

STATE OF MICHIGAN

DANA NESSEL, ATTORNEY GENERAL

MICHIGAN STATE CAPITOL
HISTORIC SITE ACT:

Prohibiting firearms on the Capitol
grounds and inside the Capitol
building

MICHIGAN CAPITOL
COMMISSION:

FIREARMS:

The Michigan State Capitol Commission has the authority to prohibit firearms in the areas under its control, which include the inside of the Capitol building, pursuant to 2013 PA 240, MCL 4.1941 *et seq.*

Opinion No. 7311

May 11, 2020

Honorable Christine Greig
State Representative
The Capitol
Lansing, MI 48909

You have asked whether the Michigan State Capitol Commission is vested with the authority to prohibit firearms in the areas under its control.

The Michigan State Capitol Commission was created by the Michigan State Capitol Historic Site Act (Act), 2013 PA 240, MCL 4.1941 *et seq.* Under the Act,

“the Michigan state capitol historic site^[1] shall be under the exclusive control of the commission,” which shall “operate and manage the Michigan state capitol historic site.” MCL 4.1944(3) (footnote added); MCL 4.1946(1)(a). The only limitation on this broad authority that is expressed in the statute is that the Commission “shall not exercise control over the internal decisions of the senate or the house of representatives related to the allocation of space in the state capitol building or the state capitol building parking lot, including legislative or staff offices.” MCL 4.1946(2).

Although it is clear the Commission is vested with the general authority to “operate and manage” the Capitol grounds and the Capitol building, your question pertains to whether this authority includes the specific power to regulate firearms. In furtherance of its statutory obligations, the Capitol Commission previously approved “Procedures for the Use of the Public Areas of the Michigan State Capitol.”² This publication enumerates various procedures to ensure the protection of the Capitol grounds and Capitol building, as well its employees and visitors. These procedures include certain restrictions on the time, place and manner of gatherings and demonstrations. But, to date, the Commission has imposed no restrictions on firearms. The absence of such restrictions has led to unscreened,

¹ “The Michigan state capitol historic site consists of the state capitol building in Lansing and the grounds of the state capitol building bounded by Ottawa [S]treet on the north, Allegan [S]treet on the south, Capitol [A]venue on the east, and Walnut [S]treet on the west.” MCL 4.1944(2).

²http://council.legislature.mi.gov/Content/Files/Capitol/cap_event_and_exhibit_planer.pdf <accessed May 9, 2020>.

armed persons congregating on the Capitol grounds and entering the Capitol building and seating themselves in the public galleries above the chambers of the Legislature. This has occurred even during times of protest and demonstration outside the Capitol building and moments of controversial debate on the legislative floors inside the Capitol building—situations when emotions and passions are known to run high. Obviously, this is a potentially dangerous combination.

The U.S. Supreme Court has held that although individuals have a right under the Second Amendment³ to possess a firearm, “[l]ike most rights, the right secured by the Second Amendment is not unlimited.” *District of Columbia v Heller*, 554 US 570, 626 (2008). It is “not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose.” *Id.* In fact, *Heller* recognized the validity of “laws forbidding the carrying of firearms in sensitive places such as . . . government buildings . . .” *Id.*

In Michigan, the concept of “open carry” does not provide the unfettered right to bring firearms into any public space. Numerous restrictions already exist on openly carrying firearms in public places. See e.g., MCL 750.234d (listing various premises, such as a court, church, and hospital, where “a person shall not possess a firearm”); MCL 750.237a (providing for “[w]eapon free school zones”). Although holders of a concealed pistol license (CPL) are exempted from some of these

³ The Second Amendment provides: “A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.” US Const, Am II.

restrictions, even a CPL is not without its limitations. See MCL 28.425o.⁴ Relevant to this authority, the Court of Appeals affirmed the University of Michigan’s ordinance barring all weapons on university property. See *Wade v Univ of Michigan*, 320 Mich App 1, 6, 16, 22 (2017) (noting the “unique character of the University Board of Regents and its exclusive authority over the management and control of its institution”), app pending, 926 NW2d 806 (2019).

Significantly, the other limitations to MCL 28.425o need not be statutory. For example, the Michigan Supreme Court, by administrative order, has prohibited “[w]eapons . . . in any courtroom, office, or other space used for official court business . . . unless the chief judge or other person designated by the chief judge has given prior approval consistent with the court’s written policy.” Administrative Order 2001-1. This administrative order and similar circuit court orders have been cited by the Michigan Court of Appeals without questioning the legal basis for these limitations. See *Michigan Open Carry Inc v Clio Area School Dist*, 318 Mich App 356, 373 (2016) (“Despite that MCL 750.234d(2)(c) permits concealed weapon holders to carry concealed weapons in ‘[a] court,’ our Supreme Court has promulgated an administrative order barring the presence of *all* weapons in court facilities unless approved by the chief judge Many circuit courts have issued their own policies banning the presence of weapons. See, e.g., Oakland County Circuit and Probate Courts, Joint Administrative Order No. 2012–06J[.]” emphasis

⁴ MCL 28.425o is not an exhaustive list of prohibitions. MCL 28.425c(3) (“Subject to section 5o *and except as otherwise provided by law...*”) (emphasis added).

in original). The issuance of such policies is consistent with the analysis and informal guidance provided by this office in 2018. See Informational Letter from Chief Legal Counsel to Representative Lee Chatfield, dated February 1, 2018, p 10 (“some state agencies . . . might impose limitations on possession of a firearm in restricted areas of government buildings”).⁵

In addition to being an example of a non-statutory, broad, prohibition on carrying a firearm, the Supreme Court’s administrative order is significant for another reason. It illustrates why the Commission is not barred from regulating firearms by virtue of MCL 123.1102, which states that “[a] local unit of government” generally may not regulate the possession of firearms. For purposes of MCL 123.1102, a “local unit of government” means “a city, village, township, or county.” MCL 123.1101(b). The Michigan Supreme Court has general superintending control over all courts,⁶ most of which are located within a city, village, township, or county. If the Michigan Supreme Court, with its extensive municipal reach, is not a “local unit of government,” then the Commission is likewise not a local unit of government. Rather, it is the caretaker of the Capitol—the hub of democracy for all Michiganders.

⁵ [https://www.michigan.gov/documents/ag/OPIN - Rep Chatfield - Informational Letter - Open Carry of Firearms 689912 7.pdf](https://www.michigan.gov/documents/ag/OPIN_-_Rep_Chatfield_-_Informational_Letter_-_Open_Carry_of_Firearms_689912_7.pdf) <accessed on May 10, 2020>.

⁶ Const 1963, art 6, § 4.

This conclusion is borne out not only by comparing the nature of the Commission to the nature of the Michigan Supreme Court, but also by applying the Court's precedent. The "local unit of government" language was addressed in *Michigan Gun Owners, Inc v Ann Arbor Public Schools*, 502 Mich 695 (2018). In that case, the Court upheld the school district's firearms regulations by acknowledging that "while MCL 123.1102 expressly preempts regulation of firearms by a city, village, township, or county, it does not apply to school districts, which are left out of the Legislature's list." *Id.* at 704. According to the Court, "because MCL 123.1102 and MCL 123.1101 show the Legislature's intent to preempt some local units of government from regulation but not others, that intent controls." *Id.* at 707. Thus, a non-local unit of government, or at least a unit of government that is not a "city, village, township, or county," may lawfully impose restrictions on carrying firearms.

The Commission is not a city, village, township, or county. It is a statutorily-created instrumentality of state government, vested with the exclusive, broad, authority to "operate and manage" the Capitol site. As the Commission has previously recognized in approving procedures for the use of the public areas of the Capitol, this grant of authority includes not only the obligation to care for and protect the Capitol grounds and facilities, but also the obligation to care for and protect the safety of those working in and visiting the Capitol grounds and facilities. And in fulfilling that obligation, the Commission, like the Michigan Supreme Court,

is not prohibited from placing restrictions on carrying firearms at facilities under its control.

It is my opinion, therefore, that the Michigan State Capitol Commission has the authority to prohibit firearms in the areas under its control, which include the inside of the Capitol building, pursuant to 2013 PA 240, MCL 4.1941 *et seq.*

A handwritten signature in blue ink that reads "Dana Nessel". The signature is written in a cursive, flowing style.

Dana Nessel
Attorney General