

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the Petition
the Woodlawn Sportsmen's Club, Inc.
for a Declaratory Ruling

Declaratory
Ruling
DEC #11-04

The Directors of the Woodlawn Sportsmen's Club, Inc. (the Club); by letter from Director Jeffrey Unser, have petitioned for a Declaratory Ruling pursuant to Section 204 of the State Administrative Procedure Act and Part 619 of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York with regard to the applicability of Environmental Conservation Law (ECL) §11-0931(4) to activities conducted by the Club and its members and to the authority of a local government to adopt a local law which might restrict such activities.

The following facts are based on Petitioner's representations in the Petition and are assumed solely for the purpose of this Ruling.

The Club was incorporated in 1948, pursuant to the Membership Corporations Law, and maintains a facility on Lydius Street in the Town of Guilderland, Albany County. (The Membership Corporation Law was repealed by Chapter 1066 of the Laws of 1969 and its provisions transferred to the Not-For-Profit Corporation Law.) The facility includes outdoor and indoor ranges for rifles, pistols and archery and includes an outdoor trap range. The Club has approximately 160 members, and use of Club facilities is limited to members and their guests. There is a committee for the maintenance of each of the target ranges. The use of these ranges is regulated through range rules provided in writing to members and posted at the ranges. The ranges are used on a regular schedule as part of the Club's organized activities and on an unscheduled basis by members and guests at other times.

As development has progressed in the Town of Guilderland, dwellings have been approved by the Town and constructed in increasingly closer proximity to the Club's property. A pending subdivision before the Guilderland Planning Board proposes the construction of homes directly opposite the Club's grounds and within 500 feet of the firing points on the target ranges.

ECL §11-0931(4)(a)(2) provides as follows:

No person shall...discharge a firearm or long bow within five hundred feet from a dwelling house, farm building or farm structure actually occupied or used, school building, school playground, or occupied factory or church.

ECL Section 11-0931(4)(b) provides as follows:

The prohibitions contained in subparagraph 2 of paragraph a above shall not apply to:[the] authorized use of a pistol, rifle or target range regularly operated and maintained by a police department or other law enforcement agency or by a duly organized membership corporation.

You ask if a structure of the type named in ECL §11-0931(4)(a)(2) were constructed within 500 feet of the Club ranges whether continued use of such ranges would be exempt from the prohibition contained in ECL §11-0931(4)(a)(2) pursuant to ECL §11-0931(4)(b)(3).

The rules of statutory construction provide that the primary consideration in construing a statute is to give effect to the intent of the Legislature, and that such intent is best ascertained from the words and language used (see McKinney's Statutes, §§92 and 94). In the instant situation, the words and language of the statute are clear. ECL §11-0931(4)(a)(2) prohibits discharge of a firearm within 500 feet of certain structures, and ECL §11-0931(4)(b)(3) provides that such prohibition does not apply on pistol, rifle or target ranges

operated and maintained by a membership corporation such as Petitioner's. What the Legislature intended to accomplish can be ascertained by the words it chose to enact. The statute is clear and unambiguous and there is no need to inquire outside it to ascertain its true meaning. Accordingly, Petitioner's members are free to discharge firearms at pistol, rifle and target ranges on Club property even if a structure is erected within 500 feet of the point of discharge.

You also ask whether State regulation permitting pistol, rifle and target ranges would preempt local regulations restricting discharge of firearms. Article IX, Section 2(c) of the New York State Constitution provides that every local government shall have power to adopt and amend local laws not inconsistent with the provisions of the constitution or any general law relating to government, protection, order, conduct, safety, health and well-being of persons or property. Article IX, Section 3 of the Constitution defines a "general law" as a law which applies alike in all counties, cities, towns and villages. ECL §11-0931(4) relating to discharge of firearms is a general law since it applies alike in all counties, cities, towns and villages.

Municipal Home Rule Law Section 10(1)(ii) also provides that every local government shall have power to adopt and amend local laws not inconsistent with the provisions of the Constitution and not inconsistent with any general law. As stated above, ECL §11-0931(4) is a general law, and local governments are powerless to adopt local laws inconsistent with it.

Inconsistency is found where a local law prohibits what would have been permissible under State Law (New York State Club Ass'n, Inc. v. City of New York, 69 N.Y. 2d 211, 513 N.Y.S. 2d 349 (1987); F.T.B. Realty Corp. v. Goodman, 300 N.Y. 140 (1949)). Clearly, enactment of a local law prohibiting discharge of firearms where a general State law expressly permits such discharge would prohibit an activity specifically permitted by the State law. Accordingly, such a local law is inconsistent

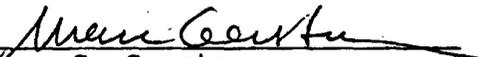
with a general law and beyond the authority of the municipality that enacted it.

By enactment of ECL §11-0931(4)(a)(2) prohibiting discharge of firearms within 500 feet of certain structures and ECL §11-0931(4)(b)(3) providing a specific exception with respect to pistol, rifle and target ranges, the Legislature has shown its intention to occupy the field of regulation in this area and to preempt any inconsistent local enactment. Where the State Legislature has enacted a comprehensive and detailed regulatory system, as is the case with ECL §11-0931(4) regarding discharge of firearms near buildings, a local law may not render unlawful what the State law permits Lansdown Entertainment Corp., v. New York City Dept. of Consumer Affairs, 74 N.Y. 2d 761, 545 N.Y.S. 2d 82 (1989). To hold otherwise would have the effect of rendering the State law a nullity, and lead to a subdividing of the State into jurisdictions with different discharge of firearms provisions. The Attorney General has also opined that while a municipality may place reasonable restrictions on discharge of firearms, any local regulations may not be inconsistent with State laws which allow hunting or other use of firearms. 1987 Op. Atty Gen (Inf) 64.

Recognizing the preemptive effect of ECL §11-0931(4), some municipalities have sought and obtained specific statutory authority to restrict discharge of firearms. Town Law §130(27) lists towns which may, upon 30-days notice to the Department of Environmental Conservation, restrict discharges in areas where such activity may be hazardous to the general public or nearby residents.

Based on the above, it is my conclusion that Petitioner's members are free to discharge firearms on pistol, rifle and target ranges on Club property even if a structure of the type described in ECL §11-0931(4)(a)(2) is erected within 500 feet of the point of discharge. Further, in the absence of specific enabling legislation, local governments are without authority to

adopt local laws restricting such discharge in a manner inconsistent with ECL §11-0931(4).


Marc S. Gerstman
Deputy Commissioner
and General Counsel

Dated: Albany, New York
March 4, 1992