9.41.290 provides that the state “fully occupies and preempts” firearm regulation, except for some specific exceptions relating to discharging weapons in the city, some restrictions on carrying firearms in some locations and sales and licensing controls set forth in RCW 9.41.300.³

All code cities shall observe and enforce, in addition to its local regulations, the provisions of state laws relating to the conduct, location and limitation on activities as regulated by state law and shall supply police information to the *section on identification of the state patrol as required by chapter 43.43 RCW.

³ RCW 9.41.290

State preemption.

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, or any other element relating to firearms or parts thereof, including ammunition and reloader components. Cities, towns, and counties or other municipalities may enact only those

The *Weden* case explains: "Article XI, section 11 requires a local law yield to a state statute on the same subject matter if that statute 'preempts the field, leaving no room for concurrent jurisdiction,' or 'if a conflict exists such that the two cannot be harmonized.' *Brown v. City of Yakima*, 116 Wash.2d 556, 559, 561, 807 P.2d 353 (1991)." *Weden v. San Juan County*, 135 Wn.2d 678, 693, 958 P.2d 273, 280 (1998)

The effect of adopting a law or rule in conflict with the state firearm preemption statute is to render the law null and void as "preempted and repealed, regardless of the nature of the code, charter, or home rule status of such city, town, county, or municipality."

City elected officials, officers and police further take an oath to enforce the "Constitution of the United States and the Constitution and laws of the State of Washington". While opponents of I-1639 argue the law is unconstitutional and unenforceable, the statute is presumptively constitutional unless and until proven otherwise "beyond a reasonable doubt."⁴

In conclusion, unless and until the opponents obtain to a judicial stay or reversal of the I-1639 prior to its full effective date on July 1, our city officials and police must enforce its provisions or violate their oaths of office, thus risking their positions.⁵ RCW 35A.12.080.

Sincerely,



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laws and ordinances relating to firearms that are specifically authorized by state law, as in RCW 9.41.300, and are consistent with this chapter. Such local ordinances shall have the same penalty as provided for by state law. Local laws and ordinances that are inconsistent with, more restrictive than, or exceed the requirements of state law shall not be enacted and are preempted and repealed, regardless of the nature of the code, charter, or home rule status of such city, town, county, or municipality.

See also *State ex rel. Schillberg v. Everett Dist. Justice Court*, 92 Wash.2d 106, 594 P.2d 448 (1979) ("the state must expressly indicate an intent to preempt a particular field" *Supra* at 695)

⁴ "In Washington, it is well established that statutes are presumed constitutional and that a statute's challenger has a heavy burden to overcome that presumption; the challenger must prove that the statute is unconstitutional beyond a reasonable doubt. *Wash. Fed'n of State Employees v. State*, 127 Wash.2d 544, 558, 901 P.2d 1028 (1995)." *School Districts' Alliance for Adequate Funding of Special Educ. v. State*, 170 Wn.2d 599, 244 P.3d 1, (2010)

⁵ Employees violating their oaths of office are subject to termination (personnel policy rule 17.02(1)(g) "neglect of duty") and elected officials may be recalled as provided in RCW 29A.56.110(2).