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Court rules that shooting club is not subject to discharge of firearms statute

FACTS:

The Cheboygan Sportsman Club has owned and operated a shooting range in Cheboygan County since 1952. Roger Watts owns a residence that is located within 150 yards of the range. In 2012, Watts reported to the Cheboygan County Sheriff Department that he had found a bullet on his property he believed came from the range. The county prosecutor informed the Club that "any individual discharging a firearm within 150 yards of a residence [c]ould face criminal prosecution" for violating MCL 324.40111(6), a section of the Natural Resources and Environmental Protection Act (NREPA).

MCL 324.40111(6) provides in relevant part as follows:

> [a]n individual shall not hunt or discharge a firearm within 150 yards of an occupied building, dwelling, house, residence, or cabin…without obtaining the written permission of the owner….

The statute is the current version of a 1968 statute that amended the Game Law of 1929. The 1968 version, i.e., MCL 312.10b, also contained language that no person, other than the owner "shall shoot or discharge any firearm…or hunt" within a safety zone defined, generally, as 150 yards of an occupied residence.

The Club brought an action seeking to preclude the prosecuting attorney from enforcing MCL 324.40111(6) against its members. The Club asserted that the statute only prohibits a hunter from discharging a firearm within 150 yards of an occupied dwelling. In an amicus brief, the National Rifle Association argued that the Club was immune from civil liability under the Sport Shooting Ranges Act. The Sport Shooting Ranges Act provides immunity for certain activities of shooting clubs that relate to noise or noise pollution.

QUESTION:

Is MCL 324.40111(6) applicable to the Club's shooting range?

ANSWER ACCORDING TO THE TRIAL COURT: The trial court held that the two statutes in question were incompatible and that since the Sport Shooting Ranges Act was more specific, it prevailed and provided immunity to the Club's members.

ANSWER ACCORDING TO THE MICHIGAN COURT OF APPEALS: The majority of the members of the court of appeals concluded that the trial court erred in applying the Sport Shooting Ranges Act, finding that the Act had no relevance to the facts of the case. The court also determined that MCL 324.40111(6) did not apply to shooting ranges but rather to hunters. The court concluded that the predecessor statute had been enacted to regulate the discharge of firearms in the hunting setting and also on an Attorney General's Opinion that the "safety zone" provision in the predecessor statute did not apply to landowners engaging in target practice on their own property.

ANSWER ACCORDING TO THE DISSENTING OPINION OF THE COURT OF APPEALS: The dissent agreed that the Sport Shooting Ranges Act had no applicability but asserted that the NREPA provisions that prohibit "hunting or discharging firearm within 150 yards of an occupied building" clearly applied. The dissent argued that the majority had incorrectly interpreted the statute and had applied erroneous standards of statutory interpretation.

Cheboygan Sportsman Club v Cheboygan County Prosecuting Attorney, No. 313902 (Oct. 2, 2014).

This column highlights a recent judicial decision or Michigan Municipal League Legal Defense Fund case that impacts municipalities. The information in this column should not be considered a legal opinion or to constitute legal advice.