



STATE OF OREGON
LEGISLATIVE COUNSEL COMMITTEE

March 2, 2007

Representative Wayne Scott
House Republican Leader
900 Court Street NE H395
Salem OR 97301

Re: Concealed handgun licenses

Dear Representative Scott:

You asked this office for an opinion on two questions: 1) Whether Oregon law prohibits a holder of a concealed handgun license from carrying a concealed handgun into a public building; and 2) Whether state agencies may, by rule, prohibit concealed handgun licensees from carrying handguns into public buildings. Generally speaking, the answer to both questions is no.

Public Buildings

ORS 166.370 describes the crime of possession of a firearm or dangerous weapon in a public building or court facility. Subject to exceptions, a person who intentionally possesses a firearm in a public building or court facility is guilty of a Class C felony. ORS 166.370. The statute specifically excludes¹ from its reach persons who are "licensed under ORS 166.291 and 166.292 to carry a concealed handgun." ORS 166.370 (3)(d). Thus, Oregon law does not prohibit a holder of a concealed handgun license from carrying a concealed weapon in a public building in accordance with their license.

Agencies

ORS 166.170 vests the authority to regulate matters relating to firearms solely in the Legislative Assembly. That statute provides:

(1) Except as expressly authorized by state statute, the authority to regulate in any matter whatsoever the sale, acquisition, transfer, ownership, possession, storage, transportation or use of firearms or any element relating to firearms and components thereof, including ammunition, is vested solely in the Legislative Assembly.

(2) Except as expressly authorized by state statute, no county, city or other municipal corporation or district may enact civil or criminal ordinances, including but not limited to zoning ordinances, to regulate, restrict or prohibit the sale, acquisition, transfer, ownership, possession, storage, transportation or use of

¹ This particular exception, however, applies solely to public buildings; it does not apply to a court facility.

firearms or any element relating to firearms and components thereof, including ammunition. Ordinances that are contrary to this subsection are void.

The specific prohibition contained in ORS 166.170 (2) is directed to units of local government, and one might argue that by not listing state agencies the Legislative Assembly did not intend to prohibit them from enacting regulations relating to firearms. The better reading of the text and context of the statute, however, is that in the absence of express statutory authority state agencies may not regulate firearms.

This conclusion is buttressed by two main points. First, ORS 166.170 (1) does not vest authority to regulate firearms in "the state" or in "state government"; it vests that authority *solely* in the Legislative Assembly. Second, as discussed above, the Legislative Assembly has specifically exempted concealed handgun licensees from the reach of ORS 166.370. Importantly, the definition of public buildings² "includes that portion of any other building occupied by an agency of the state." ORS 166.360 (4). Thus, the Legislative Assembly has specifically authorized concealed handgun licensees to possess firearms within agency buildings without running afoul of ORS 166.370.

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.

Sincerely,

ANN BOSS
Legislative Counsel

By 
Joshua Nasbe
Deputy Legislative Counsel

² The definition of public buildings also includes a "capitol building," which means "the Capitol, the State Office Building, the State Library Building, the Labor and Industries Building, the State Transportation Building, the Agriculture Building or the Public Service Building and includes any new buildings which may be constructed on the same grounds as an addition to the group of buildings listed in this subsection." ORS 166.360 (1) and (4).