

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

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Opinion No. 17-26

Effect of Tenn. Code Ann. § 39-17-1314 on Enforceability of Local Zoning Laws

Question

Where Tenn. Code Ann. § 39-17-1314 preempts counties and municipalities from adopting any ordinances to regulate the use, purchase, transfer, taxation, manufacture, ownership, possession, carrying, sale, acquisition, gift, devise, licensing, registration, storage, and transportation of firearms, would a local zoning ordinance prohibiting manufacturing of any kind in an area zoned residential be enforceable as to the manufacture of guns and ammunition?

Opinion

Tennessee Code Annotated § 39-17-1314 regulates firearms and ammunition. A local zoning ordinance prohibiting all manufacturing in a residential area regulates land use. The state law and the local ordinance regulate different subjects and therefore operate independently of one another. As long as the zoning ordinance is not otherwise discriminatory in its application and enforcement and does not indirectly engage in regulation that is forbidden under Tenn. Code Ann. § 39-17-1314, the ordinance will be enforceable.

ANALYSIS

By its plain language, Tenn. Code Ann. § 39-17-1314(a)¹ (the “firearms statute”) gives the State exclusive authority to regulate firearms and ammunition. With some specific exemptions,

the general assembly preempts the whole field of the regulation of firearms, ammunition, or combinations thereof including but not limited to, the use, purchase, transfer, taxation, manufacture, ownership, possession, carrying, sale, acquisition, gift, devise, licensing, registration, storage and transportation thereof, to the exclusion of all city, town, municipality, or metropolitan government law, ordinances, resolutions, enactment or regulation. No city, town, municipality or metropolitan government nor any local agency, department or official shall occupy any part of the of the field regulation of firearms, ammunition or components of firearms or ammunition or combinations thereof.

¹ In 2014, Tenn. Code Ann. § 39-17-1314(a) was amended and the following language was deleted: “. . . this section shall be prospective only and shall not affect the validity of any ordinance or resolution lawfully enacted before April 8, 1986.” Tenn. Code Ann. § 39-17-1314, effective June 11, 2009-April 27, 2014.

Tenn. Code Ann. § 39-17-1314(a). In short, the Legislature has expressly preempted and assumed full regulatory responsibility for the whole field of firearms regulation and has expressly prohibited local government entities from regulating firearms and ammunition—subject only to specific exceptions.

When the Legislature expressly preempts a particular field of regulation, a local regulation may nevertheless be valid as long as there is no conflict between the statute and a local regulation and the requirements of the local regulation are not unreasonable or discriminatory. *See, e.g., Capitol News Co., Inc. v. Metropolitan Gov't. of Nashville and Davidson County*, 562 S.W.2d 430, 434-35 (Tenn. 1978); *Southern Ry. Co. v. City of Knoxville*, 442 S.W.2d 619, 622 (Tenn. 1968). But a local government may not adopt by-laws that “infringe the spirit of a state law or are repugnant to the general policy of the state.” *Capitol News Co., Inc.*, 562 S.W.2d at 434.

Here, there would be no conflict between the firearms statute and a local zoning ordinance that prohibits all manufacturing, including firearms manufacturing, in an area zoned for residential use. The state law and the local ordinance regulate different fields. While the purpose of the firearms statute is to regulate all things related to firearms and ammunition, the purpose of local zoning ordinances is to regulate the use of land.

In the most general terms, zoning involves the territorial division of land into districts according to the character of land and buildings, their suitability for particular purposes, and the uniformity of these uses. Zoning regulations focus primarily on the use of property and the architectural and structural designs of buildings.

Lafferty v. City of Winchester, 46 S.W.3d 752, 758 (Tenn. Ct. App. 2000) (internal citations omitted).

It is well established that local governments have the power to restrict the use of property by means of zoning regulations. *Spencer-Sturla Co. v. City of Memphis*, 290 S.W. 608, 612 (1927) (ordinance excluding commercial enterprise from residential district held to be a valid exercise of local government police power). A local government’s legislative classification in a zoning law is valid “if any possible reason can be conceived to justify it.” *State ex rel. SCA Chemical Waste Services, Inc. v. Konigsberg*, Tenn., 636 S.W.2d 430, 437 (1982). At the same time, while local governments have broad discretion acting within the scope of this power, they may not effectively nullify state law by the enactment of ordinances that “ignore applicable state laws, grant rights the state law denies, or that deny rights the state law grants.” *Id.*

The firearms statute and a zoning ordinance that limits land use to residential purposes regulate two separate fields. Preserving the residential character of a particular area is a rational justification for a zoning ordinance that prohibits manufacturing of any kind, including firearms and ammunition manufacturing in that area. Moreover, the ordinance would not ban firearms and ammunition manufacturing; it simply requires that such manufacturing be done in compliance with the local zoning regulations. *See Lamar Tenn., LLC v. City of Knoxville*, 2016 Tenn. App. LEXIS 142 at *21-24, 2016 WL 746503 (Tenn. Ct. App. Feb. 25, 2016), perm. app. denied 2016 Tenn. LEXIS 465 (Tenn. June 23, 2016). There is nothing in the statute to suggest the Legislature

intended to divest a local government of its authority to regulate land use. Accordingly, it is reasonable to construe the statute to require firearms manufacturers and sellers to conform to the same general restrictions as those imposed on other businesses within the same zoning classifications.

The result could be different if, on the other hand, a local government attempted to administer or enforce zoning ordinances as a way of engaging indirectly in the regulation of firearms and ammunition by discriminating against those in the business of manufacturing or selling firearms or ammunition. For example, if an ordinance were administered in a way that regulated land use by excluding only manufacturers or sellers of firearms, Tenn. Code Ann. § 39-17-1314 could preempt the enforcement of that zoning ordinance. *Fallin v. Knox County Bd. of Com'rs*, 656 S.W.2d 338, 342-43 (Tenn. 1983) (spot zoning by singling out a small parcel of land for use classification which is different from surrounding area for the benefit of a property owner is invalid as not sufficiently bearing on the relationship to the public health, safety, and welfare of the general public); *City of Murfreesboro et al. v. Eddie Pilkington, d/b/a Tom Thumm Market*, 569 S.W.2d 805, 808 (Tenn. 1978) (city's discriminatory enforcement of beer permit distance ordinance held improper); *see also, Rutherford County Beer Board v. Adams*, 571 S.W.2d 830; *Seay v. Knox County Quarterly Court*, 541 S.W.2d 946 (Tenn.1976); *Serv. U. Mart, Inc. v. Sullivan County, Tenn.*, 527 S.W.2d 805 (Tenn.1975).

In sum, Tenn. Code Ann. § 39-17-1314 does not invalidate or prevent the enactment of a local zoning ordinance that limits land use to residential purposes. But, since “[i]t is a well settled principle of law that one cannot do indirectly what cannot be done directly,” *Haynes v. City of Pigeon Forge*, 883 S.W.2d 619, 622 (Tenn. Ct. App. 1994), the firearms statute could prohibit enforcement of a local ordinance that is merely an indirect way of regulating firearms or ammunition sellers and manufacturers.

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