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**MEMO**

June 20, 2017

TO: Board of Supervisors

RE: Firearms - State Preemption Law and County Policy

Scott County Policy 28 BB is affected by the new preemption law. The new law is poorly worded and vague. The law has not been tested or interpreted by a court, so much of my analysis is speculation.

The new law does not prohibit counties from having a policy regulating firearms. The new law creates liability for counties that have such a policy for any person “adversely affected” by the policy. What “adversely affected” actually means is unclear and will have to be decided by the courts. The law says persons “adversely affected” may file suit in the appropriate court for declaratory and injunctive relief for damages.

**Scott County Policy 28 BB - Workplace Violence**

This policy lists conduct that is prohibited including: “Possession of a weapon while on county property or while on county business, unless required for position.”

The scope of the policy pertains to elected officials, employees and the “general public conducting any type of business on or within county occupied buildings or property under control of Scott County.”

**2017 Law regarding State preemption** - Section 724.28, is amended to read as follows:

**724.28 Prohibition of regulation by political subdivisions.** (New language underlined)

1. As used in this section, “political subdivision of the state” means a city, county, or township.

2. A political subdivision of the state shall not enact an ordinance regulating the ownership, possession, legal transfer, lawful transportation, registration, or licensing of firearms when the ownership, possession, transfer, or transportation is otherwise lawful under the laws of this state. An ordinance regulating firearms in violation of this section existing on or after April 5, 1990, is void.

3. If a political subdivision of the state, prior to, on, or after July 1, 2017, adopts, makes, enacts, or amends any ordinance, measure, enactment, rule, resolution, motion, or policy regulating the ownership, possession, legal transfer, lawful transportation, registration, or licensing of firearms when the ownership, possession, transfer, transportation, registration, or license is otherwise lawful under the laws of this state, a person adversely affected by the ordinance, measure, enactment, rule, resolution, motion, or policy may file suit in the appropriate court for declaratory and injunctive relief for damages.

### **Liability to adversely affected persons**

If 28 BB remains in place, two litigation scenarios are contemplated although others may apply. First scenario: a person attempts to bring a firearm on county property and is denied possession of the firearm. They may assert this adversely affects them in some manner and sue the county. Monetary damages would probably not be significant in this scenario. Injunctive relief could include the court ordering the county to change its policy to allow firearms on county property. However, the law states “injunctive relief for damages” so arguably the law contemplates the award of some amount of damages. The Court could also find that such a person is not adversely affected and deny injunctive relief and damages.

The second scenario carries higher risk. If a person, or persons, were killed or injured by someone on county property, the law allows them to sue the county claiming that if they were allowed to be armed with a firearm, death or injury would not have occurred. This is the part of the law that is most concerning. An injury or death would carry a high liability risk for the payment of damages by the county. Multiple deaths/injuries significantly increases that risk. We all hope and pray this scenario would never occur but we know that it does happen.

The balancing of these risks versus the risk to employees and the public of having persons armed with firearms is what almost all counties in Iowa are addressing. The legislature felt strongly enough about this issue to enact this law and clearly it was the intent of the

legislature to discourage governmental subdivisions from regulating firearms possession on their property.

### **Courthouse prohibition**

On June 19, 2017 Chief Justice Cady of the Iowa Supreme Court entered a supervisory order banning weapons from courtrooms, court-controlled spaces, and public areas of courthouses and other justice centers occupied by the court system, except for peace officers while performing law enforcement duties. The order also states: “This order does not affect the authority of county or city officials to determine appropriate employment policies for their employees in county and city offices located in courthouses and other justice centers.”

This order prohibits the possession of weapons in the entire Scott County Courthouse. The Court entered this order pursuant to its “constitutional authority and responsibility to supervise and administer Iowa’s district courts.” It is possible this order will be legally challenged in the future.

### **Possession of a weapon**

Scott County Policy 28 BB prohibits possession of a weapon on county property. The new law references only firearms. Presumably, the county could continue to prohibit possession of weapons, other than firearms, and not be exposed to the liability created by the new law.

### **Employees**

Unlike the supervisory order, the new law does not treat employees differently from others. The law refers to “persons” so it would appear that prohibiting employees from possessing firearms exposes the county to the liability created by the statute. We have found no law that is contrary to this interpretation.

### **Conclusion**

Scott County currently has policy 28 BB prohibiting possession of weapons on county property. Pursuant to the new law, this policy subjects the county to liability for declaratory and injunctive relief for damages for any person adversely affected by this policy. The new law is effective July 1, 2017 so the risk of liability begins on that date. In order to avoid the liability created by the new law, the Board would have to rescind policy 28 BB at least as it pertains to firearms.

## **BB. WORKPLACE VIOLENCE**

### **Purpose**

Scott County is committed to ensuring the highest standard of health and safety in the workplace for all employees, customers, vendors, contractors and the public while providing for the efficient and effective operation of Scott County.

### **Scope**

This policy is applicable to the following:

The Scott County Board of Supervisors;

All employees responsible to the Scott County Board of Supervisors;

All employees responsible to a county elected office holder including elected office holder and deputies;

All employees not directly responsible to either the Board of Supervisors or an elected office holder and whose governing body and the Board of Supervisors has certified its applicability;

The general public conducting any type of business on or within county occupied buildings or property under control of Scott County.

Whenever the provisions of this policy are in conflict with the Code of Iowa, or with a collectively-bargained agreement between the County and a certified bargaining unit, the provisions of the collectively-bargained agreement and/or the Code of Iowa will prevail.

### **General Policy**

Scott County does not tolerate any type of workplace violence committed by or against employees. Employees are prohibited from making threats or engaging in violent activities.

This list of behaviors, while not all inclusive, provides examples of conduct that is prohibited.

- Causing physical injury to another person;
- Making threatening remarks;
- Aggressive or hostile behavior that creates a reasonable fear of injury to another person or subjects another individual to emotional distress;
- Intentionally damaging employer property or property of another employee;
- Possession of a weapon, excluding firearms where possession would otherwise be legal, while on county property or while on county business, unless required for position.

It is the shared responsibility of department heads, supervisors, employees, customers, vendors, contractors and the public to take any threat or violent act seriously, and to report acts of violence or threats to appropriate authorities and the Risk Manager.

Any employee or agent of Scott County who violates this policy shall be subject to disciplinary action, up to and including dismissal from employment, exclusive of any civil and or criminal penalties that may be pursued.

### **Emergency Operations Team**

The Emergency Operations Team is responsible for providing direction and decision making in any workplace violence situations. The Emergency Operations Team consists of the Assistant County Administrator or designee, Sheriff or designee and the Director of Facility and Support Services or designee and the Risk Manager. The Emergency Operations Team will be activated by Radio Room operation answering an internal emergency call. This team will also coordinate response to incidents of workplace violence, providing assistance to employees and information to the media as needed.

### **Reporting Procedures**

Any potentially dangerous situations must be reported immediately to a supervisor or the Risk Manager. Reports can be made anonymously and all reported incidents will be investigated. Reports or incidents warranting confidentiality will be handled appropriately and information will be disclosed to others only if necessary. All parties involved in a situation will be counseled and the results of investigations will be discussed with them. Scott County will intervene at any indication of a possibly hostile or violent

situation.

### **Post Incident Reporting Procedures**

All acts or incidents of violence are to be reported to the Risk Manager

Initial Incident Reports will be prepared by the individual(s) involved and forwarded within (1) one day of the incident to the Risk Manager

The Risk Manager will conduct a follow up investigation and final incident report providing a final copy to the Emergency Operations Team and County Administrator.

The Risk Manager will brief appropriate departments involved as to incident, final report, and deficiencies or corrections which may be utilized to prevent reoccurrence.

### **Employee Training**

Mandatory bi-annual training for all County employees shall consist of, but is not limited to the content of this policy, aggression management techniques and measures employees can take to defuse workplace violence; including specific procedures the County has implemented to protect employees.

THE COUNTY AUDITOR'S SIGNATURE CERTIFIES  
THAT THIS RESOLUTION HAS BEEN FORMALLY  
APPROVED BY THE BOARD OF SUPERVISORS ON

\_\_\_\_\_  
DATE

\_\_\_\_\_  
SCOTT COUNTY AUDITOR

R E S O L U T I O N

SCOTT COUNTY BOARD OF SUPERVISORS

June 29, 2017

APPROVING CHANGES TO POLICY BB "WORKPLACE VIOLENCE"

BE IT RESOLVED BY the Scott County Board of Supervisors as follows:

Section 1. That Human Resources Policy BB "Workplace Violence" is modified to comply with state law.

Section 2. This resolution shall take effect immediately.