

IN THE FRANKLIN COUNTY COURT OF COMMON PLEAS
CIVIL DIVISION

CITY OF COLUMBUS,	:	
	:	
Plaintiff,	:	CASE NO. 19 CV 2281
	:	
vs.	:	JUDGE MCINTOSH
	:	
STATE OF OHIO	:	
	:	
Defendants,	:	

**DECISION AND ENTRY ON PLAINTIFF'S
MOTION FOR A PRELIMINARY INJUNCTION**

MCINTOSH, J.

This matter came before the Court on request by Plaintiff, City of Columbus (hereafter “the City”), for a preliminary injunction against Defendant, State of Ohio (hereafter “the State”). The City filed its Motion for Preliminary Injunction on March 19, 2019. The State filed its Memorandum in Opposition on April 19, 2019.

The matter was scheduled for a preliminary injunction hearing on May 13, 2019. On May 13, 2019, the Court heard arguments from counsel on the preliminary injunction request. Upon consideration of the arguments of counsel, the Court finds the following relevant.

STATEMENT OF FACTS

R.C. 9.68 is the firearms uniformity law. The law states that “the individual right to keep and bear arms” is a “fundamental individual right” that is “constitutionally protected in every part of Ohio” R.C. 9.68(A). The statute states that “the general assembly finds the need to provide uniform laws throughout the state regulating the ownership, possession, purchase, other acquisition, transport, storage, carrying, sale or other transfer of firearms, their components, and their ammunition.” *Id.* The statute further provides that,

Except as specifically provided by the United States Constitution, Ohio Constitution, state law, or federal law, a person, without further license, permission, restriction, delay, or process, may own, possess, purchase, sell, transfer, transport, store, or keep any firearm, part of a firearm, its components, and its ammunition.

The statute provides for an avenue to challenge any ordinance that is in conflict with the statute stating, “the court shall award costs and reasonable attorney fees to any person, group, or entity that prevails in a challenge to an ordinance, rule, or regulation as being in conflict with this section.” R.C. 9.68(B).

On December 27, 2018, the Ohio General Assembly overrode Governor John Kasich’s veto of Am. Sub. H.B. 228. This house bill makes changes to R.C. 9.68 by preempting “Any such further license, permission, restriction, delay, or process” which “interferes with the fundamental individual right described in this division and unduly inhibits law abiding people from protecting themselves, their families, and others from intruders and attackers and from other legitimate uses of constitutionally protected firearms, including hunting and sporting activities.” Amended R.C. 9.68(A). In addition, Am. Sub. H.B. 228, allows any “person, group, or entity adversely affected by any manner of ordinance, rule, regulation, resolution, practice, or other action enacted or enforced by a political subdivision, in conflict with division (A)...may bring a civil action against

the political subdivision seeking damages from the political subdivision, declaratory relief, injunctive relief, or a combination of those remedies.” Amended R.C. 9.68(B).

The City seeks a preliminary injunction to prevent the implementation of Amended R.C. 9.68. The City argues that Am. Sub. H.B. 228 and Amended R.C. 9.68 infringes on its ability to exercise its home rule authority to regulate firearms within its municipality and subjects the City to damages for exercising such authority. The City believes an injunction is necessary to preserve its constitutionally protected rights to regulate firearms within its municipal boundaries. The City argues that under the Home Rule Amendment, the General Assembly does not have the authority to prohibit municipal legislation in the exercise of the municipality’s police powers. The City asks the Court to make a determination as to whether Amended R.C. 9.68 violates the Home Rule Amendment by infringing on the City’s ability to self-govern and is therefore unconstitutional.

The State asserts an injunction is unnecessary because the City will not suffer irreparable harm. The State argues that R.C. 9.68 has been in effect since 2007 and there is no merit in the City’s claims. The State further argues that it is settled law that Ohio cities do not have the constitutional authority to regulate firearms in a manner that conflicts with state law.

LAW AND ANALYSIS

The Home Rule Amendment provides that “municipalities shall have the authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, that are not in conflict with general laws.” Ohio Const. Art. XVIII, §3. A municipality exceeds its powers under the Home Rule Amendment and a state statute takes precedence over a local ordinance if “(1) the ordinance is an exercise of the police power, rather than of local self-government, (2) the statute is a general law, and (3) the ordinance is in conflict with the statute.” *Mendenhall v. Akron*, 117 Ohio St. 3d 33, 2008-Ohio-

270, ¶17. The conflict which limits the municipal local self-government must relate to a conflict with state legislation on the same subject matter. *Youngstown v. Evans*, 121 Ohio St. 342, 168 N.E. 844 (1929).

To qualify as a “general law”, a statute must:

1. be part of a statewide and comprehensive legislative enactment,
2. apply to all parts of the state alike and operate uniformly throughout the state.
3. set forth police, sanitary, or similar regulations, rather than purport only to grant or limit legislative power of a municipal corporation to set forth police, sanitary, or similar regulations, and
4. prescribe a rule of conduct upon citizens generally.

See Canton v. State, 95 Ohio St.3d 149, 2002-Ohio-2005.

In this case, there is no dispute that requirements one, two and four are satisfied. Where the parties disagree is with regard to requirement number three. “[A] statute which prohibits the exercise by a municipality of its home rule powers without such statute serving an overriding statewide interest would contravene the constitutional grant of municipal power.” *City of Dayton v. State*, 151 Ohio St.3d 168, 172, 2017-Ohio-6909, ¶16.

Courts consider the following equitable bases in deciding whether to grant injunctive relief:

1. the likelihood or probability of a plaintiff’s success on the merits;
2. whether the issuance of the injunction will prevent irreparable harm to the plaintiff;
3. what injury to others will be caused by the granting of the injunction [balance of harms]; and
4. whether the public interest will be served by the granting of the injunction.

See Corbett v. Ohio Bldg. Auth., 86 Ohio App. 3d 44, 49, 619 N.E. 2d 1145 (1993) (citing *In re DeLorean Motor Co.*, 755 F.2d 1223, 1228 (6th Cir. 1985)).

The Court will address each equitable basis as it appears above.

I. The likelihood or probability of success on the merits.

In reviewing the constitutionality of Am. Sub. H.B. 228 and Amended R.C. 9.68, the Court must consider whether to analyze the statute as a whole or the individual statutory provisions in determining whether the law is a “general law” under the *Canton* Test. The Ohio Supreme Court has considered this in multiple cases involving the constitutionality of the present statute and others.

In *Ohioans for Concealed Carry, Inc. v City of Clyde*, 120 Ohio St. 3d 96, 2008-Ohio-4605, 896 N.E. 2d 967 (2008), the question before the Ohio Supreme Court was whether a city ordinance, which prohibited licensed handgun owners from carrying concealed handguns in Clyde city parks, was a valid exercise of the municipality’s home rule power. Specifically, the Court reviewed the constitutionality of R.C. 2923.126(A), which provides that a licensed handgun owner may carry a concealed handgun anywhere in the state, except as provided by the statute. *Ohioans for Concealed Carry, Inc. v. City of Clyde*.

The City of Clyde argued that the regulation of handguns in its city parks was a matter of local self-government and the city was acting within its power to enact legislation regardless of the applicable state statute. Clyde further argued that R.C. 2923.126, was not general law because it did not apply uniformly throughout the state. Ohioans for Concealed Carry maintained that the regulation of firearm possession is an exercise of police power and contends that the exceptions apply uniformly throughout the state. Ohioans for Concealed Carry further argued that the statute was a general law and the exceptions therefore do not affect uniform application or enforcement of the statute.

In its review, the Court found that the ordinance at issue was an exercise of Clyde's police power because it related to "public health and safety as well as the general welfare of the public." *Id.* at ¶35.

Next, the court sought to determine whether R.C. 2923.126 was a general law under the *Canton* Test. The Court determined that the statute created a statewide comprehensive legislative enactment. The Court found that the General Assembly crafted the statute based on a need for a statewide comprehensive handgun possession law and that R.C. 9.68(A) represented an attempt to nullify all municipal laws impeding uniform application of the state statute. The Court rejected Clyde's argument that the statute was inconsistent as it applied to municipal boundaries and found that the statute applied to "all municipalities in the same fashion, subject to the same exceptions." *Id.* at ¶45. In addition, the Court found that the statute did more than merely prevent municipalities from enacting inconsistent handgun laws and provided a program to foster proper, legal handgun ownership in the state.

In *City of Cleveland v. State*, 128 Ohio St. 3d 135, 2010-Ohio-6318, 942 N.E.2d 370 the Court reviewed the constitutionality of R.C. 9.68 based on the second prong of the home rule analysis and reaffirmed its holding in *Clyde*, that R.C. 9.68 is part of a comprehensive statewide legislative enactment that cannot be analyzed in a vacuum. *City of Cleveland v. State*. The Court determined that the statute, when read as a whole, did not merely limit the legislative power of municipalities to set forth police, sanitary, or similar regulations. *Id.* at ¶13.

In the case *City of Dayton v. State*, 151 Ohio St. 3d 168, 2017-Ohio-6909, 87 N.E. 3d 176 (2017) the Ohio Supreme Court reviewed the constitutionality of three statutes that placed limitations on municipalities in their use of traffic cameras. The Court analyzed the statutes as they pertained to the third prong of the "general law" test, which focuses on limiting municipal

authority. In its review, the Court found that analysis under the third *Canton* prong required consideration of the individual statutory authority provision rather than examining the entire statute as a whole. *City of Dayton* at ¶ 20. Despite the precedent set by *Ohioans for Concealed Carry* and *City of Cleveland*, the Court found in the *City of Dayton* that “when a statute expressly grants or limits the legislative power of a municipal corporation to set forth police, sanitary, or similar regulations, without serving an overriding statewide interest” the statute, or a portion of it, violates the Home Rule Amendment. *Id.* The Court found that the limitations the General Assembly placed on municipalities in their use of traffic cameras violated the Home Rule Amendment and was unconstitutional.

In its Motion for Preliminary Injunction, the City argues that Am. Sub. H.B. 228 and R.C. 9.68 are unconstitutional because they infringe on the City’s right to exercise its zoning powers, under C.C.C. 3332.02, to prohibit a firearms manufacturing plant from locating in a residential neighborhood. The City asserts that the General Assembly has expressly prohibited the City from passing any zoning regulations related to firearms, including where a firearms manufacturer might locate. The City cites to R.C. 9.68(A) which provides “[e]xcept as specifically provided by the United States Constitution, Ohio Constitution, state law, or federal law, a person, without further license, permission, restriction, delay, or process... may... manufacture any firearm, part of a firearm, its components, and its ammunition.” The City also points to R.C. 9.68(D) arguing that the municipalities are only able to have a zoning ordinance prohibiting the commercial sale of firearms and its components. The City contends that the General Assembly has declared that municipalities may zone for purposes of firearm sales but has prohibited municipalities from zoning to regulate firearm manufacturing everywhere in the city.

The City argues that it has a strong likelihood of success on the merits as Amended R.C. 9.68 violates the Separation of Powers Doctrine because the General Assembly has granted itself the authority to declare ordinances, rules, regulations, practice, or other actions of a municipality to be null and void. The City also contends that Am. Sub. H.B. 228 and R.C. 9.68 are void for vagueness. The City states that the amended statute claims to prohibit any municipal “ordinance, rule, regulation, resolution, practice, or other action or any threat of citation, prosecution, or other legal process” as it relates to firearms. R.C. 9.68 (A).

The State counters that the home rule analysis does not apply here because there is no conflict between R.C. 9.68 and the City’s zoning code. The City’s zoning code C.C.C. 3332.02 lists the permitted zoning uses in a rural district. The State argues that the lists of permitted uses does not include manufacturing of any kind and that no manufacturer could locate in a R-rural district. The State contends that the amended uniformity law prohibits cities from imposing additional obstacles aimed specifically at firearms manufacturing but does not exempt firearms manufacturers from all local zoning ordinances. The State points to R.C. 9.68(D) stating that the section allows a political subdivision to have a zoning ordinance that applies specifically to the commercial sale of firearms.

II. Whether issuance of the injunction will prevent irreparable harm to the plaintiffs.

Irreparable harm exists where there is no plain, adequate and complete remedy at law, and for which money damages would be impossible, difficult, or incomplete. *Ohio Pyro, Inc. v. Ohio DOC, Div. of State Fire Marshall*, 12th Dist. Fayette Nos. CA2005-03-009, CA2005-03-011, 2006-Ohio-1002 citing *Ohio Pyro, Inc. v. Ohio DOC, Div. of State Fire Marshall*, 12th Dist. Fayette Nos. CA2005-03-009, CA2005-03-011, 2006-Ohio-1002. Actual harm is not required, as “a threat of harm is a sufficient basis on which to grant injunctive relief.” *Ohio Pyro, Inc. v. Ohio*

DOC, Div. of State Fire Marshall, 12th Dist. Fayette Nos. CA2005-03-009, CA2005-03-011, 2006-Ohio-1002

The City contends that the State has sought to interfere with the City's constitutional rights by prohibiting the City from exercising its home rule authority and thus the City argues that it will suffer irreparable harm.

The State argues in opposition that the City has failed to show how it is irreparably harmed by a twelve-year-old law. The State contends that the City must show more than a possibility of irreparable harm as the party seeking injunctive relief must show that irreparable injury is likely in the absence of an injunction. *Levine v. Beckman*, 48 Ohio App. 3d 24, 27 (10th Dist. 1988.)

III. Possible harm

Plaintiff's argue that no Third party would be harmed if the injunction were granted. The injunction would provide a constitutional balance between the State and its constitutionally protected municipalities. The State argues that third parties would be harmed by the confusion created by not having a uniform set of firearm regulations. In rebuttal, the City argued that it is not uncommon for certain laws to differ from municipality to municipality and this would not be any different.

IV. Public interest served.

The City argues that the public interest would be served by the prevention of firearm manufacturers from setting up a plant in the middle of a residential neighborhood. Because the statute does not expressly prohibit such action. Paragraph (D) prohibits the commercial sale of firearms in certain zoned areas but does not speak to manufacturing plants.

The Court finds that the Plaintiff has a likelihood of success on the merits that R.C. 9.68 as amended violates the home rule provisions of the Ohio Constitution. The Court starts with

paragraph (B) of 9.68. Here, the State has given a person, group or entity adversely affected a private cause of action against a municipality which passes a law which is later determined to conflict with paragraph (A). At the preliminary injunction hearing on this matter, the State was unaware of any other state statutes that allowed private citizens or organizations to sue municipalities for promulgating laws later determined to conflict with state law. As such R.C. 9.68 appears to be the only such state statute that imposes civil liability for passing a law which may later conflict with the state law.

Clearly this section of R.C. 9.68 is an unconstitutional infringement upon municipal home-rule authority. Paragraph (B) violates the third prong of the Canton test by purporting to limit legislative power of a municipal corporation to set forth police, sanitary or similar regulations. The chilling effect of this language would act as a deterrence to municipalities promulgating legislation under their home rule authority. Under Article XVIII section 3 of the Ohio Constitution, municipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations as are not in conflict with general laws. Language imposing liability on a municipality for passing a law which was later determined to conflict with state law would effectively end home rule as the threat of litigation from third parties would always be present.

The Court agrees that R.C. 9.68 unconstitutionally infringes upon the Plaintiff's right to exercise its zoning powers. Paragraph (D) specifically permits municipalities to regulate the *sale* (emphasis added) of firearms, firearm components or ammunition for firearms in areas zoned for residential or agricultural uses. It does not specifically grant municipalities zoning to limit gun manufacturing in areas zoned residential and agricultural.

It could be argued municipalities have always been able to zone use in residential and agricultural areas. However, since 9.68 provides a specific exception for firearms but not manufacturing a municipality which promulgated legislation which prohibited manufacturing could be subject to litigation by a person, group or entity adversely affected by the zoning ordinance and could spend significant resources defending such a suit even if successful. The Plaintiff will suffer irreparable harm because of the ambiguity in the statute that does not specifically exclude zoning for manufacturing.

The Court agrees with the City that no third persons would be harmed by the granting of the injunction. As stated in the brief of the City, “By insuring a proper constitutional balance between the State and its constitutionally protected municipalities, the Court is ensuring that third parties would not be harmed”. The State did not articulate any specific harm to third parties if the injunction were to be granted and this Court likewise does not see any harm to third parties if the injunction is granted.

Finally, the Court does believe the public interest will be served by the granting of the injunction. Until the issues that have been presented have been properly resolved there is nothing in this record that would establish that an injunction would cause harm to the interest of the public. The Court finds that its interest would be better served by granting the injunction.

The Court grants the preliminary injunction against R.C. 9.68 both in its original and amended forms and Am Sub. H.B.

Copies to: All counsel (Electronically)

Franklin County Court of Common Pleas

Date: 11-02-2022

Case Title: CITY OF COLUMBUS -VS- STATE OF OHIO

Case Number: 19CV002281

Type: ENTRY

It Is So Ordered.

A handwritten signature in black ink, which appears to read "Stephen L. McIntosh", is written over a blue circular seal. The seal contains the text "COMMON PLEAS COURT" at the top, "FRANKLIN COUNTY, OHIO" in the middle, and "ALL THINGS ARE POSSIBLE" at the bottom.

/s/ Judge Stephen L. McIntosh