



THE ATTORNEY GENERAL
OF TEXAS

JIM MATTON
ATTORNEY GENERAL

July 11, 1988

Honorable Joe Lucas
El Paso County Attorney
Room 201, City-County Building
El Paso, Texas 79901

IO-88-83

Dear Mr. Lucas:

You ask whether the city of El Paso, a home rule city, has the authority to enact an ordinance regulating the discharge, sale, and possession of b-b guns, air guns, spring guns, pellet guns and other similar devices. Home rule cities may enact any ordinance not inconsistent with the constitution or statutes of the state of Texas. Lower Colorado River Authority v. City of San Marcos, 523 S.W.2d 641 (Tex. 1975); Tex. Const. art. XI, § 5; V.T.C.S. art. 1175; Attorney General Opinion MW-291 (1981). See Penal Code § 1.08. The brief you have submitted addresses the matter of whether such an ordinance is preempted by any state statute or conflicts with current state law. Our analysis is limited accordingly. We should also point out that because you do not provide a proposed ordinance to review, we can only answer your question in general terms.

You state that the "City of El Paso has been experiencing a problem with vandalism of local businesses, residences and motor vehicles caused by the shooting of b-b guns and similar projectile devices at windows and other property causing extensive damage."

Section 215.001 of the Local Government Code provides in pertinent part as follows:

(a) A municipality may not adopt regulations relating to the transfer, private ownership, keeping, transportation, licensing, or registration of firearms, ammunition, or firearm supplies.

(b) Subsection (a) does not affect the authority a municipality has under another law to:

(2) regulate the discharge of firearms within the limits of the municipality

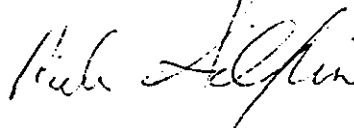
Chapter 46 of the Penal Code addresses the matter of possession of weapons and provides that it is unlawful to possess specified types of "firearms" and other weapons under circumstances delineated therein.

Subsection 3 of section 46.01 of the Penal Code defines "firearm" as follows:

"Firearm" means any device designed, made, or adapted to expel a projectile through a barrel by using the energy generated by an explosion or burning substance or any device readily convertible to that use.

The information you furnish us reflects the fact that the items the ordinance seeks to regulate are devices that expel a projectile by the energy or force activated by a spring and do not come within the definition of a firearm. Nor do the devices in question fall within the definition of any of the other weapons defined in section 46.01 that are prohibited by chapter 46 of the Penal Code. Therefore, an ordinance regulating the discharge, sale and possession of b-b guns, pellet guns and other similar devices that expel a projectile by the energy or force generated by a spring is not preempted by any state statute nor is it in conflict with any state law.

Very truly yours,



Rick Gilpin, Chairman
Opinion Committee

APPROVED: OPINION COMMITTEE
RG/TGD/bc

Ref. RQ-1463
ID#3759