

**STATE OF TENNESSEE
OFFICE OF THE ATTORNEY GENERAL**

February 27, 2014

Opinion No. 14-25

Legislation Relative to State Preemption of Weapons Regulation

QUESTION

Is Senate Bill 1756/House Bill 2144 (hereinafter “SB1756”) of the 108th Tennessee General Assembly relative to state preemption of weapons regulation constitutional?

OPINION

No.

ANALYSIS

The proposed bill, SB1756, would amend Title 39, Chapter 17, Section 1314, of the Tennessee Code to state expressly that all federal laws, ordinances, rules, and regulations in any way bearing on the rights of citizens and residents of this State relative to arms or the power of the State to regulate arms within the boundaries of the State are void. S.B. 1756, 108th Gen. Assem., § 5 (2014). The bill would also amend the section to delete the current prohibition against local-government occupation of any part of the field of firearms regulation, Tenn. Code Ann. § 39-17-1314(a), to expressly reserve to the State “the entire field of regulation within the state of all arms and weapons” and to expressly declare that any laws, regulations, ordinances, or enactments, other than those enacted by the General Assembly, “including but not limited to local laws, regulations or ordinances,” are void. S.B. 1756, § 1. The bill would leave “other governmental entities” free to regulate the use or possession of arms by government officials they directly employ and to otherwise regulate arms “only to the extent expressly authorized by state statute.” *Id.* §§ 2, 3. Any enactment providing for the ownership, maintenance, or use “by any government entity or official” of any registry or database relative to the private ownership or possession of firearms by civilians would also be prohibited. *Id.* § 4. The bill would also provide a private right of action “against the governmental entity” for persons “adversely affected by any governmental enactment or action in violation of this section.” *Id.* § 6.

This Office has previously opined that similar legislation, if enacted, would violate the Supremacy Clause of the United States Constitution. See Tenn. Att’y Gen. Op. 13-14 (Feb. 22, 2013). Like the bills that were the subject of that opinion,

Section 5, at least, of SB1756 is intended to create an actual conflict with federal law such that compliance with both state and federal regulations would be a physical impossibility. *See Florida Lime and Avocado Growers, Inc. v. Paul*, 373 U.S. 132, 142-43 (1963). If enacted as proposed, SB1756 would declare void any and all federal firearms regulation within the State of Tennessee. For the reasons set forth in our prior opinion, such action would be inconsistent with and impermissible under the Supremacy Clause of the United States Constitution. U.S. Const., art. VI, cl. 2.

Insofar as the references in the bill's remaining sections to "any laws . . . other than those enacted by the general assembly," "any enactment," "governmental enactment," and "governmental entities" could be construed to include federal laws and agencies of the federal government, these sections would likewise conflict with federal law so as to render them preempted. If enacted as proposed, the constitutional infirmity would necessitate that these provisions be construed to apply only to state and local laws and entities. *See State v. White*, 362 S.W.3d 559, 566 (Tenn. 2012) (restating the rule that statutes will be construed so as to avoid any constitutional conflict).

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