

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF GRAND TRAVERSE

DOUGLAS ARTHUR COVELL,
Plaintiff,

vs

File No. 92-10364-AZ
HON. PHILIP E. RODGERS, JR.

GRAND TRAVERSE COUNTY CONCEALED
WEAPONS LICENSING BOARD,
Defendant.

Douglas J. Donaldson (P37' 57)
Attorney for Plaintiff

Alan R. Schneider (P32121)
Attorney for Defendant

DECISION AND ORDER

Plaintiff has timely filed a petition seeking review of a determination made by the Grand Traverse County Concealed Weapons Licensing Board placing restrictions on his license to carry a concealed weapon.

The basis of Plaintiff's petition for review is that the hearing was held in violation of statute due to the fact that a formal complaint was never filed.

No such license shall be revoked except upon written complaint and then only after a hearing by said board, of which at least seven (7) days notice shall be given to the licensee either by personal service or by registered mail to his last known address. MCL 28.428; MSA 28.96

This petition originates from restrictions placed upon Plaintiff's permit to carry a concealed weapon. The restrictions resulted from an investigation into circumstances arising from the discovery of an abandoned vehicle, found on the side of the road. The car was traced to Plaintiff. Approximately one and one-half hours after being dispatched to the site of the abandoned car, the police found Plaintiff at his home where he was asleep at the kitchen table. At that time, it was discovered Plaintiff was wearing a loaded snub nose .38 revolver which was tucked into the waistband of his trousers. Plaintiff promptly showed the deputy his concealed weapon permit and registration. Also present in the

kitchen was a .22 caliber revolver and a .22 caliber pistol. Additionally, a custom made unloaded pistol was discovered in the vehicle at the scene of the accident.

The facts in dispute relate to the degree of Plaintiff's intoxication at the time of the interview. The deputy contends that Plaintiff smelled of alcohol, his eyes were watering and blood shot, and he was initially incoherent. Plaintiff testified that any indication of intoxication was due to fatigue as he had returned to his home after spending twelve (12) hours of physical labor finishing a remodeling project at his office. Plaintiff claims he had a glass of wine upon arriving home. No field sobriety tests were given.

Also in dispute are facts relating to the reason given for Plaintiff wearing a concealed weapon at the time of the interview. The deputy was under the impression that Plaintiff had been wearing the gun for some period of time and that, given his state of intoxication, a rational person would not tuck a revolver in his waistband upon arriving home. No specific questions regarding why and how long Plaintiff had been wearing the gun were asked.

At the hearing Plaintiff testified that upon his arrival home he cleaned the guns in preparation of placing them in a vault. Prior to placing them in the vault, he stuck the revolver in his waistband, and he fell asleep at the table. Mr Richard Wilder, witness testified that Plaintiff was not wearing a gun during the course of their long work day and did not consume any alcohol prior to leaving the office at approximately 11:00 P.M. (Trans. p 28, ln 9.)

Plaintiff, in his petition, asserts that the hearing was held in violation of statute in that a formal complaint was never filed. Plaintiff maintains that in lieu of a formal complaint outlining specific charges, an "Order To Show Cause" was served.

Defendant responds by stating that a written complaint was made by the Deputy to the Prosecuting Attorney for Grand Traverse County. The nature of the allegation contained in the Deputy' complaint was set forth in the hearing notice sent to Plaintiff.

Secondly, Plaintiff asserts that the participation of Mr. Alan Schneider, Assistant Prosecuting Attorney for Grand Traverse County, in the Board's voting process deprived Plaintiff of his right to due process. Plaintiff contends that Mr. Schneider' filing of the Order to Show Cause shows that he had made up his

mind prior to hearing any of the evidence.

Defendant relies on Bay County Concealed Weapons Board Gasta, 96 Mich App 784 (1980) which states:

In view of the inherent potential danger which accompanies the issuance of a permit to carry a concealed weapon the licensing board, composed of a prosecuting attorney, sheriff and commissioner for the Michigan State Police, or their respective authorized deputies, reflects the Legislature's intent that power to issue and revoke concealed weapons licenses is properly placed with those professionals most able to assess community needs and problems in this area.

Additionally, Defendant refers to Pitoniak v Borman's Inc, 104 Mich App 718, 727 (1981) which states:

A member of a state agency is not disqualified as a decision maker in matters brought before the agency for decision merely because the agency has gained familiarity with the facts of a case in the performance of its statutory role; nor is a decision-maker disqualified simply because he has taken a position, even in public, on a policy issue related to a dispute, absent a showing that he is not capable of judging the particular controversy fairly on the basis of its own circumstances.

Thirdly, Plaintiff maintains that the Administrative Procedures Act applies to all hearings conducted by the County Gun Boards in the State of Michigan. Plaintiff references MCL 24.291; MSA 24.292 which deals with the specific authority of the Michigan State Police and its specific authority to grant licenses.

Defendant relies on Hanselman v Wayne County Concealed Weapons Licensing Board, 419 Mich 168, 196-197 (1984) which states:

Because the Wayne County Concealed Weapons Licensing Board is not a state agency as defined by the Administrative Procedures Act, it is not subject to the provisions of the Act.

The characteristics, relations and functions of county concealed weapon licensing boards, taken as a whole, are not

those of a state board, but rather are overwhelmingly local, leading to the conclusion that the boards are not state boards and are not subject to the requirements of the Administrative Procedures Act. (MCL 24.201 et seq., 28.426; MSA 3.560 {101} et seq., 28.93).

The Court finds that Defendant is correct in its assertion that the Concealed Weapons Licensing Boards are not subject to the formal requirements outlined in the Administrative Procedures Act. This Court views the requirements set forth for State Agencies as merely guidelines that local licensing boards may adopt when conducting hearings. It is the opinion of this Court, based on review of the transcript, statutes, and common law, the procedures followed were sufficient for a local Concealed Weapons Licensing Board.

Plaintiff further maintains that the Licensing Board acted in excess of its statutory authority by placing restrictions on the permit. Plaintiff claims the Board only has authority to revoke permit but has no authority to restrict a permit. MCL 28.466; MSA 25.93 (5) states that the Licensing Board, upon review of an original application for a concealed weapon permit, may restrict the license for "reasons satisfactory to the board." This Court, in agreement with Defendant, finds that the Grand Traverse County Concealed Weapons Licensing Board has the authority to place restrictions on a permit as an alternative to outright revocation of the concealed weapons permit.

This Court finds no merit in Plaintiff's assertions that his right to due process was violated. Plaintiff's Petition for Review is dismissed and the Order of the Defendant is affirmed.

IT IS SO ORDERED.

HONORABLE PHILIP E. RODGERS
Circuit Court Judge
Dated: 6/23/93