



# LOCAL vs. STATE

## *Point*

**Local Control of Firearms  
is a Constitutional Right**

|| By Jack L. Hoffman ||

## *Counterpoint*

**Local Control of Firearms  
Remains Preempted  
by State Law**

|| By Carol Bamberg ||

Point

## Local Control of Firearms is a Constitutional Right

|| By Jack L. Hoffman ||

In the Michigan debate over reasonable control of firearms, open-carry advocates repeatedly cite MCL 123.1102 as prohibiting all local control of firearms. Little noticed in this debate is the qualifying clause “except as otherwise provided by federal law or a law of this state.” The qualifying language is important because the autonomy of institutions or local governments can, to some extent, override limitations on reasonable controls of gun use.

With regard to those Michigan universities expressly organized under the constitution of 1963, Article 8, the Michigan Court of Claims in *Wade v University of Michigan*<sup>1</sup> ruled that the exception in Section 1102 encompasses the autonomy of a university to promulgate its own firearms regulations. “MCL 123.1102 specifically permits ‘local units of government’ to enact regulations as ‘otherwise provided by federal law or a law of this state.’ In this case, the State Constitution grants to the University the autonomy to promulgate its own firearm regulations.”<sup>2</sup>

The exception to Section 1102 likewise encompasses the constitutional right of Michigan local governments to reasonable control of streets and public places guaranteed under Const 1963, Art 7, § 29. This section provides, in relevant part: “Except as otherwise provided in this constitution the right of all counties, townships, cities and villages to the reasonable control of their highways, streets, alleys and public places is hereby reserved to such local units of government.”<sup>3</sup>

Generally, the legislature may not by statute deprive a Michigan city of its right of reasonable control of its streets and public places. For example, in *Oshtemo Charter Twp v Kalamazoo Co Rd Comm*,<sup>4</sup> the Michigan Court of Appeals held MCL 257.726(3) unconstitutional and void because it deprived Michigan townships of the right of reasonable control of their streets and public places. The Michigan legislature had provided by statute that townships might adopt truck route ordinances, but MCL 257.726(3) purported to grant local road commissions the authority to “approve or void” these ordinances. The Court of Appeals acknowledged that a township truck control ordinance could not conflict with state law, but ruled that the legislature had no authority to void reasonable township truck route ordinances in the first place.

We...conclude that the Legislature may not override a power provided in the Constitution. Therefore, to the extent MCL 257.726(3) allows a county road commission to void a traffic control ordinance without demonstrating that the ordinance

is unreasonable, it conflicts with the Michigan Constitution’s grant of the power to townships to adopt reasonable traffic control ordinances, and is unconstitutional as applied.

The Road Commission only has the authority to void an unreasonable traffic control ordinance. Because the Road Commission did not determine that the ordinance was unreasonable, the Road Commission’s decision was contrary to the Michigan Constitution, and thus it was not authorized by law. Because the trial court improperly determined that the decision was authorized by law, we reverse and remand.<sup>5</sup>

The right of reasonable local control of streets and public places extends to reasonable control for any purpose whatsoever. The predecessor of Const 1963, Art 7, § 29 was Const 1908, Art 8, § 28, which provided, in relevant part: “The right of all cities, villages and townships to the reasonable control of their streets, alleys and public places is hereby reserved to such cities, villages and townships.” In *People v McGraw*<sup>6</sup> in 1909, at the dawn of the automobile age, the Michigan legislature passed a statute prohibiting local control of motor vehicles.

Section 9: Local Ordinances Prohibited.—Except as herein otherwise provided, local authorities shall have no power to pass, enforce or maintain any ordinance, rule, or regulation requiring from any owner or chauffeur to whom this act is applicable, any license or permit for the use of the public highways, or excluding any such owner or chauffeur from the free use of such public highways, or in any other way respecting motor vehicles or their speed upon or use of the public highways. No ordinance, rule or regulation contrary to the provisions of this act now in force or hereafter enacted shall have any effect...<sup>7</sup>

In 1912, the Detroit City Council, relying on the city’s right of reasonable local control under the Michigan Constitution, passed its own local traffic ordinance. In 1913, Donald McGraw was charged under the city ordinance with reckless driving and driving without proper lights. McGraw’s only defense was that the Detroit ordinance was void under state law because state law purported to deprive the city of Detroit of any power to regulate motor vehicles. The city attorney argued that the state statute was unconstitutional because it deprived cities of their constitutional power of reasonable control over streets and public places. The trial judge agreed with the city and found the defendant guilty. McGraw appealed to the Michigan Supreme Court.

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McGraw argued that the reservation in § 28 of Article 8<sup>8</sup> of the right of cities to reasonable control of their streets and public places should be held to refer only to the subject matter of the first two clauses of the section, to wit, public utility corporations. The Supreme Court rejected this argument, holding that “local authorities may control within reason the use of their streets for any purposes whatsoever...”<sup>9</sup> In this connection, the Supreme Court ruled:

The claim that the reservation should be limited to the control of public utility corporations, to our minds, overlooks entirely the express language of the last sentence of said section 28. By giving the language of the whole section its ordinary and natural meaning, public utilities were placed under control of the local authorities, **and the local authorities may control within reason the use of their streets for any purposes whatsoever....**<sup>10</sup>

Having ruled that local authorities may control within reason the use of their streets for any purpose whatsoever, the Supreme Court in *McGraw* went on to rule that the statute purported to deprive cities of all control of motor vehicles and was therefore unconstitutional and void under the predecessor to Art 7, § 29.

In numerous other cases, Const 1963, Art 7, § 29 or its predecessor, Const 1908, Art 8, § 28, has been used as a basis for finding a state statute void and unconstitutional.<sup>11</sup>

With regard to local control of firearms in streets and public places, MCL 123.1102 provides that:

**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.** (Emphasis added.)

By its plain language, Section 1102 prohibits local governments from regulating firearms “except as otherwise provided by federal law or a law of this state.” With regard to an unambiguous statute, the Michigan Supreme Court has ruled:

The rules of statutory construction are well established. The foremost rule, and our primary task in construing a statute, is to discern and give effect to the intent of the Legislature. This task begins by examining the language of the statute itself. The words of a statute provide “the most reliable evidence of its intent...” If the language of the statute is unambiguous, the Legislature must have intended the meaning clearly expressed, and the statute must be enforced as written. No further judicial construction is required or permitted. Only where the statutory language is ambiguous may a court properly go beyond the words of the statute to ascertain legislative intent.<sup>12</sup>

Because MCL 123.1102 is unambiguous, no further judicial construction is required or permitted. The prohibition on local regulation of firearms in Section 1102 is subject to an exception for the right of reasonable local control of firearms in streets and public places reserved to local governments by Art 7, § 29.

The ruling in *Michigan Coalition for Responsible Gun Owners v City of Ferndale*<sup>15</sup> is not controlling here. The opinion in *Ferndale* did not address the impact of Art 7, § 29 with regard to the application of MCL 123.1102. A prior opinion is not controlling with regard to issues the opinion did not address.<sup>14</sup>

Even if the relationship between Art 7, § 29 and MCL 123.1102 was ambiguous, the result would be the same. The constitution of 1963 requires that “[t]he provisions of this constitution and law concerning counties, townships, cities and villages shall be liberally construed in their favor.”<sup>15</sup> The phrase “liberal construction in favor of” is well defined in Michigan law. It means that in case of an ambiguity, the ambiguity must be construed in favor of the party who has the benefit of liberal construction.<sup>16</sup>

If MCL 123.1102 did not contain an exception in favor of the right of reasonable local control of streets and public places, the statute would be unconstitutional and void. This was the result reached in *McGraw* where the statute in question purported to prohibit all local regulation of motor vehicles just as the current MCL 123.1102 purports to prohibit all local regulation of firearms.<sup>17</sup>

But as section 9, Act 318, Public Acts 1909, clearly attempts to take away from the cities all control of their highways with reference to the use thereof by motor vehicles, such parts of said section which forbid the cities from exercising reasonable control of their highways as herein defined must be held to be unconstitutional and void.<sup>18</sup>

The statute under consideration in *McGraw* contained no exceptions for rights of local control otherwise provided by federal or state law. The statute was therefore unconstitutional on its face. The courts need not reach that issue with regard to MCL 123.1102 because the statute, by its plain language, creates an exception for the right of local government to the reasonable control of firearms in streets and public places reserved to local governments under Const 1963, Art 7, § 29.<sup>19</sup> The exception made in the statute is clear and no construction is required or permitted.

Constitutional preemption of MCL 123.1102 has been established in the courts and universities as set forth in Articles 6 and 8 of the constitution. The judiciary is excepted because it is an independent branch of government under Const 1963, Art 6. That’s why you don’t see citizens carrying firearms in courthouses. Similarly, with regard to universities organized under Const 1963, Art 8, the court of claims in *Wade* held:

Our Supreme Court has noted that the Michigan Constitution confers a unique status on public universities and their

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government boards. *Federated Publications, Inc v Board of Trustees of Michigan State University*, 460 Mich 75, 84; 594 NW2d 491 (1999). Under Const 1963, art 8, § 5, the Regents of the University of Michigan constitute a “body corporate” vested with the “general supervision of its institution and the control and direction of all expenditures from the institution’s funds.” Indeed, the Court described the governing board’s status as “a constitutional corporation of independent authority, which, within the scope of its functions, is co-ordinate with and equal to that of the legislature.” *Id.* at 84 n 8 (citing *Bd of Regents of the Univ of Michigan v Auditor General*, 167 Mich 444, 450; 132 NW 1037 (1911)). Thus, “[t]he constitution grants the governing boards authority over ‘the absolute management of the University and the exclusive control of all funds received for its use.’” *Id.* at 87. Promulgating firearm ordinances for the safety of the students, staff and faculty is, therefore, constitutionally permissible and inextricably intertwined with the operation of the University and its mission to educate. Thus, even if the University were deemed a “local unit of government,” its ordinance would not run afoul of MCL 123.1102 because under the Michigan Constitution, the University has the autonomy to promulgate firearm regulations. Moreover, any legislative scheme that “clearly infringes on the university’s educational or financial autonomy must, therefore, yield to the university’s constitutional power.” *Id.* Simply put, the Legislature may not interfere with the management and control of public universities when they are exercising their constitutional powers to supervise the institution. *Id.* at 87, 88.<sup>20</sup>

Ultimately, a statute is to be construed where fairly possible so as to avoid substantial constitutional questions.<sup>21</sup> By construing MCL 123.1102 as providing for an exception of reasonable local control of firearms in streets and public places, the statute is given a construction in favor of local government and a substantial constitutional question is avoided.

In short, MCL 123.1102 makes an exception for the right of reasonable local control of firearms in streets and public places reserved to local governments under Const 1963, Art 7, § 29. ■

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## ENDNOTES

1. *Wade v University of Michigan*, unpublished opinion of the Michigan Court of Claims, issued November 15, 2015 (Docket No. 15-000129-MZ).
2. *Id.* at pp 8–9.
3. Const 1963, art 7, § 29.
4. *Oshlomo Charter Twp v Kalamazoo Co Rd Comm*, 302 Mich App 574; 841 NW2d 135 (2013).
5. *Id.* at 577.
6. *People v McGraw*, 184 Mich 233, 238; 150 NW 836 (1915).
7. 1909 PA 319, § 9.
8. Const 1908, art 8, § 28 is the predecessor to Const 1963, art 7, § 29, and the two sections are identical in all relevant respects.
9. *McGraw*, 184 Mich at 238.
10. *Id.* (emphasis added).
11. See *City of Dearborn v Sugden & Sivier*, 343 Mich 257; 72 NW2d 185 (1955), and the many cases cited therein.
12. *Sun Valley Foods Co v Ward*, 460 Mich 230, 236; 596 NW2d 119 (1999) (citations omitted).
13. *Michigan Coalition for Responsible Gun Owners v City of Ferndale*, 256 Mich App 401; 662 NW2d 864 (2003).
14. *People v Sobczak-Obetts*, 463 Mich 687, 706; 625 NW2d 764 (2000).
15. Const 1963, art 7, § 34.
16. *Morrelli v Provident Life and Accident Ins Co*, 242 Mich App 255, 261–262; 617 NW2d 777 (2000).
17. The statute under consideration in *McGraw* contained no exceptions for rights of local control otherwise provided by federal or state law. The statute was therefore unconstitutional on its face. The courts need not reach that issue in the instant case, because MCL 123.1102 by its plain language creates an exception for the right of local government to the reasonable control of firearms in streets and public places reserved to local governments under Const 1963, art 7, § 29. *Wade*, unpub op. The exception made in the statute is clear, and no construction is required or permitted.
18. *McGraw*, 184 Mich at 238–239.
19. *Wade*, unpub op.
20. *Id.* at 8.
21. *People v Tombs*, 260 Mich App 201; 679 NW2d 77 (1983).