



STATE OF KANSAS
OFFICE OF THE ATTORNEY GENERAL

DEREK SCHMIDT
ATTORNEY GENERAL

MEMORIAL HALL
120 SW 10TH AVE., 2ND FLOOR
TOPEKA, KS 66612-1597
(785) 296-2215 • FAX (785) 296-6296
WWW.AG.KS.GOV

August 1, 2013

ATTORNEY GENERAL OPINION NO. 2013-13

Michael R. Santos
City Attorney, Overland Park
8500 Santa Fe Drive
Overland Park, KS 66212

Re: Cities and Municipalities—Miscellaneous Provisions—Firearms and Ammunition; Regulation by City or County; Limitations

Synopsis: A city ordinance banning the open carry of firearms by all persons except those in possession of a valid state-issued concealed carry license would be pre-empted by state law. Cited herein: K.S.A. 2010 Supp 12-16,124; K.S.A. 2011 Supp 12-16,124; K.S.A. 2012 Supp 12-16,124, as amended by L. 2013, Ch. 36, § 1; 21-6301; 21-6304, as amended by L. 2013, Ch. 36, § 2; 21-6309; 75-7c04, as amended by L. 2013, Ch. 36, § 5; 75-7c10, as amended by L. 2013, Ch. 105, § 9.

* * *

Dear Mr. Santos:

As Overland Park City Attorney, you ask our opinion regarding the ability of cities to regulate the manner of openly carrying firearms. In your letter, you state that the City of Overland Park repealed its ordinance banning the open carry of firearms within city limits based upon Attorney General Opinion No. 2011-24. You further state that since the repeal of that ordinance, members of the public have expressed concern regarding the open carry of firearms. According to your letter, the City of Overland Park is considering further regulating the open carry of firearms.

You ask the following question:

*Does Kansas law permit a city to adopt an ordinance that prohibits a person from openly carrying a firearm within the city unless that person possesses a state license to carry a concealed firearm issued pursuant to the Personal and Family Protection Act?*¹

Your question pertains to K.S.A. 2012 Supp. 12-16,124, as amended by L. 2013, Ch. 36, § 1, which states in relevant part:

(a) No city or county shall adopt any ordinance, resolution or regulation, and no agent of any city or county shall take any administrative action, governing the purchase, transfer, ownership, storage or transporting of firearms or ammunition, or any component or combination thereof. Except as provided in subsection (b) of this section and subsection (b) of K.S.A. 75-7c10, and amendments thereto, any such ordinance, resolution or regulation adopted prior to the effective date of this 2007 act shall be null and void.

(b) Nothing in this section shall:

...

(2) prohibit a city or county from regulating the manner of openly carrying a loaded firearm on one's person; or in the immediate control of a person, not licensed or recognized under the personal and family protection act while on property open to the public.

To answer your question, it is helpful to revisit our previous opinions that analyzed this statute.² In Attorney General Opinion No. 2012-2, we opined that "by enacting the broad preemptive language in K.S.A. 2011 Supp. 12-16,124(a), the Kansas Legislature has clearly manifested its intent to occupy the field of regulating the purchase, transfer, ownership, storage or transporting of firearms or ammunition." As such, any local ordinance that regulates the purchase, transfer, ownership, storage or transporting of firearms or ammunition is preempted by state law unless such regulation falls within an exception to K.S.A. 2012 Supp. 12-16,124(a), as amended by L. 2013, Ch. 36, § 1.

In Attorney General Opinion No. 2011-06, we opined that K.S.A. 2010 Supp. 12-16,124(b) creates specific exceptions to the general rule of preemption of local authority to regulate firearms found in K.S.A. 2010 Supp. 12-16,124(a). We further opined that if a factual circumstance does not fall within one of the exception categories of K.S.A. 2010 Supp. 12-16,124(b), then the local firearms regulation is preempted. Based upon the plain language of K.S.A. 2010 Supp. 12-16,124(b)(2), we concluded that the statute

¹ K.S.A. 2012 Supp. 75-7c01 *et seq.*

² Although our previous opinions refer to different volumes of the K.S.A. Supplement, the statute in question has not been amended in a manner that would alter our previous analyses. Accordingly, our analysis of K.S.A. 2010 Supp. 12-16,124 and K.S.A. 2011 Supp. 12-16,124 is still applicable to K.S.A. 2012 Supp. 12-16,124, as amended by L. 2013, Ch. 36, § 1.

allows a municipality to regulate the manner of openly carrying a loaded firearm on one's person, regardless of whether that person holds a concealed carry license.

In Attorney General Opinion No. 2011-24, we opined that K.S.A. 2011 Supp. 12-16,124(b)(2) does not allow a city to completely ban the open carry of loaded firearms on property open to the public, but instead allows a city to regulate "the manner of" open carry of loaded firearms. We further opined that "the manner of" openly carrying a firearm means the "way, mode or method" of open carry.

We now turn to your question, whether a city may require persons who wish to openly carry firearms to have in their possession a state-issued concealed carry license.

We note at the outset that K.S.A. 2012 Supp. 12-16,124(b)(2), as amended by L. 2013, Ch. 36, § 1, allows a municipality to regulate "the manner of openly carrying a *loaded* firearm on one's person"³ As we opined in Attorney General Opinion No. 2011-06, factual circumstances that fall outside the categories of exceptions in K.S.A. 2012 Supp. 12-16,124(b), as amended by L. 2013, Ch. 36, § 1, are preempted by the broad language found in K.S.A. 2012 Supp. 12-16,124(a), as amended by L. 2013, Ch. 36, § 1. In the case of the open carry of firearms, K.S.A. 2012 Supp. 12-16,124(b)(2), as amended by L. 2013, Ch. 36, § 1, is silent on the open carry of *unloaded* firearms. Therefore, a city may not regulate the open carry of *unloaded* firearms by holders or non-holders of concealed carry licenses.

However, a city may regulate "the manner of" openly carrying a loaded firearm on one's person. As noted in Attorney General Opinion No. 2011-24, an ordinary definition of "manner" is "way, mode or method." Other ordinary definitions include "a mode of procedure or way of acting"⁴ and "mode of action; way of performing or effecting anything; method; style; form; fashion."⁵ In Attorney General Opinion No. 2011-24 we opined that examples of regulating the manner of openly carrying a firearm include "a regulation requiring firearms to be secured in a holster, requiring openly carried firearms to have the safety on, and requiring an individual openly carrying a firearm to maintain control of the firearm at all times."

Thus, the question is whether the phrase "the manner of openly carrying a loaded firearm on one's person" includes the possession of a valid state-issued concealed carry license. In our opinion, that phrase refers to methods or procedures for physically securing and safely carrying a loaded firearm on one's person. For example, a city could prohibit the open carry of a loaded firearm in a person's waistband. We do not believe "the manner of openly carrying a loaded firearm" can be reasonably interpreted to include the possession of a concealed carry license, a driver's license, or any other document, because possession of a document does not affect the way, mode or method of securing and safely carrying a loaded firearm on one's person.

³ Emphasis added.

⁴ <http://www.merriam-webster.com/dictionary/manner>.

⁵ <http://www.webster-dictionary.org/definition/manner>.

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An ordinance that restricts the open carry of firearms to those individuals who have in their possession a state-issued concealed carry license serves to limit *who* may openly carry a loaded firearm, but does not regulate the way, mode or method of openly carrying a loaded firearm. In our opinion, this type of ordinance would be a form of “governing the . . . transport of firearms or ammunition” that is preempted by K.S.A. 2012 Supp. 12-16,124(a), as amended by L. 2013, Ch. 36, § 1. The state has occupied the field of regulation in this area.

In light of the foregoing, we decline to answer your remaining questions regarding a theoretical city ordinance requiring persons openly carrying a firearm to possess a concealed carry license.

Sincerely,

Derek Schmidt
Attorney General

Sarah Fertig
Assistant Attorney General

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