
Michigan Court of Appeals Holds that Schools May Ban Firearms from School Property

By Mark W. McInerney / Dec 19, 2016

In two published decisions, issued on December 16, 2016, the Michigan Court of Appeals has held that schools and school districts have the legal authority to forbid the possession of firearms on school premises.

The cases arose from the Ann Arbor and Clio school districts, and sprang from a 2012 Court of Appeals decision. In *Capitol Area District Library v Michigan Open Carry Inc.*, ("CADL"), the Court, in a 2-1 decision, held that the District Library could not ban firearms on library premises. The basis of this holding was a Michigan statute, MCL §123.1102, stating that "a local unit of government" could not regulate firearms, but specifically defining "local unit of government" as "a city, village, township or county." The District Library, while not a city, village, township or county, but formed pursuant to statute by the City of Lansing and Ingham County, was found implicitly governed by the statute. The Court majority also concluded that the Legislature had intended to pre-empt the field of firearm regulation, and that a local regulation inconsistent with a state statute was void. Somewhat surprisingly, the Michigan Supreme Court declined to review the Court of Appeals decision.

Following the *CADL* case, the question became whether schools would be bound by the decision. After a number of school districts enacted or attempted to enforce policies banning firearms on school premises, suits were brought in 2015 by gun enthusiasts against the Ann Arbor and Clio districts. The suits produced completely opposite results in the lower courts. In *Michigan Gun Owners, Inc. v Ann Arbor Public Schools*, the Washtenaw County Circuit Court held that *CADL* did not apply in the school context, and that schools' statutory responsibility for the safety of students permitted them to ban firearms. In *Michigan Open Carry, Inc. v Clio Area School District*, on the other hand, the Genesee County Circuit Court concluded that it was bound by the *CADL* decision, that the Legislature had pre-empted the field of firearm regulation, and that schools therefore could not ban or otherwise regulate firearms on school premises. These two directly contrary decisions, issued weeks apart, were both appealed to the Court of Appeals, and were argued back-to-back in the Court of Appeals on December 13, 2016.

Three days later, the Court issued decisions establishing the principle that schools and school districts may regulate or ban firearms on school premises. Writing for an unanimous Court in the *Ann Arbor* case, Judge Elizabeth Gleicher, who had been the dissenter in *CADL*, emphasized that a school district is not "a city, village, township or county," and is thus not a "local unit of government" prohibited by MCL §123.1102 from regulating firearms. The Court further found that the *CADL* case was distinguishable, for two reasons: the fact that, unlike a district library, a school is not created by one or more of the local units of government identified by the statute; and the fact that, also unlike a district library, a school district is expressly authorized by MCL §380.11a to take actions necessary to "provid[e] for the safety and welfare of pupils while at school or a school sponsored activity." Finally, the Court rejected the contention that the district's regulations were void because the Legislature had pre-empted the field of firearms regulation, pointing out that the Legislature has used the term "weapons free school zones" in at least 26 statutes, demonstrating an intention to prohibit, rather than permit, weapons on school premises. The district's firearms ban was thus consistent with the intentions of the Legislature.

In the *Clio* case, the Court, again unanimously, held that the Circuit Court had erred by invalidating the district's firearms ban, adopting the reasoning expressed in the *Ann Arbor* case.

It is likely that the groups of gun enthusiasts who challenged the firearms policies of the Ann Arbor and Clio school districts will ask the Michigan Supreme Court to review these decisions. The Supreme Court previously declined to become involved in this issue in the *CADL* case, and it cannot be predicted whether the Court will do so here.

Unless and until the Supreme Court says otherwise, however, the *Ann Arbor* and *Clio* decisions are the law in Michigan, binding upon all lower courts. Michigan law thus now clearly permits schools and school districts to ban firearms from school premises. Importantly, the *Ann Arbor* and *Clio* cases do not themselves ban firearms from school premises; rather, they permit districts to do so. Districts interested in banning firearms on school premises should make sure that they have policies to that effect, and may ask local law enforcement agencies to help enforce those bans.

If you have questions about this or other firearms issues, please contact Mark W. McInerney at mmcinerney@clarkhill.com | (313) 965-8383, or another member of Clark Hill's Education Law group.