



STATE OF OREGON
LEGISLATIVE COUNSEL COMMITTEE

March 15, 2004

Representative Wayne Scott
House Majority Leader
P.O. Box 664
Canby, Oregon 97013

Re: Authority of Port of Portland to regulate firearm possession

Dear Representative Scott:

You ask whether the Port of Portland has the authority to enact regulations prohibiting a person from carrying a firearm in the terminal at Portland International Airport.

The short answer is no.

Discussion

In 1995 and 1997, the legislature enacted a series of statutes that vested solely in the Legislative Assembly the authority to regulate matters relating to firearms, while granting limited authority to counties and cities to regulate very specific aspects of firearm use and possession. See ORS 166.170 to 166.176. The statute of primary importance to your inquiry is ORS 166.170.

ORS 174.020 (1)(a) provides that "[i]n the construction of a statute, a court shall pursue the intention of the legislature if possible." The Oregon Supreme Court, in Portland General Electric v. Bureau of Labor and Industries, 317 Or. 606 (1993), set out a three-level process to analyze a statute to determine legislative intent. The first level of analysis is to examine the text and context of a statute. Id. at 610. The starting point for the first level is the text of the specific statutory provision because it "is the best evidence of the legislature's intent." Id.

In attempting to determine the meaning of the statutory provision, the court may also consider rules of statutory construction that directly relate to how to read the text. These rules may be found in statutes or in case law. Id. at 611. In addition, the court may, at this first level, examine the context of the statute including related statutes. Id.

Under Portland General Electric, if one can determine the legislature's intent from the analysis described above, no further inquiry is necessary or allowed. Only if the intent remains unclear after the first level can one move to the second level of analysis, which is consideration of the legislative history of the statutory provision.¹ Id. at 611-612; Young v. State, 161 Or. App.

¹ In 2001, the Legislative Assembly amended ORS 174.020 to expressly allow parties to offer legislative history to "assist a court in its construction of a statute." ORS 174.020 (1)(b). The amendments further provided that the court could limit consideration of legislative history to information provided by the parties and directed courts to "give the weight to the legislative history that the court considers to be appropriate." ORS 174.020 (3). It is not clear if the effect of the 2001 amendments is to allow courts to consider legislative history at the first level of analysis under Portland General Electric. See Smith v. Salem-Keizer School District and Fair Dismissal Appeals Board, 188 Or. App. 237, 245 (2003) and Stevens v. Czerniak, 336 Or. 392, n.12 (2004).

32, 37-38 (1999). The third and final level of analysis, which can be reached only after going through the first two levels, is consideration of general maxims of statutory construction. Portland General Electric at 612.

Using the framework for statutory construction set out in Portland General Electric to determine what the legislature intended in enacting ORS 166.170, we begin by looking at the text of the statute itself. ORS 166.170 provides:

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

By its plain terms, subsection (1) of the statute vests exclusively in the Legislative Assembly the authority to regulate all of the listed activities and things related to firearms. Subsection (2) of the statute goes on to specifically prohibit counties, cities and other municipal corporations and districts from enacting civil or criminal ordinances regulating the same activities and things related to firearms. The only exception to the preemption of subsection (1) and the prohibition in subsection (2) is through express authorization by state statute. For authority to be express it must be explicitly stated that the entity can exercise some sort of regulatory authority over firearms. Therefore, unless there is a statute that explicitly says that some entity may regulate firearms in some manner, it may not do so.

ORS 166.171 to 166.176 are examples of such express grants of authority. ORS 166.173 authorizes cities and counties to adopt ordinances to regulate the possession of loaded firearms in public places. The statute also provides that such an ordinance does not apply to or affect certain listed persons, including a person licensed to carry a concealed handgun.

For purposes of your inquiry, one should note that ORS 166.170 (2) specifically includes districts within its prohibition. It is also important to note that the express authority granted by

ORS 174.020 provides:

174.020. (1)(a) In the construction of a statute, a court shall pursue the intention of the legislature if possible.

(b) To assist a court in its construction of a statute, a party may offer the legislative history of the statute.

(2) When a general and particular provision are inconsistent, the latter is paramount to the former so that a particular intent controls a general intent that is inconsistent with the particular intent.

(3) A court may limit its consideration of legislative history to the information that the parties provide to the court. A court shall give the weight to the legislative history that the court considers to be appropriate.

ORS 166.173 to regulate possession of loaded firearms in public places is given only to cities and counties and not to districts.

The Port of Portland is a district. ORS 778.010 provides that "[t]he Portland metropolitan area is a separate district, to be known as the Port of Portland. . . ." Because "district" is not defined for purposes of ORS 166.170, the term must be given its ordinary meaning and would include the Port of Portland.

Although the Port of Portland is given general authority to make regulations "to provide for policing or regulating the use of airports, and any facilities located at or in conjunction with airports, owned, operated, maintained or controlled by the port," ORS 778.260, the statute does not contain express authority to regulate firearms. ORS 778.260 does not mention firearms. At best, one could argue that such authority could be implied from the statute; however, implied authority is not express authority and therefore is not sufficient under ORS 166.170.

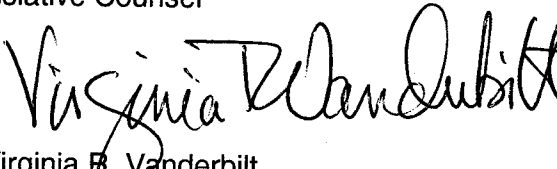
Because the port lacks the express statutory authority to regulate firearms required by ORS 166.170 (1), it may not enact regulations prohibiting a person from carrying a firearm at Portland International Airport.

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,

GREGORY A. CHAIMOV
Legislative Counsel

By


Virginia R. Vanderbilt
Senior Deputy Legislative Counsel