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Does state law preempt school policy banning possession of firearms in schools?

FACTS:

In 2015, Ann Arbor Public Schools (AAPS) adopted three policies that, in general, ban the possession of firearms on school property and at school-sponsored activities. The policies specifically acknowledge that MCL 28.425o controls the ability of concealed pistol license holders to carry a concealed pistol. MCL 28.425o(1)(a) provides that a person licensed to carry a concealed pistol shall not carry a concealed pistol on school property, except that a parent with a concealed pistol license is not precluded from carrying a concealed pistol when dropping off or picking up a child from school.

Michigan Gun Owners, Inc. and Ulysses Wong, who possessed a concealed pistol license, (plaintiffs) sued AAPS alleging that Michigan law allows Wong to openly carry a pistol on school property since state statutes preempt “a local unit government from regulating the possession” of firearms. AAPS countered that Michigan law confers on public school districts the right to address the safety of its students by enacting policies such as those in question and that case law governing preemption does not undermine the school district’s power to regulate firearms.

The plaintiffs relied upon *Capital Area Dist Library v Michigan Open Carry, Inc.* (CADL) 298 Mich App 220, which held that a district library could not regulate firearms on the basis of MCL 123.1102 which provides:

A local unit of government shall not . . . enact or enforce any ordinance or regulation pertaining to the . . . possession of pistols, [or other firearms] except as provided by federal law or a law of this state.

A local unit of government is defined in the statute as a “city, village, township, or county.”

The plaintiffs also argued that the AAPS policies contradict MCL 28.425o(1)(a) and that the statute preempts AAPS policy.

QUESTIONS:

Does state law preempt AAPS policies re: firearms on school property?

ANSWER ACCORDING TO THE TRIAL COURT AND THE MICHIGAN COURT OF APPEALS:

No. The trial court found that MCL 123.1102 and the CADL decision do not control the outcome of the case since a school system is not defined as a local unit of government nor are schools controlled by a local unit of government. In addition, the court determined that, by enacting MCL 123.1101, the Legislature did not intend to preempt (under the factors set forth in *People v LLeuwellyn*, 401 Mich 314 (1977)) the field of firearm legislation.

With respect to MCL 28.425o(1)(a), the court of appeals noted that the statute imposes a blanket prohibition on carrying a concealed pistol on school property but excepts a parent with a concealed pistol license when picking up and dropping off a student. The court found no conflict between the statute and AAPS policy and no express preemption, noting that AAPS policy specifically acknowledged that MCL 28.425o(1)(a) controls the ability of concealed pistol license holders to carry a concealed pistol under the distinct circumstances conforming to the statute.

Michigan Gun Owners v Ann Arbor Public Schools, No. 329632 (Dec. 15, 2016)

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Michigan Association of Municipal Attorneys

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