

receipt of the rents and profits thereof, he is deemed to have the legal estate therein of the same quality and duration as his beneficial interests.

In construing the language of the above quoted statute, our Court said in

Rothschild v. Dickinson (1912), 169 Mich. 200, 207:

"It will thus be seen that in this State passive trusts have been entirely abolished, and where a deed creates them the title passes at once to the beneficiary. [Citations omitted] In every case of a naked trust the statute itself executes the trust and places the legal estate in *cestui que trust*. [Citation omitted] The statute places the entire interest, both legal and equitable, in the one beneficially entitled, or, as the expression goes, executes the use. * * *"

Based upon statute and court decisions, for all practical purposes, the beneficial owner of a *res* in a grantorship trust is the owner of his beneficial interest in the land. In the problem you describe, the beneficiary of the trust has a legal interest in the estate. He is entitled to and does retain possession of the land. He uses the land in whatever manner he chooses, and his legal interest in the land is superior to the interest of a life tenant. We conclude that such a trust beneficiary is entitled to a homestead exemption of real estate taxation within the purview of the Michigan Homestead Exemption Statute.

FRANK J. KELLEY,
Attorney General.

7264103.2

COUNTIES: Ordinances.

FIREARMS: County is without authority to pass a countywide ordinance prohibiting the discharge of firearms anywhere in the county.

No. 4741

April 3, 1972.

Honorable John D. Payant
State Representative
The Capitol
Lansing, Michigan 48901

You have asked whether a county has a right to pass a countywide ordinance prohibiting the discharge of firearms within the county.

The powers of the several boards of county commissioners of counties are set forth at M.C.L.A. 46.11; M.S.A. 5.331. These powers include at subparagraph Thirteenth the power

" . . . To pass such laws, regulations and ordinances relating to purely county affairs as they may see fit, but which shall not be opposed to the general laws of this state and which shall not interfere with the local affairs of any township, incorporated city or village within the limits of such county;"

Article VII, Section 1 of the Michigan Constitution of 1963 provides that each organized county shall be a body corporate with powers and

immunities provided by law. Pursuant to Section 2 of Article VII any county may adopt a home rule charter.

It is established law that the governing body of a county has no inherent powers but may exercise only those powers expressly conferred by statute or inferentially derived therefrom. See, for example, *Mason County Civic Research Council v. Mason County*, 343 Mich. 313 (1955) (county without power to select new site for infirmary previously established by purchase and remodeling of convalescent home); *Arlan's Department Stores, Inc. v. Kelley*, 374 Mich. 70 (1964) (county is without power to act on a matter of state policy, namely Sunday sales of merchandise).

We can find no express or implied power in the county which would support the adoption of an ordinance prohibiting the discharge of any firearms anywhere within the county.

The state has the police power reasonably to regulate the right to carry weapons. See, for example, *People v. Brown*, 253 Mich. 537 (1931), upholding a statute relating to the offense of selling or possessing certain weapons. Firearms are recognized as dangerous weapons within the statute prohibiting the carrying of concealed weapons (M.C.L.A. 750.227; M.S.A. 28.424). A state statute provides that any person who discharges any firearm while intentionally but without malice aimed at or toward any persons will be guilty of a misdemeanor (M.C.L.A. 750.234; M.S.A. 28.431).

One of my predecessors has ruled that a county board has no power to pass an ordinance prohibiting hunting on Sunday (O.A.G. 1921-22, p. 384).

In O.A.G. 1933-1934, p. 193, February 6, 1933, one of my predecessors ruled that the governing body of a county is without power to adopt ordinances interfering with the enforcement of the conservation laws. The conservation laws contain numerous provisions governing firearms in the activity of hunting. See, for example, M.C.L.A. 312.10; M.S.A. 13.1359, and M.C.L.A. 313.3; M.S.A. 13.1346, which, *inter alia*, prohibits the use of firearms as therein set forth; and M.C.L.A. 314.6; M.S.A. 13.1355, prohibiting the possession and use of firearms as therein set forth.

In O.A.G. 1961-1962, #3659, p. 375, I ruled that a township cannot adopt an ordinance regulating the discharge of firearms so as to interfere with hunting as permitted by state law, noting at p. 378 that where the state has pre-empted the field of hunting with respect to the means of hunting and the type of firearms used, townships may not do by indirection that which cannot be done directly, so as to defeat the state statute. The same holds true for counties.

On the basis of the above and foregoing I am brought to the conclusion that the use of firearms is not a county power and that the state has not delegated any portion of the police power reposed in the state by which a county could be found to possess the power to prohibit the discharge of firearms anywhere within the county.

Accordingly I advise you that a county is without such power, since the subject matter does not deal with a purely county power.

FRANK J. KELLEY,
Attorney General.