

FIREARMS INDUSTRY CONSULTING GROUP

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December 05, 2014

Borough Of Doylestown, PA
Doylestown Borough Hall
57 W. Court Street
Doylestown, PA 18901

RE: Borough of Doylestown's Illegal Firearm Ordinances

Dear President Ansinn and Council Members,

I have been retained by American Gun Owners Alliance (AMGOA), Concerned Gun Owners of Pennsylvania (CGOPA), Firearm Owners Against Crime (FOAC), Pennsylvanians For Self Protection (PA4SP) and several residents of the Borough of Doylestown regarding the Borough's illegal firearm ordinances.

I understand that as a result of Governor Corbett's signing of House Bill 80, Act No. 2014-192, which amends portions of the Commonwealth's statutory firearms preemption found in 18 Pa.C.S. 6120, the Borough will consider repealing its violative ordinances during the public meeting on Wednesday, December 10, 2014. As is explained more thoroughly below, although HB 80 provides for civil liability of any municipality that violates Section 6120, a violation of Section 6120, even absent the HB 80 amendment, is still a criminal act, subject to up to five (5) years in jail.

As I believe you are aware, 18 Pa.C.S. § 6120 currently (pre-amendment) provides, in relevant part,

(a) General rule. No county, municipality or township may in any manner regulate the lawful ownership, possession, transfer or transportation of firearms, ammunition or

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ammunition components when carried or transported for purposes not prohibited by the laws of this Commonwealth.

Pursuant to 18 Pa.C.S. § 6119, "an offense under this subchapter constitutes a misdemeanor of the first degree," which, pursuant to 18 Pa.C.S. § 106(b)(6), provides for a maximum of sentence of five (5) years.

As you may be aware, I recently litigated the matter of *Dillon v. City of Erie*, 83 A.3d 467 (Pa. Cmwlth. 2014), where the Commonwealth Court struck down the City of Erie's ordinance regarding prohibiting individuals from possessing firearms in city parks, which is almost identical to the Borough ordinance found in Chapter 16, Section 206. As a result of that litigation and my clients' criminal prosecution, the General Assembly sought to provide additional protections, causes of action and rights to individuals and membership organizations in the Commonwealth, pursuant to Section 6120.

On Thursday, November 6, 2014, Governor Corbett signed into law HB 80, which takes effect on January 5, 2015. As a result, 18 Pa.C.S. § 6120 now (post-amendment) provides several new subsections. Specifically,

(a.2) Relief. A person adversely affected by an ordinance, a resolution, regulation, rule, practice or any other action promulgated or enforced by a county, municipality or township prohibited under subsection (a) or 53 Pa.C.S. § 2962(g)(relating to limitation on municipal powers) may seek declaratory or injunctive relief and actual damages in an appropriate court.

and,

(a.3) Reasonable expenses. A court shall award reasonable expenses to a person adversely affected in an action under subsection (a.2) for any of the following: (1) A final determination by the court is granted in favor of the person adversely affected. (2) The regulation in question is rescinded, repealed or otherwise abrogated after suit has been filed under subsection (a.2) but before the final determination by the court.

There are also two new additions to the definitional section, subsection (b), which includes,

"Person adversely affected." Any of the following: (1) A resident of this Commonwealth who may legally possess a firearm under Federal and State law. (2) A person who otherwise has standing under the laws of this Commonwealth to bring an action under subsection (a.2). (3) A membership organization, in which a member is a person described under paragraph (1) or (2).

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and,

"Reasonable expenses." The term includes, but is not limited to, attorney fees, expert witness fees, court costs and compensation for loss of income.

These changes are significant, especially in relation to previous decisions of the Commonwealth Court regarding standing, as the General Assembly has now conferred standing in relation to any "ordinance, resolution, regulation, rule, practice or any other action promulgated or enforced." (emphasis added). With these new changes, it seems clear that there will be litigation over a number of ordinances previously passed by the Borough, which will result in substantial additional burdens on the taxpayers. Clearly, with the financial struggles of the Borough and its residents, it is in the best of interest of all of those involved that the ordinances be immediately rescinded. Accordingly, I am respectfully requesting that the ordinances be immediately rescinded.

In reviewing the City Code, the following ordinances appear to be violative: Chapter 6, Section 201, Chapter 6, Section 202, Chapter 6, Section 304(9.), and Chapter 16, Section 206(3.).

As I stated previously, pursuant to 18 Pa.C.S. §§ 6119, 6120, these ordinances are violative of the Crimes Code, even absent the HB 80 amendment. It is unfortunate that an elected representative, such as President Ansinn, would promote the violation of Pennsylvania's Crime Code and make disparaging remarks such as "we're basically being forced to repeal these laws at gun point. Be sure to 'thank' your local state legislators for this 'common sense' reform." One would expect an individual in such a position to uphold the law, instead of support its violation.

Although it appears that many of these ordinances are on the books and not prosecuted, with the enactment of HB 80, which specifically permits a person adversely affected to sue where an ordinance or such is merely promulgated, it appears that litigation is likely commence after the 60 day effective date. As I stated previously, I do not believe this to be in the best interest of the taxpayers and I am respectfully requesting that these ordinances be rescinded. If they are not rescinded, I am prepared to take legal action against the Borough.

If you could kindly let me know the Borough's position and whether these ordinances will be rescinded, I would greatly appreciate it. If you require anything further, please do not hesitate to contact me.

Thanking you for your time and consideration, I am

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jp/web
Matter No. 19325

Yours truly,
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