

# SALT LAKE CITY CORPORATION

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LAW DEPARTMENT

RALPH BECKER  
MAYOR

May 18, 2009

David Nelson  
Jeffrey L. Johnson

Re: Utah Pride Festival's Prohibition on Firearms

Gentlemen:

Your various e-mail messages to the Mayor and City Council have been referred to me for legal analysis.

I respect your belief in the importance of your rights to carry your firearms as you understand those rights. However, I believe that your understanding of your rights under the law is incorrect in this specific instance.

Based on Mr. Nelson's April 14, 2009 e-mail, I understand your concern to be that the Gay Lesbian Bisexual Transgender Community Center of Utah doing business as Utah Pride Center has stated on the website for its Utah Pride Festival (the "Festival") under "Festival Guidelines/Prohibited Items" that "No firearms ... are permitted." The "Festival Guidelines" also state that "The Utah Pride Festival is a private event. Please be advised that the event organizer, the Utah Pride Center reserves the right to decline admittance to anyone who violates the reasonable policies established by the Utah Pride Center."

You both note that the Utah Pride Center will be entering into a lease with Salt Lake City for portions of Washington Square and Library Square.

You both assert that Salt Lake City is violating UCA Sections 53-5a-102 and 76-10-500 because it has not required the Utah Pride Center as lessee of property owned by the City to allow firearms to be carried at the Festival. I think that you are incorrectly interpreting both statutes.

Section 53-5a-102(5) provides that:

Unless specifically authorized by the Legislature by statute, a local authority or state entity may not enact, establish or enforce any ordinance, regulation, rule, or policy pertaining to firearms that in any way inhibits or restricts the possession or use of firearms on either public or private property." (emphasis added)

Section 53-5a-102(7) further provides that:

“Nothing in this section restricts or expands private property rights.”

Subsection (7) is particularly important here. As the Utah Supreme Court noted in Hansen v. America Online, Inc., 96 P.3d 950, 954 (2004) the bill sponsor stated that “the bill’s sole purpose was to preempt efforts by the University of Utah to restrict the possession of firearms on its campus.” Other senators expressed concern that as drafted the bill might impinge on private property interests. For example, it was pointed out that the bill could be read as possibly prohibiting private businesses such as Lagoon from restricting the possession of firearms by their business invitees; as prohibiting employers from restricting employees; or even as prohibiting “private citizens from regulating the presence of guns within their own homes.” Id. at 954-55.

The bill sponsor stated that he did not intend the bill to “in any way restrict [ ] private property rights,” specifically saying by way of example that he did not intend to prohibit restrictions by the Delta Center on possession of firearms at Utah Jazz games. Id. at 955. Other senators confirmed that private property rights were intended to prevail. Id. The House debate was to the same effect.

Subsection (7) was specifically added to confirm that point and the Utah Supreme Court concluded in Hansen that subsection (7) “indicate[s] that the legislature has purposefully declined to give the right to bear arms absolute preeminence over the right to regulate one’s own property.” Id.

The prohibition of Section 53-5a-102(5) on the authority of local governments to regulate firearms applies in the following situation:

1. a local authority enacts, establishes or enforces any ordinance, regulation, rule or policy;
2. that pertains to firearms;
3. that in any way inhibits or restricts possession or use of firearms on either public or private property; and
4. the local authority is not otherwise specifically authorized to do so.

With the principle that private property rights prevail in mind, the following are critical points:

First, the “rule” at issue here was adopted by the Utah Pride Center, not the City. The Festival is a private event.

Second, neither of you suggests that the City itself has an actual rule or policy of prohibiting firearms at private events held on City property.

Section 53-5a-102(5) does not apply here for two reasons.

First, the Utah Pride Center adopted the rule prohibiting firearms at the Festival, not Salt Lake City. The Utah Pride Center is a private party, not a “local authority.”

Second, the only policy of Salt Lake City that either of you allege is a policy of leasing City property to third parties. However, any such policy is not a policy “pertaining to firearms.”

Moreover, Section 53-5a-102(7) confirms the Legislature’s intention that the Utah Pride Center’s private property rights prevail here. The fact that the Utah Pride Center’s private property rights derive from a lease rather than outright ownership is irrelevant. The bill’s sponsor explicitly confirmed that “he did not intend to preempt restrictions on firearms possession put in place by the Delta Center ...” 96 P.3d at 955. The Delta Center [now Energy Solutions Arena] is located on property leased from the Salt Lake City Redevelopment Agency, a public entity. (Spring Mobile Ballpark where the Bees play is also leased from the City.)

Thus, the principle that private property rights prevail is applied by determining whether the entity adopting the rule regulating firearms is private or public, not by investigating whether the fee simple owner of the property is public or private.

Salt Lake City Police would be authorized to enforce the Utah Pride Center’s rule by Section 53-5a-102(7) because the Utah Pride Center has the private property right to “trespass” people not complying with its rule.

Section 76-10-500 also does not apply in this specific situation. Section 76-10-500(1)(a) provides that a citizen shall not be prohibited from owning or possessing any firearm at his “place of residence, property, business or in any vehicle lawfully in his possession.” The rule adopted by the Utah Pride Center applies only at the Utah Pride Festival. It does not apply at your (or anyone else’s) place of residence, business, property or vehicle.

In his May 1, 2009 e-mail to Council Member Simonsen, Mr. Nelson suggested that I answer three specific questions. The first question was just a restatement of UCA Section 53-5a-102(5). The second question is irrelevant because the rule in question was adopted by the Utah Pride Center as explained above. The third question is also irrelevant because the City is not “transferring” any of its legislative authority to the Utah Pride Center. (The third question also presumes that a superseding specific authorization is necessary in a situation where the underlying prohibition does not apply to begin with.) As explained above, the Utah Pride Center is exercising its private property rights which the Utah Supreme Court held in Hansen prevail over the right to bear arms.

In his April 29, 2009 e-mail to Council Member Simonsen, Mr. Nelson argued that because the City requires in the lease that the Utah Pride Center comply with applicable laws, for example, federal requirements for providing accessibility for persons with disabilities and state alcohol beverage control laws, the City must also prohibit in the lease restrictions on firearms.

The City's lease agreement requires the Utah Pride Center to:

“obey all laws, ordinances, regulations and rules of the federal, state, county, and municipal governments that may be applicable to its operations. Said laws include, but are not limited to, the Equal Employment Opportunity laws, the Fair Labor Standards Act, Occupational Safety and Health Administration laws, rules and regulations (OSHA), and the Americans with Disabilities Act (ADA).”

The reference to laws “that may be applicable” to the Utah Pride Center's Operations is critical. For example, the Utah Alcohol Beverage Control laws apply directly to the Utah Pride Center regardless of anything that Salt Lake City might or might not require in the lease. A City contractual requirement to comply with applicable laws adds nothing to the lessee's underlying obligation to comply with those laws.

Mr. Nelson apparently believes that the ADA does not apply to the Utah Pride Center and the Festival of its own force and ADA compliance is required only because the City has required it in the lease. Even if that were true, a City policy requiring ADA compliance would not be a policy “pertaining to firearms.”

Moreover, this argument completely ignores the Legislature's very clearly expressed intent that state government – including local government – would not override a decision to exercise private property rights to prohibit firearms on the premises.

In his May 14, 2009 e-mail, Mr. Nelson cites a recent decision by a Norfolk, Virginia court that concluded Virginia state law does not allow the lessee of a building financed by the public to prohibit firearms. As Mr. Nelson notes, “the opinion affects only Norfolk, Virginia.” More importantly, the decision has no relevance for Utah because the Legislature expressly confirmed that the owner of the Delta Center could prohibit firearms. The Delta Center is located on land leased from the Salt Lake Redevelopment Agency.

In an e-mail earlier today, Mr. Nelson also referred to the opinion of the Sebastian County, Arkansas Prosecuting Attorney that Sebastian County has to repeal its ordinance prohibiting firearms in county parks to comply with state law. Again that does not apply here because the Legislature specifically differentiated between public and private property rights, referring, for example, to the Delta Center.

In his April 29, 2009 e-mail to Council Member Simonsen, Mr. Nelson asserts that the Utah Pride Center may not prohibit firearms at the Festival because it is not one of the entities authorized to establish a “secure area” by UCA Section 76-8-311.1 (correctional facilities); Section 53B-3-103 (higher education institutions); Section 76-10-529 (airport authority); or Section 78A-2-203 (judicial council). However, the Utah Pride Center's rights derive from the

confirmation in Section 53-5a-102(7). Nothing in Sections 76-8-311.1, 53B-3-103, 76-10-529 or 78A-2-203 limits in any way the private property rights confirmed by Section 53-5a-102(7).

In addition to these sections of the Utah Code, Mr. Nelson also cited UCA Sections 76-10-504, 76-10-505, 76-10-505.5, and 76-10-530 in his April 14, 2009 e-mail to Mayor Becker and the City Council Members. These sections are all criminal statutes prohibiting people from carrying weapons in specified circumstances. These criminal statutes in no way limit whatever private property rights other people may have under civil law to restrict firearms.

We have also reviewed H.B. 357 “Firearms Amendments” and S.B. 78 “Protection of Constitutionally Guaranteed Activities in Certain Private Venues” which were adopted by the Legislature during this year’s session. Neither has any applicability to the current situation.

While it is not relevant in this specific situation, I disagree with your characterization of the U.S. Supreme Court’s decision in District of Columbia v. Heller, 128 S.Ct. 2783 (2008) in several key respects. The most important is that the right that the Court specifically recognized was fairly narrow – it was limited to “handguns held and used for self-defense in the home.” 128 S.Ct. at 2822. Thus even if the Second Amendment applies to state and local governments – a question that the Court left open in Heller, the Second Amendment would not provide you with any rights relevant here.

Finally, in his May 14, 2009 e-mail, Mr. Nelson asks at which City Council meeting he can raise his concerns about gun rights. Most City Council meetings have a “Comments to the Council” slot on the agenda for public comment. See the Rules for Decorum in the Salt Lake City Council Chamber on [www.slccgov.com](http://www.slccgov.com) on the City Council page.

Very truly yours,