

Opinion No. 2012-099

September 7, 2012

The Honorable Efrem Elliott  
State Representative  
Post Office Box 566  
Altheimer, Arkansas 72004-0566

Dear Representative Elliott:

You have requested my opinion concerning an ordinance enacted by the City of Pine Bluff to regulate the discharge of firearms within city limits.<sup>1</sup> You state that the matter involves property owned by the U.S. Army Corps of Engineers, locally known as Boyd Point, which was annexed into the city limits in 1996. You further state that because Boyd Point is within the city limits, discharging of firearms is prohibited. Your specific questions are as follows:

1. Is it lawful for the aforementioned ordinance to create a presumption that “possession of loaded weapons or instruments listed in subsections (a) or (c) in a city park or upon other municipally-owned or maintained property, in contravention of the exceptions listed in subsections (a) or (c), is for the purpose of or to aid in the discharging or firing said weapon or instrument unlawfully[?]” Pine Bluff Code of Ordinances 14-26(d).

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<sup>1</sup> Cities may regulate or prohibit the unsafe discharge of firearms or other weapons within their corporate limits. A.C.A. §§ 14-16-504(b)(1)(B); 14-54-1411(b)(1)(B) (Supp. 2011); Op. Att’y Gen. 2004-279. With certain enumerated exceptions, including discharge by law enforcement, archery discharge in certain circumstances, and discharge on certain shooting ranges, the Pine Bluff ordinance prohibits “[t]he discharging or firing of any weapon, modern or primitive, or any bow instrument where the pull of the bow is thirty (30) pounds or more, compound bow, crossbow, recurved bow, long bow, air rifle, pellet gun, or firearm of any description within the city....” Code of Ordinances, City of Pine Bluff, Arkansas Chp. 14, art. II, § 14-26(a).

2. Is it lawful for the U.S. Corps of Engineers to permit the discharge of firearms on Boyd Point, in contravention of the existing ordinance?

## **RESPONSE**

I cannot definitively opine on these questions because they necessarily entail construing the ordinance to determine legislative intent. It has long been the policy of the Attorney General's office to decline to construe the provisions of local ordinances. As stated by one of my predecessors:

[T]he interpretation of local ordinances is a matter outside the domain of the Attorney General. The interpretation of such ordinances necessarily involves a determination of the intent of the city council, a factor that this office is not well situated to consider and address. It also requires consideration of other factors of which this office is unaware that could reflect a particular intent on the part of the city council that is not apparent from the face of the ordinance. The awareness of such factors is a matter within the local domain, rather than the domain of this office. An interpretation of the legality of a specific ordinance that is the subject of your question therefore must ultimately be handled locally, through the interested parties and their counsel, or through a medium that can consider local factual matters, such as a court.<sup>2</sup>

My predecessors and I have, however, issued opinions discussing local ordinances to the extent necessary to determine the application of state law.<sup>3</sup> In this regard, I will note in response to your first question that the enforceability of presumptions of the sort established under this ordinance can give rise to concerns under the Due Process Clause of the Arkansas Constitution.<sup>4</sup> When challenged under the Due Process Clause, the validity of a presumption or inference depends upon there

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<sup>2</sup> Op. Att'y Gen. 2002-306.

<sup>3</sup> *E.g.*, Op. Att'y Gen. Nos. 2009-203; 2004-279.

<sup>4</sup> Ark. Const. art. 2, § 8 ("No person shall be ... deprived of life, liberty, or property, without due process of law."). *See also* U.S. Const. amends. 5 and 14.

being a rational connection between the proven fact and the fact to be presumed therefrom.<sup>5</sup>

Determining whether the presumption under the Pine Bluff ordinance meets this test will, I believe, initially require construing the provision that establishes the presumption (quoted above under Question 1). Specifically, I believe it will be necessary to determine precisely what fact is to be presumed from the proven fact, according to the language of this provision. The *proven fact* is the “possession of loaded weapons ... in a city park or upon other municipally-owned or maintained property....”<sup>6</sup> Given your statement that the particular matter at issue involves property owned by the U.S. Army Corps of Engineers, I am uncertain how the presumption—which seems to apply only in the case of possession of a loaded weapon on municipal property—comes into play. I will nevertheless note that according to the wording of the ordinance, the *presumed fact*, i.e., the ultimate fact to be established under the presumption, is that possession of a loaded weapon in the stated locations “*is for the purpose of or to aid in the discharging or firing said weapon or instrument unlawfully.*” (Emphasis added.)

The meaning or effect of this emphasized language (“for the purpose of or to aid in”) is unclear, in my view, when considering the proscribed conduct under the ordinance. Another provision of the ordinance describes the offense of “discharging or firing of any weapon ... within the city....”<sup>7</sup> I can see a distinction between *discharging* a weapon and a *purpose of discharging* (or *aiding in the discharging*). Accordingly, before addressing the question whether there is a rational connection between the proven fact and the presumed fact under the provision establishing the presumption, the language of this provision must be construed to determine the local intent. Because the ordinance’s proper interpretation is outside the scope of this opinion, I can only reiterate in response to your first question that depending upon the intent, the presumption created

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<sup>5</sup> *Stone v. State*, 254 Ark 1011, 1013, 498 S.W.2d 634 (1973) (“[A] statutory inference may be valid if there is a valid connection between the fact proved and the ultimate fact to be established.”). See also *Jackson v. State*, 259 Ark. 780, 536 S.W.2d 716 (1976).

<sup>6</sup> The ordinance appears to track A.C.A. § 5-73-122 (Repl. 2005) in this respect. This statute prohibits the carrying of firearms in publicly owned buildings and facilities or on the State Capitol grounds. The statute defines the term “facilities” to include “a municipally owned or maintained park, football field, baseball field, soccer field, or another similar municipally owned or maintained recreational structure or property.” *Id.* at (a)(4).

<sup>7</sup> Code of Ordinances, City of Pine Bluff, *supra* n. 1, at § 14-26(a).

under the ordinance could conceivably implicate one's constitutional due-process interests in life and liberty.

***Question 2 - Is it lawful for the U.S. Corps of Engineers to permit the discharge of firearms on Boyd Point, in contravention of the existing ordinance?***

As noted above, the ordinance states that with six enumerated exceptions, “[t]he discharging or firing of any weapon ... or firearm .... within the city is prohibited....” See note 1, *supra*. You state that Boyd Point is within the city limits, having been annexed in 1996. Accordingly, unless an exception applies, it appears that the Corps of Engineers would be acting contrary to the ordinance if it were to permit the discharge of firearms on Boyd Point. This office has previously opined that a city may enforce its “no firearms” ordinance on U.S. Corps property.<sup>8</sup> Indeed, the relevant federal rules and regulations appear to recognize the applicability of local laws such as this:

- (a) Except as otherwise provided in this part or by Federal law or regulation, *state and local laws and ordinances shall apply on project lands and waters*. This includes, but is not limited to, state and local laws and ordinances governing:

\* \* \*

- (3) *Use or possession of firearms or other weapons;*

- (b) These state and local laws and ordinances are enforced by those state and local enforcement agencies established and authorized for that purpose.<sup>9</sup>

While it thus seems clear that the so-called “no discharge” ordinance will be applicable to Corps of Engineers property that has been annexed into the city limits, consideration must also be given to the several exceptions to the discharge prohibition in order to determine whether the Corps is acting in contravention of the ordinance in any given instance.

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<sup>8</sup> Op. Att’y Gen. 97-093.

<sup>9</sup> 36 C.F.R. § 327.26 (emphasis added).

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Deputy Attorney General Elisabeth A. Walker prepared the foregoing opinion,  
which I hereby approve.

Sincerely,

DUSTIN MCDANIEL  
Attorney General

DM/EAW:cyh