



**CITIES AND TOWNS – FIREARMS – PREEMPTION - Authority of city to enact a local law prohibiting possession of firearms on city property or in city-owned facilities.**

**RCW 9.41.290 preempts a city’s authority to enact local laws that prohibit possession of firearms on city property or in city-owned facilities.**

\*\*\*\*\*

**October 13, 2008**

Honorable Bob Morton  
State Senator, 7th District  
P. O. Box 40407  
Olympia, WA 98504-0407

Honorable Kevin Van De Wege  
State Representative, 24th District  
P. O. Box 40600  
Olympia, WA 98504-0600

**Cite As:  
AGO 2008 No. 8**

Dear Senator Morton and Representative Van De Wege:

By letter previously acknowledged, you have asked the following paraphrased question:

**Does a city in Washington have the authority to enact a local law that prohibits possession of firearms on city property or in city-owned facilities?**

**BRIEF ANSWER**

The answer to your question is no. RCW 9.41.290 “fully occupies and preempts the entire field of firearms regulation” and preempts a city’s authority to adopt firearms laws or regulations of application to the general public, unless specifically authorized by state law. Accordingly, RCW 9.41.290 preempts a city’s authority to enact local laws that prohibit possession of firearms on city property or in city-owned facilities.

**BACKGROUND**

Your question deals with the authority of cities to enact laws relating to firearms. 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.” Const. art. XI, § 11. “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 subject-matter is local, and the regulation reasonable and consistent with the general laws.” *City of Spokane v. Portch*, 92 Wn.2d 342, 346, 596 P.2d 1044 (1979). However, the “plenary police power in regulatory

## ATTORNEY GENERAL OF WASHINGTON

Honorables Morton and Van De Wege

- 2 -

AGO 2008 No. 8

matters accorded municipalities by Const. Art. 11, § 11, ceases when the State enacts a general law upon the particular subject, unless there is room for concurrent jurisdiction.” *Id.* “Preemption occurs when the Legislature states its intention either expressly or by necessary implication to preempt the field.” *Brown v. City of Yakima*, 116 Wn.2d 556, 560, 807 P.2d 353 (1991). Thus, a city’s authority to enact laws relating to firearms depends upon the general firearms laws enacted by the State.

RCW 9.41 sets forth a comprehensive scheme of state firearms regulations. This statutory scheme includes preemption. RCW 9.41.290 provides:

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 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.

RCW 9.41.290 preempts the authority of cities to adopt laws regulating firearms. The question is whether the scope of this preemption extends to prohibiting cities from enacting local law that prohibits possession of firearms on city property or in city-owned facilities.

### ANALYSIS

In determining the scope of the preemption in RCW 9.41.290, the “objective is to determine the legislature’s intent. If the statute’s meaning is plain on its face, then the court must give effect to that plain meaning as an expression of legislative intent.” *See State v. Jacobs*, 154 Wn.2d 596, 600, 115 P.3d 281 (2005). “The ‘plain meaning’ of a statutory provision is to be discerned from the ordinary meaning of the language at issue, as well as from the context of the statute in which that provision is found, related provisions, and the statutory scheme as a whole.” *Id.* A statute is ambiguous if it is “subject to more than one reasonable interpretation.” *In re the Marriage of Kovacs*, 121 Wn.2d 795, 804, 854 P.2d 629 (1993).

In this case, the plain meaning of RCW 9.41.290 establishes that the preemptive effect of the statute is substantial. “Preemption occurs when the Legislature states its intention . . . expressly . . . to preempt the field.” *Brown*, 116 Wn.2d at 560. RCW 9.41.290 expressly preempts the field. RCW 9.41.290 provides in part that the “state of Washington *hereby fully occupies and preempts* the entire field of firearms regulation within the boundaries of the state”. (Emphasis added.) Not only does RCW 9.41.290 use the words of preemption—“fully occupies and preempts”—it broadly defines the field of firearms regulation to include “the registration, licensing, possession, purchase, sale, acquisition, transfer, discharge, and transportation of

ATTORNEY GENERAL OF WASHINGTON

Honorables Morton and Van De Wege

- 3 -

AGO 2008 No. 8

firearms, or any other element relating to firearms or parts thereof, including ammunition and reloader components.” RCW 9.41.290.

Standing alone, the language of RCW 9.41.290 quoted above would establish substantial field preemption. However, RCW 9.41.290 goes on to specifically address the authority of cities to regulate firearms and provides, in part, that “[c]ities, towns, and counties or other municipalities may enact only those 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.”

Under RCW 9.41.290, cities may only enact laws and ordinances relating to firearms if two conditions are met. First, cities may only enact laws “that are specifically authorized by state law, as in RCW 9.41.300”. RCW 9.41.290. Second, the cities’ laws must be “consistent with this chapter.” *Id.* Subject to conditions in the statute, RCW 9.41.300 authorizes cities to enact laws restricting the discharge of firearms in any portion of their respective jurisdictions, restricting the possession of firearms in any stadium or convention center, operated by a city, restricting the areas in their respective jurisdictions in which firearms may be sold, and restricting the location of a business selling firearms to not less than five hundred feet from primary or secondary school grounds. RCW 9.41.300(2)(a)-(b), (3)(a)-(b).<sup>1</sup>

The requirement in RCW 9.41.290 that firearms laws adopted by cities be “consistent with this chapter” necessarily implies that inconsistent laws are invalid. RCW 9.41.290 contains additional language, however, that renders this implication explicit. RCW 9.41.290 provides, in part:

*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.*

(Emphasis added.) In our judgment, the plain language of RCW 9.41.290 demonstrates that the Legislature intended to broadly preempt local laws relating to firearms.

Although the language of RCW 9.41.290 is broad, it does not preempt all city authority with respect to firearms. The Supreme Court has considered RCW 9.41.290 on two occasions. In *Cherry v. Municipality of Metropolitan Seattle*, 116 Wn.2d 794, 808 P.2d 746 (1991), the Court considered whether the Municipality of Metropolitan Seattle (Metro) could discharge an employee who violated Metro’s policy prohibiting employees from carrying concealed weapons. The Court held that “RCW 9.41.290 is intended to preempt regulatory city, town or county firearms laws and ordinances, but *does not address internal employment rules limiting on-duty possession of firearms by public employees in the workplace.*” *Id.* at 798 (emphasis added). The Court concluded that “RCW 9.41.290 was enacted to reform that situation in which counties, cities, and towns could each enact conflicting local criminal codes regulating the general public’s possession of firearms.” *Id.* at 801. Thus, the purpose of RCW 9.41.290 was “to eliminate a

---

<sup>1</sup> The complete text of RCW 9.41.300 is attached.

ATTORNEY GENERAL OF WASHINGTON

Honorables Morton and Van De Wege

- 4 -

AGO 2008 No. 8

multiplicity of local laws relating to firearms and to advance uniformity in criminal firearms regulation.” *Id.*

The Supreme Court next considered RCW 9.41.290 in *Pacific Northwest Shooting Park Association v. City of Sequim*, 158 Wn.2d 342, 144 P.3d 276 (2006). In *Pacific Northwest Shooting Park*, the Association wanted to hold a gun show in the city convention center. The conditional use permit issued by the City of Sequim imposed three conditions on the ability of licensed and unlicensed gun dealers to sell or exchange firearms. The Association argued that these conditions were preempted by RCW 9.41.290. The Court disagreed. According to the Court, “*Cherry* supports the general proposition that when a municipality acts in a capacity that is comparable to that of a private party, the preemption clause does not apply.” *Pacific Northwest Shooting Park*, 158 Wn.2d at 357. The Court concluded that a “municipality acts in a proprietary capacity when it acts as the proprietor of a business enterprise for the private advantage of the municipality and it may exercise its business powers in much the same way as a private individual or corporation.” *Id.* (citations and internal quotation marks omitted). Therefore, “[b]y issuing a temporary use permit, the city was leasing its property to PNSPA and acting in its private capacity as a property owner.” *Id.* The Court held that RCW 9.41.290

does not prohibit a private property owner from imposing conditions on the sale of firearms on his or her property. RCW 9.41.290. Applying our reasoning in *Cherry*, it follows that a municipal property owner like a private property owner may impose conditions related to firearms for the use of its property in order to protect its property interests. For the same reason that a municipal employer may enact policies regarding possession of firearms in the workplace because a private employer may do so, a municipal property owner should be allowed to impose conditions related to sales of firearms on its property if a private property owner may impose them.

*Pacific Northwest Shooting Park*, 158 Wn.2d at 357. The Court explained that the “critical point is that the conditions the city imposed related to a permit for private use of its property. They were not laws or regulations of application to the general public.” *Id.*

Under *Cherry* and *Pacific Northwest Shooting Park*, RCW 9.41.290 does not preempt a city’s ability to impose conditions when it is acting in a private capacity. The question is whether this reasoning would apply if a city prohibited the general public from possessing firearms on city property. It is certainly true that RCW 9.41.290 would not preempt a private citizen from prohibiting possession of firearms on his or her property. This prohibition might be enforced by simply refusing to permit someone entry on to the private property with a firearm. However, in this respect, a city is not in the same position as a private citizen. Large parts of city property are generally open to the public. Indeed, citizens may be required to enter city property, for example, to apply for a building permit. For these reasons, neither *Cherry* nor *Pacific Northwest Shooting Park* support the view that cities may prohibit the general public from possessing firearms on city property.

ATTORNEY GENERAL OF WASHINGTON

Honorables Morton and Van De Wege

- 5 -

AGO 2008 No. 8

It has been suggested that such a prohibition on the possession of firearms on city property might be enforced through the state's criminal trespass laws. RCW 9A.52.070 governs first degree criminal trespass and provides:

- (1) A person is guilty of criminal trespass in the first degree if he knowingly enters or remains unlawfully in a building.
- (2) Criminal trespass in the first degree is a gross misdemeanor.

RCW 9A.52.080 governs second degree criminal trespass and provides:

- (1) A person is guilty of criminal trespass in the second degree if he knowingly enters or remains unlawfully in or upon premises of another under circumstances not constituting criminal trespass in the first degree.
- (2) Criminal trespass in the second degree is a misdemeanor.

A person "enters or remains unlawfully" when a person is "in or upon premises when he is not then licensed, invited, or otherwise privileged to so enter or remain." RCW 9A.52.010(3). It is a defense to criminal trespass if the "premises were at the time *open to members of the public* and the actor complied with all *lawful conditions* imposed on access to or remaining in the premises". RCW 9.52.090(2) (emphasis added).

Under the criminal trespass approach, a city would post signs or otherwise notify the public that possession of firearms was prohibited on city property.<sup>2</sup> If an individual did not comply with this requirement, he or she would be charged with criminal trespass.

In our judgment, a city does not have the authority to generally prohibit the possession of firearms on city property except to the extent authorized by RCW 9.41.290. Even in the case of criminal trespass, a member of the public is only required to comply with "lawful conditions". RCW 9A.52.090(2). Prohibiting possession of firearms on city property would not be a lawful condition, because RCW 9.41.290 preempts the power of a city to impose such a prohibition. We reach this conclusion for three reasons.

First, breadth of the language in RCW 9.41.290 persuades us that the Legislature intended to prohibit cities from generally prohibiting firearms. Even though *Cherry* and *Pacific Northwest Shooting Park* recognized that RCW 9.41.290 does not preempt all city authority to regulate firearms, both cases hold that the purpose of RCW 9.41.290 was "to reform that situation in which counties, cities, and towns could each enact conflicting local criminal codes *regulating the general public's possession of firearms*." *Cherry*, 116 Wn.2d at 801 (emphasis added); *Pacific Northwest Shooting Park*, 158 Wn.2d at 356. Thus, the regulation in those cases

---

<sup>2</sup> There are different ways in which a city might take action to prohibit firearms on city property. One would be for the city legislative authority to enact an ordinance imposing the prohibition. Another would be for a city official to impose the prohibition, if he or she were authorized by city law to impose conditions on access to city property. In our view, the answer to this question does not turn on the manner in which the prohibition might be imposed.

ATTORNEY GENERAL OF WASHINGTON

Honorables Morton and Van De Wege

- 6 -

AGO 2008 No. 8

was not directed at the general public's possession of firearms. As the Court explained, the "*critical point is that the conditions the city imposed related to a permit for private use of its property. They were not laws or regulations of application to the general public.*" *Pacific Northwest Shooting Park*, 158 Wn.2d at 357 (emphasis added). Under the facts of your question, the city would prohibit the general public from possessing firearms on city property.

Prior to the enactment of RCW 9.41.290, it might have been legal to possess a firearm at a particular place in one city and a crime to possess a firearm in the same place in another city. RCW 9.41.290 was enacted to prevent these conflicting criminal codes. Allowing a city to use criminal trespass to enforce a ban on firearms allows conflicting criminal codes regulating the general public's possession of firearms. In this respect, it makes little difference to a citizen who is subjected to conflicting criminal codes whether he or she is being prosecuted for the gross misdemeanor of first degree trespass, or for the crime of possession of a firearm.

Second, in interpreting a statute "each provision of a statute should be read together (*in pari materia*) with other provisions in order to determine the legislative intent underlying the entire statutory scheme." *State v. Chapman*, 140 Wn.2d 436, 448, 998 P.2d 282 (2000). "The purpose of interpreting statutory provisions together with related provisions is to achieve a harmonious and unified statutory scheme that maintains the integrity of the respective statutes." *Id.* Reading RCW 9.41.290 together with other firearms statutes persuades us that the Legislature did not intend to permit cities to prohibit the general public from possessing firearms. The Legislature has expressly prohibited the possession of firearms in specific places. These include (a) restricted access areas of a jail, or of a law enforcement facility, or any place used for the confinement of a certain person, (b) the areas in any building which are used in connection with court proceedings, including courtrooms, jury rooms, judge's chambers, offices and areas used to conduct court business, waiting areas, and corridors adjacent to areas used in connection with court proceedings, (c) the restricted access areas of certain public mental health facilities, (d) that portion of an establishment classified by the state liquor control board as off-limits to persons under twenty-one years of age, and (e) the restricted access areas of a commercial service airport designated in the airport security plan approved by the federal transportation security administration. RCW 9.41.300(1)(a)-(e). The Legislature also prohibited possession of firearms "while on the site of an outdoor music festival." RCW 70.108.150. The Legislature has also expressly authorized cities to prohibit firearms in certain places. This includes restricting the discharge of firearms in any portion of their respective jurisdictions, restricting the possession of firearms in any stadium or convention center, operated by a city, restricting the areas in their respective jurisdictions in which firearms may be sold, and restricting the location of a business selling firearms to not less than five hundred feet from primary or secondary school grounds. RCW 9.41.300(2)(a)-(b), (3)(a)-(b).

The Legislature has carefully set out the places where the general public is prohibited from possessing firearms. "Where a statute specifically designates the things upon which it operates, there is an inference that the Legislature intended all omissions." *In re Hopkins*, 137 Wn.2d 897, 901, 976 P.2d 616 (1999). We conclude that the Legislature did not intend that the possession of firearms would be prohibited in the places that were not listed. This conclusion is buttressed by the fact that the Legislature's prohibition of firearms is very narrow. The Legislature prohibited the possession of firearms in the "restricted access areas of a jail, or of a

