

MIAMI VALLEY RISK MANAGEMENT **ASSOCIATION**

LEGAL ALERT

RE: MUNICIPAL AUTHORITY TO PROHIBIT FIREARMS IN GOVERNMENTAL BUILDINGS

Introduction:

Concerns have recently been raised regarding the government's ability to restrict and otherwise prohibit firearms in governmental buildings. Issues regarding the right and limitations of an individual to carry a firearm in the State of Ohio have been subject to serious debate in recent years. Furthermore, modern changes in the law have obscured a municipality's authority to regulate firearm possession. Upon review of the relevant law in this State, however, it appears clear that a municipality may prohibit individuals from possessing a firearm in a governmental building. As set forth below, the government entity must first post the appropriate sign at a conspicuous location at or within the building to give the prohibition its effect.

Municipal Authority to Prohibit Firearms in Governmental Buildings:

The Second Amendment to the United States Constitution confers an individual right to keep and bear arms. This right is fully applicable to the States by virtue of the Fourteenth Amendment. Like most rights, however, the Second Amendment is not unlimited. Of particular significance is the ability of the Ohio General Assembly to limit or restrict the rights of individuals to possess or carry a firearm.

In 2006, the General Assembly enacted R.C. § 9.68 as a component of Sub.H.B. No. 347 (effective March 14, 2007) which recognized that the right to keep and bear arms is a "fundamental individual right." R.C. § 9.68(A). The General Assembly specifically noted that the purpose of this statute was to address a "need to provide uniform laws throughout the state" regulating firearm ownership and possession. R.C. § 9.68(A). Ohio Revised Code Section 9.68 provides in its entirety as follows:

(A) 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, or other transfer of firearms, their components, and their ammunition. **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, may own, possess, purchase, sell, transfer, transport, store, or keep any firearm, part of a firearm, its components, and its ammunition.

Section 9.68 unambiguously points out that a person may possess a firearm unless such possession is otherwise prohibited by federal or state law. The specific prohibition for governmental buildings is found in R.C. § 2923.1212. Pursuant to this Section of the Revised Code:

(A) The following persons, boards, and entities, or designees, shall post in the following locations a sign that contains a statement in substantially the following form: "Unless otherwise authorized by law, pursuant to the Ohio Revised Code, no person shall knowingly possess, have under the person's control, convey, or attempt to convey a deadly weapon or dangerous ordnance onto these premises.":

(9) The officer of this state or of a political subdivision of this state, or the officer's designee, who has charge of a building that is a government facility of this state or the political subdivision of this state, as defined in section 2923.126 of the Revised Code, and that is not a building that is used primarily as a shelter, restroom, parking facility for motor vehicles, or rest facility and is not a courthouse or other building or structure in which a courtroom is located that is subject to division (B)(3) of that section.¹

¹ R.C. § 2923.126 addresses the licensing requirement for carrying concealed firearms and lists several areas where concealed firearms are prohibited despite the possessor having a valid CCW permit. The prohibited locations include governmental buildings and courthouses.

Section 2923.1212(A)(9) requires the officers of a political subdivision of this state to post a sign in the building that announces a person is prohibited from carrying a firearm in the building. Assuming the building is not used primarily as a shelter, restroom, parking facility, or rest facility, and does not house a courtroom, the posting of a sign will effectively ban firearms from crossing its threshold. The posting of sign pursuant to R.C. § 2923.1212(A)(9) is mandatory and the prohibition referenced in this section cannot be enforced without the appropriate signage.

Furthermore, R.C. § 2923.1212 does not distinguish between weapons being openly carried, as opposed to concealed. Rather, the statute provides a blanket prohibition on deadly weapons, including firearms, in governmental buildings. Assuming the proper signage is posted, a municipality may therefore prohibit all firearms regardless of the manner such weapon is being carried by a particular individual. Any person who ignores the posted prohibition may be prosecuted for criminal trespass, a misdemeanor of the fourth degree. § R.C. 2911.21.

It bears noting that R.C. § 2923.1212(A) mandates that the statement "*Unless otherwise authorized by law*" be contained within the sign prohibiting firearms. Individuals wishing to challenge such a firearm prohibition may interpret this language to invoke the fundamental right to carry a firearm codified by R.C. § 9.68. An argument framed in this manner should fail. The language of R.C. § 9.68 demonstrates the General Assembly's recognition that the fundamental right to carry a firearm will not displace state law adopting certain firearm prohibitions. Again, R.C. § 9.68 unequivocally states that a person may possess a firearm unless such possession is otherwise prohibited by federal or state law.

Conclusion:

Accordingly, the government may prohibit individuals from possessing or carrying firearms in a governmental building that is not used primarily as a shelter, restroom, parking facility, or rest facility, and does not house a courtroom. Before enforcing such prohibition, the government must post a conspicuous sign on the premises that complies with R.C. § 2923.1212(A). Provided the proper signage is posted, persons entering a public building in violation thereof may be prosecuted under R.C. § 2911.21 for criminal trespass, a misdemeanor of the fourth degree.