

STATE OF MICHIGAN

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CONCEALED WEAPONS:	Reserve police officer carrying exposed pistol in gun-free zones established by Concealed Pistol Licensing Act
FIREARMS:	
LAW ENFORCEMENT:	Reserve police officer carrying exposed pistol in gun-free zones established by Michigan Penal Code.
PEACE OFFICERS:	

A uniformed reserve police officer acting as an unpaid volunteer for a local police agency may carry an exposed, holstered pistol within the gun-free zones established by the Concealed Pistol Licensing Act; and if the officer is either a fully authorized "peace officer" or, alternatively, possesses a valid concealed pistol license issued under the Concealed Pistol Licensing Act, he or she may also carry an exposed, holstered pistol within the gun-free zones established by the Michigan Penal Code.

Opinion No. 7113

June 28, 2002

Honorable Gary C. Peters
State Senator
The Capitol
Lansing, MI

Honorable Mary Ann Middaugh
State Representative
The Capitol
Lansing, MI

Honorable Larry Julian
State Representative
The Capitol
Lansing, MI

You have asked whether a uniformed reserve police officer acting as an unpaid volunteer for a local police agency may carry an exposed, holstered pistol within a "gun-free zone" established by the Concealed Pistol Licensing Act.

Your inquiry is governed by the interplay between two separate but related statutes, both of which regulate the possession of firearms.

The Concealed Pistol Licensing Act, 1927 PA 372, 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 that Act. Amendatory 2000 PA 381 made significant changes to the Act. Section 5b(7) sets forth specific qualifications a person must possess in order to receive a license to carry a concealed pistol and further provides that a county concealed weapon licensing board "shall issue a license" to an applicant who meets those requirements. The Act also provides that a person who is issued a license under the Act may carry a concealed pistol "anywhere in this state" except in certain designated classes of locations listed in section 5o of the Act. Those exceptions, commonly referred to as

"gun free zones," include the following:

- a) A school or school property
- b) A public or private day care center, public or private child caring agency, or public or private child placing agency.
- c) A sports arena or stadium.
- d) A dining room, lounge, or bar area of a premises licensed under the Michigan liquor control code of 1998 This subdivision shall not apply to an owner or employee of the premises.
- e) Any property or facility owned or operated by a church, synagogue, mosque, temple, or other place of worship, unless the presiding official or officials of the church, synagogue, mosque, temple, or other place of worship permit the carrying of concealed pistol on that property or facility.
- f) An entertainment facility [that has a seating capacity of 2,500 or more]
- g) A hospital.
- h) A dormitory or classroom of a community college, college, or university. [Section 5o(1).]

Section 12a of the Act expressly exempts certain persons from the requirements of the Act, including:

- (a) A *peace officer* of a duly authorized police agency of the United States or of this state or a political subdivision of this state, *who is regularly employed* and paid by the United States or this state or a subdivision of this state, except a township constable. [Emphasis added.]

Under the express terms of this section, a police officer or reserve police officer is exempt from the requirements of the Concealed Pistol Licensing Act, including the prohibition against carrying a concealed weapon in a "gun free zone," but only if the officer (1) possesses the full authority of a peace officer, and not merely special or limited law enforcement authority; and (2) is regularly employed and paid for those services. *See* OAG, 2001-2002, No 7098, p 74 (January 11, 2002). Your inquiry does not specify whether the uniformed reserve officer in question possesses the full authority of a peace officer. You do, however, specify that the officer in question serves as an unpaid volunteer. Because the exemption contained in section 12a(a) is limited to officers who are "regularly employed," an unpaid volunteer officer is not exempt from the provisions of the Concealed Pistol Licensing Act and is, therefore, prohibited from carrying a *concealed* pistol in a designated "gun free zone." OAG No 7098, *supra*.

A plain reading of section 5o(1) of the Concealed Pistol Licensing Act discloses, however, that its prohibition applies only to the carrying of pistols that are "concealed." A holstered pistol carried openly and in plain view is not "concealed" and therefore does not violate the prohibition contained in that section. *See, e.g.,* OAG, 1951-1952, No 1388, p 228 (April 18, 1951) ("Should they be so directed by their superior officers, auxiliary police while on duty may carry weapons openly, the prohibition in the Penal Code applying only to 'concealed' weapons."), *Cf., People v Johnnie W. Jones*, 12 Mich App 293, 296; 162 NW2d 847 (1968); and *People v Kincade*, 61 Mich App 498, 502; 233 NW2d 54 (1975).

This, however, does not end the analysis of your question. The carrying of firearms in public is also restricted by the Michigan Penal Code, 1931 PA 328, MCL 750.1 *et seq.* Section 234d of the Penal Code identifies certain "gun free zones" similar to those enumerated in section 5o of the Concealed Pistol Licensing Act; within those specified zones, the possession of firearms is strictly prohibited, subject to limited exceptions. Specifically, section 234d(1) of the Penal Code provides that:

- (1) Except as provided in subsection (2), a person shall not possess a firearm on the premises of any of the following:
 - (a) A depository financial institution or a subsidiary or affiliate of a depository financial institution.

- (b) A church or other house of religious worship.
- (c) A court.
- (d) A theatre.
- (e) A sports arena.
- (f) A day care center.
- (g) A hospital.
- (h) An establishment licensed under the Michigan liquor control act, Act No. 8 of the Public Acts of the Extra Session of 1933, being sections 436.1 to 436.58 of the Michigan Compiled Laws.

This language is significantly broader than that employed by section 5o of the Concealed Pistol Licensing Act. By its express terms, section 234d(1) of the Penal Code applies to firearms generally, not merely to pistols, and applies to firearms whether concealed or not. Subsection (2) of this provision creates several specific exceptions to this prohibition, two of which are germane to your inquiry. It provides, in pertinent part that:

(2) This section does not apply to any of the following:

* * *

- (b) A peace officer.
- (c) A person licensed by this state or another state to carry a concealed weapon.

Similarly, section 237a(4) of the Penal Code prohibits possession of a firearm in a weapon free school zone, a term defined in section 237a(6)(d) as "school property and a vehicle used by a school to transport students to or from school property." Like section 234d(2), the prohibition against possessing firearms in a school zone does not apply to a peace officer or to a person licensed to carry a concealed weapon. Section 237a(5).

If a reserve officer qualifies as a peace officer, then the officer is exempt from the prohibition contained in sections 234d(1) and 237a(4) of the Penal Code concerning the possession of firearms on specified premises. If not, sections 234d(2)(c) and 237a(5)(c) of the Penal Code also exempt "[a] person licensed by this state or another state to carry a concealed weapon." A license issued by a county concealed weapon licensing board under section 5b(7) of the Concealed Pistol Licensing Act clearly satisfies the latter exemption. Thus, possession of such a license would enable a reserve police officer to carry an exposed, holstered pistol in the "gun free zones" described in sections 234d and 237a of the Penal Code.

It is my opinion, therefore, that a uniformed reserve police officer acting as an unpaid volunteer for a local police agency may carry an exposed, holstered pistol within the gun-free zones established by the Concealed Pistol Licensing Act; and if the officer is either a fully authorized "peace officer" or, alternatively, possesses a valid concealed pistol license issued under the Concealed Pistol Licensing Act, he or she may also carry an exposed, holstered pistol within the gun-free zones established by the Michigan Penal Code.

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