

DOUGLAS F. GANSLER
ATTORNEY GENERAL

KATHERINE WINFREE
Chief Deputy Attorney General

JOHN B. HOWARD, JR.
Deputy Attorney General



DAN FRIEDMAN
Counsel to the General Assembly

SANDRA BENSON BRANTLEY
BONNIE A. KIRKLAND
KATHRYN M. ROWE
Assistant Attorneys General

THE ATTORNEY GENERAL OF MARYLAND
OFFICE OF COUNSEL TO THE GENERAL ASSEMBLY

September 30, 2011

The Honorable Donald H. Dwyer, Jr.
1432 Isted Road
Glen Burnie, Maryland 21060

Dear Delegate Dwyer:

You have asked for advice concerning an Anne Arundel County ordinance. Specifically, you have asked whether application of the ordinance to handguns, rifles, and shotguns would be preempted by State or federal law. It is my view that application of the ordinance to handguns, rifles, and shotguns would be preempted by State law, but not by federal law.

Anne Arundel County Code § 11-12A-101, *et seq.*, imposes licensing and other requirements on second-hand dealers. The ordinance defines a "second-hand dealer" as "a person who acquires commercially from the public and trades commercially with the public in tangible personal property." § 11-12A-101(a). The term does not include pawnbrokers, businesses that deal primarily with antiques, charitable organizations that accept only donations, garage or yard sales, consignment stores dealing in clothing, furniture, books, or baby accessories and toys, or the activities of a club, school, church, or charitable organization that include the sale of donated items; or auctions, estate sales, conventions, or trade shows. *Id.* The law requires second-hand dealers to maintain permanent records of items received by them, and to submit "a legible and correct transcription" from the records of the items purchased for resale each day to the Police Department. § 11-12A-102(a). The record must identify the person from whom the item was purchased by name, address, telephone number, date of birth, driver's license number, and a physical description, including sex, race, distinguishing features, height, weight, and hair and eye color. § 11-12A-102(a)(1). Your letter reflects that the Anne Arundel County Police have interpreted this law to apply to licensed firearms dealers.

Criminal Law Article, § 4-209(a) provides that:

[T]he State preempts the right of a county, municipal corporation, or special taxing district to regulate the purchase, sale, taxation, transfer, manufacture, repair, ownership, possession, and transportation of:

- (1) a handgun, rifle, or shotgun; and

(2) ammunition for and components of a handgun, rifle, or shotgun.

In addition, Public Safety Article, § 5-104 provides that the Regulated Firearms Subtitle:

supersedes any restriction that a local jurisdiction in the State imposes on a sale of a regulated firearm, and the State preempts the right of any local jurisdiction to regulate the sale of a regulated firearm.

Moreover, Public Safety Article § 5-134(a), provides that section 5-134, which prohibits a dealer or other person from selling, renting, or transferring a regulated firearm or ammunition for a regulated firearm to certain categories of individuals:

supersedes any restriction that a local jurisdiction in the State imposes on the transfer by a private party of a regulated firearm, and the State preempts the right of any local jurisdiction to regulate the transfer of a regulated firearm.

A similar provision preempts local regulation of the possession of regulated firearms. Public Safety Article, § 5-133(a).

Finally, Section 6 of Chapter 13 of 1972, which imposed regulations on handguns, provides that:

all restrictions imposed by the law, ordinances, or regulations of the political subdivisions on the wearing, carrying or transporting of handguns are superseded by this Act, and the State of Maryland hereby preempts the right of the political subdivisions to regulate said matters.

It is clear that requiring a license before acquiring and reselling firearms regulates the purchase, sale, and transfer of those firearms and is preempted by State law.¹ It is also clear that the record keeping and reporting requirements of the county ordinance constitute the regulation of the purchase, sale, and transfer of firearms and are similarly preempted by State law. As a result, it is my view that they may not be applied to second-hand dealer transactions involving handguns, rifles and shotguns.

As to federal law, the Firearms Owners Protection Act of 1986 provides, at 18 U.S.C. § 926(a):

(a) The Attorney General may prescribe only such rules and regulations as are necessary to carry out the provisions of this chapter, including—

¹ A firearms dealer could, however, be required to obtain a second-hand dealers license with respect to any other tangible items purchased and sold by the dealers.

(1) regulations providing that a person licensed under this chapter, when dealing with another person so licensed, shall provide such other licensed person a certified copy of this license;

(2) regulations providing for the issuance, at a reasonable cost, to a person licensed under this chapter, of certified copies of his license for use as provided under regulations issued under paragraph (1) of this subsection; and

(3) regulations providing for effective receipt and secure storage of firearms relinquished by or seized from persons described in subsection (d)(8) or (g)(8) of section 922.

No such rule or regulation prescribed after the date of the enactment of the Firearms Owners' Protection Act may require that records required to be maintained under this chapter or any portion of the contents of such records, be recorded at or transferred to a facility owned, managed, or controlled by the United States or any State or any political subdivision thereof, nor that any system of registration of firearms, firearms owners, or firearms transactions or dispositions be established. Nothing in this section expands or restricts the Secretary's authority to inquire into the disposition of any firearm in the course of a criminal investigation.

It is my view that the limitation on what "no such rule or regulation" may do is directed to the rules and regulations authorized by the section, that is, those to be prescribed by the United States Attorney General. The provision does not limit the authority of states and local jurisdictions to enact regulations.

Sincerely,



Kathryn M. Rowe
Assistant Attorney General