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OPINION NO. 94-06

TO: Michael L. Strobe, Police Chief
FROM: Stephen M. Kemp, City Attorney
DATE: August 3, 1994
SUBJECT: Concealed weapons in public buildings

QUESTION:

Does the enactment of Chapter 109, Laws 1994 pertaining to permitting concealed weapons impact the existing city code provisions prohibiting weapons in public buildings.

OPINION:

No.

In 1994, the legislature enacted Chapter 109, Laws 1994 amending A.R.S. §13-3102 to provide for the carrying of concealed weapons with a permit. Existing state law requires that ordinances of political subdivisions of this state shall not be in conflict with state law. See, A.R.S. §13-3108. In 1993, the City adopted an Ordinance prohibiting the possession of weapons in public buildings. See, Ord. 93-47, October 19, 1993.

The question then arises whether Ordinance No. 93-47 is in conflict with Chapter 109. If the answer is in the affirmative, then the ordinance would be preempted by state statute. Conversely, if the answer is in the negative, the city ordinance

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stands.

The City draws its authority to regulate weapons in public buildings from A.R.S. §13-3102.A.10. This section was not changed by the enactment of Chapter 109, Laws 1994. Consequently, the issue becomes whether the legislature impliedly changed subsection A.10 by enactment of Chapter 109. Based on general principles of statutory construction, implied repeal of existing statutes is disfavored. Pima County by City of Tucson v. Maya Construction Co., 158 Ariz. 151, 761 P.2d 1055 (1988). Therefore it is our conclusion that the enactment of Chapter 109, Laws 1994 did not impliedly repeal subsection A.10 of A.R.S. §13-3102.

The remaining issue to be addressed is whether the preemption provisions of A.R.S. §13-3108 and Chapter 109 preempt the City from regulating concealed weapons in any fashion. The basic test on preemption of municipal authority requires: (1) The subject matter be one of state wide concern, (2) Legislature has appropriated the field (3) Legislature has acted. City of Phoenix, v. Breuninger, 50 Ariz. 372, 72 P.2d 580 (1937).

In this case, the second and third parts of the test have not been met. The legislature had a clear opportunity to appropriate the issue of concealed weapons in public buildings and neglected to do so. Conversely, the prohibition of weapons in public buildings does not interfere with the statewide policy of permitting trained individuals in public to carry concealed weapons for their protection. The impact of the city ordinance does not in any way impact the application, permitting and training provisions governing concealed weapons. Instead it appears to be consistent and not in conflict with the provisions of Chapter 109. Hislop v. Rodgers, 54 Ariz. 101, 92 P.2d 527 (1939).

Therefore, it is our opinion that the city ordinance prohibiting weapons, including concealed weapons in public buildings, is not preempted by Chapter 109, Laws, 1994. If you should have any questions, please do not hesitate to contact me.

cc: Honorable Mayor and Council