



March Case Law Update March 31, 2017

A summary of Wisconsin court opinions decided during the month of March related to planning

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Wisconsin Supreme Court Opinions

State Concealed Carry Law Preempts City Rule Prohibiting Weapons on City Buses

The Transit and Parking Commission of the City of Madison adopted a Rule prohibiting passengers from bearing weapons on City Metro Transit buses. The Rule identified several types of unacceptable conduct which subjects the offending individual to potential expulsion from city buses including bringing “any items of a dangerous nature on-board buses including: weapons (pistols, rifles, knives or swords)”

Wisconsin Carry, Inc., contacted Metro Transit and asked that it amend the Rule to harmonize it with 2011 Wisconsin Act 35, which authorized Wisconsin residents to carry concealed weapons upon obtaining the required license. Act 35 is codified in part at Wis. Stat. § 66.0409(2) and states that:

Except as provided in subs. (3) and (4), no political subdivision may enact or enforce an ordinance or adopt a resolution that regulates the . . . possession, bearing, [or] transportation . . . of any knife or any firearm . . . unless the ordinance or resolution is the same as or similar to, and no more stringent than, a state statute.

Metro Transit declined Wisconsin Carry's invitation to amend the Rule. Wisconsin Carry then sued arguing that Act 35 preempted the City's authority to enforce the ban on concealed weapons. The City defended its actions arguing, in part, that since it owned the buses, the City could keep them weapon-free just as a private individual may prohibit weapons in his or her own vehicle. The City also argued that the express terms of Act 35 only applied to “ordinances” and “resolutions” and that the Commission's “rule” is different from ordinances and resolutions so it lies beyond the statute's reach. The Wisconsin Court of Appeals agreed with the City. Wisconsin Carry then petitioned the Wisconsin Supreme Court to review the case. The Wisconsin Supreme Court granted review of the case and in [Wisconsin Carry, Inc. v. City of Madison](#), 2017 WI 19, reversed the decision of the Court of Appeals.

A majority of the Court's members found that a "rule" is a legislative activity and that Act 35 applied to all legislative activity by local governments, not just ordinances and resolutions. In addition, the majority held that Act 35 left local governments "entirely powerless" to authorize any of its sub-units like Metro Transit to legislate on the subject.

The Court majority was also not persuaded by the City's argument that as the owner of the buses the City should be able to act like a private individual and prohibit weapons on its vehicles. According to the majority, "An individual may ban weapons because he has unlimited discretion to bar anyone and everyone from his vehicle for any reason, or even no reason at all. The City enjoys no such latitude with respect to bus passengers." According to the majority, the City needed a lawful basis to exclude passengers from its buses and none exists with respect to passengers who comply with state weapons laws. The majority therefore concluded that the City's ownership interest in its buses gives it no authority to promulgate or enforce the Rule.

Justice Ann Walsh Bradley wrote a dissenting opinion and was joined by Justice Abrahamson.

Wisconsin Court of Appeals Opinions

[No planning-related cases to report.]

U.S. Court of Appeals for the 7th Circuit Opinions

[No planning-related cases to report.]