



STATE OF OREGON
LEGISLATIVE COUNSEL COMMITTEE

March 19, 2007

Representative Jerry Krummel
900 Court Street NE H281
Salem OR 97301

Re: Foster Parents and Concealed Weapons

Dear Representative Krummel:

The Department of Human Services, when administering its child protection functions, is delegated the *parens patriae* authority of the state with respect to children placed in its care. The department has a duty to protect the children in its care. ORS 418.630 prohibits a person from operating a foster home without a certificate of approval from the department. ORS 418.640 delegates broad authority to the department to "adopt such rules, not inconsistent with ORS 418.625 to 418.645, as it deems necessary or advisable to protect the best interests of children in foster homes. . . ."

Proposed OAR 413-200-0335 (copy enclosed) reorganizes the department's current policy regarding the safety of the physical environment required for certification of foster homes. The rule addresses all aspects of the environment, including such things as proper storage of chemicals, appropriate sleeping arrangements, restricted access to dangerous animals, appropriate fire exits, reliable and safe transportation and, as concerns your constituent, proper storage of firearms and ammunition. It requires that to be certified for approval as a foster home, a foster family must provide the department with a copy of a concealed weapons permit possessed by any member of the household and a "[w]ritten plan to keep concealed weapons secure from a child or young adult in the care or custody of the [d]epartment when in the home or in vehicles when transporting a child or young adult."

ORS 166.170 prohibits the regulation of firearms by local governments. You have requested an opinion on the validity of proposed OAR 413-200-0335 and whether it conflicts with ORS 166.170.

In our opinion, OAR 413-200-0335 is within the department's authority and does not conflict with ORS 166.170.


The proposed rule does not regulate the possession of firearms. Instead, it establishes minimum safety requirements for certification of a foster home. No person has a right to be a foster parent, but instead must be certified by the department, which is charged with protecting "the best interests of children in foster homes." ORS 418.640 (1). The department has the authority and the obligation to establish reasonable conditions for foster homes to ensure the safety of the children. The proposed rule appears to fall well within that authority.

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 
Lorey H. Freeman
Deputy Legislative Counsel

Encl.