

1974 N.Y. Op. Atty. Gen. No. 254, 1974 WL 324414 (N.Y.A.G.)

Office of the Attorney General
State of New York

Informal Opinion

September 18, 1974

NEW YORK STATE CONSTITUTION, Article IX, § 2(c) and § 3(d)(1); MUNICIPAL HOME RULE LAW, §§ 2(5) and 10(1); and PENAL LAW, § 400.00(1), (2), (4) AND (6).

The County of Suffolk is not authorized to enact a local law requiring the applicant for a pistol license to satisfactorily complete a weapon safety course prior to the issuance of such license nor does the licensing official who issues such license have the authority to institute a rule or regulation requiring the completion of such a safety course prior to its issuance.

Hon. Edward J. Volz, Jr.
Counsel-Suffolk County Legislature

This is in response to your letter wherein you ask for the Attorney General's opinion whether or not the Suffolk County Legislature may enact a local law requiring the applicant for a pistol license to satisfactorily complete a weapon safety course prior to the issuance of such license and whether or not the local licensing official has the authority pursuant to section 400.00 of the Penal Law to institute a rule or regulation requiring the completion of such a safety course prior to the issuance of such license.

Penal Law, § 400.00(1), prescribes the eligibility of an applicant for the issuance of a license by a licensing officer and subdivision 2 prescribes the types of licenses to be issued while subdivision 4 provides for an investigation to be made prior to the issuance of a license. Penal Law, § 400.00(6), provides in part as follows:

"6. License: validity. Any license issued pursuant to this section shall be valid notwithstanding the provisions of any local law or ordinance. * * * A license to carry or possess a pistol or revolver, not otherwise limited as to place or time of possession, shall be effective throughout the state, except that the same shall not be valid within the city of New York unless a special permit granting validity is issued by the police commissioner of that city. * * *" (Emphasis supplied.)

Penal Law, § 400.00(1), (2), (4) and (6), are general laws since each apply in terms and in effect alike to all counties or all counties other than those wholly included within a city (New York State Constitution, article IX, § 3[d][1]; Municipal Home Rule Law, § 2[5]).

New York State Constitution, article IX, § 2(c), empowers every local government to adopt and amend local laws relating to its property, affairs or government and also empowers every local government to adopt and amend local laws relating to enumerated subjects there-in whether or not they relate to its property, affairs or government. The issuance of licenses for the possession of firearms is not one of those enumerated subjects.

Municipal Home Rule Law, §(1), implements the constitutional provisions but in both the Constitution and Municipal Home Rule Law, the granting of the powers to adopt and amend such local laws are preambled by the proviso that such local laws be not inconsistent with the provisions of the Constitution or not inconsistent with any general law.

*2 In *People of the State of New York v. Pedro Del Gardo*, 1 Misc 2d 821 (City Magistrate's Court of New York, Borough of Manhattan, Upper Manhattan Court, December 1, 1955), the Court stated that the State had pre-empted the entire field in respect to possession and use of toy and imitation pistols and that the ordinance of the City of New York interdicts without exception that which is permitted in State law is thus inconsistent therewith and therefore invalid.

In *People v. Wilkerson*, 73 Misc 2d 895 (County Court, Monroe County, April 24, 1973), the court held a provision of the Code of the City of Rochester adopted by the City Council relating to gambling as being invalid on the ground that the field of anti-gambling laws had been pre-empted by the State Legislature. In reaching that conclusion the Court said:

"The Constitution defines a general law as one which 'in terms and in effect applies alike to all counties, all counties other than those wholly included within a city, all cities, all towns or all villages'. (art. XI, § 3, subd.[d], par.[1]; see, also McKinney's Cons. Laws of N. Y., Book 1, Statutes, § 32, subd. b).

"Thus, the power of local government to legislate is limited by the requirement that its local laws not be in conflict with the State Constitution nor inconsistent with the general laws of the State (*People v. Lewis*, 295 N. Y. 42; *Wholesale Laundry Bd. of Trade v. City of New York*, 17 A D 2d 327, affd. 12 N Y 2d 998; *People v. Del Gardo*, 1 Misc 2d 821; *People v. Kearse*, 56 Misc 2d 586).

"It is beyond cavil that the Penal Law of the State is a general law. It has general application to all of the inhabitants of the State and it has been specifically so held and applied (*Town of Babylon v. Conte*, 64 Misc 2d 1055; *People v. Conte*, 64 Misc 2d 573; *People v. Del Gardo supra*; *People v. Kearse, supra*).

"It is also well-settled law that where a local law is inconsistent or in conflict with a State law of general character and State-wide application, the local law is invalid. A local law, therefore, may not prohibit what a State law permits (*Wholesale Laundry Bd. of Trade v. City of New York, supra*; *Kindermann Fireproof Stor. Warehouses v. City of New York*, 39 A D 2d 266; *People v. Kearse, supra*; *Town of Babylon v. Conte, supra*; *People v. Conte, supra*; *Kim v. Town of Orangetown*, 66 Misc 2d 364").

From all the foregoing we conclude that the County of Suffolk is not authorized to enact local law requiring the applicant for a pistol license to satisfactorily complete a weapon safety course prior to the issuance of such license nor does the licensing official who issues such license have the authority to institute a rule or regulation requiring the completion of such a safety course prior to its issue.

Louis J Lefkowitz

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