

EVAN C. GOYKE
City Attorney

MARY L. SCHANNING
ROBIN A. PEDERSON
NAOMI E. SANDERS
JULIE P. WILSON
Deputy City Attorneys



Milwaukee City Hall Suite 800 • 200 East Wells Street • Milwaukee, Wisconsin 53202-3551
Telephone: 414.286.2601 • TDD: 414.286.2025 • Fax: 414.286.8550

HEIDI WICK SPOERL
KATHRYN Z. BLOCK
THOMAS D. MILLER
PETER J. BLOCK
PATRICK J. MCCLAIN
HANNAH R. JAHN
JOANNA FRACZEK
MEIGHAN M. ANGER
ALEXANDER R. CARSON
ALEXANDER T. MUELLER
ALEXANDER D. COSSI
LISA A. GILMORE
KATHERINE A. HEADLEY
SHEILA THOBANI
STACY J. MILLER
JORDAN M. SCETTLE
THERESA A. MONTAG
ALEXANDER E. FOUNDOS
TRAVIS J. GRESHAM
JENNIFER L. WILLIAMS
KYLE W. BAILEY
JOSEPH M. DOBBS
WILLIAM K. HOTCHKISS
CLINT B. MUCHE
ZACHARY A. HATFIELD
MEGHAN C. MCCABE
MARIA E. MESOLORAS
CYNTHIA HARRIS ORTEGA
Assistant City Attorneys

July 10, 2024

Scott Spiker
District 13 Alderman
Milwaukee Common Council
200 East Wells Street, Room 205
Milwaukee, WI 53202
414-286-8537

Re: Analysis of Ordinance Regulating Bump Stocks (Milwaukee Common Council File No. 240435)

Dear Alderman Spiker:

You have asked this office to conduct a legal review of Common Council File No. 240435 (hereinafter "Ordinance No. 240435"), which amends the definition of "dangerous weapon" contained in Milwaukee Code of Ordinances § 105-34-2-b to include a "bump stock or any device designed to enable rapid fire from a non-automatic firearm." The proposed ordinance acknowledges that, pursuant to Wis. Stat. § 66.0409(2), the City of Milwaukee is preempted from regulating firearms in manner that is more restrictive than state law. However, the proposed ordinance asserts that "bump stocks" are not firearms or "intrinsic parts of a firearm," and are therefore not a preempted subject matter under Wis. Stat. § 66.0409(2).

QUESTIONS PRESENTED

You have asked whether Ordinance No. 240435 is legal and enforceable. Because the ordinance relates to the regulation of firearms, your inquiry requires us to conduct a preemption analysis under Wis. Stat. § 66.0409(2). We have therefore taken the liberty of reframing your request into the following questions:

1. Is a bump stock a "part of a firearm" covered by state preemption under Wis. Stat. § 66.0409(2)?
2. If the answer to Question 1 is yes, has the state enacted a "same" or "similar" regulation that would render the proposed bump stock ordinance legal and enforceable?



CONCLUSION

1. Yes. Wis. Stat. § 66.0409(2)'s use of the modifier "any" before the phrase "part of a firearm" indicates a "broad application," and encompasses all parts of a firearm "of whatever kind and without restriction." See *Lipscomb v. Abele*, 2018 WI App 58, ¶ 77, 384 Wis. 2d 1, 41, 918 N.W.2d 434, 454. Moreover, existing caselaw from the United States Supreme Court recognizes rifle stocks as a "part" of a rifle. *Garland v. Cargill*, 602 U.S. 406, 411–12, 144 S. Ct. 1613, 1618 (2024). A bump stock is therefore a "part of a firearm" subject to state preemption under Wis. Stat. § 66.0409(2).
2. No. The Wisconsin State Legislature has previously declined to enact a bump stock regulation similar to the proposed ordinance. Specifically, in 2021, the state failed to pass Senate Bill 656, which would have prohibited the importation, sale, purchase, manufacture, transfer, use, or possession of "a bump-fire device, or any part, combination of parts...that is designed or functions to accelerate the rate of fire of a semiautomatic firearm..." Because the State of Wisconsin has not enacted a regulation that is the "same" or "similar" to the proposed ordinance, the ordinance is preempted pursuant to Wis. Stat. § 66.0409(2). The proposed ordinance is therefore not legal and enforceable.

ANALYSIS

I. The Phrase "Any Part of a Firearm," As Used in Wis. Stat. § 66.0409(2), Encompasses Bump Stocks

a. Bump Stocks

Ordinance No. 240435 seeks to regulate bump stocks. Bump stocks are an aftermarket rifle stock replacement accessory that allows shooters to more easily "bump fire" a semi-automatic weapons. A brief explanation of these terms is helpful. A semi-automatic weapon is a firearm that "utilizes a portion of the energy of a firing cartridge to extract the fired cartridge case and chamber the next round, and which requires a separate pull of the trigger to fire each cartridge." 18 U.S.C. § 921(a)(21). Put simply, a semi-automatic weapon will discharge one round and automatically rechamber (but not discharge) another round each time the trigger is pulled. A semi-automatic weapon is distinguishable from a "machinegun"—sometimes called an "automatic weapon"—which is capable of discharging one round, and automatically rechamber *and discharging* another round multiple times (or even continuously) until the trigger is released.

Although semi-automatic weapons are only capable of discharging a single round each time the trigger is pulled, a shooting technique known as "bump firing" enables a semi-automatic firearm to discharge at a rate similar to a machinegun. Bump firing allows a shooter to take advantage of the firearm's natural oscillation during recoil to rapidly manipulate the firearm's trigger. During bump firing, a semi-automatic weapon still

discharges only one round with each pull of the trigger, but the recoil-assisted trigger pulls occur in much faster succession—thereby giving the appearance of an automatic rate of fire.

Although bump firing can be accomplished without any additional equipment, an accessory known as a “bump stock” makes the technique easier. A bump stock is essentially a spring-tensioned chassis in which a semi-automatic weapon can slide backwards and forwards during recoil. The resulting mechanical process is as follows. After the first round is discharged, recoil drives the weapon backwards into the bump stock. The bump stock’s internal spring then pushes the weapon forward into its original position. This forward motion—or “bump”—causes the trigger to strike the shooter’s finger, discharging another round and restarting the process. The result is a recoil-driven sequence (fire, recoil, bump, fire) that causes the weapon to continue discharging rounds until the weapon is either emptied of ammunition or the shooter releases the trigger.

b. Ordinance No. 240435

Milwaukee Code of Ordinances (“MCO”) § 105-34 prohibits persons from “go[ing] armed” with a “dangerous weapon” in the City of Milwaukee. The phrase “dangerous weapon” is defined as:

...any device designed as a weapon and capable of producing death or great bodily harm, any electric weapon as defined in s. 941.295(1c), Wis. Stats., and any similar electronic control device, or any other device or instrumentality which, in the manner it is used or intended to be used, is calculated or likely to produce death or great bodily harm. The following are dangerous per se: blackjack, billy, standclub, sandbag, bludgeon, nunchaku sticks, throwing stars, sling shot, slung shot, any instrument which impels a missile by compressed air, spring or other means, any weapon in which loaded or blank cartridges are used, crossknuckles, knuckles of any metal, barbed or blade type arrowhead, bowie knife, dirk knife, dirk, dagger, switch blade knife or any knife which has a blade that may be drawn without the necessity of contact with the blade itself or is automatically opened by pressure on the handle or some other part of the knife and is commonly known as a switch blade knife, straightedge razor or any other knife having a blade 3 inches or longer.

MCO § 105-34(2)(b).

The recently proposed Ordinance No. 240435 would amend the definition of “dangerous weapons” to include a “bump stock or any device designed to enable rapid fire from a non-automatic firearm.” In effect, the proposed ordinance would prohibit individuals from carrying a bump stock in the City of Milwaukee.

The text of Ordinance No. 240435 acknowledges that local regulation of firearms in Wisconsin is preempted under Wis. Stat. § 66.0409(2). That statute—which is partially set forth in the proposed ordinance—states:

“no political subdivision may enact or enforce an ordinance or adopt a resolution that regulates the sale, purchase, purchase delay, transfer, ownership, use, keeping, possession, bearing, transportation, licensing, permitting, registration, or taxation of any knife or any firearm or part of a firearm, including ammunition and reloader components, *unless the ordinance or resolution is the same as or similar to, and no more stringent than, a state statute.*” (emphasis added). Consequently, the City of Milwaukee cannot enact a bump stock regulation unless the State has enacted the same regulation or a similar regulation.

Wis. Stat. § 66.0409(2) (emphasis added).

Despite its acknowledgment of state preemption, Ordinance No. 240435 goes on to suggest that bump stocks are not actually a “firearm or part of a firearm,” as contemplated under Wis. Stat. § 66.0409(2). Specifically, the ordinance argues that the phrase “firearm or part of a firearm” was only intended to include the “intrinsic parts of a firearm” necessary for the firearm to function, such as the trigger. The ordinance further suggests that “aftermarket products” or “accessories,” such as shoulder straps, custom grips, and bump stocks, are not necessary for the basic functioning of a firearm and are therefore not a “firearm or part of a firearm” subject to preemption under Wis. Stat. § 66.0409(2).

c. Bump Stocks Are a “Part of a Firearm” Under Wis. Stat. § 66.0409(2)

As Ordinance No. 240435 readily acknowledges, its legality and enforceability relies on the presumption that a bump stock cannot be considered a “firearm or part of a firearm” under Wis. Stat. § 66.0409(2). This interpretation, however, is not consistent with the plain language of the preemption statute.

Wis. Stat. § 66.0409(2) prohibits municipalities from enacting a regulation related to “any firearm or part of a firearm” unless it is the “same” or “similar” to an existing state regulation. The use of the modifier “any” within a statute indicates a legislative intent for “broad application,” and has been interpreted to mean “of whatever kind and *without restriction.*” *Lipscomb*, 2018 WI App 58, ¶ 77 (emphasis added). Applying this meaning to the statutory phrase at issue, Wis. Stat. § 66.0409(2) must be read as contemplating parts of a firearm of whatever kind, and without restriction. *Id.*

With the benefit of this added context, Ordinance No. 240435’s proposed interpretation of the phrase “any firearm or part of a firearm” is not permissible. In essence, the ordinance suggests that the phrase “part of a firearm” really means “*intrinsic parts* [of a firearm]” that are necessary for the firearm’s functioning. The statute, however, contains

no such limitation. In fact, the opposite is true. By using the modifier “any” before the phrase “firearm or part of a firearm,” Wis. Stat. § 66.0409(2) mandates a broad—not narrow—interpretation of the phrase “part of a firearm.” Ordinance No. 240435 therefore reads a limitation into the preemption ordinance that is not supported—and is, in fact, prohibited—by the statute’s plain language.

Our conclusion is reinforced by recent United States Supreme Court caselaw discussing bump stocks. In a recently released decision in the case of *Garland v. Cargill*, the Supreme Court struck down a Bureau of Alcohol, Tobacco, Firearms, and Explosives (“ATF”) rule that classified bump stocks as “machineguns” under federal law. 602 U.S. 406. In a lengthy discussion of semi-automatic weapons and bump stocks, the Court referred to a weapon’s “stock” as “the back *part* of the rifle that rests against a shooter’s shoulder.” *Id.* at 411 (emphasis added). While the Supreme Court was obviously not interpreting Wisconsin preemption law, the Court’s reference to a stock as “part” of a rifle demonstrates the commonly understood meaning of the word “part” as it relates to firearms. Notably, because a stock is generally not necessary to the intrinsic mechanical functions of many rifles (especially the types of rifles that can accept bump stocks), the proposed ordinance’s logic would permit local regulation of not just bump stocks, but virtually *all* rifle stocks in Wisconsin—a result that is clearly contrary to Wis. Stat. § 66.0409(2)’s intent. For this and the foregoing reasons, we conclude that a bump stock is “part of a firearm” under Wis. Stat. § 66.0409(2), and is therefore a subject matter covered by statutory preemption.

II. Ordinance No. 240435 is Not Legal and Enforceable Because There is No “Same” or “Similar” Regulation of Bump Stocks Under State Law

Having established that the regulation of bump stocks is covered by Wis. Stat. § 66.0409(2), we must next determine whether Ordinance No. 240435 is still permissible based on the existence of a “same” or “similar” state regulation. Wis. Stat. § 66.0409(2). After surveying state law, we have determined that Wisconsin does not currently regulate the possession or carrying of bump stocks, or firearms equipped with a bump stock (beyond those regulations generally applicable to all firearms).

As an initial matter, based on the Supreme Court’s decision in *Cargill*, bump stocks are not regulated as “machineguns” under Wisconsin law. Although *Cargill* only interpreted federal law, because the definition of “machineguns” contained in the Wisconsin Statutes (Wis. Stat. § 941.25(1), *et seq.*) is essentially identical to that contained in the U.S. Code (26 U.S.C. § 5845(b)), there does not appear to be any non-frivolous argument that bump stocks qualify as “machineguns” under Wisconsin law.

More importantly, the State of Wisconsin has previously declined to expressly regulate bump stocks. For example, 2021 Senate Bill 656 would have prohibited the importation, sale, purchase, manufacture, transfer, use, or possession of “a bump-fire

Alderman Scott Spiker
July 10, 2024
Page 6

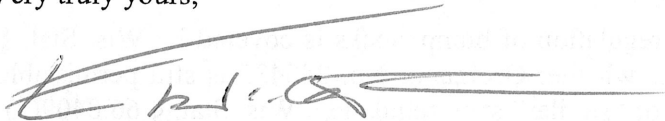
device, or any part, combination of parts...that is designed or functions to accelerate the rate of fire of a semiautomatic firearm..." The bill failed to pass in March, 2022.

This office has previously concluded that the failure of proposed state legislation on a particular firearms-related issue will likely be viewed as evidence that the issue is subject to preemption under Wis. Stat. § 66.0409(2). In a City Attorney Opinion dated February 17, 2023, we determined that a proposed city ordinance (that would have required firearms owners to report the loss or theft of a firearm within 48 hours) was preempted by state law. CAO dtd. Feb. 17, 2023, at 1. In reaching that conclusion, we noted that the state legislature had previously declined to adopt a bill imposing a similar reporting requirement. "Because Wis. Stat. § 66.0409 explicitly prohibits municipalities from enacting gun regulations and this legislation was contemplated by the state legislature, it is likely that if the proposed ordinance were enacted and challenged, the ordinance would be deemed unlawful." The same logic applies here. Because the state legislature declined to enact a bump stock regulation that is the "same...or similar" to the one the City now proposes, a reviewing court would almost certainly conclude that such regulation is preempted.

Because Ordinance No. 240435 imposes a regulation on parts of a firearm that is more stringent than state law, the ordinance is preempted under Wis. Stat. § 66.0409(2). Ordinance No. 240435 is therefore not legal and enforceable.

We trust that this opinion has adequately addressed your inquiry. Should you have any further concerns, please do not hesitate to contact this office.

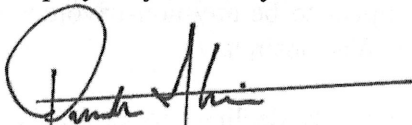
Very truly yours,



EVAN C. GOYKE
City Attorney



ROBIN A. PEDERSON
Deputy City Attorney



PATRICK J. MCCLAIN
Assistant City Attorney

1081-2024-1166:474061