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Newsletters

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Government

Illinois Supreme Court Says Gun Ban Near Parks Is Unconstitutional

By Gretchen Harris Sperry

On February 1, 2018, the Illinois Supreme Court struck down the portion of the Unlawful Use of a Weapon (UUW) statute that criminalized the possession of a firearm within 1,000 feet of a public park. *People v. Julio Chairez*. The Court found a portion of Section 24-1(c)(5) of the UUW statute facially unconstitutional as a violation of the Second Amendment, following the Court's 2013 opinion in *People v. Aguilar*, which recognized that the Second Amendment protects the right to carry firearms outside of the home, subject to reasonable restrictions. 720 ILCS 5/24-1(c)(1.5).

In 2013, defendant Julio Chairez pled guilty to possessing a firearm within 1,000 feet of Virgil Gilman Trail, a public park in Aurora, Illinois. Chairez later filed a postconviction petition to vacate his conviction on the ground that Section 24-1(c)(1.5) of the UUW statute was unconstitutional under the Second Amendment. Chairez argued that the statute effectively served as a blanket prohibition on carrying a firearm, rather than a narrow restriction on carrying a firearm in certain places.

The Circuit Court of Kane County declared Section 24-1(c)(1.5) unconstitutional in its entirety and vacated Chairez's conviction. In doing so, the Court struck down the prohibition against firearm possession within 1,000 feet of public parks, as well as schools, public transportation facilities, and public housing projects, as stated in the statute.

The Illinois Supreme Court affirmed in part, applying the principles from *Aguilar*. The Court held that the statute's prohibition was not limited to a particular place, but rather extended to an entire area or a zone, effectively rendering a person's right of self-defense inoperable. It further rejected the State's public safety argument as unsupported by empirical evidence and incapable of justifying the breadth of the restriction, noting that Illinois has a large number of public parks that would qualify as forbidden zones under the statute.

The Court was also concerned with the lack of any clearly defined boundaries identifying these firearm restriction zones because it would ultimately deprive individuals of notice that they may be entering a restricted area. That leaves the statute vulnerable to turning the otherwise legal possession of a firearm into liable conduct every time an individual entered a restricted zone, knowingly or not.

Notably, the Supreme Court limited its discussion and holding to only that portion of Section 24-1(c)(1.5) pertaining to Chairez—the public parks restriction—whereas the circuit court struck down that subsection in its entirety. The Supreme Court vacated the circuit court's ruling as to the remainder of the subsection, declining to extend its holding to schools, public transportation facilities or public housing projects. The restrictions in those areas remain in effect.

Nevertheless, this decision is one of several recent challenges to firearms restrictions in broad or poorly defined areas since *Aguilar*. More are likely to come, particularly under the remaining provisions of Section 24-1(c)(1.5).

Proposed Illinois Constitutional Amendment Seeks to Expand Municipality Home Rule Eligibility
By Jeffrey Hoskins

The number of Illinois municipalities with home rule may soon increase with a new proposed constitutional amendment. Currently, Illinois communities are automatically home rule eligible if they have a population of more than 25,000 or elect to become a home rule unit by referendum. The proposed Senate Joint Resolution Constitutional Amendment SC0009 (SJRCA9) may substantially lower that population threshold requirement, granting home rule status to many more Illinois municipalities.

SJRCA9, proposes to amend the Local Government Article of the Illinois Constitution to authorize any Illinois municipality with a population greater than 5,000 to automatically become eligible for home rule status. If the Illinois General Assembly passes the resolution, the proposed constitutional amendment would be placed on the November 2018 ballot. Subsequent approval by a 3/5 majority of Illinois voters would grant an additional 169 Illinois municipalities home rule status. The Illinois Municipal League supports the proposed amendment.

Home rule allows Illinois municipalities to enact local solutions to the specific issues they face. With it, a municipality is generally free to exercise any powers and functions so long as not specifically prohibited by state law. Conversely, non-home rule municipalities may exercise only those powers and functions expressly authorized by state law. If SJRCA9 becomes law, a far greater number of Illinois municipalities may be able to benefit from the self-governance afforded via home rule.

Amendment Makes Notice by Publication in Newspapers Easier for Local Government Bodies
By Staci Holthus

On January 1, 2018, a bill slightly amending the requirements for notice by publication in a newspaper went into effect. Officers of the court, units of local government, and school districts have long been required by law to provide notice of certain items via publication in a newspaper. A county board, for example, must provide notice via publication in a newspaper if it changes its regular meeting dates. Similarly, a school board must provide notice via publication in a newspaper for the sale or lease of school property and contracts over specified amounts. Prior to January 1, those notice requirements, and others like them, had to be published in a newspaper in the county that housed the unit of local government or school district, or in a newspaper in an adjoining county with "general circulation" there. The officers, units of local government, and school districts located in a county without a local newspaper could only publish notice in newspapers located in adjoining counties, even though there might be other newspapers outside the immediate area that could provide the same service.

The law as amended eliminates the requirement that the newspaper either be published in the county in which the unit of local government or school district is located or in an adjoining county. Now, a legally sufficient newspaper need only have "general circulation" within the county where the unit of local government or school district is located. The law still requires that the publication appear in a non-religious newspaper, that the newspaper make the notice available to the State for posting, and that the font of the notice cannot be smaller than the font the newspaper uses in classified ads.

2018 Binding PAC Opinions
By Raylene DeWitte Grischow

No. 18-002

A municipality violated the requirements of the Freedom of Information Act (FOIA) by improperly redacting the name of the account holder on a copy of a water bill associated with a specified address.

No. 18-003

The municipality violated Section 3(d) of FOIA by failing to respond to the complainant's request for copies of "all records responsive to Courtney Logan's meeting schedule for the months of March, April and June 2016," specifying that the records should contain "correspondence and communications in regards to dates, time, place and who the meetings were with." Since the request was ignored, a request for review to the PAC was made. The City also failed to respond to the PAC. It is a fundamental obligation of government to operate openly and provide public records as expediently and efficiently as possible in compliance with FOIA. 5 ILCS 140/1. The City was directed to take immediate and appropriate action to comply with the PAC opinion.

For more information, please contact Charles Schmadeke.