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OHIO LEGISLATIVE SERVICE COMMISSION

Wendy Zhan, Director

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Office

R-135-1199

To: The Honorable Lauren McNally
Ohio House of Representatives

From: Helena Volzer, Attorney *HV*
Sarah A. Maki, Attorney *SAM*
Alyssa Bethel, Attorney *AB*

Date: May 10, 2023

Subject: Deer hunting and culling questions

Below is a discussion responding to a series of questions you asked that are related to hunting deer in a metropark located within a municipal corporation. The specific questions are as follows:

1. Does the Revised Code prohibit a municipal corporation from regulating the discharging of a firearm? Is “discharging” a firearm defined in the Ohio Revised Code?
2. May a municipal corporation ban hunting? Does state law prohibit a municipal corporation from banning hunting?
3. Is there case law pertaining to the intersection of local and state government regarding the subject of hunting?
4. What laws govern metroparks?
5. What laws govern hunting in Ohio?

Regulation of firearms

Right to bear arms

You asked whether the Revised Code prohibits local regulation of discharging of a firearm. First, R.C. 9.68 provides that any local regulation of firearms that unduly inhibits law-abiding people from legitimate uses of constitutionally protected firearms, including hunting and sporting activities, is preempted by the state. Second, while R.C. 9.68 does not expressly prohibit local regulation of discharging of a firearm, in *City of Cleveland v. State*¹ the court held that in enacting R.C. 9.68, the General Assembly intended to create a statewide

¹ 128 Ohio St.3d 135 (2010).

comprehensive legislative enactment. To support this holding, the court listed a “host” of state laws regulating firearms, including those precluding the discharge of firearms in certain locations (see, “**Discharge of a firearm**,” below). The court held that the General Assembly in enacting R.C. 9.68 intended to nullify all municipal laws impeding uniform application of state statutes. While R.C. 9.68 is currently being challenged in *City of Columbus v. the State of Ohio* in the Tenth District Court of Appeals, the Ohio Supreme Court has previously held that R.C. 9.68 does not violate home-rule authority.

In Ohio, the right to bear arms is derived from both federal and state law. The Second Amendment to the United States Constitution states that, “. . . the right of the people to keep and bear Arms, shall not be infringed.” Article I, Section 4 of the Ohio Constitution states that, “[t]he people have the right to bear arms for their defense and security.” In *Klein v. Leis*, the Ohio Supreme Court held that the right to bear arms in Ohio is a fundamental right under Article I, Section 4, but that the right is not absolute and is subject to limitations.²

R.C. 9.68 juxtaposes an individual’s right to bear arms with the state’s need to limit that right through the regulation of firearms.

The individual right to keep and bear arms, being a fundamental individual right that predates the United States Constitution and Ohio Constitution, and being a constitutionally protected right in every part of Ohio, the general assembly finds the need to provide uniform laws throughout the state regulating the ownership, possession, purchase, other acquisition, transport, storage, carrying, sale, other transfer, manufacture, taxation, keeping, and reporting of loss or theft of firearms, their components, and their ammunition, and knives.³

In contrast, R.C. 9.68 also prohibits local regulation of firearms:

Except as specifically provided by the United States Constitution, Ohio Constitution, state law, or federal law, a person, without further license, permission, restriction, delay, or process, including by any ordinance, rule, regulation, resolution, practice, or other action or any threat of citation, prosecution, or other legal process, may own, possess, purchase, acquire, transport, store, carry, sell, transfer, manufacture, or keep any firearm, part of a firearm, its components, and its ammunition, and any knife. Any such further license, permission, restriction, delay, or process interferes with the fundamental individual right described in this division and unduly inhibits law-abiding people

² *Klein v. Leis* (2003), 99 Ohio St.3d 537.

³ R.C. 9.68(A).

from protecting themselves, their families, and others from intruders and attackers and from other legitimate uses of constitutionally protected arms, including hunting and sporting activities, and the state by this section preempts, supersedes, and declares null and void any such further license, permission, restriction, delay, or process.

In *City of Cleveland v. State*, the Ohio Supreme Court considered whether the prohibition on the local regulation of firearms in R.C. 9.68 was constitutional under the Ohio Constitution, which grants municipal corporations home-rule authority. Article XVIII, Section 3 provides that, “[m]unicipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws.” The court utilized a three-part test to determine whether the city’s regulation of firearms was constitutional, noting that a state statute takes precedence over a local ordinance when, “(1) the ordinance is an exercise of the police power, rather than of local self-government, (2) the statute is a general law, and (3) the ordinance is in conflict with the statute.”

The court analyzed the ordinance under the second part of the test. A general law must be a part of a statewide and comprehensive legislative enactment. The court held that the General Assembly could not have been more direct in expressing its intent for a statewide comprehensive legislative enactment. To support this holding, the court listed a “host” of state laws regulating firearms, including those precluding the discharge of firearms in certain locations. A general law has been described as one that promotes statewide uniformity. The court found that the General Assembly reiterated the need for uniformity in 9.68(A), which represents an attempt by that body to nullify all municipal laws impeding the uniform application of state statutes. Ultimately, the court held that R.C. 9.68 is a general law that displaces municipal firearm ordinances and that it does not unconstitutionally infringe on municipal home-rule authority.⁴

On March 19, 2019, the city of Columbus filed a complaint for declaratory and injunctive relief against the state of Ohio alleging that R.C. 9.68 and the provisions in H.B. 228 from the 132nd General Assembly violated home rule authority. The city of Columbus also requested a preliminary and permanent injunction against both H.B. 228 and R.C. 9.68 enjoining them and any predecessor version of R.C. 9.68. On November 2, 2022, the trial court granted a preliminary injunction against H.B. 228 and R.C. 9.68 in both its original and amended forms. The state of Ohio appealed the preliminary injunction to the Tenth District Court of Appeals. Upon appeal, the trial court stayed all proceedings, including the preliminary injunction. As of the date of this memorandum, the appellate case is pending.⁵

⁴ *City of Cleveland v. State* (2010), 128 Ohio St.3d 135.

⁵ *City of Columbus v. State of Ohio*, No. 19 CV 002281 (Franklin County, Ohio, filed March 19, 2019), and *City of Columbus v. State of Ohio*, 2023-Ohio-195.

Discharge of a firearm

You asked whether the Revised Code defines discharging a firearm. The Revised Code does not define discharging a firearm, but it does contain prohibitions against discharging a firearm in state parks, habitations, school safety zones, school buildings, school premises, cemeteries, schoolhouses, churches, dwellings, charitable institutions, public roads, highways, motor vehicles, vessels, and aircrafts.⁶

Municipal bans on deer hunting and culling

You asked whether a municipal corporation may prohibit hunting, either outright through a municipal ordinance or through its zoning regulations. This is a question that ultimately must be answered by a court. Zoning regulations are enacted via a municipal corporation's police power,⁷ so a court's analysis would be the same regardless of whether a municipal corporation uses an ordinance to prohibit hunting or uses its zoning regulations to do so. Ohio's statutory scheme regulating hunting activities is generally found in Chapters 1531 and 1533 of the Revised Code. Municipal corporations have authority to supplement state law,⁸ but an ordinance cannot conflict with a general state law.⁹ An ordinance conflicts when it allows something state law prohibits, or prohibits something state law allows.¹⁰

As further discussed below (see "**Hunting law**"), a person must generally obtain a hunting license and a permit for the animal the person is hunting from the Division of Wildlife in order to legally hunt in Ohio. All wildlife is the property of the state of Ohio and may only be taken in accordance with the law governing hunting.¹¹ The Ohio Supreme Court has ruled that a municipal ordinance violates home rule if it restricts an activity which a state license or permit allows.¹² We are unable to locate a court case that specifically evaluates the issue of whether a municipal ordinance that prohibits hunting within the municipal corporation violates home rule. We did locate an Attorney General Opinion, which does not have the force of law, that opined that such a municipal ordinance violates home rule because it conflicts with a general state law.¹³ We have included a copy of that opinion with this memorandum (1966 Op. Att'y Gen. No. 151).

⁶ R.C. 1546.19, 1547.69, 2909.08, 2923.16, 2923.161, and 2923.162.

⁷ *State ex rel. Morrison v. Beck Energy Corp.*, 143 Ohio St.3d 271 (2015).

⁸ *Mendenhall v. City of Akron*, 117 Ohio St.3d 33 (2008).

⁹ For more information about what constitutes a "general state law," please see [LSC's Home Rule Members Brief \(PDF\)](#), available at lsc.ohio.gov.

¹⁰ *Village of Struthers v. Sokol*, 108 Ohio St. 263 (1923).

¹¹ R.C. 1531.02.

¹² *Auxter v. Toledo*, 173 Ohio St. 444 (1962) and *Anderson v. Brown*, 13 Ohio St.2d 53 (1968).

¹³ 1966 Op. Att'y Gen. No. 151.

In certain instances, an individual may hunt without obtaining a state license (e.g., on the individual's own property). R.C. 1533.10 states, "A resident of this state who owns lands in the state and the owner's children of any age and grandchildren under [18] years of age may hunt on the lands without a hunting license." A court would need to evaluate this provision and similar provisions to determine if a municipal ordinance that prohibits hunting conflicts with the provision's seeming grant of authority to hunt.

Note that deer culling is not the same as hunting under Ohio law. The Division authorizes and issues deer damage control permits to cull deer under administrative rules. This permit allows the holder to take or attempt to take a deer with any rifle, shotgun, pistol, revolver, bow or crossbow and arrow unless otherwise prohibited by the issued permit. The permit specifies the exact terms and conditions under which the deer may be culled, and it is generally prohibited to keep the deer, except as specified in the permit.¹⁴

According to the Division:

Most communities with significant deer conflicts have local ordinances in place which prohibit the discharge of hunting implements. The ODNR Division of Wildlife's hunting framework does not supersede these local ordinances; therefore, communities wishing to use lethal techniques to address their deer problems need to implement special regulations to allow for these techniques to be used in their community.¹⁵

The Division's technical guide for urban white-tailed deer management also includes the following illustration.

¹⁴ Ohio Administrative Code (O.A.C.) 1501:31-15-08.

¹⁵ Department of Natural Resources Division of Wildlife, [Ohio Technical Management Guide: Urban White-Tailed Deer \(PDF\)](#), Publication 5477, p.6.

NUISANCE DEER MANAGEMENT OPTIONS

SUGGESTIONS FOLLOWING A SITE VISIT
FROM A DIVISION OF WILDLIFE REPRESENTATIVE

NON-LETHAL TECHNIQUES

Landowner implements the new and/or revised suggestions for non-lethal techniques.

If problem persists, the landowner contacts the Division of Wildlife for further guidance.

HUNTING OPTIONS

Landowner submits an application to the city for a municipal wildlife control permit by the application deadline.

Chief of police, or their designee, does a site visit to determine if hunting can be done safely and if there are any needed special conditions added to the municipal wildlife control permit.

If approved, landowner receives the municipal wildlife control permit and hunts following Division of Wildlife rules, as well as the rules of the permit.

DEER DAMAGE CONTROL PERMIT

If there is active damage AND the Division of Wildlife representative identifies the use of a deer damage control permit is warranted, the landowner is issued a deer damage control permit.

Landowner submits an application to the city for a municipal wildlife control permit within 15 days of receiving the deer damage control permit.

Chief of police, or their designee, does a site visit to determine if shooting can be done safely and if there are any needed special conditions added to the municipal wildlife control permit.

If approved, landowner receives the municipal wildlife control permit and shoots following the rules of the deer damage control permit as well as the rules of the municipal wildlife control permit.

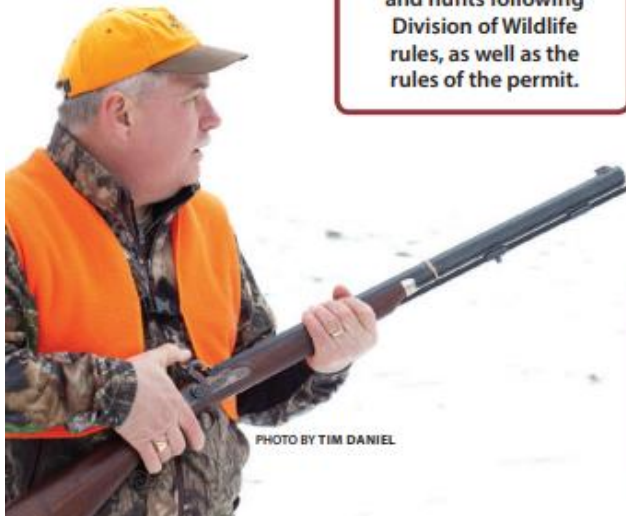


PHOTO BY TIM DANIEL

¹⁶ Department of Natural Resources Division of Wildlife, [Ohio Technical Management Guide: Urban White-Tailed Deer \(PDF\)](#), Publication 5477, p.7.

The manual further includes suggested language for municipal ordinances to allow for limited hunting options and deer damage control permits within city limits.¹⁷

While the Division currently defers to local ordinances, it is unclear how a court may rule in a case where a hunter or metropark employee is authorized by the Division to cull deer in a metropark, but a municipal corporation prohibits doing so by an ordinance. This matter is ultimately for a court to determine.

Metroparks

A “metropark” is a term commonly used to describe a park administered by a metropolitan park district organized under R.C. Chapter 1545. A metropark is a political subdivision governed by a board of park commissioners.¹⁸ The board is typically comprised of three commissioners appointed by a probate judge.¹⁹

As a body politic and corporate, a metropark’s board can sue and be sued, enter contracts, acquire property, levy taxes and assessments, issue bonds, adopt its own bylaws and rules, and adopt rules and regulations for the preservation of order within the metropark.²⁰ A board can assume control of other parks and annex adjacent parks.²¹ In addition, the board can designate certain employees to act as police officers. It may also enter contracts with other local political subdivisions for the exercise of police powers.²²

The Ohio Supreme Court has addressed circumstances in which a municipal ordinance conflicts with powers granted to a metropark under R.C. Chapter 1545. In *State ex rel. Board of Comm’rs v. Tablack*, the Ohio Supreme Court ruled that a park district’s authority to levy a tax derives from a general state law. Thus, a municipal ordinance that exempts its citizens from the park district’s taxes conflicts with that authority.²³ Consequently, the municipal ordinance was found unconstitutional and invalid.

There does not appear to be a case resolving a conflict between metropark regulations authorizing a person to hunt or control deer and a municipal ordinance that specifically prohibits those activities. Thus, the matter would be for a court to determine.

¹⁷ Department of Natural Resources Division of Wildlife, [Ohio Technical Management Guide: Urban White-Tailed Deer \(PDF\)](#), Publication 5477, p. 22.

¹⁸ R.C. 1545.07.

¹⁹ R.C. 1545.05.

²⁰ R.C. 1545.07, 1545.11, 1545.18 to 1545.211 and 1545.09.

²¹ R.C. 1545.14 and 1545.15.

²² R.C. 1545.131.

²³ R.C. Chapter 1545 and *State ex rel. Bd. of Commrs. v. Tablack*, 86 Ohio St.3d 293, 714 N.E.2d 917 (1999).

Hunting law

In general, in order to hunt in Ohio, a person must obtain a hunting license and the applicable permit for the animal the person desires to hunt. For example, in order to hunt deer on the lands of another, a hunting license and deer permit are required.²⁴ Hunting on one's own property does not require any license or permit.²⁵ Written permission from the landowner is required to hunt on the land of another. A hunter must carry the written permission on their person while engaged in hunting.²⁶ Failure to hunt with written permission is a third degree misdemeanor, punishable by up to 60 days in jail and up to a \$500 fine. Each subsequent offense is a second degree misdemeanor, punishable by up to 90 days in jail and up to a \$750 fine.²⁷

Administrative rules prescribe additional requirements concerning hunting, such as bag limits (the maximum number of animals, per species, that one may take), hours during which hunting is permissible, the season during which a hunter may hunt, and the type of hunting implement (rifle, bow, etc.) that may be used during that season. These regulations apply even on one's own property.²⁸ Each year, the Department of Natural Resources Division of Wildlife publishes a summary of hunting and trapping regulations. For your reference, we have included a copy with this memorandum (Ohio Hunting and Trapping Regulations).²⁹

A violation of any Division hunting regulation is a fourth degree misdemeanor, punishable by a criminal penalty of up to 30 days in jail and up to a \$250 criminal fine.³⁰ Specific violations carry higher criminal penalties. For example, illegally buying or selling wild animal parts in excess of \$1,000 is a fifth degree felony.³¹ In addition to criminal penalties for offenses involving the illegal taking of an animal, the Division may initiate a civil action to collect restitution for the value of the animal that was the subject of the offence.³²

State wildlife officers, sheriffs, deputy sheriffs, constables, and other police officers can enforce any hunting regulation. Prosecution may be undertaken by the county prosecutor,

²⁴ R.C. 1533.10 and 1533.11.

²⁵ R.C. 1533.10(C).

²⁶ R.C. 1533.17.

²⁷ R.C. 1533.99(A), 2929.24, and 2929.28.

²⁸ See O.A.C. 1501:31-15.

²⁹ Department of Natural Resources Division of Wildlife, [Ohio Hunting and Trapping Regulations \(PDF\)](#) (2022-2023).

³⁰ R.C. 1531.99(A).

³¹ R.C. 1531.99(D).

³² R.C. 1531.201, see also R.C. 1531.99(E).

municipal law director, or the Attorney General.³³ All fines and forfeitures must be paid into the Wildlife Fund to support the Division.³⁴

Conclusion

We hope that this information is helpful to you. Please note that this memorandum should not be considered legal advice. Ethical restrictions applicable to LSC attorneys prohibit the provision of legal advice. In addition, because we do not know the entirety of the facts prompting the questions addressed in this memorandum, it should not be considered a comprehensive discussion of the subject. If you have any further questions, please feel free to contact our office.

Attachments: 1966 Op. Att’y Gen. No. 151
State ex rel. Bd. of Commrs. v. Tablack
Ohio Hunting and Trapping Regulations

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³³ R.C. 1531.16 and 1531.18.

³⁴ R.C. 1531.17.