



## MUNICIPAL LEGAL SPOTLIGHT

by Sue A. Jeffers

# Ordinance prohibiting firearms in city buildings is preempted by state law

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

### Facts:

On November 12, 2001, the city of Ferndale adopted an ordinance prohibiting the possession or concealment of weapons in city owned or controlled buildings located in the city. The city adopted the ordinance pursuant to the general police power. The ordinance specifically identified the buildings that were subject to the ordinance. The ordinance exempted certain law enforcement officers.

The Michigan Coalition for Responsible Gun Owners (MCRGO) sued the city and the city clerk. MCRGO claimed that the ordinance was unlawful because it was in direct conflict with the state statutory scheme and was preempted by two state statutes. MCRGO claimed that the ordinance unlawfully expanded the exclusive statutory list of public places where concealed firearms are prohibited (MCL 28.425o) and violated MCL 123.1102 which prohibits a local unit of government from enacting an ordinance that regulates, in part, the possession of firearms.

The city of Ferndale countered that the ordinance was a valid exercise of the city's police power under the Michigan Constitution, the Home Rule City Act and the Ferndale charter. The city also argued that the ordinance did not preempt state law but rather was merely an extension of the prohibition imposed by the state.

### Question:

Is a Ferndale ordinance that regulates the possession of firearms in city owned or controlled buildings located in the city preempted by state law?

### Answer according to the circuit court:

**No.** The circuit court held that the Ferndale ordinance was not preempted by state law and that the ordinance was merely an extension of the prohibition already imposed by state law on carriers of concealed weapons.

### Answer according to the Michigan Court of Appeals:

**Yes.** In its analysis, the court acknowledged that cities have the authority to adopt resolutions and ordinances relating to their own concerns, property and government. (Mich Const, art 7, sect. 22) The court noted that the grant of broad authority to municipalities is subject, however, to constitutional and statutory limitations. The court also recognized that the Home Rule City Act provides that each city may provide in its charter for the exercise of all municipal powers in the management and control of municipal property and the administration of all municipal powers subject to the constitution and general state laws.

The court reviewed the legal doctrine that a municipal ordinance is preempted by state law if 1) the statute completely occupies the field that the ordinance attempts to regulate or 2) the ordinance directly conflicts with a state statute. The court analyzed whether state statutes occupy the field by

following the four guidelines set out by the Michigan Supreme Court in *People v Llewellyn*, 401 Mich 314.

The court found that the ordinance was preempted by MCL 123.1102. Section 1102 provides that a local unit of government shall not enact an ordinance pertaining to the transportation or possession of firearms "except as otherwise provided by federal law or a law of this state." The court held that the Ferndale ordinance is clearly preempted by section 1102 unless it could be shown that the regulation is permitted under the language "except as otherwise provided by . . . a law of this state."

The city argued that MCL 28.425c (which was enacted in 2000) satisfied the exception. MCL 28.425c provides that a person licensed to carry a concealed pistol may do so "except as otherwise provided by law." The city argued that MCL 28.425c returns to local units of government the power to enact and enforce an ordinance or regulation concerning the possession and transportation of pistols or other firearms. The court was not persuaded. It found that MCL 28.425c was not enacted to repeal section 1102 or to expand the role of local units of government with respect to firearm regulation. ♦

*Michigan Coalition for Responsible Gun Owners v City of Ferndale*, No. 242237 (April 29, 2003).

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