

MEMORANDUM OF LAW

DATE: October 7, 1985

TO: Bill Mitchell, Deputy Mayor

FROM: City Attorney

SUBJECT: Handgun Safety Pamphlets

This memorandum is in partial response to your memorandum of July 11, 1985. In his memorandum dated August 16, 1985, Chief of Police, W. B. Kolender, has responded to questions numbers 3 through 6 of your July 11, 1985 inquiry regarding requiring all firearms dealers to bear the cost and distribute handgun safety pamphlets with each and every sale of handguns.

Attachment 1 is included as an answer to question 1, consisting of a summary of California handgun law in "layman's language." In response to question numbers 2 and 7, it is the opinion of this office that state law preempts any local regulations of handgun safety. Accordingly, we are unable to provide any suggestions as to how the City can require firearms

dealers to provide a copy of the Police Department's pamphlet while bearing the cost via a surcharge in their license fees.

#### STATE LAW PREEMPTION OF FIREARMS REGULATION

Article XI, section 7, of the California Constitution states that "a county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws." Thus, although the City of San Diego may enact handgun control regulations, such regulations would be invalid insofar as they are in conflict with state laws.

The California Supreme Court has enumerated a test for determining whether a local law is in conflict with general laws in *Lancaster v. Municipal Court*, 6 Cal.3d 805, 807-808 (1972) states in pertinent part that "(c)onflicts exist if the ordinance duplicates, contradicts, or enters an area fully occupied by general law, either expressly or by legislative implication." (Citations omitted; emphasis added.)

The California legislature, in September of 1983, enacted a bill requiring the Department of Justice to prepare a pamphlet summarizing California firearm laws as they pertain to persons other than law enforcement and military personnel. Copies of the summary are to be offered through the Department of General Services to licensed dealers at actual cost for sale to the

purchasers of such firearms. Receipts from the sale of the pamphlets are to be deposited as reimbursements to the support appropriation for the Department of Justice. This legislation is codified as California Penal Code section 12080.

Should handgun dealers in the City of San Diego be required to include a copy of the City's safety pamphlet with the sale of each handgun, there would be a duplication of state law. Both pamphlets summarize California firearm laws and safety procedures.

In *Doe v. City and County of San Francisco*, 136 Cal.App.3d 509, 518 (1982), the First District Court of Appeal held that the San Francisco handgun ordinance, which prohibited possession of handguns, conflicted with California Penal Code section 12026, stating that "no permit or license to purchase, own, possess or keep any . . . firearm at the place of residence or place of business shall be required of the owner." The Court reasoned that the ordinance, in effect, constituted a permit requirement and thus conflicted with Penal Code section 12026.

Thus, even though it is arguable that Penal Code section 12080 only provides information regarding the "availability of safety training programs," with its main purpose to provide a summary of firearm laws, and the San Diego regulation will more specifically set forth safety procedures, the latter, in effect,

is still a pamphlet summary of firearm laws, conflicting with state law.

Government Code section 53071 provides as follows:

It is the intention of the Legislature to occupy the whole field of regulation of the registration or licensing of commercially manufactured firearms as encompassed by the provisions of the Penal Code, and such provisions shall be exclusive of all local regulations, relating to registration or licensing of commercially manufactured firearms, by any political subdivision.

(Emphasis added).

A "handgun" is defined as a firearm held and "fired with one hand" (Webster's Third New International Dictionary, 1961 ed., p. 1027). By enacting Penal Code section 53071, the state Legislature has preempted the fields of registration and licensing of handguns and their users. The issue, therefore in determining whether state law expressly preempts any City regulations requiring sellers of firearms to distribute handgun safety pamphlets, is whether the distribution of pamphlets constitutes registration and licensing.

According to 65 Op. Att'y Gen. 457 (1982), the subject of "sales," is included within the categories of "registration," "licensing," "possession" and "use" of the broad topic of "gun control." Inasmuch as a regulation requiring handgun dealers to distribute safety pamphlets concerns sales, this regulation could be considered as part of the general area of registration and licensing. See e.g. *Doe v. City and County of San Francisco*, supra, (where a total ban on possession of handguns was considered a form of registration and licensing, even though the ordinance did not mention the words registration or licensing. Moreover, under the holding of *Bishop v. City of San Jose*, 1 Cal.3d 56 (1969) even if a local regulation of a charter city conflicts with general state law, if it is a municipal affair, the city's authority will be respected. If the regulation is of a statewide concern, general state law will prevail.

In *Long Beach Police Officers Assn. v. City of Long Beach*, 61 Cal.App.3d 364, 371 (1976), the court held that a city ordinance relating to the display and discharge of firearms by city police was not a municipal affair.

Just as the use of city streets by police and fire vehicles affects not only the municipality's citizens but also transients, and is thus a matter of state-wide concern, so

also the firing of guns by Long Beach police officers and the apprehension or escape of felons in Long Beach affects the people of the state generally. (Citation omitted.)

If police use of guns is a statewide affair, the sale of guns to the general public would also appear to be a statewide affair.

#### CONCLUSION

Since handgun safety pamphlet distribution has been regulated by the state, (Penal Code section 12080); since the field of gun registration and licensing has been preempted by the California Legislature (Government Code section 53071); and since the sale of firearms is not a municipal affair, the City of San Diego's power to require the distribution of safety pamphlets with the sale of all handguns is preempted by state law. Accordingly, we are unable to provide any specific means by which the City can regulate firearms pursuant to the procedure proposed.

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By

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