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RE: Lower Merion Township's Proposed Unlawful Ordinance

District Attorney Steele,

I am writing to you today in relation to Lower Merion Township's recent proposal to enact a firearm discharge ordinance, which the Commonwealth Court has already held to be prohibited under Article 1, Section 21 and our state preemption statute. As such is in direct violation of state preemption and would additionally constitute official oppression, I am respectfully requesting that your Office investigate this matter and file appropriate charges.

As you are likely aware, 18 Pa.C.S. § 6120 provides, in pertinent part:

(a) General rule. No county, municipality or township may in any manner regulate the lawful ownership, possession, transfer or transportation of firearms, ammunition or ammunition components when carried or transported for purposes not prohibited by the laws of this Commonwealth.

Pursuant to 18 Pa.C.S. § 6119, "an offense under this subchapter constitutes a misdemeanor of the first degree," which, pursuant to 18 Pa.C.S. § 106(b)(6), provides for a maximum of sentence of five (5) years.

Further, in interpreting Section 6120, the Pennsylvania Supreme Court has been "crystal clear" that only the General Assembly can regulate firearms, as the entire field is preempted. *See, Nat'l Rifle Ass'n v. City of Philadelphia*, 977 A.2d 78, 82 (Pa. Cmwlth. 2009). More importantly, the Pennsylvania Supreme Court in reviewing the protections afforded by Article 1, Section 21 of the Pennsylvania Constitution and Section 6120 declared in *Ortiz v. Commonwealth* that "[b]ecause

the ownership of firearms is constitutionally protected, its regulation is a matter of statewide concern. . . . [T]he General Assembly, not city councils, is the proper forum for the imposition of such regulation." 681 A.2d 152, 156 (Pa. 1996). (Emphasis added). Continuing, the *Ortiz* Court stated that:

. . . the Constitution of Pennsylvania requires that home rule municipalities may not perform any power denied by the General Assembly; the General Assembly has denied all municipalities the power to regulate the ownership, possession, transfer or transportation of firearms; and the municipalities seek to regulate that which the General Assembly has said they may not regulate.

Likewise, the Commonwealth Court has invariably held that Section 6120 and the *Ortiz* decision prohibit the regulation of firearms and ammunition. *See, National Rifle Ass'n v. City of Philadelphia*, 977 A.2d 78 (Pa. Cmwlth. 2009) (holding that a Straw Purchaser Ordinance and an Assault Weapons Ordinance were preempted by § 6120); *Dillon v. City of Erie*, 83 A.3d 467 (Pa. Cmwlth. 2014) (holding that the prohibition on possession of firearms in city parks violates Section 6120); *Clarke v. House of Rep. of Commonwealth*, 957 A.2d 361, 365 (Pa. Cmwlth. 2008) (holding that "practical considerations do not alter the clear preemption imposed by the legislature"); *Ortiz v. Commonwealth*, 655 A.2d 194 (Pa. Cmwlth. 1995) (holding municipal assault weapons ban invalid and unenforceable); *Schneck v. City of Philadelphia*, 383 A.2d 227 (Pa. Cmwlth. 1978) (holding that municipal regulations on the acquisition and transfer of firearms was preempted by § 6120).

More recently, I litigated the matter of *Firearm Owners Against Crime, et al. v. Lower Merion Township*, 151 A.3d 1172 (Pa. Cmwlth. Ct. 2016)(*petition for allocatur denied July 11, 2017*), where the Commonwealth Court struck down, *inter alia*, Lower Merion Township's discharge ordinance. As a result of the decision, Lancaster County District Attorney Craig Stedman sent out a letter to all law enforcement agencies within Lancaster County advising them that all municipal firearm regulations are prohibited. I am attaching a copy. Nevertheless, in direct defiance of the legions of case law, including the Commonwealth Court's recent decision holding its discharge ordinance to be prohibited, Lower Merion Township is now seeking, at its September 19th meeting, to enact a new discharge ordinance, in violation of Article 1, Section 21, state preemption and established precedent.

As such conduct is in direction violation of Section 6120 and 18 Pa.C.S. § 5301, I am respectfully requesting that your Office investigate this matter and file appropriate charges. Thanking you for your time and consideration in this matter, I am

Yours truly,  
Prince Law Offices, P.C.



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