



ALAN WILSON  
ATTORNEY GENERAL

June 27, 2018

The Hon. Glenn G. Reese  
South Carolina Senate  
PO Box 142  
Columbia, SC 29202

Dear Senator Reese:

We received your opinion request regarding the regulation of practice shooting ranges in South Carolina. The following opinion sets out our understanding of your question and our response.

**Issue (as quoted from your letter):**

I have been contacted by a constituent who has made an inquiry into who is in control of practice shooting ranges in South Carolina and what are the regulations that control them. Also, the number of feet they have to be away for a school.

**Law/Analysis:**

Before answering your question we must clarify the scope of our response. We understand that your question here concerns the regulation of shooting ranges as distinct from other generally-applicable regulation and we limit our discussion here accordingly.<sup>1</sup> Our response here is restricted to state-level law, and certain political subdivisions may have zoning, noise, or other local ordinances which affect shooting ranges. *See* S.C. Code Ann. § 31-18-50 (2007) (providing that local governments may regulate "the location and construction of a new shooting range" under certain circumstances); *but cf.* S.C. Code Ann. § 23-31-510 (Supp. 2017) (preempting local regulation of "the transfer, ownership, possession, carrying, or transportation of firearms, ammunition, components of firearms, or any combination of these things"). For this reason, we advise that private counsel would be in the best position to assist your constituent with determining what local regulations might apply to a particular factual scenario. With these caveats, the following opinion sets out the generally-applicable state law in order to be as responsive as possible to your question.

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<sup>1</sup> For example, our response here mostly omits discussion of generally-applicable commercial regulations with which all commercial businesses must comply. We also have omitted any discussion of tort and similar liability issues due to the fact-specific nature of such questions. *See, e.g., Op. S.C. Att'y Gen.*, 1987 WL 342819 (March 13, 1987) (noting that factual questions are beyond the proper scope of an opinion of this Office).

### 1. The Shooting Range Protection Act

It appears that the only South Carolina legislation which directly regulates shooting ranges as such is found in the South Carolina Shooting Range Protection Act of 2000, codified as Chapter 18 of Title 31 of the South Carolina Code. S.C. Code Ann. § 31-18-10 *et seq.* (2007).<sup>2</sup> Within that chapter, Section 31-18-20 defines various terms, including the statutory definition of a "shooting range" as an area:

- (a) designated, utilized, and operated by a person for the firing of firearms; where
- (b) the firing of firearms is the usual, regular, and primary activity occurring in the area; and where
- (c) the improvements, size, geography, and vegetation of the area are such that a projectile discharged from a firearm at a target would not reasonably be expected to escape its boundaries by virtue of the trajectory of the projectile, or by virtue of a backstop, berm, bullet trap, impact barrier, or similar device designed to prevent the escape of such projectiles.

S.C. Code Ann. § 31-18-20(1) (2007). We note that this definition does not include any requirement that the range be operated for a commercial purpose in order to qualify for protection. *See id.* Other code sections found within the Shooting Range Protection Act address private nuisance actions (Section 31-18-30), application of noise control ordinances (Section 31-18-40), and notification requirements (Section 31-18-50). When read together, these provisions reflect an effort to balance the interests of operators of shooting ranges, adjacent landowners, and political subdivisions.

Notably, the Shooting Range Protection Act does preserve some room for regulation by county and municipal governments. *See* S.C. Code Ann. § 31-18-50 (2007). Section 31-18-50 relates to local regulation of shooting ranges, and reads: "[e]xcept as otherwise provided in this chapter or the law of this State, this chapter does not prohibit a local government from regulating the location and construction of a new shooting range after the effective date of this chapter." *Id.* (emphasis added). Of course, this allowance must be read in conjunction with the strong restrictions that the General Assembly has placed on local regulation of firearm possession in S.C. Code Ann. § 23-31-510 (Supp. 2018). *See Op. S.C. Att'y Gen.*, 2017 WL 6940255 (December 29, 2017).

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<sup>2</sup> A current copy of the Act is available to the public on the South Carolina Legislature's website at <https://www.scstatehouse.gov/code/t31c018.php>.

Section 23-31-510 provides in relevant part that:

No governing body of any county, municipality, or other political subdivision in the State may enact or promulgate any regulation or ordinance that regulates or attempts to regulate:

(1) the transfer, ownership, possession, carrying, or transportation of firearms, ammunition, components of firearms, or any combination of these things . . . .

*Id.* "Our Office has consistently construed § 23-31-510(1) as preempting the regulation of possession and carrying a firearm by political subdivisions." *Op. S.C. Att'y Gen.*, 2017 WL 6940255 (December 29, 2017) (internal citations and quotations omitted); *cf.* S.C. Code Ann. § 23-31-520 ("This article [including Section 23-31-510] does not affect the authority of any . . . political subdivision to regulate the careless or negligent discharge or public brandishment of firearms . . .").

As noted earlier in this opinion, private counsel would be in the best position to assist your constituent with determining what local regulations might apply to a particular factual scenario. We simply highlight these provisions of South Carolina law to point out some specific statutes which relate to the powers of a political subdivision to provide for local regulation consistent with the law and principles of Home Rule. *Cf. Op. S.C. Att'y Gen.*, 2006 WL 1376910 (May 15, 2006) (discussing Home Rule in South Carolina). We have enclosed for your reference a copy of the Shooting Range Protection Act and the opinion of the South Carolina Court of Appeals in *Shaw v. Coleman*, 373 S.C. 485 (2007), which appears to be the only reported case applying the Act to a particular set of facts.

## 2. SCDNR Shooting Ranges

The South Carolina Department of Natural Resources is authorized by law to "construct shooting ranges on property it owns or leases for the purpose of providing public shooting opportunity." S.C. Code Ann. Regs. 123-211 (Supp. 2017). Those ranges are subject to the rules set out in SCDNR's Regulation 123-211, which is too lengthy to set out fully in this opinion but which generally addresses safety protocols and regulates the types of targets and ammunition used on those SCDNR ranges, in addition to other provisions. *Id.* A copy of the current regulation is available on the South Carolina Legislature's website.<sup>3</sup>

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<sup>3</sup>[https://www.scstatehouse.gov/query.php?search=DOC&searchtext=123%20211&category=CODEOFREGS&conid=9250387&result\\_pos=0&keyval=20829&numrows=10](https://www.scstatehouse.gov/query.php?search=DOC&searchtext=123%20211&category=CODEOFREGS&conid=9250387&result_pos=0&keyval=20829&numrows=10).

### 3. SC OSHA Regulations Relevant to Shooting Ranges

Where the owner or operator of a practice shooting range has employees present and working on the range, certain additional safety regulations also apply which are under the jurisdiction of the South Carolina Occupational Safety and Health Administration (SC OSHA). *See, e.g.*, S.C. Code Ann. § 41-15-80 (Supp. 2017). These regulations include precautions against the threats of noise and airborne lead, among others. *See, e.g.*, 29 C.F.R. 1910.95 (establishing safety standards for occupational noise exposure). Additionally, different OSHA regulations may apply depending on the facts of a particular scenario and we reiterate our advice that your constituent consult with private counsel to determine applicability.<sup>4</sup> While we mostly have omitted from this opinion discussion of generally-applicable commercial regulations with which all commercial businesses must comply, we bring these particular relevant provisions to your attention in order to be as responsive as possible to your question.

### 4. Other Regulatory Authority

As of the date of this writing, this author's research has not identified any act of the General Assembly which expressly vests an agency with specific jurisdiction to regulate shooting ranges as distinct from normal commercial enterprise. Instead, it appears that shooting ranges might be subject to various, generally-applicable regulatory requirements depending on their location and operation. *Cf. Op. S.C. Att'y Gen.*, 2015 WL 1382881 (March 16, 2015) ("As to your question concerning which agencies an automated transport network would be subject to, that list is dependent on how it chooses to run its business . . .").

### 5. Distance of a Shooting Range from a School

Neither has this author's research identified a legal provision which would require a shooting range to be located a specific distance from a school. As you no doubt are aware, South Carolina law criminalizes the possession of firearms on school property without authorization by school officials, subject to a few exceptions. S.C. Code Ann. §§ 16-23-420, 16-23-430 (2015). However, it appears that the General Assembly has not established any minimum distance

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<sup>4</sup> As an example of a federal OSHA enforcement action in another state, see the OSHA Regional News Brief for Region 3 dated May 10, 2016 which reported that OSHA placed a commercial indoor shooting range in its Severe Violator Enforcement Program and proposed a \$135,200 fine following a finding of willful and serious safety violations. The News Brief included this quotation by an OSHA official: "[i]ndoor shooting range employers are well aware that noise and lead are common hazards in their industry. [The range] failed to take seriously its responsibility to ensure a safe and healthful workplace by failing to protect workers from hazardous overexposure to noise and lead." The News Brief may be found at <https://www.osha.gov/news/newsreleases/region3/05102016>.

requirements for a shooting range, and until the Legislature does so it cannot be said that South Carolina law includes such a requirement.<sup>5</sup>

Indeed, we are not aware of any legal impediment to a school constructing a shooting range for the purpose of its students safely engaging in shooting sports. *Cf.* S.C. Code Ann. § 16-23-420 (2015) (providing exceptions from criminal liability where school authorities have authorized possession of a firearm). At least a few secondary schools in South Carolina offer shooting sports opportunities for their students, including Camden Military Academy's riflery team<sup>6</sup> and Wardlaw Academy's sporting clay team<sup>7</sup>. While we are careful not to attribute great significance to the absence of legislation, we observe that because the General Assembly has not mandated a minimum distance between schools and practice shooting ranges, schools have the latitude to establish controlled environments - where safety is paramount - which allow students to participate safely in school-sponsored shooting sports.

#### **Conclusion:**

Accordingly, it is the opinion of this Office that the only South Carolina legislation which directly regulates shooting ranges as such is found in the South Carolina Shooting Range Protection Act of 2000, codified as Chapter 18 of Title 31. S.C. Code Ann. § 31-18-10 *et seq.* (2007). Other laws may also apply depending upon the nature, location, and operation of a particular practice shooting range. *See, e.g.*, S.C. Code Ann. Regs. 123-211 (Supp. 2017). For this reason, we advise that private counsel would be in the best position to assist your constituent with determining what local regulations might apply to a particular factual scenario. As of the date of this writing, this author's research has not identified any act of the General Assembly which expressly vests an agency with specific jurisdiction to regulate shooting ranges as such. Neither has this author's research identified a state law which establishes a minimum distance of a shooting range from school property.

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<sup>5</sup> While this Office may not opine on questions of federal law, we would bring to your attention the federal statute 18 U.S.C. § 922(q), which attempts to establish a gun free zone around schools by criminalizing possession of a firearm by most persons within 1,000 feet of a primary or secondary school. This provision was held unconstitutional by the United States Supreme Court in *U.S. v. Lopez*, 514 U.S. 549 (1995), was subsequently amended by Congress, and thereafter has been the subject of challenges in reported opinions in other federal Courts of Appeals but not in the Fourth Circuit.

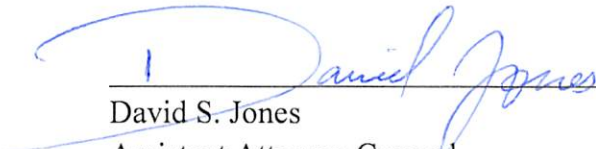
<sup>6</sup> See [https://camdenmilitary.com/images/uploads/CMA\\_info\\_sheet\\_Intl.pdf](https://camdenmilitary.com/images/uploads/CMA_info_sheet_Intl.pdf).

<sup>7</sup> See <http://www.wardlawacademy.com/athletics/sporting-clays/>

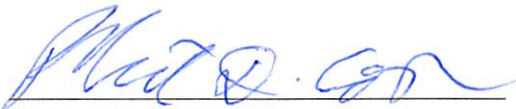
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This Office has reiterated in numerous opinions that it strongly supports the Second Amendment and the right of citizens to keep and bear arms. *See, e.g., Op S.C. Att'y Gen.*, 2015 WL 4596713 (July 20, 2015).

Sincerely,

  
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David S. Jones  
Assistant Attorney General

REVIEWED AND APPROVED BY:

  
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Robert D. Cook  
Solicitor General