



STATE OF OREGON  
LEGISLATIVE COUNSEL COMMITTEE

June 3, 2015

Senator Ted Ferrioli  
Senate Republican Leader  
900 Court Street NE S323  
Salem OR 97301

Re: Enforcement of federal law by local law enforcement

Dear Senator Ferrioli:

You asked whether the Oregon State Police, county sheriffs and municipal police officers are authorized to enforce federal criminal laws, specifically those related to firearm crimes. Unless specifically prohibited by state or federal law or preempted by federal law, the general rule is that state and local law enforcement officers can arrest persons who violate federal firearm criminal laws.

### **I. Oregon State Police**

There is not a statute explicitly granting the Department of State Police the authority to enforce federal law. The statute granting powers to the Department of State Police and members of the Oregon State Police states that the department and members “are charged with the enforcement of . . . [a]ll criminal laws.”<sup>1</sup> The statute is silent on the issue of whether “all criminal laws” refers only to state criminal laws, or includes federal criminal laws as well. However, a federal court of appeals opinion cites several United States Supreme Court cases as controlling authority when stating “[t]he general rule is that local police are not precluded from enforcing federal statutes.”<sup>2</sup>

There are circumstances in which a state or local law enforcement officer’s authority to enforce federal law is limited. Federal law may explicitly prohibit enforcement actions by state or local law enforcement officers. For example, “[f]ederal law specifies limited circumstances in which state officers may perform the functions of an immigration officer.”<sup>3</sup> Federal preemption may also prevent a state or local law enforcement officer from enforcing certain federal laws without federal authorization. Federal preemption is summarized as follows:

The United States Supreme Court has identified three circumstances that result in the preemption of state law by federal law: (1) when the federal law expressly provides for preemption; (2) when a congressional statutory scheme so completely occupies the field with respect to some subject matter that an

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<sup>1</sup> ORS 181.830 (1)(a).

<sup>2</sup> *Gonzales v. Peoria*, 722 F.2d 468, 474 (9th Cir. 1983) (overturned on other grounds).

<sup>3</sup> *Arizona v. U. S.*, 132 S. Ct. 2492, 2506 (2012).

intent to exclude the states from legislating in that subject area is implied; and (3) when an intent to preempt is implied from an actual conflict between state and federal law. The third type of preemption exists not only when it is physically impossible to comply with both the state and federal law, but when “under the circumstances of the particular case, [the challenged state law] stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.”<sup>4</sup> (Citation omitted.)

However, we did not find any federal law that prohibits the enforcement of federal firearm laws by state or local law enforcement officers, and we do not believe that any of the preemption circumstances apply to the enforcement of federal firearm laws.

Also, state law could prohibit the enforcement of federal law by state or local law enforcement officers. According to the United States Supreme Court: “This Court has said, in the similar circumstance of an arrest for violation of federal law by state peace officers, that the lawfulness of the arrest without warrant is to be determined by reference to state law.”<sup>5</sup> For example, Oregon law prohibits the use of state or local law enforcement “agency moneys, equipment or personnel for the purpose of detecting or apprehending persons whose only violation of law is that they are persons of foreign citizenship present in the United States in violation of federal immigration laws.”<sup>6</sup> However, there is no Oregon statute that prohibits the Department of State Police from enforcing federal firearm laws.

Given the lack of limiting circumstances and the general grant of authority to the Department of State Police, we believe Oregon State Police likely have the authority to arrest persons who violate federal firearm criminal laws.

## II. County Sheriffs

Again, there is not a statute explicitly granting county sheriffs the authority to enforce federal law. However, it is the statutory duty of a county sheriff to “[a]rrest and commit to prison all persons who break the peace, or attempt to break it, and all persons guilty of public offenses.”<sup>7</sup> Furthermore, there is a recent Oregon case that, at least in dicta, states that county sheriffs have the general authority to enforce federal law, specifically federal firearm laws:

In fact, it is possible that the sheriffs in this case could themselves enforce section 922(g)(3) of the federal Gun Control Act against medical marijuana users who possess guns in violation of federal law. The federal act makes such possession illegal, the sheriffs generally are authorized to enforce federal as well as state law, and no state law prohibits the sheriffs from taking such enforcement actions.<sup>8</sup>

In light of this case, we believe county sheriffs likely have the authority to arrest persons who violate federal firearm criminal laws.

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<sup>4</sup> *Willis v. Winters*, 350 Or. 299, 308 (2011) quoting *Hines v. Davidowitz*, 312 U.S. 52 (1941).

<sup>5</sup> *Miller v. U.S.*, 357 U.S. 301, 305 (1958), citing *U.S. v. Di Re*, 332 U.S. 581 (1948).

<sup>6</sup> ORS 181.850 (1).

<sup>7</sup> ORS 206.010 (1).

<sup>8</sup> *Willis* at 312.

### III. Municipal Police Officers

ORS 133.310 authorizes a peace officer to arrest a person without a warrant if the peace officer “has probable cause to believe that the person has committed any of the following: (a) A felony[,] (b) A misdemeanor . . . [or] (d) Any other crime committed in the officer’s presence.” As with the general grant of authority to the Department of State Police, ORS 133.310 is silent on the issue of whether the terms felony, misdemeanor and crime refer only to state criminal laws, or include federal criminal laws as well. However, given the *Willis* case, the general rule that state and local law enforcement officers can enforce federal law and the lack of a prohibition under state or federal law, we believe municipal police officers likely have the authority to arrest persons who violate federal firearm criminal laws.

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Very truly yours,

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