

Office of the Mayor  
Michael J. Ryan  
Mayor



Phone: (954) 746-3250  
Fax: (954) 746-3243

January 30, 2014

Attorney General  
Office of Attorney General  
State of Florida  
The Capitol PL01  
Tallahassee, Florida 32399-1050

**Re: Request for Attorney General Opinion  
Outdoor Firearm Ranges in Urban Residential Neighborhoods**

Dear Honorable Attorney General Bondi:

As Mayor of the City of Sunrise, I am requesting an Attorney General Opinion regarding the authority and ability of a municipality to limit outdoor firearm ranges in urban residential neighborhoods and/or the discharge of firearms for the purposes of shooting practice. In summary, the limitation on such would be based either upon new ordinances setting forth reasonable restrictions for the protection of the health, safety and welfare of the community and/or interpretation of Florida Statue Section 790.15 and/or enforcement of existing municipal based code restrictions, such as noise ordinances, and those powers reserved through Florida Statute Sections 823.16(2), 823.16(3) and 823.16(5)

The Miami Herald reported that outdoor backyard gun ranges in urban neighborhoods are legally permissible. See <http://www.miamiherald.com/2014/01/26/3895027/big-pine-key-homeowner-has-gun.html>

Florida Statute Section 790.15, which regulates discharge of firearms in public or on residential property, provided in Section 1:

*Except as provided in subsection (2) or subsection (3), any person who knowingly discharges a firearm in any public place or on the right-of-way of any paved public road, highway, or street, who knowingly discharges any firearm over the right-of-way of any paved public road, highway, or street or over any occupied premises, or who recklessly or negligently discharges a firearm outdoors on any property used primarily as the site of a dwelling as defined in s. 776.013 or zoned exclusively for residential use commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. This section does not apply to a person lawfully defending life or property or performing official duties requiring the discharge of a firearm or to a person discharging a firearm on public roads or properties expressly approved for hunting by the Fish and Wildlife Conservation Commission or Florida Forest Service.*

Therefore, under Florida law, an individual is prohibited from discharging a firearm “in any public place or on the right-of-way of any paved public road, highway, or street... [or] over the right-of-way of any paved public road, highway, or street or over any occupied premises....” Additionally, an individual is prohibited from discharging a firearm “on any property used primarily as the site of a dwelling ...or zoned exclusively for residential use...” is if such discharge is performed “recklessly or negligently.”

Assuming the firearm discharge is “on any property used primarily as the site of a dwelling ...or zoned exclusively for residential use...” and is not “in any public place or on the right-of-way of any paved public road, highway, or street... [or] over the right-of-way of any paved public road, highway, or street or over any occupied premises...” (and assuming the firearm is not discharged in defense of life or property or performing official duties and not expressly approved for hunting by Fish and Wildlife Conservation Commission or Florida Forest Service), is a municipality in an urban setting such as Sunrise, Florida permitted to:

- (1) implement reasonable requirements on the circumstances surrounding the discharge of firearms with regards to urban residential firearm ranges to address
  - (a) the type of backstop or safety protection;
  - (b) the type of firearm which can be used;
  - (c) the type of ammunition which can be used;
  - (d) requirements to notify the police department in advance of discharge;
  - (e) restrictions on time of day or for how long;
  - (f) restrictions on how close to a neighboring residential dwelling, school, church, government building or park and/or commercial development;
  - (g) environmental impact of accumulation of lead or other materials.
- (2) make a finding that, in an urban setting where residential dwellings are within 500 feet of urban residential shift firearm range,
  - (a) the establishment of such a firearm range (due to the distance projectiles can travel, propensity for misfirings and misdirected discharges, failure to meet the standard of care for back stop and safety measures) is *per se* negligent and thereby enforce Florida Statute Section 790.15 to arrest those who discharge a firearm in such circumstances; or
  - (b) the establishment of a firearm range lacking enumerated standard of care protections developed in the firearm range industry (e.g., type of firearm, type of backstop and overhead protections from misfires and misdirected discharges; distance from nearest residential dwelling; distance from nearest commercial development, type of ammunition) is negligent and thereby enforce Florida Statute Section 790.15 to arrest those who discharge a firearm in such circumstances where they fail meet to those standard of care criteria.
- (3) enforce existing municipal code based noise restrictions to prohibit discharge of firearms in urban residential neighborhoods either in the entirety or during certain hours both based upon the municipality authority and those powers reserved through Florida Statute Sections 823.16(2), 823.16(3) and 823.16(5).

Relevant is of the overlap of Florida Statute Section 790.33, which in the pertinent part states as follows:

*Except as expressly provided by the State Constitution or general law, the Legislature hereby declares that it is occupying the whole field of regulation of firearms and ammunition, including the purchase, sale, transfer, taxation, manufacture, ownership, possession, storage, and transportation thereof, to the exclusion of all existing and future county, city, town, or municipal ordinances or any administrative regulations or rules adopted by local or state government relating thereto. Any such existing ordinances, rules, or regulations are hereby declared null and void.*

The “discharge” of a firearm is not one of the enumerated areas (the clause states “including purchase, sale, transfer, taxation, manufacture, ownership, possession, storage, and transportation”). But see AGO 2005-40; AGO 2011-17.

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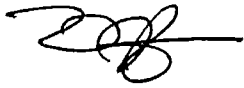
Honorable Attorney General Bondi

January 30, 2014

I would note that Sunrise, Florida is already home to a County-owned public outdoor firearm range which is professionally supervised for safety, available to the public, and geographically separated from existing residential and commercial development.

Your timely response is necessary given the severe potential impact on health, safety and welfare of our community and surrounding communities.

Best regards,

A handwritten signature in black ink, appearing to read "MJ Ryan", with a long horizontal line extending to the right.

Michael J. Ryan  
Mayor, City of Sunrise

cc: Kimberly A. Kisslan, City Attorney  
Members of the Sunrise City Commission  
Michael Satz, State Attorney, 17<sup>th</sup> Judicial Circuit

Office of the Mayor  
Michael J. Ryan  
Mayor



Phone: (954) 746-3250  
Fax: (954) 746-3243

January 31, 2014

Governor Rick Scott  
Office of Governor Rick Scott  
State of Florida  
The Capitol  
400 S. Monroe St.  
Tallahassee, FL 32399-0001

**Re: Outdoor Firearm Ranges and Firearm Discharges in Urban Residential Neighborhoods**

Dear Governor Scott:

As you are aware, I am the Mayor of the City of Sunrise.

I am writing to you urgently in an effort to address a public safety concern related to the apparent legal authority, under Florida law, for individuals to establish outdoor firearm ranges in urban residential neighborhoods and/or discharge firearms for the purposes of shooting practice in those urban residential neighborhoods. In particular, given the obvious safety concerns associated with such unregulated urban residential firearm ranges, local communities would naturally seek to set reasonable restrictions on and/or enforce existing legal prohibitions against establishment of such outdoor urban residential firearm ranges or such discharges for the protection of the health, safety and welfare of the community.

At issue is whether or not you intend to invoke the authority granted to you under Florida Statute Section 790.33(e) to remove from office any elected official who either passes an ordinance causing there to be a restriction on the discharge of firearms in urban residential neighborhoods or any official who causes to be enforced existing laws to prevent such discharges in urban residential neighborhoods. This is not a speculative situation as I intend to propose reasonable restrictions and/or encourage enforcement of existing law.

The Miami Herald reported that outdoor backyard gun ranges in urban neighborhoods are legally permissible. See <http://www.miamiherald.com/2014/01/26/3895027/big-pine-key-homeowner-has-gun.html>

Florida Statute Section 790.15, which regulates discharge of firearms in public or on residential property, provides in Section 1:

*Except as provided in subsection (2) or subsection (3), any person who knowingly discharges a firearm in any public place or on the right-of-way of any paved public road, highway, or street, who knowingly discharges any firearm over the right-of-way of any paved public road, highway, or street or over any occupied premises, or who recklessly or negligently discharges a firearm outdoors on any property used primarily as the site of a dwelling as defined in s. 776.013 or zoned exclusively for residential use commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. This section does not apply to a person lawfully defending life or property or performing official duties requiring the discharge of a firearm or to a person discharging a firearm on public roads or properties expressly approved for hunting by the Fish and Wildlife Conservation Commission or Florida Forest Service.*

Therefore, under Florida law, an individual is prohibited from discharging a firearm "in any public place or on the right-of-way of any paved public road, highway, or street... [or] over the right-of-way of any paved public road, highway, or street or over any occupied premises...." Additionally, an individual is prohibited from discharging a firearm "on any property used primarily as the site of a dwelling ...or zoned exclusively for residential use..." is if such discharge is performed "recklessly or negligently."

However, assuming the firearm discharge is "on any property used primarily as the site of a dwelling ...or zoned exclusively for residential use..." and is not "in any public place or on the right-of-way of any paved public road, highway, or street... [or] over the right-of-way of any paved public road, highway, or street or over any occupied premises..." (and assuming the firearm is not discharged in defense of life or property or performing official duties and not expressly approved for hunting by Fish and Wildlife Conservation Commission or Florida Forest Service), there is an interpretation that establishment of an outdoor firearm range in an urban neighborhood is permissible.

In advance of taken action to prevent such, I would like to know if, in your opinion, a municipality in an urban residential setting such as Sunrise, Florida is permitted to:

- (1) implement reasonable requirements on the circumstances surrounding the discharge of firearms with regards to urban residential firearm ranges to address:
  - (a) the type of backstop or safety protection;
  - (b) the type of firearm which can be used;
  - (c) the type of ammunition which can be used;
  - (d) requirements to notify the police department in advance of discharge;
  - (e) restrictions on time of day or for how long;
  - (f) restrictions on how close to a neighboring residential dwelling, school, church, government building or park and/or commercial development;
  - (g) environmental impact of accumulation of lead or other materials.
- (2) make a finding that, in an urban setting where residential dwellings are within 500 feet of urban residential shift firearm range,
  - (a) the establishment of such a firearm range (due to the distance projectiles can travel, propensity for misfirings and misdirected discharges, failure to meet the standard of care for back stop and safety measures) is *per se* negligent and thereby enforce Florida Statute Section 790.15 to arrest those who discharge a firearm in such circumstances; or
  - (b) the establishment of a firearm range lacking enumerated standard of care protections developed in the firearm range industry (e.g., type of firearm, type of backstop and overhead protections from misfires and misdirected discharges; distance from nearest residential dwelling; distance from nearest commercial development, type of ammunition) is *per se* negligent and thereby enforce Florida Statute Section 790.15 to arrest those who discharge a firearm in such circumstances where they fail meet to those standard of care criteria.
- (3) enforce existing municipal code based noise restrictions to prohibit discharge of firearms in urban residential neighborhoods either in the entirety or during certain hours both based upon the municipality authority and those powers reserved through Florida Statute Sections 823.16(2), 823.16(3) and 823.16(5).

Page 3  
Governor Rick Scott  
January 31, 2014

Police officers in such urban residential settings are entitled to guidance. Furthermore, before an elected official, intending to do nothing more than protect their community, takes a vote to impose reasonable and rational restrictions, or makes a finding that such ranges are *per se* negligent and thereby induce enforcement under Section 790.15(1), they should know whether or not you intend to remove them from office for their role in the passage of such restrictions or enforcement efforts.

Of course, I am familiar with Florida Statute Section 790.33 preemption, as well as interpretations of the Attorney General related thereto. Florida Statute Section 790.33, in the pertinent part states as follows:

*Except as expressly provided by the State Constitution or general law, the Legislature hereby declares that it is occupying the whole field of regulation of firearms and ammunition, including the purchase, sale, transfer, taxation, manufacture, ownership, possession, storage, and transportation thereof, to the exclusion of all existing and future county, city, town, or municipal ordinances or any administrative regulations or rules adopted by local or state government relating thereto. Any such existing ordinances, rules, or regulations are hereby declared null and void.*

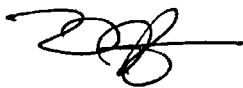
The "discharge" of a firearm is not one of the enumerated areas (the clause states "including purchase, sale, transfer, taxation, manufacture, ownership, possession, storage, and transportation"). However, I am familiar with AGO 2005-40 and AGO 2011-17.

I would note that Sunrise, Florida is already home to a County-owned public outdoor firearm range which is professionally supervised for safety, available to the public, and geographically separated from existing residential and commercial development.

I have copied Mr. Vail from the Attorney General's office, who is representing your office in the current litigation in Leon County involving the constitutionality of Section 790.33. I am not involved in that litigation nor is my City. Additionally, I have attached a copy of the request for an Attorney General Opinion directed to the Honorable Attorney General Pam Bondi.

Your timely response is necessary given the severe potential impact on health, safety and welfare of our community and surrounding communities. I intend to move expeditiously and would rather propose reasonable restrictions which comport with existing Florida law or understand that I am potentially incurring professional and personal consequences for doing nothing more than trying to protect my community and helping to protect urban residential communities in my region.

Best regards,



Michael J. Ryan  
Mayor, City of Sunrise

cc: Kimberly A. Kisslan, City Attorney  
Jay Vail, Attorney General's Office



**RICK SCOTT**  
GOVERNOR

STATE OF FLORIDA

# Office of the Governor

THE CAPITOL  
TALLAHASSEE, FLORIDA 32399-0001

[www.flgov.com](http://www.flgov.com)  
850-488-7146  
850-487-0801 fax

February 11, 2014

Honorable Michael J. Ryan  
Mayor, City of Sunrise  
10770 West Oakland Park Blvd.  
Sunrise, Florida 33351

Dear Mayor Ryan,

Thank you for writing Governor Scott regarding outdoor firearm ranges and his authority under section 790.33(e), Florida Statutes. As you are aware, the constitutionality of this statute has been challenged and is currently pending in the Fifteenth Judicial Circuit. Moreover, your letter also indicates that you have filed a request for an Attorney General Opinion regarding this issue. The outcome of the litigation may affect the enforceability of this statute, and the Attorney General Opinion may impact the Governor's interpretation of it. Accordingly, at this time it is prudent to await the outcome of these proceedings before further action is warranted.

Sincerely,

Peter Antonacci  
General Counsel

Office of the Mayor  
Michael J. Ryan  
Mayor



Phone: (954) 746-3250  
Fax: (954) 746-3243

February 14, 2014

Attorney General  
Office of Attorney General  
State of Florida  
The Capitol PL01  
Tallahassee, Florida 32399-1050

Dear Honorable Attorney General Bondi:

As you know, I requested the Governor provide elected officials guidance as to whether or not the Governor would exercise the authority under F.S. 790.33 to remove from office those who vote for reasonable restrictions on outdoor firearm target shooting in dense urban residential neighborhoods. Attached is the answer from the Governor's office. The Governor is awaiting an opinion from your office (or the outcome of the lawsuit challenging the constitutionality of F.S. 790.33 punitive provisions). However, I wish to act now. I have forwarded to you the unanimous resolution from the Sunrise City Commission seeking the authority to act.

Of course, I am aware of AGO 2005-40, 2011-17 and 2011-20. Nonetheless, it is imperative that we be provided guidance so we may avoid local officials being removed from office as well as enduring the other punitive aspects of F.S. 790.33.

If possible, can you please provide some idea as to when we will receive an answer to the January 30, 2014 AGO request?

I remain available to discuss this matter.

Best regards,

Mike Ryan  
Mayor, City of Sunrise



Office of the Mayor  
Michael J. Ryan  
Mayor



Phone: (954) 746-3250  
Fax: (954) 746-3243

February 20, 2014

Attorney General  
Office of Attorney General  
State of Florida  
The Capitol PL01  
Tallahassee, Florida 32399-1050

**Re: 1/30/2014 AGO Request  
Outdoor Firearm Target Shooting in Dense Urban Residential Neighborhoods**

Dear Honorable Attorney General Bondi:

This is a respectful follow-up correspondence to my correspondence of February 14, 2014 and the January 30, 2014 request for an Attorney General Opinion related to the ability of our City Commission to protect our community from outdoor firearm target ranges in dense urban residential neighborhoods.

Since my February 14, 2014 correspondence, I have learned there is an individual who is promoting standards and guidelines for residents to construct outdoor firearm target ranges in urban residential backyards. I believe you have received a copy of his correspondence and even sent that to the Governor.

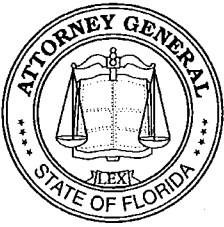
I wish to act now to prevent residents from constructing unreasonable outdoor firearm target shooting in dense urban residential neighborhoods in our City. I have already forwarded to you the unanimous resolution from the Sunrise City Commission seeking the authority to act. It is imperative that we be provided guidance so we may avoid local officials being removed from office as well as enduring the other punitive aspects of F.S. 790.33.

If possible, can you please provide some idea as to when we will receive an answer to the January 30, 2014 AGO request?

I remain available to discuss this matter.

Best regards,

Michael J. Ryan  
Mayor, City of Sunrise



**STATE OF FLORIDA**

**PAM BONDI  
ATTORNEY GENERAL**

**OFFICE OF THE ATTORNEY GENERAL  
Opinions Division**

**PL 01 The Capitol  
Tallahassee, Florida 32399-1050  
Telephone (850) 245-0158  
Fax (850) 922-3969**

February 25, 2014

The Honorable Michael J. Ryan  
Office of the Mayor  
10770 West Oakland Park Boulevard  
Sunrise, Florida 33351

Dear Mayor Ryan:

Thank you for your letter of January 30, 2014, requesting an Attorney General's Opinion relating to the authority of a municipality to "limit outdoor firearm ranges in urban residential neighborhoods and/or the discharge of firearms for the purposes of shooting practice." You have also written to Governor Scott to request assurances from that office that the Governor would not exercise his authority under section 790.33, Florida Statutes, to remove from office those officials who seek to legislate restrictions on outdoor firearm target shooting in residential neighborhoods. Attorney General Bondi has asked me to respond to your letters.

After reviewing the information you have submitted, it does not appear that this is a matter upon which this office may comment. This office is currently involved in litigation in the Second Judicial Circuit dealing with the constitutionality of provisions of section 790.33, Florida Statutes.<sup>1</sup> As our Statement of Policy provides:

In order not to intrude upon the constitutional prerogative of the judicial branch, opinions generally are not rendered on questions pending before the courts or on questions requiring a determination of the constitutionality of an existing statute or ordinance.

Under these circumstances it would be inappropriate for this office to comment on the issues you have raised.<sup>2</sup>

This office, in a series of Attorney General's Opinions has considered whether local governments, both counties and municipalities, may regulate the recreational discharge of firearms in residential areas. Based on the language of the statutes and

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<sup>1</sup> See *Marcus v. Scott*, No. 37-2012-CA-001260 (Fla. 2nd Jud. Cir., Leon County).

<sup>2</sup> See Department of Legal Affairs Statement Concerning Attorney General Opinions (copy enclosed).

The Honorable Michael J. Ryan  
Page Two

the clearly expressed legislative intent for adoption of section 790.33, Florida Statutes, previously issued opinions of this office have concluded that local governments have no authority to regulate in the area of firearms.<sup>3</sup>

I regret that this office could not be of more direct assistance to you in this matter and trust that the opinions issued previously by this office (which I have enclosed) will provide some direction to you in considering future legislative actions by the City of Sunrise.

Sincerely,

A handwritten signature in black ink, appearing to read "Gerry Hammond", written in a cursive style.

Gerry Hammond  
Senior Assistant Attorney General

GH/tsh

Enclosures: Ops. Att'y Gen. Fla. 2011-20, 2011-17, 2008-34,  
2005-40; Inf. Op. to Gibson, dated August 6, 2008;  
Department of Legal Affairs Policy Statement

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<sup>3</sup> See Ops. Att'y Gen. Fla. 11-20 (2011), 11-17 (2011), and 05-40 (2005). And see s. 1, Ch. 2011-109, Laws of Fla. (the language of preemption contained in s. 790.33[1], Fla. Stat., providing that the Legislature has determined to occupy 'the whole field' of firearms regulation is expansive). See also *National Rifle Ass'n of America, Inc. v. City of South Miami*, 812 So. 2d 504 (Fla. 3rd DCA 2002). Cf. *Penelas v. Arms Technology, Inc.*, 778 So. 2d 1042, 1045 (Fla. 3rd DCA 2001), cert. denied, review denied, 799 So. 2d 218 (Fla. 2001) (county's request for injunctive relief against firearm manufacturers and dealers found to be an attempt to regulate firearms and ammunition through the judiciary denied; power to legislate in area of firearm regulation belongs to the legislative branch).

State of Florida  
Office of the Attorney General

**Advisory Legal Opinion (Formal)**

Number: AGO 2011-20  
Date: September 21, 2011  
Subject: Business License Tax - Firearms - Municipalities

Mr. Lonnie Groot  
City Attorney, City of Sanford  
1001 Heathrow Park Lane  
Suite 4001  
Lake Mary, Florida 32746

RE: BUSINESS LICENSE TAX - TAXATION - OCCUPATIONS - FIREARMS - MUNICIPALITIES  
- ORDINANCES - validity of municipal business license tax ordinance including  
gunsmiths and gun dealers. Ch. 205, Fla. Stat.; s. 790.33, Fla. Stat.

Dear Mr. Groot:

As City Attorney for the City of Sanford and on behalf of the City Commission,  
you have asked for my opinion on substantially the following question:

In light of the enactment of Chapter 2011-109, Laws of Florida, may the City  
of Sanford continue to impose a local business tax as authorized by Chapter  
205, Florida Statutes, upon gun dealers and gunsmiths?

In sum:

While Chapter 2011-109, Laws of Florida, preempts to the state the entire  
field of regulation of firearms, it does not affect the authority of a  
municipality to impose a local business tax as authorized by Chapter 205,  
Florida Statutes, upon businesses, professions, or occupations including gun  
dealers and gunsmiths.

According to your letter, the city is proceeding to amend the City Code of the  
City of Sanford to bring the code into compliance with Chapter 2011-109, Laws  
of Florida. You advise that you are in doubt whether the city may continue to  
impose the local business tax, as authorized by Chapter 205, Florida Statutes,  
upon gun dealers and gunsmiths. The city's code provisions setting forth a  
schedule of license taxes states that "[t]he amount of license [sic] tax[1]  
levied and imposed upon every person that shall engage in or manage any  
occupation, business or profession mentioned in this section within the City  
is hereby fixed, graded and determined as to the following occupations,  
businesses or professions at the following amounts" and specifically includes  
gun dealers and gunsmiths within its scope. As you are aware, this office  
will not comment on the validity of the terms of local legislation but is  
limited to addressing questions of state law.[2]

Chapter 205, Florida Statutes, is the "Local Business Tax Act." [3] Section  
205.042, Florida Statutes, authorizes the governing body of a municipality to  
levy, by appropriate resolution or ordinance, a local business tax (formerly  
referred to as an occupational license tax) for the privilege of engaging in  
or managing any business, profession, or occupation within its jurisdiction.  
Any such tax must be based upon reasonable classifications and must be uniform

throughout any class.[4] The statute provides that the occupational license tax may be levied on:

"(1) Any person who maintains a permanent business location or branch office within the municipality, for the privilege of engaging in or managing any business within its jurisdiction.

(2) Any person who maintains a permanent business location or branch office within the municipality, for the privilege of engaging in or managing any profession or occupation within its jurisdiction.

(3) Any person who does not qualify under subsection (1) or subsection (2) and who transacts any business or engages in any occupation or profession in interstate commerce, if the business tax is not prohibited by s. 8, Art. I of the United States Constitution." [5]

Adoption of a business tax ordinance or resolution requires public notice and such notice must contain "the proposed classifications and rates applicable to the business tax." [6]

As defined in the statute, the term "[l]ocal business tax" refers to

". . . the fees charged and the method by which a local governing authority grants the privilege of engaging in or managing any business, profession, or occupation within its jurisdiction. It does not mean any fees or licenses paid to any board, commission, or officer for permits, registration, examination, or inspection. Unless otherwise provided by law, these are deemed to be regulatory and in addition to, but not in lieu of, any local business tax imposed under the provisions of this chapter."

This definition clearly distinguishes the "local business tax" from fees or licenses which may be regulatory and which may be levied in addition to the local business tax imposed pursuant to Chapter 205, Florida Statutes.

The local business tax authorized to be levied by municipalities by Chapter 205, Florida Statutes, is not directed at regulating firearms or those whose businesses may involve firearms such as gunsmiths or gun dealers. This tax is a license or privilege tax levied on the privilege of conducting business in a jurisdiction and applies equally throughout classifications of businesses.[7] As the local business license tax is not a regulation or a regulatory tax, it would not constitute a "regulation" of gunsmiths or gun dealers.

Chapter 2011-109, Laws of Florida, amended provisions of Chapter 790, Florida Statutes, and is specifically intended to preempt "the entire field of regulation of firearms." As stated in section 790.33(1), Florida Statutes:

"PREEMPTION.-Except as expressly provided by the State Constitution or general law, the Legislature hereby declares that it is occupying the whole field of regulation of firearms and ammunition, including the purchase, sale, transfer, taxation, manufacture, ownership, possession, storage, and transportation thereof, to the exclusion of all existing and future county, city, town, or municipal ordinances or any administrative regulations or rules adopted by local or state government relating thereto. Any such existing ordinances, rules, or regulations are hereby declared null and void." [8]

The language of preemption contained in section 790.33(1), Florida Statutes, providing that the Legislature has determined to occupy "the whole field" of firearms regulation is expansive. The statute specifically includes "the

purchase, sale, transfer, taxation, manufacture, ownership, possession, storage, and transportation" of firearms, but does not limit its application to those activities. The clear statement that the Legislature is occupying the whole field of firearms regulation and the use of the term "includes" to imply a broad reading of the activities covered rather than limiting those to a specific list suggest a comprehensive preemption. However, while the preemption is broad, "the whole field of regulation," is, by its terms, limited to firearms regulation.

As discussed herein, a local business tax levied pursuant to Chapter 205, Florida Statutes, is not a regulation or regulatory tax and it is my opinion that a municipality may impose a local business tax upon classifications of businesses which may include gunsmiths or gun dealers. However, in drafting local business tax ordinances, municipalities must be mindful that the provision of a local business tax may only impose restrictions or burdens on firearms-related businesses to the same extent that any other similar business may be burdened.

In sum, it is my opinion that while section 790.33, Florida Statutes, as amended by Chapter 2011-109, Laws of Florida, preempts the entire field of regulation of firearms to the state, it does not affect the authority of a municipality to impose a local business tax as authorized by Chapter 205, Florida Statutes, upon businesses, professions, or occupations which may include gun dealers and gunsmiths.

Sincerely,

Pam Bondi  
Attorney General

PB/tgh

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[1] Chapter 2006-152, Laws of Fla., changed the name of the "local occupational license tax act" to the "local business tax act."

[2] Section 16.01(3), Fla. Stat. Based on the material included with your opinion request, I would direct the city's attention to s. 790.335, Fla. Stat., which prohibits any local governmental agency from keeping or causing to be kept "any list, record, or registry of privately owned firearms or any list, record, or registry of the owners of those firearms."

[3] Section 205.013, Fla. Stat.

[4] Section 205.043(1)(a), Fla. Stat.

[5] Section 205.042, Fla. Stat.

[6] Id.

[7] See, e.g., the City of Tallahassee's Code of Ordinances which in section 18-55, establishes such business classifications as "automobile and other vehicular activities," "banking and lending institutions," "entertainment/amusement," "merchant," "professional," "schools," and "services." For purposes of section 18-56 of the Tallahassee Code establishing a business tax rate schedule, business classifications such as those imposed on merchants are based on the square footage of the business

location plus a fee based on the number of workers employed.

[8] And see s. 790.33(4), Fla. Stat., containing exceptions to the section and making it clear that the statute does not prohibit zoning ordinances which encompass firearms businesses along with other businesses. However, zoning ordinances which are designed for the purpose of restricting or prohibiting the sale, purchase, transfer, or manufacture of firearms or ammunition as a method of regulating firearms or ammunition are in conflict with the statute and are prohibited.

State of Florida  
Office of the Attorney General

Advisory Legal Opinion (Formal)

Number: AGO 2011-17  
Date: September 21, 2011  
Subject: Counties - Firearms - Preemption - Regulation

Mr. Lane Lynchard  
Chairman, Santa Rosa County  
Board of Commissioners  
6495 Caroline Street, Suite M  
Milton, Florida 32570-4592

RE: COUNTIES - FIREARMS - PREEMPTION - REGULATION - authority of county to enact ordinance regulating discharge of firearms. ss. 790.33 and 790.15, Fla. Stat.

Dear Mr. Lynchard:

On behalf of the Santa Rosa County Board of Commissioners, you have asked for my opinion on substantially the following questions:

1. May Santa Rosa County regulate the recreational discharge of firearms in residentially zoned areas in light of section 790.33, Florida Statutes?
2. May a county impose new regulations impacting a private shooting range if the shooting range is not in compliance with current "National Rifle Association gun safety and shooting range standards?"
3. Is the "NRA Range Source Book" (National Rifle Association) the relevant standard referenced in section 823.16(6), Florida Statutes?

In sum:

1. Santa Rosa County may not regulate the recreational discharge of firearms in residentially zoned areas as the regulation of firearms is preempted to the state pursuant to section 790.33, Florida Statutes.
2. Pursuant to section 823.16(6), Florida Statutes, a sport shooting range that was lawful at the time of its construction loses any applicable exemption from a "new ordinance or an amendment to an existing ordinance" if the shooting range does not "continue[ ] to conform to current National Rifle Association gun safety and shooting range standards."
3. In the absence of clear guidance from the statutory text, and without any clarifying legislative history, this office is unable to opine on whether the "NRA Range Source Book" contains the applicable National Rifle Association Standards.

You have posed several questions "regarding the ability of a county or other municipality to regulate the recreational discharge of firearms in a residentially zoned area in light of F.S. 790.33." In answering your questions, I am mindful of local governments' concern for the safety and well-being of their residents and I note that this opinion is limited to the issue of preemption and a county's authority to expand on the protections



already in the law. This opinion does not address the many statutory provisions regulating the discharge of firearms. In light of the interrelated nature of these issues, your questions are answered together.

Chapter 790, Florida Statutes, operates to regulate the entire field of firearms and ammunition, including the purchase, sale, transfer, taxation, manufacture, ownership, possession, and transportation thereof.[1] Section 790.33(1), Florida Statutes, as amended by Chapter 2011-109, Laws of Florida, [2] states:

"Except as expressly provided by the State Constitution or general law, the Legislature hereby declares that it is occupying the whole field of regulation of firearms and ammunition, including the purchase, sale, transfer, taxation, manufacture, ownership, possession, storage, and transportation thereof, to the exclusion of all existing and future county, city, town, or municipal ordinances or any administrative regulations or rules adopted by local or state government relating thereto. Any such existing ordinances, rules, or regulations are hereby declared null and void."

In section 790.33, Florida Statutes, the Legislature, in furtherance of its intent to "provide uniform firearms laws in the state[,] "[3] has expressly stated that "it is occupying the whole field of regulation of firearms and ammunition." Moreover, in adopting Chapter 2011-109, Laws of Florida, the Legislature reaffirmed its intent to preempt the field of firearms regulation and mandated penalties for official acts that contravene state preemption.[4]

Particularly in light of its recent reaffirmation by the Legislature, section 790.33, Florida Statutes, provides a clear answer to your principal question: a county may not regulate the recreational discharge of firearms in residentially zoned areas when the discharge is not on a "shooting range," but merely recreational shooting on private property. In addition to being mandated by the plain language of section 790.33, Florida Statutes, [5] this conclusion adheres to the position taken by this office in Attorney General Opinion 2005-40. That opinion concluded that section 790.33, Florida Statutes, prohibited Indian River County from adopting an ordinance that would have prohibited the discharge of firearms within 300 yards of a building or public road or right-of way. There is no material difference between the issue presented in your request and the issue addressed in Attorney General Opinion 2005-40.[6]

Although it is not entirely clear, your request seems to ask whether local governments could regulate the use of firearms "any place where firearms are discharged" simply by couching an ordinance in terms of regulating "shooting ranges." Specifically, your request asserts that "[t]he definition of 'shooting range' provided in [section] 823.16(1)(c) essentially makes a 'shooting range' synonymous with any location where firearms are discharged." This office respectfully disagrees with that characterization of the Legislature's use of the term "shooting range." The definition of "Sport shooting range" set forth in section 823.16(1)(c), Florida Statutes, [7] is nearly identical to the definition of "Sport shooting and training range" set out in section 790.333(3)(h), Florida Statutes.[8] In section 790.333(1)(a) and (c), Florida Statutes, the Legislature noted the importance of shooting ranges for firearms training programs and adopted a finding that "in excess of 400 sport shooting and training ranges exist on public and private lands throughout this state." Clearly, the Legislature does not deem a "shooting range" to consist of any location where firearms are discharged.

Your request concludes with questions about section 823.16(6), Florida

Statutes. Under that provision, a sport shooting range that was lawful at the time of its construction loses any applicable exemption from a "new ordinance or an amendment to an existing ordinance" if the shooting range does not "continue[ ] to conform to current National Rifle Association gun safety and shooting range standards." The statute provides protection from application of new or amended local ordinances for those shooting ranges which are in compliance with current "National Rifle Association gun safety and shooting range standards" and were not in violation of any law at the time the range was constructed. If a shooting range does not comply with current "National Rifle Association gun safety and shooting range standards," it falls outside the protections of section 823.16(6), Florida Statutes, and new county regulations governing shooting ranges would be effective as imposed on such property. Again, however, we note that the Legislature's intent is clear that a "shooting range" is not synonymous with any place a firearm is discharged.

Finally, you ask whether the reference in section 823.16(6), Florida Statutes, to current "National Rifle Association gun safety and shooting range standards" is a reference to the "NRA Range Source Book." A review of the legislative history of this statute[9] does not provide any clear direction on this issue and in the absence of clear guidance from the statutory text and without any clarifying legislative history, this office is unable to opine on whether the "NRA Range Source Book" contains the applicable National Rifle Association standards.

Sincerely,

Pam Bondi  
Attorney General

PB/tgh

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[1] Section 790.33(1), Fla. Stat.

[2] Effective October 1, 2011. See s. 2, Ch. 2011-109, Laws of Fla.

[3] Section 1(2)(a), Ch. 2011-109, Laws of Fla.

[4] See s. 1, Ch. 2011-109, Laws of Fla. The language of preemption contained in s. 790.33(1), Fla. Stat., providing that the Legislature has determined to occupy "the whole field" of firearms regulation is expansive. See *National Rifle Association of America, Inc. v. City of South Miami*, 812 So. 2d 504 (Fla. 3d DCA 2002), in which a city's firearms ordinance establishing safety standards for firearms was determined to be *ultra vires* based on the legislative preemption of "the entire field of firearm and ammunition regulation by enactment of section 790.33, Florida Statutes (2000) [,]" despite the absence of any mention of storage or safety within the scope of the statute.

[5] See, e.g., *In re McCollam*, 612 So. 2d 572 (Fla. 1993) (when language of statute is clear and unambiguous and conveys a clear meaning, statute must be given its plain and ordinary meaning).

[6] Your letter suggests a conflict between Ops. Att'y Gen. Fla. 05-40 (2005) and 08-34 (2008). The 2008 opinion deals with shooting ranges and the regulation of new construction of such ranges. The 2005 opinion is concerned with the discharge of firearms under the provisions of s. 790.15, Fla. Stat.,

but does not discuss or comment on shooting ranges, which are regulated separately from the general provisions of s. 790.33, Fla. Stat. I see no conflict between these opinions.

[7] Section 823.16(1)(c), Fla. Stat., defines a (sport shooting range( or (range( as "an area designed and operated for the use of rifles, shotguns, pistols, silhouettes, skeet, trap, black powder, or any other similar type of sport shooting."

[8] Section 790.333(3)(h), Fla. Stat., defines "sport shooting and training range" or "range" to mean "any area that has been designed, or operated for the use of, firearms, rifles, shotguns, pistols, silhouettes, skeet, trap, black powder, BB guns, airguns, or similar devices, or any other type of sport or training shooting."

[9] See, e.g. , Senate Staff Analysis and Economic Impact Statement for SB 776, 1999 Florida Legislative Session, dated March 15, 1999. SB 776 was the companion bill to the house version which became s. 823.16, Fla. Stat., and generally discusses gun safety and shooting range standards.

State of Florida  
Office of the Attorney General  
Advisory Legal Opinion (Formal)

Number: AGO 2008-34  
Date: June 25, 2008  
Subject: Shooting Ranges -- Land Use Regulation

Mr. Michael S. Craig  
County Attorney  
Polk County  
Post Office Box 9005  
Bartow, Florida 33831-9005

RE: FIREARMS - SHOOTING RANGES - LAND USE REGULATION - ZONING - application of land use regulations and zoning to sports shooting ranges. ss. 790.33, 790.333, and 823.16, Fla. Stat.

Dear Mr. Craig:

You ask substantially the following question:

May a county enforce its land development code to prohibit a shooting range in a residential land use district in light of section 790.333(8), Florida Statutes?

You state that currently there are shooting ranges located within residential land use districts in Polk County. Due to concerns about public safety, the county wishes to restrict such shooting ranges to commercial areas. You state that under the Polk County Land Development Code, shooting ranges are classified as either a commercial business or high intensity recreation and would be prohibited in residential land use districts.

Section 790.333(8), Florida Statutes, provides:

"Preemption.—Except as expressly provided by general law, the Legislature hereby declares that it is occupying the whole field of regulation of firearms and ammunition use at sport shooting and training ranges, including the environmental effects of projectile deposition at sport shooting and training ranges." (e.s.)

While the plain language of the statute pertains to the regulation of firearm and ammunition use at shooting ranges, there is apparent confusion in determining whether local land use regulations may be enforced to restrict the location of a shooting range. A review of the legislative history of section 790.333, Florida Statutes, reveals that the committee recognized the shift in population from urban to suburban and rural areas, and "the impact of certain zoning decisions." [1] The staff analysis, however, focuses primarily on giving immunity to shooting ranges that may be subject to suit for environmental contamination and incidentally provides for the preemption of the field of regulation of firearms and ammunition use at sport shooting and training ranges.

In 1999, the Legislature provided limited immunity to sport shooting ranges from criminal prosecution or civil suits based on an underlying claim of noise or noise pollution in section 823.16, Florida Statutes. [2] The statute was

clear, however, that such immunity was to be extended as long as the shooting range was in compliance with the local noise-control ordinances in effect at the time of construction or initial operation of the range.[3]

The statute also provides:

"A sport shooting range that is not in violation of existing law at the time of the enactment of an ordinance applicable to the sport shooting range shall be permitted to continue in operation even if the operation of the sport shooting range does not conform to the new ordinance or an amendment to an existing ordinance, provided the range was not in violation of any law when the range was constructed and provided that the range continues to conform to current National Rifle Association gun safety and shooting range standards." [4]

Section 823.16(7), Florida Statutes, recognizes that "[e]xcept as otherwise provided in this act, this act shall not prohibit a local government from regulating the location and construction of a sport shooting range after the effective date of this act."

Section 790.33(1), Florida Statutes, preempts the regulation of firearms and ammunition to the state:

"Except as expressly provided by general law, the Legislature hereby declares that it is occupying the whole field of regulation of firearms and ammunition, including the purchase, sale, transfer, taxation, manufacturer, ownership, possession, and transportation thereof, to the exclusion of all existing and future county, city, town, or municipal ordinances or regulations relating thereto. Any such existing ordinances are hereby declared null and void. *This subsection shall not affect zoning ordinances which encompass firearms businesses along with other businesses*. Zoning ordinances which are designed for the purpose of restricting or prohibiting the sale, purchase, transfer, or manufacture of firearms or ammunition as a method of regulating firearms or ammunition are in conflict with this subsection and are prohibited." (e.s.)

Clearly, a municipality's attempt to regulate firearms is null and void.[5] However, the general provisions in section 790.33, Florida Statutes, recognize that local zoning ordinances which affect other businesses in the same way are allowed. The statute is equally clear in prohibiting zoning ordinances designed to restrict or prohibit the sale, purchase, transfer, or manufacture of firearms or ammunition as a method of regulating firearms or ammunition. Thus, a zoning ordinance prohibiting any commercial business activities within an area zoned for residential use would not appear to be inconsistent with the intent of section 790.33, Florida Statutes. Such an ordinance, however, could not be applied retroactively to an existing sport shooting range.

The provisions of section 790.333, Florida Statutes, are specific to the regulation of the use of firearms and ammunition at sport shooting and training ranges, but do not address the actual siting of such facilities. The primary purpose of the legislation was to grant immunity from legal action by the state and local governments for the use, release, placement, deposition, or accumulation of any projectile in the environment. The recognition that no action can be taken against shooting range facilities existing at the time of the enactment of all of the above-cited statutes relating to firearms and shooting ranges should be read together in a manner to give effect to each.[6] To read the preemption provision in section 790.333, Florida Statutes, as a total ban on the application of any zoning or land use regulation upon an existing or proposed sports shooting range would render section 823.16 (7),

Florida Statutes, noted above, of no use or consequence.

Accordingly, it is my opinion that a county clearly may impose existing zoning and land use regulations upon the siting of a proposed sports shooting range; however, no newly created or amended zoning or land use regulations may be enforced against existing ranges.

Sincerely,

Bill McCollum  
Attorney General

BM/tls

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[1] Senate Staff Analysis and Economic Impact Statement, CS/CS/CS/SB 1156, Appropriations Committee, Criminal Justice Committee, Judiciary Committee, March 18, 2003.

[2] Section 823.16(2), Fla. Stat.

[3] Section 823.16(3), Fla. Stat.

[4] Section 823.16(6), Fla. Stat.

[5] See *National Rifle Association of America, Inc. v. City of South Miami*, 812 So. 2d 504 (Fla. 3rd DCA, 2002) (municipal ordinance establishing certain safety standards for firearms null and void as regulation preempted to the state) and *Rinzler v. Carson*, 262 So. 2d 661 (Fla. 1972) (municipal ordinance must not conflict with controlling provisions of state statute; any doubt as to municipality's power is resolved against the ordinance).

[6] See, e.g., *Mann v. Goodyear Tire and Rubber Company*, 300 So. 2d 666 (Fla. 1974) (A law should be construed together and in harmony with any other statute relating to same subject matter and having same purpose even though not enacted at same time).

State of Florida  
Office of the Attorney General

Advisory Legal Opinion (Formal)

Number: AGO 2005-40  
Date: July 12, 2005  
Subject: County ordinance re discharge of firearms

The Honorable Roy Raymond  
Sheriff, Indian River County  
4055 41st Avenue  
Vero Beach, Florida 32960-1808

RE: FIREARMS AND WEAPONS-COUNTIES-SHERIFFS-no authority for county to enact ordinance prohibiting discharge of firearms. s. 790.33, Fla. Stat.

Dear Sheriff Raymond:

You ask substantially the following question:

May a county pass an ordinance prohibiting the discharge of a firearm in proximity to persons or property when such discharge endangers the health, welfare, and safety of the citizens of such county?

This office has been advised that Indian River County joins in your request. You have proposed a county ordinance to prohibit the discharge of firearms within 300 yards of a building or public road or right-of-way in order to preserve the life and safety of the general public in Indian River County. The proposed ordinance specifies exceptions.[1] There remains a question, however, as to whether such an ordinance is prohibited by section 790.33, Florida Statutes.

Section 790.33, Florida Statutes, preempts the field of regulation of firearms and ammunition to the Florida Legislature, as follows:

"(1) PREEMPTION.- Except as expressly provided by general law, the Legislature hereby declares that it is occupying the whole field of regulation of firearms and ammunition, including the purchase, sale, transfer, taxation, manufacture, ownership, possession, and transportation thereof, to the exclusion of all existing and future county, city, town, or municipal ordinances or regulations relating thereto. Any such existing ordinances are hereby declared null and void. This subsection shall not affect zoning ordinances which encompass firearms businesses along with other businesses. Zoning ordinances which are designed for the purpose of restricting or prohibiting the sale, purchase, transfer, or manufacture of firearms or ammunition as a method of regulating firearms or ammunition are in conflict with this subsection and are prohibited."

While this office recognizes the need to protect the safety of the county's citizens against the dangerous discharge of firearms in proximity to people and property, the Legislature has expressed its intent to preempt the regulation of firearms and to provide uniform firearms laws in the state. Any ordinance or regulation attempting to regulate firearms is stated to be null and void when enacted by jurisdictions other than the state or the federal government.[2] Relative to the discharge of firearms, section 790.15(1), Florida Statutes, states:

"Except as provided in subsection (2) or subsection (3), any person who knowingly discharges a firearm in any public place or on the right-of-way of any paved public road, highway, or street or whosoever knowingly discharges any firearm over the right-of-way of any paved public road, highway, or street or over any occupied premises is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. This section does not apply to a person lawfully defending life or property or performing official duties requiring the discharge of a firearm or to a person discharging a firearm on public roads or properties expressly approved for hunting by the Fish and Wildlife Conservation Commission or Division of Forestry."

Thus, in addition to expressly preempting the field of firearm regulation to the state, the Legislature has enacted legislation making it a crime to discharge firearms in any public place, with specified exceptions. It is well settled that absent a general law stating otherwise, local governments have no authority to regulate firearms in any manner.[3] Attempts to circumvent this preemption of firearm regulation have not been allowed.[4] Thus, despite the county's concerns for the health, safety and welfare of its citizens, it may not enact an ordinance regulating the use of firearms.[5]

Accordingly, it is my opinion that a county ordinance prohibiting the discharge of a firearm in proximity to persons or property when such discharge endangers the health, welfare, and safety of the citizens of such county would be preempted by section 790.33, Florida Statutes.

Sincerely,

Charlie Crist  
Attorney General

CC/tls

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[1] Section 2(b) of the proposed ordinance states:

"EXCEPTIONS - The prohibition set forth in section (a) above shall not apply to a person lawfully defending his life or property or performing official duties requiring the discharge of firearms. Further, this ordinance shall not apply to the discharge of firearms within the confines of approved and licensed shooting ranges, law enforcement agency ranges, existing commercial and private shooting ranges, gun clubs and hunting clubs and official hunting areas, or that land zoned agricultural and which has a minimum parcel size of fifty (50) acres. The prohibition is also not applicable to the discharge of shotguns utilizing shot size no larger than number four (4) shot on land which is zoned agricultural and which has a minimum parcel size of five (5) acres, so long as no discharge of firearms is conducted within three hundred (300) yards of any building situated on another's property."

[2] Section 790.33(3)(a), Fla. Stat.

[3] See *National Rifle Ass'n of America, Inc. v. City of South Miami*, 812 So. 2d 504 (Fla. 3rd DCA 2002).

[4] See *Penelas v. Arms Technology, Inc.*, 778 So. 2d 1042, 1045 (Fla. 3rd DCA 2001), cert. denied, review denied, 799 So. 2d 218 (Fla. 2001) (county's request for injunctive relief against firearm manufacturers and dealers found



to be an attempt to regulate firearms and ammunition through the judiciary denied; power to legislate in area of firearm regulation belongs to the legislative branch).

[5] *National Rifle Ass'n of America, Inc. v. City of South Miami*, *supra*.

State of Florida  
Office of the Attorney General  
  
Informal Legal Opinion

Number:     INFORMAL  
Date:       August 6, 2008  
Subject:     Shooting Ranges

The Honorable Hugh H. Gibson, III  
Representative, District 42  
916 Avenida Central  
The Villages, Florida 32159

Dear Representative Gibson:

Thank you for your letter of July 23, 2008, requesting an interpretation of section 790.333, Florida Statutes, on behalf of a constituent who would like to open a shooting range. Attorney General McCollum has asked that I respond to your letter.

After reviewing the information you have submitted, it does not appear that this office may formally comment on this matter. The Florida Attorney General is statutorily limited to providing legal advice and opinions to governmental agencies and officers on questions relating to their official duties.[1] This office has no authority to provide legal advice to private individuals, whether an opinion request is received from the individual or through his or her legal or governmental representative. However, in an effort to be of some assistance to you I offer the following informal comments.

Section 790.333, Florida Statutes, was adopted in 2004.[2] Legislative intent for adoption of the statute is expressed in subsection (2):

"The Legislature intends to protect public and private sport shooting or training range owners, operators, users, employees, agents, contractors, customers, lenders, and insurers from lawsuits and other legal actions by the state, special purpose districts, or political subdivisions and to promote maximum flexibility for implementation of environmental management practices and of the principles of risk-based corrective action pursuant to s. 376.30701. It is also the intent of the Legislature that legal action against sport shooting and training ranges will only be a last-resort option and be available only to the department and only after all reasonable efforts to resolve disputes at shooting ranges, including compliance assistance, negotiations, and alternative dispute resolution have been attempted."

Thus, the intent of this legislation is to protect the owners of sport shooting and training ranges from liability in lawsuits. The statute does not appear to be directed to streamlining the permitting process by local governments, but to provide immunity from legal action.

Section 790.333, Florida Statutes, states:

"Notwithstanding any other provision of law, any public or private owner, operator, employee, agent, contractor, customer, lender, insurer, or user of any sport shooting or training range located in this state shall have immunity from lawsuits and other legal actions from the state and any of its agencies,

special purpose districts, or political subdivisions for any claims of any kind associated with the use, release, placement, deposition, or accumulation of any projectile in the environment, on or under that sport shooting or training range, or any other property over which the range has an easement, leasehold, or other legal right of use, if the sport shooting or training range owner or operator has made a good faith effort to comply with subsection (4)." [3]

I am enclosing a copy of the Staff Analysis for HB 149 for your consideration.

I trust that these informal comments will be helpful to you.

Sincerely,

Gerry Hammond  
Senior Assistant Attorney General

GH/t

Enclosure: House of Representatives Staff Analysis, HB 149 w/CS,  
dated Dec. 16, 2003

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[1] See s. 16.01(3), Fla. Stat., and Department of Legal Affairs Statement Concerning Attorney General Opinions (available at [www.myfloridalegal.com](http://www.myfloridalegal.com)).

[2] See Ch. 2004-56, Laws of Fla.

[3] Section 790.333(5), Fla. Stat.

## **DEPARTMENT OF LEGAL AFFAIRS**

### **Attorney General Opinions**

#### **I. General Nature and Purpose of Opinions**

Issuing legal opinions to governmental agencies has long been a function of the Office of the Attorney General. Attorney General Opinions serve to provide legal advice on questions of statutory interpretation and can provide guidance to public bodies as an alternative to costly litigation. Opinions of the Attorney General, however, are not law. They are advisory only and are not binding in a court of law. Attorney General Opinions are intended to address only questions of law, not questions of fact, mixed questions of fact and law, or questions of executive, legislative or administrative policy.

Attorney General Opinions are not a substitute for the advice and counsel of the attorneys who represent governmental agencies and officials on a day to day basis. They should not be sought to arbitrate a political dispute between agencies or between factions within an agency or merely to buttress the opinions of an agency's own legal counsel. Nor should an opinion be sought as a weapon by only one side in a dispute between agencies.

Particularly difficult or momentous questions of law should be submitted to the courts for resolution by declaratory judgment. When deemed appropriate, this office will recommend this course of action. Similarly, there may be instances when securing a declaratory statement under the Administrative Procedure Act will be appropriate and will be recommended.

#### **II. Types of Opinions Issued**

There are several types of opinions issued by the Attorney General's Office. All legal opinions issued by this office, whether formal or informal, are persuasive authority and not binding.

Formal numbered opinions are signed by the Attorney General and published in the Annual Report of the Attorney General. These opinions address questions of law which are of statewide concern.

This office also issues a large body of informal opinions. Generally these opinions address questions of more limited application. Informal opinions may be signed by the Attorney General or by the drafting assistant attorney general. Those signed by the Attorney General are generally issued to public officials to whom the Attorney General is required to respond. While an official or agency may request that an opinion be issued as a formal or informal, the determination of the type of opinion issued rests with this office.

#### **III. Persons to Whom Opinions May Be Issued**

The responsibility of the Attorney General to provide legal opinions is specified in section 16.01(3), Florida Statutes, which provides:

Notwithstanding any other provision of law, shall, on the written requisition of the Governor, a member of the Cabinet, the head of a department in the executive branch of state government, the Speaker of the House of Representatives, the President of the Senate, the Minority Leader of the House of Representatives, or the Minority Leader of the Senate, and may, upon the written requisition of a member of the Legislature, other state officer, or officer of a county, municipality, other unit of local government, or political subdivision, give an official opinion and

legal advice in writing on any question of law relating to the official duties of the requesting officer.

The statute thus requires the Attorney General to render opinions to "the Governor, a member of the Cabinet, the head of a department in the executive branch of state government, the Speaker of the House of Representatives, the President of the Senate, the Minority Leader of the House of Representatives, or the Minority Leader of the Senate . . . ."

The Attorney General may also issue opinions to "a member of the Legislature, other state officer, or officer of a county, municipality, other unit of local government, or political subdivision." In addition, the Attorney General is authorized to provide legal advice to the state attorneys and to the representatives in Congress from this state. Sections 16.08 and 16.52(1), Florida Statutes.

Questions relating to the powers and duties of a public board or commission (or other collegial public body) should be requested by a majority of the members of that body. A request from a board should, therefore, clearly indicate that the opinion is being sought by a majority of its members and not merely by a dissenting member or faction.

#### **IV. When Opinions Will Not Be Issued**

Section 16.01(3), Florida Statutes, does not authorize the Attorney General to render opinions to private individuals or entities, whether their requests are submitted directly or through governmental officials. In addition, an opinion request must relate to the requesting officer's own official duties. An Attorney General Opinion will not, therefore, be issued when the requesting party is not among the officers specified in section 16.01(3), Florida Statutes, or when an officer falling within section 16.01(3), Florida Statutes, asks a question not relating to his or her own official duties.

In order not to intrude upon the constitutional prerogative of the judicial branch, opinions generally are not rendered on questions pending before the courts or on questions requiring a determination of the constitutionality of an existing statute or ordinance.

Opinions generally are not issued on questions requiring an interpretation only of local codes, ordinances or charters rather than the provisions of state law. Instead such requests will usually be referred to the attorney for the local government in question. In addition, when an opinion request is received on a question falling within the statutory jurisdiction of some other state agency, the Attorney General may, in the exercise of his or her discretion, transfer the request to that agency or advise the requesting party to contact the other agency. For example, questions concerning the Code of Ethics for Public Officers and Employees may be referred to the Florida Commission on Ethics; questions arising under the Florida Election Code may be directed to the Division of Elections in the Department of State.

However, as quoted above, section 16.01(3), Florida Statutes, provides for the Attorney General's authority to issue opinions "[n]otwithstanding any other provision of law," thus recognizing the Attorney General's discretion to issue opinions in such instances.

Other circumstances in which the Attorney General may decline to issue an opinion include:

- questions of a speculative nature;
- questions requiring factual determinations;
- questions which cannot be resolved due to an irreconcilable conflict in the laws although the Attorney General may attempt to provide general assistance;

questions of executive, legislative or administrative policy;  
matters involving intergovernmental disputes unless all governmental agencies  
concerned have joined in the request; moot questions;  
questions involving an interpretation only of local codes, charters, ordinances or  
regulations; or

where the official or agency has already acted and seeks to justify the action.

#### **V. Form In Which Request Should Be Submitted**

Requests for opinions must be in writing and should be addressed to:

Pam Bondi  
Attorney General  
Department of Legal Affairs  
The Capitol  
Tallahassee, Florida 32399-1050

The request should clearly and concisely state the question of law to be answered. The question should be limited to the actual matter at issue. Sufficient elaboration should be provided so that it is not necessary to infer any aspect of the question or the situation on which it is based. If the question is predicated on a particular set of facts or circumstances, these should be fully set out.

The response time for requests for Attorney General Opinions has been substantially reduced. This office attempts to respond to all requests for opinions within 30 days of their receipt in this office. However, in order to facilitate this expedited response to opinion requests, this office requires that the attorneys for public entities requesting an opinion supply this office with a memorandum of law to accompany the request. The memorandum should include the opinion of the requesting party's own legal counsel, a discussion of the legal issues involved, together with references to relevant constitutional provisions, statutes, charter, administrative rules, judicial decisions, etc. Input from other public officials, organizations or associations representing public officials may be requested. Interested parties may also submit a memorandum of law and other written material or statements for consideration. Any such material will be attached to and made a part of the permanent file of the opinion request to which it relates.

#### **VI. Miscellaneous**

This office provides access to formal Attorney General Opinions through a searchable database on the Attorney General's Internet home page at:

**<http://myfloridalegal.com/>**

Persons who do not have access to the Internet and wish to obtain a copy of a previously issued formal opinion should contact the Florida Legal Resource Center of the Attorney General's Office. Copies of informal opinions can be obtained from the Opinions Division of the Attorney General's Office.

As an alternative to requesting an opinion, officials may wish to use the informational pamphlet prepared by this office on dual office-holding for public officials. Copies of the pamphlet can be obtained by contacting the Opinions Division of the Attorney General's Office. In addition, the Attorney General, in cooperation with the First Amendment Foundation, has prepared the Government in the Sunshine Manual which explains the law under which Florida ensures public access to the meetings and records of state and local government. Copies of this manual can be obtained through the First Amendment

Foundation.

Please visit our [searchable database of attorney general advisory opinions](#).

[Order form](#) for Attorney General Reports.

Officials may wish to use the informational pamphlet prepared by this office on [dual office-holding](#).

Additional information may be obtained by contacting the Opinions Section of the Attorney General's Office at 850-245-0158.

Office of the Mayor  
Michael J. Ryan  
Mayor



Phone: (954) 746-3250  
Fax: (954) 746-3243

February 27, 2014

Governor Rick Scott  
Office of Governor Rick Scott  
State of Florida  
The Capitol  
400 S. Monroe St.  
Tallahassee, FL 32399-0001

**Re: Outdoor Firearm Target Shooting in Dense Urban Residential Neighborhoods**

Dear Governor Scott:

I am in receipt of Mr. Antonacci's response to my letter of January 31, 2014 related to outdoor firearm target shooting in dense urban residential neighborhoods and our ability to protect our community.

In part, your office was awaiting the response from the Attorney General as to our authority to impose reasonable restrictions on firearm target shooting in neighborhoods. On February 25, 2014, the Attorney General's Office provided a response, which I have attached.

In short, the Attorney General made clear, predicated upon prior Attorney General Opinions and the language of the statutes, local communities have no authority to restrict or regulate "recreational discharges", even in residential communities.

Once again, I am respectfully requesting you to tell local elected officials you will not invoke the authority provided to you under Florida Statute 790.33(3) to remove elected officials who impose reasonable restrictions on firearm target shooting in residential neighborhoods.

Additionally, I am respectfully requesting you consult with the leadership in the House and Senate to solve this public safety danger as quickly as possible. Of concern, the deadline for filing new bills has passed and it will require a collaborative and cooperative approach to timely protect our communities. The urgency of this matter is underscored by the fact that your office has been contacted by someone who purports to have developed standards to constructing these target shooting ranges in residential neighborhoods and is actively promoting these ideas.

Ironically, a resident cannot install an in-ground pool or an addition to their home without complying with well-defined guidelines for safety and compliance with local codes. Yet, a resident is permitted under Florida law to construct a firearm target shooting range in the backyard (or frontyard for that matter) and we are powerless to provide guidelines or restrict in any manner. This illogical result must be corrected to protect the health, safety and welfare of our community and surrounding communities where appropriate.

Best regards,

Michael J. Ryan  
Mayor, City of Sunrise

cc: Kimberly A. Kisslan, City Attorney  
Peter Antonacci, Office of the Governor, General Counsel





RICK SCOTT  
GOVERNOR

STATE OF FLORIDA

# Office of the Governor

THE CAPITOL  
TALLAHASSEE, FLORIDA 32399-0001

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February 28, 2014

The Honorable Michael J. Ryan  
Mayor, City of Sunrise  
10770 West Oakland Park Blvd.  
Sunrise, Florida 33351

Dear Mayor Ryan,

Thank you for writing Governor Scott regarding outdoor firearm ranges and Section 790.33(e), Florida Statutes. The constitutionality of this law has been challenged by several officeholders and is pending in the Second Judicial Circuit Court. *Marcus v. Scott*, Leon County Circuit Court, Case No. 2012-CA-1260. Accordingly, the most prudent course is to await the outcome of this litigation so that the courts may speak to the issues raised in the case. This office is pleased to inform you of any developments once this matter has been resolved in the courts.

Sincerely,

Peter Antonacci  
General Counsel

Office of the Mayor  
Michael J. Ryan  
Mayor



Phone: (954) 746-3250  
Fax: (954) 746-3243

February 28, 2014

Governor Rick Scott  
Office of Governor Rick Scott  
State of Florida  
The Capitol  
400 S. Monroe St.  
Tallahassee, FL 32399-0001

**Re: Outdoor Firearm Target Shooting in Dense Urban Residential Neighborhoods**

Dear Governor Scott:

I am in receipt of the General Counsel letter of this date in response to my inquiry of February 27<sup>th</sup>, 2014. Thank you for your timely response.

While I understand the constitutionality of the punitive provisions of F.S. 790.33 is currently being challenged, respectfully, this is a matter of public safety. Waiting for the legal process to run its course could result in a significant delay.

Furthermore, even if the trial court enters a ruling finding those provisions unconstitutional, your office, through the Attorney General, has the right to take an appeal of the final judgment. Further complicating any plan to await the outcome of the pending case is that the plaintiffs are counties; it is not clear whether or not the Attorney General would attempt to distinguish any ruling regarding the constitutionality of those provisions as that ruling would be applied to city officials.

Therefore, while it may be prudent in other circumstances to await the outcome of litigation, we would like to take action now to protect our community. As explained in my letter dated February 27<sup>th</sup>, 2014, given the timing of the legislative session, respectfully requesting that you abate any authority you have been granted under F.S. 790.33(3) to impose punitive sanction for establishing reasonable restrictions on outdoor firearm target shooting in urban residential neighborhoods. In the meantime, we would ask you to encourage the Senate and House leadership to find a legislative solution expeditiously.

Best regards,

Michael J. Ryan  
Mayor, City of Sunrise

cc: Kimberly A. Kisslan, City Attorney  
Peter Antonacci, Office of the Governor, General Counsel



# THE CITIZEN

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A CITIZEN  
SPECIAL  
REPORT

## TAKING AIM at Firearms Regulation

STORIES BY  
TIMOTHY O'HARA  
PHOTOS BY MIKE HENTZ  
Citizen Staff

### Gun range divides subdivision, sparks verbal war

One of Sheriff Rick Ramsay's fears about the placement of homemade gun ranges in residential neighborhoods is coming true.

In addition to his concerns about public safety and stray bullets, Ramsay has worried all along that Big Pine Key resident Doug Varrleur's gun range was going to pit neighbor against neighbor in Eden Pines subdivision.

On Thursday, Ramsay received a text message from

See NEIGHBOR, Page 8A

A Florida statute that prohibits county and city governments from regulating firearms has county officials scrambling for a solution amid concerns the law takes away their ability to protect the citizenry. But an attorney general's opinion issued last week

leaves little hope they'll get any help on an issue that straddles the boundaries of the always controversial gun-control issue.

#### HOW WE GOT TO THIS POINT

• 1987 — Florida Legislature prohibits local governments from regulating home gun ranges.

• 2008 — State Attorney General Chadler Crist opines that local governments can't regulate recreational gun ranges.

• 2011 — Legislature beefs up law with \$5,000 fine, and revocation of office for elected officials who prohibit gun ranges.  
Continued on Page 8A.

Monroe County officials can't do a thing about a Big Pine Key resident's homemade gun range, no matter how concerned they are about the safety of nearby citizens.

That's the ruling of the state Attorney General's Office, which issued an opinion last week that echoed the sentiments of a host of similar rulings on the same piece of legislation — Section 790.33 of the Florida Statutes.

Unbeknownst to many

See GUN, Page 8A



Above, Huey Gordon shoots his Ruger .22. At left, Doug Varrleur fires his American Heritage Rough Rider .22 at his gun range on Big Pine Key.

# Gun

Continued from Page 1A

Floridians, that law, enacted by the state Legislature in 1987, allows residents to fire guns on their property, as long as it's not done in a "reckless" manner, or over a public road or occupied dwelling.

The law also prohibits governments and law enforcement agencies from enacting local gun laws.

State legislators strengthened the law in 2011 to include the governor's power to remove from office those who violate the law, and allow courts to levy fines of up to \$5,000.

The issue surfaced in January after county officials learned that Doug Varrieur had built a small gun range on a vacant lot adjacent to his home in the small Eden Pines neighborhood. Varrieur has been firing guns there every Wednesday for the past two months.

After the story went viral on the Internet, the Sunrise City Council asked the attorney general and the governor's office if it could institute a series of reasonable regulations that would prohibit homemade gun ranges in urban residential neighborhoods.

Sunrise does not have any homemade ranges, Mayor Michael Ryan said, but council members wanted to prevent them from being built within the city.

## Can't stop them

"This office, in a series of attorney general opinions, has considered whether local governments, both counties and municipalities, may regulate the recreational discharge of firearms in residential neighborhoods," Senior Assistant Attorney General Gerry Hammond wrote in response to the city of Sunrise's request.

Hammond cited opinions going back as far as when Charlie Christ was attorney general in 2005.

"Based on the language of the statutes and the clearly expressed legislative intent for adoption of section 790.33, Florida statutes, previously issued opinions of this office have concluded that local governments have no authority to regulate in the area of firearms," he wrote.

Monroe County government had planned to ask for a similar opinion from the attorney general's office, but the request may now be moot, County Attorney Bob Shillinger will discuss the issue with commissioners later this month, he said.

Last month, the county commission gave Shillinger the green light to seek an attorney general's opinion after learning they couldn't stop Varrieur, or anyone else for that matter, from firing guns at homemade ranges in residential neighborhoods.

## 1 ruling pending

Section 790.33 has garnered the attention of other government bodies since it became law 27 years ago.

In 2005, Indian River County Sheriff Roy Raymond asked then State Attorney General Charlie Christ for an opinion on 790.33. Christ ruled that local governments can't enact laws on the discharging of firearms.

"Despite the county's concerns for the health, safety and welfare of its citizens, it may not enact an ordinance regulating the use of firearms," Christ wrote in July 2005.

Former state Attorney General Bill McCulloch also upheld the state's jurisdiction in 2008 when asked for an opinion by Polk County officials.

Current state Attorney General Pam Bondi ruled in 2011 that local governments can't regulate gun ranges after she received a request from the Santa Rosa County Commission for an opinion on 790.33.

After the Legislature added the fines and removal of office provisions to the law in 2011, in December of that year, the Palm Beach County Commission sued Gov. Rick Scott to overturn the gun law. The commission argued the law violates the separation of powers doctrine, and takes control away from local governments.

Although Palm Beach County did not have any known cases of people building personal gun ranges, officials there were reviewing their regulations when they realized state law would trump any of their efforts to regulate the discharging of firearms in their communities.

Since that lawsuit is still pending, Attorney General's representatives said it would be inappropriate for them to comment on those issues at this time.

## What can we do?

State law would have to be changed in order for local governments to be given control over the legislation of firearms and gun ranges, officials agree. But it doesn't look that that will happen in the 2014 session that begins Tuesday.

House Rep. Holly Raschein, R-Key Largo, does not have any plans to file legislation to change the state gun statutes, she said.

Sen. Dwight Bullard, D-South Miami, has indicated he would be willing to look at gun bills to determine if the law could be amended to give local governments and law enforcement agencies more control, but he has not filed any bills on the issue.

Sunrise Mayor Ryan has reached out to state legislators from Broward County seeking their help in getting the gun laws changed. They are receptive to the idea, he said.

The current regulations do not establish where ranges can be placed, how they are designed, and what are hours people can fire weapons, Ryan pointed out.



Doug Varrieur gets ready for target practice. In his background is an expanded target area with steel doors added to both sides to deflect any bullets that might ricochet.

"It's a poorly crafted law," he said.

Varrieur, the man at the crux of the local issue, has said he is supportive of beefing up the state regulations. He has asked Raschein to propose a bill with new regulations that would require those building homemade gun ranges to include a backstop, ammunition specifications, a gun safety course and time limits for shooting, he said.

## Real life consequences

Ultimately, if anything goes wrong at a homemade gun range in Monroe County, it would fall into the lap of Sheriff Rick Ramsay. And the sheriff is no supporter of the backyard gun ranges, or discharging firearms in residential neighborhoods.

"This is dangerous," Ramsay said of the idea while pointing out his concerns that an accidental discharge, or a ricocheting bullet could injure, or possibly kill, an innocent bystander.

To hammer home his point, the sheriff has referenced the accidental shooting of a 69-year-old Volusia County grandfather in his yard on Christmas day.

Bruce Fleming died after he was struck in the chest from a bullet that was accidentally discharged from a shotgun from a neighbor's yard, Volusia County sheriff's spokesman Brandon Haught said.

"Even if you are a good shot with control, bullets can ricochet and accidental discharges happen," said Ramsay. "It happens at gun ranges. It's something to be worried about."

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## Neighbor

Continued from Page 1A

Varrieur's mother, who lives next door to her son and the gun range, that neighbors were shouting profanities at family members while the son and his friend were target shooting at the range.

Everlyn Varrieur and her husband were behind the gun range on lookout at the canal for boat traffic. One of the neighbors shouting was an off-duty sheriff's department corrections deputy, Everlyn Varrieur claimed.

Varrieur went on to say that the neighbors used the "F word at least 20 times ... calling us all sorts of insults, so loud five houses away heard very clearly what was said."

"I am 84 years old, a business woman, and my husband is 80," she sent in the text message to the sheriff. "I consider this to be harassment to people of our age."

The incident is of particular concern for Ramsay as the heated argument involved someone carrying a loaded firearm.

"This is what I have been saying for weeks," Ramsay said. "I am worried about this escalating."

Neighbors first started complaining to the sheriff's office, the Monroe County Code Enforcement Department, and state and local leaders after Varrieur and a retired sheriff's office deputy started firing guns at the homemade range. Varrieur does limit the shooting to one hour a week, and has taken certain safety precautions, such as building a backstop.

"We have neighbors complaining to us about the firing of guns, and we have the range operator complaining to us about neighbors yelling at him," Ramsay said. "This puts us in a tough spot."

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