

STATE OF MICHIGAN

MIKE COX, ATTORNEY GENERAL

CONCEALED WEAPONS: Possession of handguns within state parks or while hunting during bow and arrow only hunting season

FIREARMS:

HUNTING:

A person licensed to carry a concealed pistol may possess a pistol while hiking or camping within a state park provided that the pistol is not loaded. A person licensed to carry a concealed pistol may possess a loaded pistol within a state park only during established hunting seasons on lands designated open to hunting or at a target range established by the Department of Natural Resources or during an officially sanctioned field trial.

A person licensed to carry a concealed pistol is subject to the rules, regulations, and orders of the Department of Natural Resources regulating the possession of firearms and may not possess or carry a pistol while hunting deer during "bow and arrow only" hunting season, unless the person is licensed to hunt deer with a firearm and is hunting in an area open to firearm deer hunting.

Opinion No. 7123

February 11, 2003

Honorable Rich Brown
State Representative
The Capitol
Lansing, MI 48913

Honorable James L. Koetje
State Representative
The Capitol
Lansing, MI 48913

You have requested my opinion on two questions relating to the possession of concealed pistols. You first ask whether a person licensed to carry a concealed pistol may possess a pistol while hiking or camping within a state park. Your second question asks whether a person licensed to carry a concealed pistol is subject to any restrictions established by the Department of Natural Resources in connection with wildlife hunting in Michigan or may possess or carry a firearm while hunting deer during "bow and arrow only" hunting season.

The Concealed Pistol Licensing Act (Act), 1927 PA 372, as amended, MCL 28.421 *et seq*, regulates the possession and carrying of concealed pistols. The Act prohibits persons from carrying a concealed pistol unless they have been licensed in accordance with the provisions of the Act. Section 5c(2), MCL 28.425c(2), provides that licensees may carry a concealed pistol "anywhere in this state," subject to certain exceptions found in section 5o and "except as otherwise provided by law."

Section 5o of the Act, MCL 28.425o, identifies specific locations where the carrying of a concealed pistol is expressly prohibited. These locations are commonly referred to as gun-free zones and include: A school or school property; a public or private daycare center, public or private child care agency, or public or private child placing agency; a sports arena or stadium; certain premises licensed by the Michigan Liquor Control Commission; property owned or operated by a church, synagogue, mosque, temple, or other place of worship; an entertainment facility that seats 2,500 or more people; a hospital; or a dormitory or classroom of a college or university. The list of gun-free zones in section 5o is not all-inclusive, however, because section 5c(2) of the Act also prohibits the carrying of a concealed pistol in those locations where such a ban is "otherwise provided by law."

The phrase "provided by law" was construed by the Michigan Supreme Court in *Viculin v Dep't of Civil Service*, 386 Mich 375; 192 NW2d 449 (1971). In holding that appeal procedures set forth in a Michigan court rule were properly considered a method of review "provided by law" as used in Const 1963, art 6, § 28, the Court explained that the rule fell within the scope of this phrase because "[i]t was adopted pursuant to the power vested" in the Court. 386 Mich at 397, n 20.

This view is consistent with established principles describing what is meant by the word "law." Its meaning was summarized in 52A CJS, Law, p 737, in the following way:

It has been held to be a broad term, variously and frequently defined, its meaning in every instance to be governed by the context.

* * *

[I]t is a general rule of conduct declared by some authority possessing sovereign power over the subject; a rule which every citizen of the state is bound to obey; an established or permanent rule established by the supreme power, or the power having the legislative control of the particular subject That which must be obeyed and followed by citizens subject to sanctions or legal consequences is a law. [Footnotes omitted.]

These general principles have been applied by Michigan courts. For example, properly promulgated administrative rules have the force and effect of law. *Clonlara, Inc v Michigan State Bd of Ed*, 442 Mich 230, 239; 501 NW2d 88 (1993). See also *Vagts v Perry Drug Stores, Inc*, 204 Mich App 481, 485-486; 516 NW2d 102 (1994) (a "law" includes "those principles promulgated in constitutional provisions, common law, and regulations as well as statutes"). Moreover, the Michigan Supreme Court has afforded full legal force and effect to orders issued by the Director of the Michigan Department of Natural Resources pursuant to statutory authorization in *DNR v Seaman*, 396 Mich 299, 310-314; 240 NW2d 206 (1976).

An examination of the Michigan laws dealing with the possession of firearms discloses several additional instances where the prohibition of firearms is "otherwise provided by law." Among these is 2001 PA 225, MCL 259.80f, effective April 1, 2002, which prohibits the possession of a firearm in the "sterile" (i.e., secure) area of a commercial airport. In addition, the Michigan Supreme Court, in Administrative Order 2001-3, 464 Mich 1xxv, has, with certain exceptions, prohibited the possession of a weapon in any courtroom or facility used for official business of the court. A person violating the order may be held in contempt of court. The Michigan Department of Agriculture has also promulgated a rule making it unlawful for any person, except authorized peace officers and other persons authorized by law, "to enter upon a fairgrounds and have in his possession any firearm loaded or unloaded." 1979 AC, R 291.208.

The Michigan Department of Natural Resources has also adopted rules in the discharge of its duties concerning state park and wildlife management that fall within the "otherwise provided by law" provision of section 5c(2) of the Concealed Pistol Licensing Act. MCL 324.504 authorizes the Department of Natural Resources to promulgate rules "for the protection of the lands and property under its control against wrongful use or occupancy." This section also authorizes the Department to issue orders necessary to implement rules promulgated under this section. These orders take effect upon posting. Violation of a rule or order issued under this section constitutes a civil infraction punishable by a fine of not more than \$500.00. MCL 324.504.

Pursuant to this authority, the Department of Natural Resources has promulgated rules relating to the possession of a firearm on certain state lands administered by the department.¹ Rule 27(b) makes it unlawful for a person to carry or possess a loaded firearm "in state parks and state recreation areas," except on lands designated open to hunting during established hunting seasons or at an officially established target range or during an officially sanctioned field trial. 2001 MR 20, R 299.927. There is no prohibition against carrying or possessing an unloaded firearm in such areas. Department employees acting in the line of duty and certain other authorized persons are exempt from this rule. 2001 MR 20, R 299.930. On a designated shooting range, a person shall not "[p]ossess a loaded firearm, except at established shooting stations on the firing line." 1979 AC, R 299.673. The Natural Resources and Environmental Protection Act (NREPA), MCL 324.101 *et seq*, further allows a person to transport a firearm while going to and from a target range provided the firearm is unloaded and either encased or carried in the trunk of a vehicle. MCL 324.43513.

It is my opinion, therefore, in answer to your first question, that a person licensed to carry a concealed pistol may possess a pistol while hiking or camping within a state park provided that the pistol is not loaded. A person licensed to carry a concealed pistol may possess a loaded pistol within a state park only during established hunting seasons on lands designated open to hunting or at a target range established by the Department of Natural Resources or during an officially sanctioned field trial.

Your second question asks whether a person licensed to carry a concealed pistol is subject to any restrictions established by the Department of Natural Resources in connection with wildlife hunting in Michigan or may possess or carry a pistol while hunting deer during "bow and arrow only" hunting season.

As previously noted, section 5c(2) of the Concealed Pistol Licensing Act, with certain exceptions, allows a licensee to carry a concealed pistol anywhere in this state except "as otherwise provided by law." MCL 324.40107 is a provision of the NREPA that expressly delegates to the Department of Natural Resources the responsibility to issue orders regarding hunting in Michigan. A person who violates orders issued under section 40107 of the NREPA is subject to various criminal penalties, including imprisonment and fines. MCL 324.40118. Pursuant to this authority, the Department of Natural Resources has issued a number of orders regulating the possession of firearms in connection with the hunting of animals in Michigan. Wildlife Conservation Order 3.101(3) provides that a person hunting deer during the "muzzle-loading and black-powder firearms only" season shall possess only a muzzle-loading rifle, muzzle-loading shotgun, or black-powder pistol. Wildlife Conservation Order 3.101(5) prohibits a person who is hunting deer with a bow and arrow during the open "bow and arrow only" season from possessing a firearm of any type unless that person is properly licensed to hunt deer with a firearm and is hunting in an area open to firearm deer hunting.² Wildlife Conservation Order 3.101e(2) prohibits an adult accompanying a youth firearm deer hunter from possessing a firearm while accompanying a youth hunter during the specified youth firearm deer-hunting season. As these orders are adopted pursuant to powers vested in the Department of Natural Resources and the failure to follow them subjects the offender to sanctions or legal consequences, these orders fall within the scope of the phrase "otherwise provided by law" used in section 5c(2) of the Act. See *DNR v Seaman, supra*.

It is my opinion, therefore, in answer to your second question, that a person licensed to carry a concealed pistol is subject to the rules, regulations, and orders of the Department of Natural Resources regulating the possession of firearms and may not possess or carry a pistol while hunting deer during "bow and arrow only" hunting season, unless the person is licensed to hunt deer with a firearm and is hunting in an area open to firearm deer hunting.

MIKE COX
Attorney General

¹Your question only deals with the possession of firearms in state parks. Additional regulations limit the possession of firearms in federal parks, such as Isle Royale National Park, Sleeping Bear National Lake Shore, and Pictured Rocks National Lake Shore. See 36 CFR 2.4.

²OAG, 1985-1986, No 6406, p 431 (December 10, 1986), concluded that a person licensed to carry a concealed weapon could carry a pistol while hunting deer, provided the person was licensed to hunt deer with certain handguns. The opinion did not consider whether a concealed weapon could be carried where that person was licensed to hunt only with a bow and arrow, so it has no application here.

Editor's Note: After OAG No 7123 was released, 2004 PA 129 and 130 were enacted into law, effective June 3, 2004. These acts amended MCL 324.504, 324.43510, and 324.43516. Under MCL 324.504(3) as amended, the Department of Natural Resources "shall not promulgate or enforce a rule that prohibits an individual who is licensed or exempt from licensure under 1927 PA 372, MCL 28.421 to 28.435, from carrying a pistol in compliance with that act, whether concealed or otherwise, on property under the control of the department." MCL 324.43510(2) as amended provides: "This act or a rule promulgated or order issued by the department or the commission under this act shall not be construed to prohibit a person from transporting a pistol or carrying a loaded pistol, whether concealed or not" if certain specified circumstances apply. MCL 324.43516 as amended specifies that its provisions are subject to MCL 324.43510. Accordingly, OAG No 7123 has been superseded by subsequent legislation.

<http://opinion/datafiles/2000s/op10198.htm>

State of Michigan, Department of Attorney General

Last Updated Tuesday, August 29, 2006 17:09:12