

STATE OF MICHIGAN
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May 8, 2020

Mr. Gary Randall, Chair
Michigan State Capitol Commission
Clerk of the House
State Capitol, Room H-70
Lansing, MI 48909

Re: Firearms within the State Capitol

Dear Chair Randall:

As the Capitol Commission is aware, unscreened persons are currently allowed to enter the elevated public gallery position in the Capitol while armed with high-capacity loaded semi-automatic assault weapons and while clad in body armor. This is permitted during active legislative sessions and during moments of controversial debate where emotions and passions are known to run hot. At the risk of stating the obvious, this is an absurdly dangerous combination that would cause the heart of any security expert to skip a beat.

I am aware that the Commission is reviewing whether it is vested with the authority to prohibit firearms in the Capitol. To this end, I have undertaken a review of the Commission's legal authority to impose such a prohibition. I conclude the Commission is vested with the legal authority to ensure the safety of the visiting public, as well as the those who carry out the People's work by prohibiting firearms within the Capitol building.

The Michigan State Capitol Historic Site Act (Act), was enacted in 2013 at MCL 4.1941, et. seq., with an effective date of March 14, 2014. The Act, among other things, created the Michigan State Capitol Commission. MCL 4.1945. The Act states, "Except as otherwise provided in this act, the Michigan state capitol historic site shall be under the exclusive control of the Commission." MCL 4.1944(3). Moreover, the Act mandates the Commission shall "operate and manage the Michigan state capitol historic site." MCL 4.1945(a) The only limitation on the Commission's authority within the Act is regarding 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)

In furtherance of its statutory obligations, the Capitol Commission published “Procedures for the Use of the Public Areas of the Michigan State Capitol.” This publication enumerates rules and procedures adopted by the Commission to ensure the protection of the Capitol grounds and building, as well as its visitors and inhabitants. This includes procedures for determining the time, place and manner of gatherings and demonstrations. There are a number of cases litigating the means by which the capitol authority restricts or limits individuals and groups expression of their constitutionally protected free speech rights. None, however, have challenged the power of the capitol authority to impose those regulations.

While it is clear the Commission is vested with the authority to manage the Capitol grounds and building, there has been some confusion on whether the Commission is permitted to regulate firearms in areas under its authority and control. Generally, regulation of firearms stems from state statute.

A local unit of government shall not impose special taxation on, enact or enforce any ordinance or regulation pertaining to, or regulate in any other manner the ownership, registration, purchase, sale, transfer, transportation, or possession of pistols, other firearms, or pneumatic guns, ammunition for pistols or other firearms, or components of pistols or other firearms, except as otherwise provided by federal law or a law of this state.

MCL 123.1102 (emphasis added)

The concept of “open carry” in Michigan law does not provide the unfettered right to bring firearms into any public space. Both MCL 750.234d and MCL 750.237a are examples of the lawful restriction of open carry in other public places. And these restrictions do not necessarily need to be statutory.

For example, the Michigan Supreme Court, by Administrative Order 2001-1, entered March 27, 2001, has stated:

It is ordered that weapons are not permitted in any courtroom, office, or other space used for official court business or by judicial employees unless the chief judge or other person designated by the chief judge has given prior approval consistent with the court's written policy.

This order is acknowledged in a footnote of a Court of Appeals decision in an open carry challenge to a school district prohibition to weapons on school grounds.

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. Administrative Order No. 2001-1, 463 Mich cliii (2001). Many circuit courts have issued their own policies banning the presence of weapons. See, e.g., Oakland Co with Circuit and Probate Courts, Joint Administrative Order No. 2012-06J.

Mich. Open Carry Inc. v. Clio Area Sch. Dist., 318 Mich. App. 356, 370 n.8, 897 N.W.2d 748, 757 (2016).

To the extent that it is asserted the Commission is barred from regulating firearms within the Capitol by virtue of MCL 123.1102, this argument fails as the Commission is not a local unit of government. The Michigan Supreme Court is not a "city, village, township or county" (i.e., local unit of government), even though, most courthouses under the jurisdiction of the Supreme Court are within a city, village, township or county. The characterization of a "local unit of government" for purposes of firearms regulation was addressed by the Michigan Supreme Court in *Mich Gun Owners, Inc v Ann Arbor Pub Sch*, 502 Mich 695; 918 NW2d 756 (2018). This case was a consolidation of two cases examining school district prohibitions on weapons on school grounds, including *Mich. Open Carry Inc. v. Clio Area Sch. Dist.* which identifies the court firearms ban. The Supreme Court there upheld the school districts' firearms regulations by acknowledging that "MCL 123.1102 expressly preempted regulations of firearms by a city, village, township, or county, it did not apply to school districts, which were left out of the Legislature's list," and "[b]ecause MCL 123.1102 and MCL 123.1101 showed the Legislature's intent to preempt some local units of government from regulation but not others, that intent controlled; *Mich Gun Owners, Inc v Ann Arbor Pub Sch*, 502 Mich 695, 700; 918 NW2d 756 (2018) (consolidated with *Mich. Open Carry Inc. v. Clio Area Sch. Dist.*) Thus, firearm regulations imposed by a non-local unit of government, or at least a local unit of government that is not a "city, village, township or county" may lawfully impose regulations that impact firearms.

The same is true of the Capitol Commission. It is not a local unit of government, but rather a statutorily created Commission, charged with the exclusive duty to manage and ensure safe access to the Capitol. Like the Michigan Supreme Court, the Commission is not constrained from enacting procedures limiting firearms at facilities under its control. This is especially true where those procedures fulfill its mandate to "operate and manage the Michigan state capitol historic site" in a fashion that ensures the safety of those civil servants who access the Capitol in service of the citizens of this state, as well as the thousands who visit the Capitol every year.

I wish to emphasize that my position herein is consistent with general guidance previously provided to House Speaker Lee Chatfield under the

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administration of my predecessor in office. That guidance is attached to this letter and outlines the numerous other lawful restrictions upon open carry and weapons possession in Michigan.

I understand that if the Commission votes to prohibit firearms within the Capitol building, it may face a legal challenge over this action. Consistent with my duties as Attorney General, you may rely on my pledge to defend the Commission from suit challenging a prohibition on firearms in the Capitol.

Sincerely,



Dana Nessel
Attorney General

DN:dt

Enclosure: OPIN -Rep Chatfield – Information Letter – Open Carry of Firearms

cc: John Truscott
Joan Bauer
Kerry Chartkoff
William Kandler
Margaret O'Brien