



PEMBROKE PINES
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INTER-OFFICE CORRESPONDENCE
MEMORANDUM NO. 2018-133

TO: Mayor Frank C. Ortis
Members of the City Commission

CC: Charles F. Dodge, City Manager
Aner Gonzalez, Assistant City Manager
Christina Sorensen, Director of Recreation and Cultural Arts
Steve Clark, General Manager - SMG

FROM: Samuel S. Goren, City Attorney *SSG*
Jacob G. Horowitz, Assistant City Attorney *JGH*

DATE: August 27, 2018

RE: City of Pembroke Pines ("City") / Gun Show Inquiry

The City Attorney's Office has been advised that the City has received an application from a gun show promoter (the "Promoter") seeking to conduct multiple events at the Pembroke Pines Civic Center ("Civic Center" or the "Facility"). Our office has been asked to examine whether the City may legally deny the Promoter an opportunity to rent the Civic Center for a gun show or, alternatively, limit the number of events that the Promoter may conduct at the Civic Center annually.

The Civic Center is managed and operated by SMG, on behalf of the City, in accordance with the management agreement between the parties dated February 17, 2016 (the "Agreement"). Rental of the Civic Center is further governed in accordance with the Booking Policies dated August 2018, and is generally available to be rented by private entities pursuant to such policies.

Notwithstanding the Agreement and Booking Policies, the issue of a gun show is also separately governed by Section 790.33, F.S. (the "Firearm Preemption Statute" or the "Statute").

After reviewing the applicable policies and statutory provisions, it is our legal opinion that a decision to deny the Promoters the ability to conduct a gun show at the Civic Center based solely on their intention to engage in the sale of firearms and/or ammunition may be considered a policy or regulation which runs afoul of the Firearm Preemption Statute and potentially subjects the City and certain City officials, including elected officials and SMG officials, to the **significant penalties** set forth therein. However, it is also our opinion that the City may place a **reasonable limitation** on the number of

events that a particular promoter may conduct at Civic Center on an annual basis.

I. FIREARM PREEMPTION STATUTE

As we have previously advised, the Firearm Preemption Statute preempts to the Legislature 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.”

The Statute provides severe penalties for violations which apply to the City, as well as both elected and appointed officials and SMG employees acting on behalf of the City. These penalties include, but are not limited to, civil fines of up to \$5,000, cause for termination of employment and/or removal from office by the governor.

As you know, the City is currently involved, along with a number of municipal co-plaintiffs, in litigation pending in circuit court in and for Leon County against the governor and several co-defendants challenging the constitutionality of the Statute, along with the statutory penalties (Case No. 2018CA001509). Recall that the City initially joined a lawsuit in Broward County, along with Coral Springs, Coconut Creek and Wilton Manors. That case was transferred to Leon County and then consolidated with separate cases filed by the City of Weston, along with a number of municipal co-defendants, and a third case filed by Broward County. As we previously advised, the National Rifle Association is monitoring this lawsuit and has filed an *amicus* brief.

There are no court decisions or opinions of the attorney general which specifically examine the Firearm Preemption Statute in the context of gun shows. Nevertheless, it is our opinion that a policy or regulation, written or otherwise, which singles out gun shows as a specific type of use that is precluded from renting the Civic Center, when the Civic Center is generally available to be rented for similar events, would potentially violate the Statute.

II. AGREEMENT AND BOOKING POLICIES

Section 4.2 of the Agreement between the City and SMG expressly states that SMG “shall have the right to determine, and be responsible for determining, all programming and events to be presented at the Facility.”

Section 4.4(Q) of the Agreement further states that the “City shall have the sole discretion to permit or not permit an event to be conducted at the Facility.”

Additionally, Section V(A) of the Booking Policies, which were last amended in August 2018, expressly states, in part, as follows:

Potential facility users may request space by completing and submitting a Facility Use Application, or by contacting SMG sales staff directly via telephone, email, or letter. SMG sales staff will follow up on all requests for space. SMG may decline any request for space on the basis of credit references, financial ability or prior experience. Further, SMG reserves the right to decline requests for space to previous or potential facility users who have failed to perform any obligations under prior agreements with the PPCC or similar facility, has cancelled or failed to proceed with a tentative reservation with the PPCC or a similar facility, **or whose conduct is, in the opinion of SMG’s General Manager, detrimental to the best interest of the City of Pembroke Pines.**

While the Agreement and the Booking Policies give the City and SMG certain discretion to evaluate requests for rental of the Civic Center, these provisions must be read in conjunction with the broad preemption language set forth in the Statute.

The Agreement and Booking Policies are silent as to the number of events a particular promoter may conduct within a year. While we do not believe that the City can legally deny the Promoter’s request to rent the Civic Center when the Civic Center is otherwise available, we also do not believe that the City is required to make the Facility available for an unlimited number of events.

Assuming the City limits the number of events that promoters may conduct at the Civic Center within a particular year, in our opinion a gun show promoter may be subject to the same limitations. In other words, the Promoter must be offered the same opportunities and may be subject to the same limitations as any other entity seeking to rent the Civic Center.

Please contact our office if there is any additional information that we can provide.