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July 5, 2013

ATTORNEY GENERAL OPINION NO. 2013- 11

Robert J. Schmisser, County Counselor  
Pratt County Counselor's Office  
223 South Main St., Suite 200  
P.O. Box 313  
Pratt, KS 67124

Re: Counties and County Officers—General Provisions—County Home Rule Powers; Limitations, Restrictions and Prohibitions; Charter Resolutions

State Departments; Public Officers and Employees—Firearms—Personal and Family Protection Act

Synopsis: A county may not enact a charter resolution to exempt the county from L. 2013, Ch. 105, § 2. Cited herein: K.S.A. 2012 Supp. 19-101a; K.S.A. 19-101c; K.S.A. 2012 Supp. 75-7c01; 75-7c17, as amended by L. 2013, Ch. 105, § 10; 75-6102; L. 2013, Ch. 105, § 2.

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Dear Mr. Schmisser:

As the Pratt County Counselor, you request our opinion whether a county may enact a charter resolution exempting itself from Section 2 of Senate Substitute for House Bill 2052 (Senate Sub. for HB 2052), hereinafter referred to as L. 2013, Ch. 105, § 2. Effective July 1, 2013, L. 2013, Ch. 105, § 2 prohibits a Kansas municipality<sup>1</sup> from restricting persons licensed by the state to carry concealed handguns from carrying a

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<sup>1</sup> The legislature adopted the definition of municipality in K.S.A. 2012 Supp. 75-6102(b) for the purposes of the bill, excluding school districts: "any county, township, city . . . or other political or taxing subdivision of the state, or any agency, authority, institution or other instrumentality thereof." L. 2013, Ch. 105, §2(l)(2).

concealed handgun into a state or municipal building<sup>2</sup> unless such building has adequate security measures<sup>3</sup> to detect and restrict all weapons from entering the building.<sup>4</sup>

Your question pertains to a county's power of home rule, which allows the governing body of a county to "transact all county business and perform all powers of local legislation and administration as it deems appropriate."<sup>5</sup>

The principles governing county home rule authority are well-established. County home rule powers derive from statute, specifically K.S.A. 19-101 *et seq.* Such home rule powers "shall be liberally construed for the purpose of giving to counties the largest measure of self-government."<sup>6</sup> As part of its home rule authority, a county may enact a charter resolution to exempt itself from state laws that are applicable to the county but not uniformly applicable to all counties.<sup>7</sup>

County home rule powers are not unlimited. "Counties are prohibited . . . from passing any legislation which is contrary to or in conflict with any act of the state legislature which is of uniform application to all counties throughout the state."<sup>8</sup> Such uniform laws "occupy the field" of regulation and preclude home rule: "The legislature may reserve exclusive jurisdiction to regulate in a particular area when an intent is clearly manifested by state law to pre-empt a particular field by uniform laws made applicable throughout the state."<sup>9</sup> Thus, whether a county may enact a charter resolution to exempt itself from the provisions of Section 2 of L. 2013, Ch. 105 depends upon whether the law is a uniform enactment that preempts local regulation of concealed carry.

Section 2 of L. 2013, Ch. 105 is "a part of and supplemental to"<sup>10</sup> the Personal and Family Protection Act (PFPA),<sup>11</sup> commonly known as the concealed carry law. Therefore, we consider Section 2 in the context of the PFPA as a whole.

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<sup>2</sup> "State or municipal building" means a building owned or leased by such public entity. It does not include a building owned by the state or a municipality which is leased by a private entity whether for profit or not-for-profit or a building held in title by the state or a municipality solely for reasons of revenue bond financing." L. 2013, Ch. 105, § 2(l)(5)(A).

<sup>3</sup> "Adequate security measures" means the use of electronic equipment and personnel at public entrances to detect and restrict the carrying of any weapons into the state or municipal building, including, but not limited to, metal detectors, metal detector wands or any other equipment used for similar purposes to ensure that weapons are not permitted to be carried into such building by members of the public. Adequate security measures for storing and securing lawfully carried weapons, including, but not limited to, the use of gun lockers or other similar storage options may be provided at public entrances." L. 2013, Ch. 105, § 2(l)(1).

<sup>4</sup> The governing body or chief administrative officer of a municipal building may exempt the building from this requirement for specified periods of time by submitting written notice to the Attorney General. L. 2013, Ch. 105, §§ 2(i) and (j).

<sup>5</sup> K.S.A. 2012 Supp. 19-101a(a).

<sup>6</sup> K.S.A. 19-101c.

<sup>7</sup> K.S.A. 2012 Supp. 19-101a(b).

<sup>8</sup> *Missouri Pac. R.R. v. Board of Co. Comm'rs of Greeley Co.*, 231 Kan. 225, 227 (1982). See also K.S.A. 2012 Supp. 19-101a(a)(1).

<sup>9</sup> 231 Kan. at 227.

<sup>10</sup> L. 2013, Ch. 105, § 2(m).

The PFFA includes a clear description of the legislature's intent in enacting statewide laws governing concealed carry. K.S.A. 2012 Supp. 75-7c17(a), as amended by L. 2013, Ch. 105, § 10, states:

The legislature finds as a matter of public policy and fact that it is necessary to provide *statewide uniform standards* for issuing licenses to carry concealed handguns for self-defense and finds it necessary to *occupy the field of regulation* of the bearing of concealed handguns for self-defense to ensure that no honest, law-abiding person who qualifies under the provisions of this act is subjectively or arbitrarily denied the person's rights. No city, *county* or other political subdivision of this state shall regulate, restrict or prohibit the carrying of concealed handguns by persons licensed under this act *except as provided in section 2*, and amendments thereto, and in subsection (b) of K.S.A. 75-7c10, and amendments thereto, and subsection (f) of K.S.A. 21-4218, prior to its repeal, or subsection (e) of K.S.A. 21-6309, and amendments thereto. Any existing or future law, ordinance, rule, regulation or resolution enacted by any city, *county* or other political subdivision of this state that regulates, restricts or prohibits the carrying of concealed handguns by persons licensed under this act except as provided in section 2, and amendments thereto, and in subsection (b) of K.S.A. 75-7c10, and amendments thereto, and subsection (f) of K.S.A. 21-4218, prior to its repeal, or subsection (e) of K.S.A. 21-6309, and amendments thereto, shall be null and void.<sup>12</sup>

In our opinion, this statute is a clear manifestation of the legislature's intent to preempt local regulation of concealed carry. Consistent with such intent, the other statutes of the PFFA contain no provision that would exempt certain counties from its application or otherwise create exceptions to the general applicability of the PFFA to all counties. Although the PFFA authorizes counties to restrict the concealed carry of handguns into certain county *buildings*,<sup>13</sup> it is nonetheless uniformly applicable to all Kansas counties.

Section 2 of L. 2013, Ch. 105 is no different. Section 2 applies to "any . . . municipal building" and any "municipality." The bill defines municipality to include "any county." If we substitute "county" for "municipality" in Section 2, it is clear that the statute applies to all counties. For example, Section 2(c) would read: "No state agency *or county* shall prohibit an employee who is licensed to carry a concealed handgun under the provisions of the personal and family protection act from carrying such concealed handgun at the employee's work place . . . ." <sup>14</sup>

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<sup>11</sup> K.S.A. 2012 Supp. 75-7c01 *et seq.*

<sup>12</sup> Emphasis added.

<sup>13</sup> See L. 2013, Ch. 105, §§ 2(g), (h) and (k).

<sup>14</sup> Emphasis added.

It is our opinion that L. 2013, Ch. 105, § 2 is part of an act of the legislature that is uniformly applicable to all counties. Because the PFPA is a uniform enactment applicable to all counties, a county may not enact a charter resolution to exempt itself from the provisions of Section 2 of L. 2013, Ch. 105, or from any other provision of the PFPA. However, we note that Sections 2(i) and 2(j) of L. 2013, Ch. 105 provide mechanisms by which a county may exempt certain buildings from the provisions of the bill for specific periods of time.<sup>15</sup>

Sincerely,

Derek Schmidt  
Attorney General

Sarah Fertig  
Assistant Attorney General

DS:AA:SF:sb

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<sup>15</sup> L. 2013, Ch. 105, §§ 2(i) and (j).