



STATE OF OREGON
LEGISLATIVE COUNSEL COMMITTEE

April 11, 2008

Representative Linda Flores
900 Court Street NE
Salem OR 97301

Re: ORS 166.370

Dear Representative Flores:

You asked this office three questions related to ORS 166.370, which describes a Class C felony for possessing a firearm in a "public building" or a "court facility."¹ First, you ask whether municipal courts are included within the definition of a "court facility" contained in ORS 166.360. Second, you ask whether any other statute authorizes a municipality to exclude persons who possess a firearm pursuant to a concealed handgun license from entering and remaining in a municipal court. Finally, you ask whether a city or county can declare an entire building off limits to a person who possesses a firearm pursuant to a concealed handgun license because the building contains a courtroom.

Question 1: Are municipal courts included within the definition of "court facility" for the purposes of ORS 166.370?

Answer: No.

ORS 166.360 provides:

As used in ORS 166.360 to 166.380, unless the context requires otherwise:

...

(2) "Court facility" means a courthouse or that portion of any other building occupied by a circuit court, the Court of Appeals, the Supreme Court or the Oregon Tax Court or occupied by personnel related to the operations of those courts, or in which activities related to the operations of those courts take place.

This statutory scheme does not provide a definition of "courthouse." The dictionary defines the term as:

1: a building in which established courts are held: the principal building in which county offices are housed and in which county administrative affairs are conducted and which often contains also the county jail 2: COUNTY SEAT—

¹ As you note, the affirmative defense for persons with a concealed handgun license applies in a public building, but not in a court facility. ORS 166.370 (3)(d).

used chiefly in place names in Virginia and some nearby states <Appomattox Courthouse>; abbr. C.H.²

It appears, then, that the term “courthouse” may be used generically to mean a building in which any court is held or, alternatively, as a more specific reference to a particular building that is usually located in the county seat. The use of the word “other” in the statutory definition of “court facility” suggests that, at least in part, this more specific reference to a particular building was intended. An examination of the statute’s evolution confirms this suggestion.

The felony prohibition on possessing firearms in a court facility was first created in 1999.³ At that time, “court facility” was defined in ORS 166.360 as “a *county* courthouse or that portion of any other building occupied by a *court* or occupied by personnel related to *court* operations, or in which activities related to *court* operations take place.”⁴ (Emphasis added.)

The current form of this statutory definition was adopted the following session.⁵ “County” appears to have been deleted in order to include the “courthouses” occupied by the Court of Appeals, the Supreme Court and the Oregon Tax Court. Similarly, the “portion” clause in the definition could no longer arguably be read as requiring a relationship to *any* court; instead, the amendments clarified that the portion of the other building must be related to *those* courts. Although an argument could be advanced that municipal courts are related to those courts,⁶ and are therefore included in the definition of “court facility,” we do not believe that this relationship is sufficiently close to overcome the legislative omission of municipal courts from the list in ORS 166.360 (2).⁷ We believe that, after 2001, the “portion” clause was intended to recognize the practical reality that the listed courts house staff, or conduct operations, in buildings other than the court’s “courthouse.”

Finally, it is worth noting that the 2001 Act also created ORS 166.373.⁸ This statute was enacted to describe the situations in which law enforcement officers may, despite the prohibition in ORS 166.370, lawfully possess a firearm in a court facility. The resulting statute provides that law enforcement officers must be in compliance “with any security procedures” established by a “presiding judge of a judicial district or the Chief Justice of the Supreme Court” through “a plan for court security improvement, emergency preparedness and business continuity under ORS 1.177 or 1.180.” The plans described in these statutes are limited to the state court system; the terms “presiding judge” and “judicial district” are references to this system and ORS 1.180 defines “court facility” as “a state court or justice court other than” the specific state courts

² Webster’s Third New International Dictionary, Unabridged (Merriam-Webster, 2002), 523.

³ Chapter 782, Oregon Laws 1999. It was also at this time that the clause “other than a court facility” was added to the definition of “public building” in ORS 166.360 (4). The second sentence of the definition for “public building” provides: “The term [public building] also includes that portion of any other building occupied by an agency of the state or a municipal corporation, as defined in ORS 297.405, *other than a court facility.*” Id. at section 6, amending ORS 166.360 (4). Because, at this time, the definition of “court facility” applied to a “county courthouse,” this clause was likely intended to clarify that county government offices, for example, housed in a county courthouse would remain a “court facility” rather than a “public building.”

⁴ Id. at section 6.

⁵ Section 1, chapter 201, Oregon Laws 2001.

⁶ Municipal courts have concurrent jurisdiction with the circuit courts over a limited class of cases, may issue valid warrants for crimes committed within the court’s territorial jurisdiction and may have certain convictions appealed to the state court system. ORS 133.120, 221.339 and 221.359.

⁷ The Legislative Assembly frequently distinguishes between the various types of courts recognized under Oregon law. See, e.g., ORS 18.025 (“Except as specifically provided by this chapter, the provisions of this chapter apply to circuit courts, municipal courts and justice courts and to county courts performing judicial functions.”). See also, e.g., ORS 8.340, 137.290, 419C.349 and 810.340.

⁸ Section 3, chapter 201, Oregon Laws 2001.

covered in ORS 1.177.⁹ Had the Legislative Assembly understood municipal courts to be within the prohibition of ORS 166.370, it seems likely that the 2001 Act would have provided municipal court judges with the authority to establish procedures regulating the possession of firearms by law enforcement officials.

While we recognize that our conclusion is one about which reasonable persons may disagree, we believe the text and context of ORS 166.360 demonstrate that a municipal court is not a "court facility" for purposes of ORS 166.370.

Question 2: Are there any other statutes that would give [a municipality] the authority to prohibit a person with a concealed handgun license from being in the court?

Answer: No, although it is likely that a municipal court judge may exclude a person who possesses a firearm from the courtroom and use the court's contempt power to enforce this exclusion.

The Legislative Assembly has, in ORS 166.170, reserved for itself, "[e]xcept as expressly authorized by state statute, the authority to regulate in any matter whatsoever" certain specified matters related to firearms, including their possession. One such example of this express delegation may be found in ORS 166.173, which provides that a city or county may prohibit the possession of loaded firearms in public places. This statute, however, expressly exempts persons with a concealed handgun license, as well as persons authorized to possess firearms in a public building or court facility under ORS 166.370, from any such ordinance. Because we are unaware of any additional express authorization, subject to the discussion below, we do not believe that any other statutes provide a municipality with the authority to exclude a person who possesses a firearm pursuant to a concealed handgun license.

A significantly closer question is presented when one considers the authority of a municipal court judge to utilize the court's contempt power. Although statutes exist regulating the exercise of this power, contempt, as the Legislative Assembly has recognized, "is an inherent judicial power."¹⁰ The Legislative Assembly may regulate the court's contempt power, but it may not "substantially impair or destroy" that authority.¹¹ Even assuming that the court's use of its contempt power is a regulation under ORS 166.170, we believe that a court is likely to conclude that a blanket prohibition on the court's authority to exclude persons who possess a firearm from the courtroom unconstitutionally impairs the court's authority to control the courtroom and enforce its orders. Thus, it is likely that, at a minimum, a municipal court judge has the authority to exclude a person who possesses a firearm from the courtroom and to enforce this exclusion through the use of the court's contempt power.¹²

⁹ The Supreme Court, Court of Appeals, Oregon Tax Court or office of the State Court Administrator.

¹⁰ ORS 33.025; Taylor v. Gladden, 232 Or. 599, 603-604 (1962) ("The power of the courts to punish for a direct contempt is not, however, derived from the statute, but is inherent in all courts and arises from necessity.").

¹¹ State ex rel. Oregon State Bar v. Lenske, 243 Or. 477, 495 (1965) *cert. den.* 384 U.S. 943 (1966). It is less than clear whether the Legislative Assembly has broader regulatory authority over contempt in statutorily created courts. Compare State v. Moen, 86 Or. App. 87, 91 (1987) (concluding "the legislature has the authority to limit the court's power to punish for contempt where the court is a creature of the legislature and not constitutionally established.") with Frost v. Lotspeich, 175 Or. App. 163, 177-178 (2001) (questioning this conclusion and indicating that the "separation of powers doctrine applies to all of the judicial branch, i.e., to all courts exercising the 'judicial power,' including 'statutory' courts, not merely to the Supreme Court.").

¹² We note that ORS 166.373 provides that an individual judge may prohibit, or otherwise regulate, the possession of a firearm in the judge's courtroom, even under circumstances where the presiding judge has authorized law enforcement to possess firearms in the court facility. It is likely that these exceptions to ORS 166.373 are predicated on the notion that an individual judge has the inherent authority to control the judge's courtroom.

Question 3: Can a city or county declare an entire building off limits to persons with concealed handgun licenses, (if they are in possession of firearms) because that building contains a courtroom?

Answer: No.

Given our conclusion that a municipal court is not a "court facility" for purposes of ORS 166.370, a municipal court falls squarely within the definition of a "public building" under that statute. Thus, the affirmative defense contained in ORS 166.370 (3)(d) protects a person with a concealed handgun license from criminal prosecution under ORS 166.370. Because a city's or county's authority to regulate firearms is constrained by ORS 166.170 and 166.173 (2), we believe a person who possesses a concealed handgun license may, subject to the foregoing discussions pertaining to court facilities and courtrooms, lawfully possess a firearm in any other portion of a city or county building.

The opinions written by the Legislative Counsel and the staff of the Legislative Counsel's office are prepared solely for the purpose of assisting members of the Legislative Assembly in the development and consideration of legislative matters. In performing their duties, the Legislative Counsel and the members of the staff of the Legislative Counsel's office have no authority to provide legal advice to any other person, group or entity. For this reason, this opinion should not be considered or used as legal advice by any person other than legislators in the conduct of legislative business. Public bodies and their officers and employees should seek and rely upon the advice and opinion of the Attorney General, district attorney, county counsel, city attorney or other retained counsel. Constituents and other private persons and entities should seek and rely upon the advice and opinion of private counsel.

Very truly yours,

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