



STATE OF INDIANA

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CURTIS T. HILL, JR.
ATTORNEY GENERAL

April 2, 2020

OFFICIAL OPINION 2020-4

The Honorable Jim Buck
Indiana State Senate
200 W. Washington Street
Indianapolis, IN 46204

The Honorable Aaron Freeman
Indiana State Senate
200 W. Washington Street
Indianapolis, IN 46204

The Honorable Jim Tomes
Indiana State Senate
200 W. Washington Street
Indianapolis, IN 46204

RE: Local Government Restriction of Firearms During Emergencies

Dear Senators Buck, Freeman, and Tomes:

This opinion is in response to your request for an official opinion of the Attorney General regarding whether a city, county, or other political subdivision may restrict the sale of firearms during an emergency declaration.

QUESTION PRESENTED

Whether a city, county, or other political subdivision may restrict the sale of firearms during an emergency declaration.

BRIEF ANSWER

No; under the Indiana Code, a city, county, or other political subdivision is prohibited from restricting the sale of firearms during an emergency declaration.

BACKGROUND

On March 6, 2020, Governor Holcomb issued Executive Order 20-02, which declared a public health emergency in the State of Indiana due to the COVID-19 outbreak. On March 11, 2020, the World Health Organization declared the COVID-19 outbreak a global pandemic. On March 13, 2020, President Trump declared a national emergency in response to the COVID-19 pandemic.

On March 23, 2020, Governor Holcomb issued a “stay at home order” in Executive Order 20-08. Section 14p of Executive Order 20-08 specifically lists “firearm and ammunition suppliers” among essential businesses and operations. On March 28, 2020, the United States Department of Homeland Security released a second list of essential services allowed to remain open during the COVID-19 national emergency which included “workers supporting the operation of firearm or ammunition product manufacturers, retailers, importers, distributors, and shooting ranges.”¹ Essential businesses and operations listed via memorandum by the Department of Homeland Security were retroactively and prospectively incorporated by Executive Order 20-08, section 14a. Despite such orders and determinations by federal and state government, some Indiana localities are reportedly labeling firearm retailers as *nonessential* by policy and requiring them to close during this public health emergency.

ANALYSIS

Indiana counties and municipalities have “home rule” under Ind. Code § 36-1-3-4. However, this is limited to powers granted to a unit by statute and all other powers necessary or desirable in the conduct of its affairs, even though not granted by statute. Ind. Code § 36-1-3-4(b). Local governments only retain power which is not constitutionally or statutorily denied. See Ind. Code § 36-1-3-5. Here, all political subdivisions are prohibited, by way of Ind. Code § 35-47-11.1-2, from regulating firearms and ammunition. Even in times of declared emergency, all political subdivisions are prohibited from engaging in regulation of firearms under Ind. Code § 10-14-3-12.

Political subdivisions are specifically prohibited from regulating firearms with limited exception.² Ind. Code § 35-47-11.1-2 provides in relevant part:

. . . [A] political subdivision may not regulate:

- (1) firearms, ammunition, and firearm accessories;
- (2) the ownership, possession, carrying, transportation, registration, transfer, and storage of firearms, ammunition, and firearm accessories; and
- (3) commerce in and taxation of firearms, firearm ammunition, and firearm accessories.

As the above clearly illustrates, under existing law a political subdivision cannot pass an ordinance that regulates ownership, possession, or even taxation of firearms, ammunition, or firearm accessories. A local ordinance which purports to regulate firearms, whether enacted before, on or after June 30, 2011, is void. See Ind. Code § 35-47-11.1-3. “An individual cannot be adversely affected by a void ordinance, because by its very nature, a void ordinance is ‘[o]f no legal effect; null.’ *Black’s Law Dictionary* 1604 (8th ed. 2004).” *Dykstra v. City of Hammond*, 985 N.E.2d 1005, 1008 (Ind. Ct. App. 2013)(transfer

¹ <https://www.cisa.gov/publication/guidance-essential-critical-infrastructure-workforce>

² A list of exceptions may be found in Ind. Code § 35-47-11.1-4

denied). Courts have found that the legislature intended to prevent the adoption of future ordinances that may conflict with state law and to prevent the enforcement of statutes that were in place at the time of adoption. See *City of Evansville v. Magenheimer*, 37 N.E.3d. 965, 968 (Ind. Ct. App. 2015) (quoting *Dykstra v. City of Hammond*, 985 N.E.2d. 1105, 1108 (Ind. Ct. App. 2013)).

The Governor of Indiana has the power to declare a disaster emergency under Ind. Code § 10-14-3-12. While such declaration grants broad powers to local units of government or political subdivisions to take actions necessary to deal with such an emergency, state and local governments are concurrently limited with respect to firearms. Ind. Code § 10-14-3-33.5 provides in pertinent part:

(a) ... [T]he state, a political subdivision, or any other person may not prohibit or restrict the lawful possession, transfer, sale, transportation, storage, display, or use of firearms or ammunition during:

- (1) a disaster emergency;
- (2) an energy emergency; or
- (3) a local disaster emergency;

declared under this chapter. . . .

Accordingly, the state, a political subdivision, or any other person are explicitly prohibited from restricting such activity during disaster emergencies as declared by the governor, or local disaster emergencies as declared by a local unit. Importantly, Ind. Code § 10-14-3-33.5(b) establishes a limit to the types of properties where firearms or ammunition are prohibited during a disaster emergency. However, the limitations provided for in Ind. Code § 10-14-3-33.5(b) do not provide an exception to the rule for emergency declarations issued by a city, county, or other political subdivision.

CONCLUSION

No unit of government in the State of Indiana has the power to restrict the lawful exercise of the right to bear arms during a state or local emergency. Furthermore, local units are prohibited by Ind. Code § 35-47-11.1-2 and Ind. Code § 10-4-3-33.5 from ordering firearm retailers to close their businesses or in any other way restricting or prohibiting the transfer or sales of firearms during an emergency declaration or otherwise.

Sincerely,



Curtis T. Hill, Jr.
Attorney General

David P. Johnson, Chief Counsel
William H. Anthony, Assistant Chief Counsel