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August 13, 2010

OPINION NO. 2010-16

FIREARMS; LOCAL GOVERNMENT;
POLITICAL SUBDIVISIONS: County
government is prohibited from adopting
and enacting new legislation relating to the
possession of firearms.

David Roger, District Attorney
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Dear Mr. Roger:

This letter is in response to your request for an opinion from the Nevada Attorney General's Office.

QUESTION

Does NRS 244.364 give Clark County the authority to adopt and enact a local ordinance or regulation which prohibits the carrying, possessing, or discharging of firearms in Clark County parks and park facilities?

ANALYSIS

Counties are political subdivisions of the State and enjoy only the powers which the State Legislature grants to them. *Falcke v. Douglas County*, 116 Nev. 583, 588, 3 P.3d 661, 664 (2000). The answer to your first question requires an analysis of the authority granted to the county governments concerning the regulation of firearms. We will first look to the language of NRS 244.364.

NRS 244.364 reads in relevant part:

1. Except as otherwise provided by specific statute, the Legislature reserves for itself such rights and powers as are necessary to regulate the transfer, sale, purchase, possession, ownership, transportation, registration and licensing of firearms and ammunition in Nevada, and no county may infringe upon those rights and powers. As used in this subsection, "firearm" means any weapon from which a projectile is discharged by means of an explosive, spring, gas, air or other force.
2. A board of county commissioners may proscribe by ordinance or regulation the unsafe discharge of firearms.

If the language of a statute is plain and unambiguous, the words must be given their ordinary meaning. *McGrath v. State Dept. of Public Safety*, 123 Nev. 120, 123, 159 P.3d 239, 241 (2007). "If, however, a statute is subject to more than one reasonable interpretation, it is ambiguous, and the plain meaning rule does not apply." *Savage v. Pierson*, 123 Nev. 86, 89, 157 P.3d 697 (2007). "When a statute is ambiguous, legislative intent is the controlling factor, and reason and public policy may be considered in determining what the legislature intended." *Id.* However, statutory construction should always avoid an absurd result. *Sheriff, Clark County v. Burcham*, 124 Nev. ___, 198 P.3d 326, 329 (Adv. Op. 101, Dec. 24, 2008).

Your office asserts two main arguments in support of the position that NRS 244.364 does not prevent the county from adopting and enacting local ordinances that regulate firearms. First, your office suggests that NRS 244.364 is ambiguous as to its intent to preempt regulation of the *possession* of firearms. Second, your office suggests that Clark County Code 19.060.04, and the regulations adopted pursuant to its authority, were grandfathered by the Legislature when the Act of June 13, 1989, ch. 308, § 1, 1989 Nev. Stat. 652 (A.B. 147) was codified in NRS 244.364.

As an initial matter, NRS 244.364(2) explicitly authorizes county government to regulate the unsafe discharge of firearms. Therefore, any new or existing ordinance or regulation that prohibits the unsafe discharge of firearms in Clark County parks and facilities is within Clark County's authority.

A review of the language contained in NRS 244.364(1) indicates that the Nevada Legislature intended to preempt the entire field of firearm regulation, absent its one exception for the unsafe discharge of firearms. NRS 244.364(2). When the Legislature adopts a general scheme for the regulation of a particular subject, local control over the

same subject ceases. *Lamb v. Mirin*, 90 Nev. 329, 332, 526 P.2d 80, 82 (1974). Therefore, a county may not enforce regulations which are in conflict with the Legislature's mandate. *Id.* at 333.

Your office suggests that the word 'possession' in NRS 244.364(1) is ambiguous since it is subject to more than one meaning in BLACK'S LAW DICTIONARY. BLACK'S LAW DICTIONARY describes that in law there are two forms of possession; actual and constructive possession. BLACK LAW DICTIONARY 1047 (5th ed. 1979). However, an ambiguous word should receive the meaning which is generally recognized within the community. *State v. Webster*, 102 Nev. 450, 453, 726 P.2d 831, 833 (1986). Use of a more narrow definition is contrary to this rule of statutory construction. *Id.* at 454. MIRIAM WEBSTER'S DICTIONARY defines possession as "the act of having or taking into control." MIRIAM WEBSTER'S NINTH NEW COLLEGIATE DICTIONARY 918 (9th ed. 1985). This definition clearly reflects a meaning most akin to actual, physical possession.

In order for the word possession to mean constructive possession, it would be necessary to conclude that the Legislature intended the word to have its less ordinary meaning. Instead, it is the opinion of this office that the ordinary and plain meaning of possession must be given its more common meaning, which is actual possession. Further, actual possession is consistent with preemption principles and with the spirit of the Act.

Your office also suggests that the legislative history discloses that the Legislature did not intend to preempt local ordinances concerning the carrying, possessing, and discharging of firearms. A review of the legislative history shows otherwise. In a letter dated February 17, 1989, Attorney General McKay responds to the following questions posed by Assemblyman Dini:

1. Would A.B. 147 repeal or make ineffectual local discharge ordinances?

Answer:

This statute [A.B. 147] would preempt for state regulation all forms of governmental regulation involving firearms and ammunition in Nevada, with one exception. That exception allows cities, counties, and towns to proscribe by ordinance or regulation the unsafe discharge of firearms. We understand this to mean that cities, counties and towns could continue to enact ordinances and regulation which

would prohibit discharging firearms on the public street or other public places, in urbanized area, or into structures, vehicles, aircraft or watercraft. *Such unlawful discharge ordinances would be the only type of local ordinance or regulation permitted if A.B. 147 becomes law.*

. . . .

4. Would A.B. 147 repeal or make ineffective laws governing the carrying of concealed weapons?"

Answer:

A.B. 147 would not repeal or make ineffective any state statutes, but *would invalidate any local ordinances or regulations on this subject since all aspects of the possession of firearms and ammunition in Nevada would be preempted for state regulation if A.B. 147 becomes law* (emphasis added).

Discharge ordinances are explicitly permitted by NRS 244.364(2); however, regulations concerning possession are not. The Office of the Attorney General has also interpreted NRS 244.364 in a 1995 Opinion and has stated, "regarding control of firearms, NRS 244.364 clearly states that counties may regulate only the unsafe discharge of firearms, and that "no county may infringe upon" the power of the legislature to regulate, inter alia, the sale and possession of firearms." Op. Nev. Att'y Gen. No. 95-03 (March 13, 1995). It is therefore the opinion of this office that the legislative history supports preemption.

It has been also been offered that Clark County Code 19.060.04, and the regulations adopted pursuant to its authority, were grandfathered by Section 5 of A.B. 147. Section 5 reads: "The provisions of this act apply only to ordinances or regulations adopted on or after the effective date of this act."¹ As the legislative history suggests, Section 5 was added to grandfather existing firearms ordinances statewide. Assembly Bill 147 became effective on June 13, 1989 and was codified as NRS 244.364. The regulations adopted by the Clark County Board of County Commissioners, which prohibited the carrying, possessing or discharging of firearms in Clark County parks, were adopted on January 5, 1981, well before the effective date of A.B. 147. Therefore, Clark County Code 19.060.04, and the regulations adopted pursuant to its authority, were grandfathered by the Legislature in 1989. As a result, the

¹ The previously cited Attorney General Opinion was drafted prior to Section 5 being added to A.B. 147.

continued enforcement of the previously adopted regulation prohibiting the carrying, possessing, and discharging of firearms in Clark County parks continued in effect despite the preemption language contained in A.B. 147.

The grandfather provision was not altered in this regard by subsequent amendment. In 2007, Act of June 4, 2007, ch. 320, §1, 2007 Nev. Stat. 1288 (S.B.92) amended NRS 244.364 to require that county governments impose uniform laws concerning the registration of handguns in the State of Nevada. Rather than grandfather local ordinances and regulations concerning registration, S.B. 92 explicitly required all local ordinances or regulations relating to the registration of handguns to be consistent throughout the state. Unlike A.B. 147, S.B. 92 did not grandfather previously adopted ordinances or regulations related to firearms registration. However, S.B. 92 also did not materially amend the “grandfather clause” from A.B. 147 in the 1989 legislative session.² Therefore, the “grandfather clause” remained unaffected by S.B. 92.³

² Senate Bill 92 did clarify the language of the grandfather clause by replacing “after the effective date of this act” with “after June 13, 1989.”

³ At the conclusion of NRS 244.364, the Reviser’s Notes contain Section 4 of S.B. 92:

Ch. 308, Stats. 1989, the source of this section, as amended by ch. 320 Stats. 2007, contains the following provision not included in the NRS:

1. Except as otherwise provided in subsection 2, the provisions of this act apply to ordinances or regulations adopted on or after June 13, 1989.

2. The provisions of this act, *as amended on October 1, 2007*, apply to ordinances or regulations adopted before, on or after June 13, 1989 [emphasis added].

The sections of A.B. 147 and S.B. 92 which dictated whether NRS 244.364 was to be applied retroactively do not appear in the body of the current statute. Instead, the Legislative Counsel placed those sections of A.B. 147 and S.B. 92 in the Reviser’s Notes at the conclusion of NRS 244.364. Pursuant to NRS 220.120(6); the Legislative Counsel is authorized to reorganize and reorder the Nevada Revised Statutes without changing their force and effect.

Section one of the Reviser’s Notes means that ordinances or regulations adopted prior to June 13, 1989, were not preempted by language of A.B. 147, codified as NRS 244.364 (1) and (2). Section two of the Reviser’s Notes addresses the 2007 amendments from S.B.92. Section two states that provisions amended by S.B. 92 apply to all ordinances and regulations, even those adopted prior to June 13, 1989. Therefore, since S.B. 92 only substantively amended NRS 244.364 (3) and (4) and it did not substantively amend NRS 244.364 (1) and (2), section two of the Reviser’s Notes is not applicable to Clark County Code 19.060.04 and the regulations adopted pursuant to its authority.

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CONCLUSION

The Legislature has preempted the entire field of firearm regulation, with the exception of unlawful discharge ordinances and regulations which the Legislature has explicitly authorized county government to regulate. Therefore, county government is prohibited from adopting and enacting new legislation relating to the possession of firearms. However, through the legislative process, certain ordinances and regulations concerning firearm regulation were grandfathered by A.B. 147, including Clark County Code 19.060.04 and the regulations adopted pursuant to its authority. Although Clark County does not have the authority to adopt or enact new local ordinances or regulations that are preempted by NRS 244.364(1), the ordinances or regulations grandfathered by A.B. 147 still remain in effect today.

Sincerely,

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STL:JMR