



COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

DANIEL CAMERON
ATTORNEY GENERAL

CAPITOL BUILDING, SUITE 118
700 CAPITAL AVENUE
FRANKFORT, KENTUCKY 40601
(502) 696-5300
FAX: (502) 564-2894

February 18, 2020

OAG 2020-02

Subject: Whether proposed resolutions expressing the sentiment of Marshall County and McLean County on the Second Amendment rights of citizens to keep and bear arms would violate KRS 65.870.

Requested by: Jason Darnall, Marshall County Attorney
Donna Dant, McLean County Attorney

Written by: Steve Pitt, General Counsel
Office of the Attorney General

Syllabus: The proposed resolutions do not violate the provisions of KRS 65.870.

Statute construed: KRS 65.870

Opinion of the Attorney General

The Marshall County Attorney and the McLean County Attorney ask the Office of the Attorney General for an opinion whether resolutions being considered by their respective fiscal courts would violate Kentucky law, namely KRS 65.870. In both instances, the proposed resolutions state that the fiscal courts support the Second Amendment right of each county's citizens to keep and bear arms. This Office concludes that such resolutions are permissible and do not violate KRS 65.870.

The Marshall County resolution, restated in full, provides:

**A RESOLUTION OF THE MARSHALL COUNTY FISCAL COURT
DECLARING MARSHALL COUNTY A SECOND AMENDMENT
AND A SECTION 1(7) OF THE KENTUCKY CONSTITUTION
SAFE HARBOR.**

It is the natural tendency of civil government to expand beyond the limits of its rightful constitutional authority and to usurp powers which have not been given to it through the delegated consent of the governed.

Whenever the uses of government are perverted, and individual sovereignty is overtly endangered or threatened, and all other means of redress are ineffective, the People may, and in fact ought to, force the reestablishment of the original constitutional limits of government.

WHEREAS, the Constitution of the United States is the supreme law of our nation; and

WHEREAS, the Second Amendment to the Constitution of the United States provides: "a well-regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed," and

WHEREAS, the Supreme Court of the United States ruled in *Miranda v. Arizona*, 384 U.S. 436 (1966), that, "where rights secured by the Constitution are involved, there can be no rulemaking or legislation which would abrogate them," and

WHEREAS, the Supreme Court of the United States in *District of Columbia v. Heller*, 554 U.S. 570 (2008), ruled that the Second Amendment right to keep and bear arms is not connected in any way to service in the militia; and

WHEREAS, the Supreme Court of the United States in *United States v. Miller*, 307 U.S. 174 (1939), ruled that firearms that are part of ordinary military equipment with use that could contribute to the common defense are protected by the Second Amendment; and

WHEREAS, the Fourteenth Amendment to the Constitution states, "no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process

of law; nor deny to any person within its jurisdiction the equal protection of the laws;" and

WHEREAS, the Supreme Court of the United States in *McDonald v. City of Chicago*, 561 U.S. 742 (2010), ruled that a person's Second Amendment right to "keep and bear arms" is further secured by the "due process" and the "privileges and immunities" clauses of the Fourteenth Amendment. This decision also protects rights closely related to the Second Amendment, namely the right to manufacture, transfer, purchase, and sell firearms, accessories, and ammunition; and

WHEREAS, the Tenth Amendment to the Constitution states, "the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the People;" and

WHEREAS, the Supreme Court of the United States in *Printz v. United States*, 521 U.S. 898 (1997), ruled that the Federal government cannot compel law enforcement officers of the States to enforce Federal laws as it would increase the power of the Federal government far beyond that which the Constitution intended; and

WHEREAS, Kentucky's Bill of Rights, set forth as Section 1 of the Kentucky Constitution, protects the rights of life, liberty, worship, pursuit of safety and happiness, free speech, acquiring and protecting property, peaceable assembly, redress of grievances, and bearing arms. Section 1 of the Kentucky Constitution reads in pertinent part: "All men are, by nature, free and equal, and have certain inherent and inalienable rights, among which may be reckoned... (Seventh) The right to bear arms in defense of themselves and of the State, subject to the power of the General Assembly to enact laws to prevent persons from carrying concealed weapons;" and

WHEREAS, the last protectors of the Constitution of the United States are the County Sheriffs and We the People, and, historically, their ability to fulfill that role successfully rests, in part, on their Second Amendment rights and their rights set forth in Section 1(7) of the Kentucky Constitution.

WHEREAS, the situation in Virginia, where the governor and members of the general assembly have announced they will enact statutes restricting the Constitutional rights of Virginians to keep and bear arms and threatening the confiscation of arms and jailing those

citizens who do not comply therewith, is alarming. Now, some members of the Kentucky General Assembly and the Governor are publicly advocating laws that might restrict the constitutional rights of the People of Marshall County, Kentucky to keep and bear arms.

NOW THEREFORE, BE IT RESOLVED BY THE FISCAL COURT OF MARSHALL COUNTY, KENTUCKY as follows:

Section 1. The above recitals are true and correct and incorporated in this Resolution.

Section 2. The People of Marshall County, Kentucky, through their duly elected members of the Fiscal Court and their Sheriff, resolve that Marshall County, Kentucky is hereby designated a "Second Amendment and a Section 1(7) of the Kentucky Constitution Safe Harbor."

Section 3. Marshall County, Kentucky acknowledges its responsibility to protect the People thereof and their right to keep and bear arms by declaring itself to be a "Second Amendment and a Section 1(7) of the Kentucky Constitution Safe Harbor."

Section 4. Marshall County, Kentucky specifically acknowledges:

- a. the Constitutional right, as originally written and understood, to keep and bear arms for self-defense, personal safety, protection of one's family, and in defense of one's community and county;
- b. the unalienable right to keep and bear arms, as specified in the Second Amendment to the Constitution of the United States, Section 1(7) of the Kentucky Constitution, and the aforementioned decisions of the Supreme Court of the United States; and
- c. the rights to manufacture, transfer, purchase, and sell firearms and ammunition designed for those purposes outlined above, are rights guaranteed by the Second Amendment to the Constitution of the United States and Section 1(7) of the Kentucky Constitution.

Section 5. The criminal misuse of firearms is due to the fact that criminals do not obey laws, and that is not a reason to abrogate or abridge the unalienable, constitutionally-guaranteed rights of law-abiding citizens. Historically, the last protectors of the constitutional rights are We the People, and our ability to fulfill that role successfully rests, in part, on our Second Amendment rights to the Constitution of the United States and our rights under Section 1(7) of the Kentucky Constitution.

Section 6. Any Federal or State statute, executive order, rule or regulation regarding the right to keep and bear arms that violates the Second, Ninth, Tenth, or Fourteenth amendments to the Constitution of the United States, Section 1(7) of the Kentucky Constitution, and/or the numerous, related Supreme Court of the United States decisions, including those listed above, shall be regarded by the People of Marshall County to be unconstitutional, a transgression of the supreme law of our nation and State.

Section 7. Marshall County, Kentucky does not intend to authorize or consent to the use of county funds, resources, employees, agencies, contractors, buildings, detention centers, or offices, for the purpose of enforcing or assisting in the enforcement of any element of such Federal or State statutes, executive orders, rules or regulations, that unconstitutionally infringe on the right of the People to keep and bear arms as described and defined in detail above.

Section 8. In the event the Federal or State government, by statute, executive order, rule or regulation, abridges the rights of the People of Marshall County, Kentucky to keep and bear arms secured by the Second Amendment to the Constitution of the United States and Section 1(7) of the Kentucky Constitution, Marshall County will consider, alone, or in conjunction with its sister counties in Kentucky, proceeding to a court of competent jurisdiction to enjoin, temporarily and permanently, the enforcement thereof, and will consider enacting such ordinances that protect the People of Marshall County, Kentucky in their exercise of their right to keep and bear arms secured by the Second Amendment to the Constitution of the United States and Section 1(7) of the Kentucky Constitution.

Section 9. Nothing in this Resolution shall be construed to mean or imply that Marshall County does not support, or will not enforce, all Federal and State laws, regulations, and rules regarding the carrying of deadly weapons, whether concealed or not, in government

buildings, Federal or State, including elementary and secondary schools, or in private establishments that prohibit same. Marshall County will always enforce such laws, regulations, and rules.

Section 10. A copy of this Resolution shall be spread upon the Minutes of this meeting.

Section 11. This Resolution shall become effective upon adoption.

THIS RESOLUTION has been adopted by the Marshall County Kentucky Fiscal Court Commissioners in their regular session this ____ day of February, 2020.

*** **

Likewise, the McLean County resolution, restated in full, provides:

WHEREAS, the Constitution of the United States is the supreme law of our nation, and

WHEREAS, the Second Amendment to the Constitution states "A well-regulated militia, being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed," and

WHEREAS, the United States Supreme Court has affirmed an individual's right to possess firearms, unconnected with service in a military, for traditionally lawful purposes, such as self-defense within the home, and

WHEREAS, the United States Supreme Court has affirmed that the right of an individual to "keep and bear arms," as protected under the Second Amendment, is incorporated by the Due Process Clause of the Fourteenth Amendment against the states, and

WHEREAS, the McLean County Fiscal Court is concerned about the passage of any bill containing language which could be interpreted as infringing the rights of the citizens of McLean County to keep and bear arms, and

WHEREAS, the McLean County Fiscal Court wishes to express its deep commitment to the rights of all citizens of McLean County to keep and bear arms, and

WHEREAS, the McLean County Fiscal Court wishes to express opposition to any law that would unconstitutionally restrict the rights of the citizens of McLean County to keep and bear arms, and

WHEREAS, the McLean County Fiscal Court wishes to express its intent to stand for our Second Amendment rights and oppose, within the limits of the Constitution of the United States and the Commonwealth of Kentucky, any efforts to unconstitutionally restrict such rights.

THEREFORE, BE IT RESOLVED THAT the people of McLean County, through their duly elected Fiscal Court, hereby request that our state and federal legislators pass no laws which would infringe on our constitutional 2nd Amendment right in order to preserve for the People of McLean County, their rights guaranteed by the Constitution of the United States of America, furthermore

THAT THE MCLEAN COUNTY FISCAL COURT hereby expresses its intent to uphold the Second Amendment rights of the citizens of McLean County, Kentucky, and, furthermore

THAT THE MCLEAN COUNTY FISCAL COURT hereby declares its intent to oppose any infringement on the right of law-abiding citizens to keep and bear arms.

We, the Fiscal Court of McLean County, Kentucky, through this Resolution hereby declare our rights, our freedom, and our liberty as guaranteed by the Constitution of the United States of America.

*** **

The question presented primarily implicates KRS 65.870, which prohibits counties and certain other state political subdivisions from enacting any "ordinance, executive order, administrative regulation, policy, procedure, rule or any other form of executive or legislative action" that would regulate the "manufacture, sale, purchase, taxation, transfer, ownership, possession, carrying, storage, or

transportation of firearms, ammunition, components of firearms, components of ammunition, firearm accessories, or combination thereof.” Any local legislation or executive acts purporting to regulate firearms, ammunition, or their components is thus declared void by the statute. A violation of KRS 65.870 by any “public servant” can amount to a violation of either KRS 522.020 (official misconduct in the first degree) or KRS 522.030 (official misconduct in the second degree), depending on the circumstances of the violation.

This Office’s review of the proposed resolutions leads us to conclude that the resolutions do not violate KRS 65.870. As a threshold matter, the Office of the Attorney General is mindful of the right of the citizens of the Commonwealth to keep and bear arms under the Second Amendment to the United States Constitution and under Section 1(7) of the Kentucky Constitution. The resolutions set out the firmly held beliefs of the citizens of Marshall County and McLean County through their duly elected fiscal courts, including the intent of the counties to oppose any attempt by government “to infringe on the right of law-abiding citizens to keep and bear arms.” Indeed, the language of the proposed resolutions supports state and federal law, namely the Second Amendment to the United States Constitution and Section 1(7) of the Kentucky Constitution. A county is well within its rights to pass a resolution that expresses support for established laws. *See, e.g.*, KRS 67.076.

By their terms, the proposed resolutions do not regulate the “manufacture, sale, purchase, taxation, transfer, ownership, possession, carrying, storage, or transportation” of firearms, ammunition, or their components. The proposed resolutions therefore are in keeping with KRS 65.870.

Having concluded that the proposed resolutions do not violate KRS 65.870, adoption by the fiscal courts would not amount to official misconduct under KRS 522.020 and KRS 522.030.

RESOLUTION

A RESOLUTION OF THE MARSHALL COUNTY FISCAL COURT DECLARING MARSHALL COUNTY A SECOND AMENDMENT AND A SECTION 1(7) OF THE KENTUCKY CONSTITUTION SAFE HARBOR.

It is the natural tendency of civil government to expand beyond the limits of its rightful constitutional authority and to usurp powers which have not been given to it through the delegated consent of the governed.

Whenever the uses of government are perverted, and individual sovereignty is overtly endangered or threatened, and all other means of redress are ineffective, the People may, and in fact ought to, force the reestablishment of the original constitutional limits of government.

WHEREAS, the Constitution of the United States is the supreme law of our nation; and

WHEREAS, the Second Amendment to the Constitution of the United States provides: “a well-regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed;” and

WHEREAS, the Supreme Court of the United States ruled in *Miranda v. Arizona*, 384 U.S. 436 (1966), that, “where rights secured by the Constitution are involved, there can be no rulemaking or legislation which would abrogate them;” and

WHEREAS, the Supreme Court of the United States in *District of Columbia v. Heller*, 554 U.S. 570 (2008), ruled that the Second Amendment right to keep and bear arms is not connected in any way to service in the militia; and

WHEREAS, the Supreme Court of the United States in *United States v. Miller*, 307 U.S. 174 (1939), ruled that firearms that are part of ordinary military equipment with use that could contribute to the common defense are protected by the Second Amendment; and

WHEREAS, the Fourteenth Amendment to the Constitution states, “no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws;” and

WHEREAS, the Supreme Court of the United States in *McDonald v. City of Chicago*, 561 U.S. 742 (2010), ruled that a person’s Second Amendment right to “keep and bear arms” is further secured by the “due process” and the “privileges and immunities” clauses of the Fourteenth Amendment. This decision also protects rights closely related to the Second Amendment, namely the right to manufacture, transfer, purchase, and sell firearms, accessories, and ammunition; and

WHEREAS, the Tenth Amendment to the Constitution states, “the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the People;” and

WHEREAS, the Supreme Court of the United States in *Printz v. United States*, 521 U.S. 898 (1997), ruled that the Federal government cannot compel law enforcement officers of the States to enforce Federal laws as it would increase the power of the Federal government far beyond that which the Constitution intended; and

WHEREAS, Kentucky's Bill of Rights, set forth as Section 1 of the Kentucky Constitution, protects the rights of life, liberty, worship, pursuit of safety and happiness, free speech, acquiring and protecting property, peaceable assembly, redress of grievances, and bearing arms. Section 1 of the Kentucky Constitution reads in pertinent part: "All men are, by nature, free and equal, and have certain inherent and inalienable rights, among which may be reckoned... (Seventh) The right to bear arms in defense of themselves and of the State, subject to the power of the General Assembly to enact laws to prevent persons from carrying concealed weapons;" and

WHEREAS, the last protectors of the Constitution of the United States are the County Sheriffs and We the People, and, historically, their ability to fulfill that role successfully rests, in part, on their Second Amendment rights and their rights set forth in Section 1(7) of the Kentucky Constitution.

WHEREAS, the situation in Virginia, where the governor and members of the general assembly have announced they will enact statutes restricting the Constitutional rights of Virginians to keep and bear arms and threatening the confiscation of arms and jailing those citizens who do not comply therewith, is alarming. Now, some members of the Kentucky General Assembly and the Governor are publicly advocating laws that might restrict the constitutional rights of the People of Marshall County, Kentucky to keep and bear arms.

NOW THEREFORE, BE IT RESOLVED BY THE FISCAL COURT OF MARSHALL COUNTY, KENTUCKY as follows:

Section 1. The above recitals are true and correct and incorporated in this Resolution.

Section 2. The People of Marshall County, Kentucky, through their duly elected members of the Fiscal Court and their Sheriff, resolve that Marshall County, Kentucky is hereby designated a "Second Amendment and a Section 1(7) of the Kentucky Constitution Safe Harbor."

Section 3. Marshall County, Kentucky acknowledges its responsibility to protect the People thereof and their right to keep and bear arms by declaring itself to be a "Second Amendment and a Section 1(7) of the Kentucky Constitution Safe Harbor."

Section 4. Marshall County, Kentucky specifically acknowledges:

- a. the Constitutional right, as originally written and understood, to keep and bear arms for self-defense, personal safety, protection of one's family, and in defense of one's community and county;

- b. the unalienable right to keep and bear arms, as specified in the Second Amendment to the Constitution of the United States, Section 1(7) of the Kentucky Constitution, and the aforementioned decisions of the Supreme Court of the United States; and
- c. the rights to manufacture, transfer, purchase, and sell firearms and ammunition designed for those purposes outlined above, are rights guaranteed by the Second Amendment to the Constitution of the United States and Section 1(7) of the Kentucky Constitution.

Section 5. The criminal misuse of firearms is due to the fact that criminals do not obey laws, and that is not a reason to abrogate or abridge the unalienable, constitutionally-guaranteed rights of law-abiding citizens. Historically, the last protectors of the constitutional rights are We the People, and our ability to fulfill that role successfully rests, in part, on our Second Amendment rights to the Constitution of the United States and our rights under Section 1(7) of the Kentucky Constitution.

Section 6. Any Federal or State statute, executive order, rule or regulation regarding the right to keep and bear arms that violates the Second, Ninth, Tenth, or Fourteenth amendments to the Constitution of the United States, Section 1(7) of the Kentucky Constitution, and/or the numerous, related Supreme Court of the United States decisions, including those listed above, shall be regarded by the People of Marshall County to be unconstitutional, a transgression of the supreme law of our nation and State.

Section 7. Marshall County, Kentucky does not intend to authorize or consent to the use of county funds, resources, employees, agencies, contractors, buildings, detention centers, or offices, for the purpose of enforcing or assisting in the enforcement of any element of such Federal or State statutes, executive orders, rules or regulations, that unconstitutionally infringe on the right of the People to keep and bear arms as described and defined in detail above.

Section 8. In the event the Federal or State government, by statute, executive order, rule or regulation, abridges the rights of the People of Marshall County, Kentucky to keep and bear arms secured by the Second Amendment to the Constitution of the United States and Section 1(7) of the Kentucky Constitution, Marshall County will consider, alone, or in conjunction with its sister counties in Kentucky, proceeding to a court of competent jurisdiction to enjoin, temporarily and permanently, the enforcement thereof, and will consider enacting such ordinances that protect the People of Marshall County, Kentucky in their exercise of their right to keep and bear arms secured by the Second Amendment to the Constitution of the United States and Section 1(7) of the Kentucky Constitution.

Section 9. Nothing in this Resolution shall be construed to mean or imply that Marshall County does not support, or will not enforce, all Federal and State laws, regulations, and rules regarding the carrying of deadly weapons, whether concealed or not, in government buildings, Federal or State, including elementary and secondary schools, or in private establishments that prohibit same. Marshall County will always enforce such laws, regulations, and rules.

Section 10. A copy of this Resolution shall be spread upon the Minutes of this meeting.

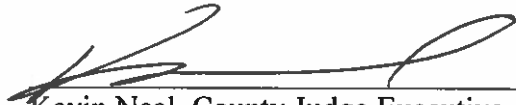
Section 11. This Resolution shall become effective upon adoption.

THIS RESOLUTION has been adopted by the Marshall County Kentucky Fiscal Court Commissioners in their regular session this 14 day of February, 2020.

ATTEST:

MARSHALL COUNTY KENTUCKY
FISCAL COURT COMMISSIONERS

Clerk



Kevin Neal, County Judge Executive