



CASE REPORT

FIREARMS PREEMPTION. Except as otherwise provided in RCW 9.41.290, the legislature has expressly preempted municipalities from enacting firearm regulations prohibiting the possession of firearms. *Chan v. City of Seattle*, No. 65123-4, Court of Appeals Division I (Oct. 31, 2011).

I. Facts. In 2008, the Mayor of the City of Seattle issued an executive order directing city departments to review "all rules, policies, and leases for all City of Seattle properties" and to develop a gun-free policy for those properties. Later that year, the Washington State Attorney General issued a formal opinion concluding that RCW 9.41.290 preempts the authority of a city "to enact local laws that prohibit possession of firearms on city property or in city-owned facilities."¹ Subsequently in 2009, the City of Seattle Department of Parks and Recreation issued a "Rule/Policy" that prohibits the carrying of concealed firearms or the display of firearms, except by law enforcement officers and on-duty security officers, at Parks Department facilities at which: (1) children and youth are likely to be present and, (2) appropriate signage has been posted to communicate to the public that firearms are not permitted at the facility. The "Rule/Policy" further provides that it does not include any criminal or civil penalties. Rather, the "Rule/Policy" states that it constitutes a "condition placed upon a person's permission to enter or remain at a designated Parks Department facility at which appropriate signage has been posted." According to the "Rule/Policy," these conditions could be enforced "in the same manner and pursuant to the same ordinances and statutes as similar conditions could be enforced by other public or private property owners." Several citizens brought suit seeking a declaration that the City's "Rule/Policy" was preempted by state law.

II. Applicable Law and Analysis. RCW 9.41.290 expressly states that the State of Washington "fully occupies and preempts the entire field of firearms regulation," including the regulation of firearm possession. RCW 9.41.290 further states that (1) cities, towns, and counties or other municipalities may enact only those laws and ordinances relating to firearms that are specifically authorized by and consistent with state law, and (2) local laws and ordinances that are inconsistent with, more restrictive than, or exceed the requirements of state law will not be enacted and are preempted and repealed.²

The City of Seattle contended that RCW 9.41.290 does not preempt its Rule/Policy because (1) the City is acting in its proprietary capacity, (2) the Rule/Policy is not a criminal regulation, and (3) the Rule/Policy was not adopted as a law or ordinance. With respect to the City's first

¹ This office previously issued a case report on this Opinion, AGO No. 8 (2008).

² RCW 9.41.300 specifically authorizes cities to enact ordinances restricting the *possession* of firearms *only* within stadiums or convention centers operated by the city.

argument, case law has previously provided a narrow exception to state preemption of firearms possession where a city is acting within its proprietary function. See *Pacific Northwest Shooting Park Association v. City of Sequim*, 158 Wn.2d 342 (2006). In *Sequim*, the Court concluded that because the central purpose of RCW 9.41.290 was to eliminate conflicting criminal municipal codes and to advance uniformity, the statute was not intended to interfere with a city's ability to restrict firearms when acting in a manner comparable to that of a private party. In other words, when acting in its proprietary capacity, the city can restrict guns on its property like any other private landowner. Therefore, the Court found that the City of Sequim did not violate RCW 9.41.290 when it placed conditions restricting gun purchase and sale in a temporary use permit for the city's convention center. Because the city was leasing its property, it was acting within its proprietary function. Similarly, the Court in *Cherry v. Municipality of Metropolitan Seattle*, 116 Wn.2d 794 (1991), held that the city could enact policies prohibiting public employees from carrying concealed weapons because the city acted within its proprietary capacity when making internal employment rules in the workplace. As the Court explained in *Sequim*, the critical point is that the conditions the city imposes on firearm possession must be related to private use of its property and *cannot be laws or regulations of application to the general public*. *Sequim*, 158 Wn.2d at 357. Here, the court disagreed that the City of Seattle acted as "the proprietor of a business enterprise" in adopting the Rule/Policy because it was intended to regulate the possession of firearms in designated city parks and facilities open to the general public, thereby conflicting with the holding of *Sequim*.

The court also disagreed that Seattle's Rule/Policy was not preempted because it was not a criminal ordinance. Although the Rule/Policy provides that there are no civil or criminal penalties, the record showed that the City intended to enforce the Rule/Policy through criminal trespass laws. Therefore, the Rule/Policy conflicted with the legislature's intent to eliminate conflicting criminal firearms laws.

Seattle also contended that RCW 9.41.290 does not preempt its Rule/Policy because the statute only precludes a municipality from adopting "laws and ordinances" regulating the possession of firearms, and not a rule or policy. But the City failed to convince the court that it can regulate the possession of firearms through rule or policy when it cannot otherwise do so by law or ordinance.

III. Conclusion. Although the previous Attorney General Opinion issued in 2008 was not authoritative on the subject of preemption, the *Chan* case now creates binding precedent that cities must follow. An ordinance, rule, or policy restricting possession of firearms in city parks is very likely preempted by state law. If your city's code prohibits carrying or possessing firearms in public places, such as city parks, you should consult with your city attorney. Finally, it is important to note that a city may still regulate the discharge of firearms within the city's jurisdiction where there is a reasonable likelihood that humans, domestic animals, or property will be jeopardized. State law preemption only applies to local laws regulating possession of firearms. Please contact your city attorney with any further questions regarding firearms preemption.