



# Guns and Prose(s) - Does Recent School Gun Case Affect Libraries?



# Disclaimer

The research and resources above are for informational purposes only and not for the purpose of providing legal advice. You should *contact your attorney to obtain advice with respect to any particular issue or problem.*



# Michigan Open Carry v. CADL

In 2010, and 2011, numerous patrons attempted to enter the Capital Area District Library downtown Lansing branch openly carrying firearms. CADL employees sought to enforce existing library policy by asking patrons to leave. When they refused, the police were summoned and the police refused to remove patrons without a court order. CADL brought suit seeking to confirm the validity of its policy and to enforce the policy.

The Trial Court ruled in favor of CADL, and Michigan Open Carry appealed. The Court of Appeals ruled that Public Libraries are preempted from regulating firearms because the State legislature, under [MCL 123.1102](#), intended that municipalities may not enact regulations on firearms:

- CADL appealed to the Court of Appeals.



# CADL v. Michigan Open Carry

Because the issue in CADL revolved around the question of whether a “quasi-municipal” agency can regulate in an area already regulated by the State, the court in CADL based its ruling on a court precedence known as “People v. Llewellyn, 401 Mich 314 (1977). The Llewellyn case involved people who showed two allegedly obscene films in violation of a few City of East Detroit Ordinances. The issue in the case was whether the city could prescribe ordinances and regulate an area of law that was already regulated by the State. The court, in it’s ruling created a two step “test.”:

*“A municipality is precluded from enacting an ordinance if 1) the ordinance is in direct conflict with the state statutory scheme, or 2) if the state statutory scheme preempts the ordinance by occupying the field of regulation which the municipality seeks to enter, to the exclusion of the ordinance, even where there is no direct conflict between the two schemes of regulation.”*

People v. Llewellyn, 401 Mich. 314, 321-22, 257 N.W.2d 902, 904 (1977)



# CADL Court Reasoning

In CADL, the Llewellyn “test,” was used to determine if the CADL board could create a policy (a “rule”) for limiting firearms within the Library.

## 1) Conflict with Statute

One of the questions the court in CADL looked at was whether public libraries (specifically District Libraries) are included within the “local unit of government” defined by the statute.

The court determined that, under the definitions within the statute, a District Library was NOT “expressly barred by MCL 123.1102 from imposing firearm regulations.” In other words, this statute, arguably, did not apply to District Libraries

However, because the state has obviously occupied the field of gun legislation, the court had to conduct additional analysis using the Llewellyn part 2 “field preemption” test to determine if the state occupied the field of firearm regulation to the exclusion of **other** local units of governments such as a District Library.

In other words, did the government so fully occupy the field that, District Libraries were barred despite the irrelevancy of MCL 123.1102?



## 2) Occupies the Field of Regulation

The court had already determined that MCL 123.1102 demonstrates that the state “*completely occupies the field of firearm regulation to the exclusion of local units of government*” CADL, *citing* Mich. Coalition for Responsible Gun Ownership v. Ferndale 26 MICH App 401 (2003).

MCL123.1102 states:

- ***“23.1102 Regulation of pistols, other firearms, pneumatic guns, or ammunition.***
- *Sec. 2.*
- *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.”*



# Application of Legislative History

- Legislative History indicated that spark for creation of legislation included concern over varying local; and state laws regulating Guns in Michigan.
- The court determined that, while it is true that MCL123.1101 does not include District Libraries in the definition of “local units of government,” because municipal public libraries (Township, city, village, etc.) are clearly included (as entities under their municipalities), District Libraries, which are **CREATED BY** two or more municipalities, also fit within the Legislatively intended definition – they are, indeed, local units of government. The court reasoned that to **NOT** include District Libraries would create the patchwork of regulations feared by the legislature and discussed in the legislative History – that if District Libraries are included within the field preemption – and considered covered by MCL 123.1102, then all libraries are the same with respect to this regulation.



# Michigan Gun Owners v Ann Arbor Public Schools

## Michigan Open Carry v. Clio Area School District,

- In 2018 there were two separate suits brought against school districts by entities disputing firearm restrictions enforced by each school district. Ann Arbor, and Clio.
- At the lower court levels, the decisions were split, with one court deciding in favor of Ann Arbor, and another against Clio. The court of appeals ruled in favor of the school districts, determining that the regulations involved passed both Llewellyn tests (no preemption and no conflict). The gun owners appealed to the Michigan Supreme Court.



# School Gun Cases

Using the Llewellyn test, the Supreme Court ruled:

- That the conflict test need not be resolved on this appeal because the plaintiffs (the gun owners) failed to raise this issue in their initial appeal briefs. The question on appeal only dealt with the field preemption test. Appellate court rules dictate that only issues raised in the appeals brief can be ruled on.
- Under the field preemption test, the court ruled that the legislature did NOT intend to occupy the entire field of regulation in this area. Overruling the court opinion used in CADL to affirm the state's sole occupation of the field, the court indicated that because MCL 123.1102 specifically lists the entities prohibited from regulating firearms (ie: local units of government), any entity NOT included with that list MAY regulate. In other words, the legislature intended only to occupy the field of regulation for "local units of government, but not for School Districts, which are not "local units of government" as defined by MCL 123.1101, since they were not listed.



# How does this affect CADL & Libraries' ability to regulate guns on premises?

- For now, not at all – Court was pretty clear in its analysis that Legislature intended libraries to fall under [MCL 123.1102](#).
- Ruling does NOT prevent guns on school grounds – it merely confirms the ability of school districts to make their own policies.
- Legislative action or additional court action required to change situation for libraries.

In other words:

Within the school district decision, the Court distinguishes its holding in CADL as not affected by the school district case because District Libraries are entities created by two or more of the “local government units” expressly defined by MCL 123.1101. School Districts are created by the State – not by local municipalities, so they are definitely not local units of governments as listed by MCL 123.1101–1102. In other words, District Libraries are included within the sphere of MCL 123.1102 by virtue of their relationship to municipal libraries and their municipal ancestry (their being formed by two or more municipalities).



# What Can Be Done?

- ADVOCATE –
  - Legislative solution that would make public libraries equal to schools would be easiest solution. Patchwork argument is not inviolate – School/Public and Academic Libraries are not covered by existing law, so patchwork will exist no matter what.
  - Community & Patrons – Polls and surveys show that a majority of Americans (around 88–90%) are in favor of “common sense” gun regulation – including a large percentage of Americans who are NRA members. Most of these people are not opposed to reasonable policies that would keep guns out of public places like libraries and schools, Frank, respectful dialog and polite requests to gun owners to leave weapons in vehicles during events like programing or story hour may be effective without being punitive or stigmatizing.



# What about 3D Printed Guns?

- First and Second Amendment issues not covered in CADL or School litigation
- Michigan laws make this issue more complex for Michigan than for many other states
  - Portions of association guidelines and policies may not be completely applicable in Michigan.

More info to come in a future Webinar!!



# At A Glance

## CADL v. Mich. Open Carry

Local gov't regulation:  
Llewellyn Test

- 1) Conflict with state statutory scheme?
- 2) Attempt to regulate in field claimed by State

(People v. Llewellyn , 401 MICH 314 (1977))

## CADL v. Mich. Open Carry

MCL 123.1102 prevents the regulation of firearms by Local Gov't Units

Local Gov't Units defined as City, Village, Township, County

Text of MCL 123.1102 & Legis History convey Intent of Legislature to fully occupy field of regulation under step 2 of Llewellyn

## CADL v. Mich. Open Carry

District Libraries not listed as Local Gov't Unit but because they are Established by the collaboration of 2 or more listed Gov't Units, and because municipal libraries must be under statute, District Libraries will be considered Local Government Units under MCL 123.1102 to preserve consistency in regulation among municipal entities as intended by legislature. Therefore, District Libraries preempted from regulation under Steps 1 & 2 of Llewellyn

## Michigan Gun Owners v. Ann Arbor Schools, Mich. Open Carry v. Clio Schools

Local Gov't Regulation  
Llewellyn Test

- 1) Conflict with State Statutory Scheme - Not discussed because parties never raised issue in initial Appellate Brief.
- 2) Attempt to regulate in field claimed by State.

Llewellyn Test

People v. Llewellyn , 401 MICH 314 (1977)

## Michigan Gun Owners v. Ann Arbor Schools, Mich. Open Carry v. Clio Schools

MCL 123.1102 prevents the regulation of firearms by Local Gov't Units

Local Gov't Units defined in statute as City, Village, Township, County

Text of MCL 123.1102 clearly conveys Intent of Legislature to occupy field of regulation under step 2 of Llewellyn ONLY with respect to entities defined as "local Units of Gov't"

CADL Llewellyn field analysis flawed.

Legislative History was wrongly considered in CADL

## Michigan Gun Owners v. Ann Arbor Schools, Mich. Open Carry v. Clio Schools

School District NOT included as entity listed in definition of "Local Gov't Unit" under MCL 123.1101, so School Districts are not covered by MCL 123.1102. (School Districts are entities distinctly separate from municipalities)

Therefore, School Districts are NOT preempted from regulation under Llewellyn.



# Thank You!

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