

IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR JACKSON COUNTY

SHIRLEY KATZ,)	
)	
Plaintiff,)	No. 07-3765-E-2
)	
v.)	ORDER ON MOTION FOR
)	PRELIMINARY INJUNCTION
MEDFORD SCHOOL DISTRICT 549C,)	
)	
Defendant.)	
_____)	

Plaintiff Shirley Katz is a teacher in Medford School District 549C (District). The District has a policy which prohibits employees, district contractors and/or their employees and district volunteers from possessing dangerous or deadly weapons or firearms on District property or at school sponsored events. Plaintiff possesses a valid license to carry a concealed handgun and asserts she is entitled to carry, and will carry, her handgun while at work on District property. Mr. Dan Zaklan, from the District's Human Resource Department, has warned Ms. Katz if she brings a weapon onto campus the District policy will be enforced and she will be disciplined, which discipline could result in dismissal from employment. By previous order this Court has found these facts state a justiciable controversy.

Plaintiff alleges the District's policy prohibiting the carrying of weapons violates provisions of the Oregon Constitution and the United States Constitution and Oregon Revised Statutes 166.170. In this motion Plaintiff relies on the State statute as a basis

for granting a preliminary injunction prohibiting the District from enforcing its policy against her.

The District asserts the policy is a valid employment policy which is not prohibited by the statute.

In the pleadings, and at oral argument several other issues were mentioned by the parties. Plaintiff's personal problems are not a factor in deciding the case. Likewise, the wisdom of the District's policy is not a factor in the case, nor are the potential problems which might arise if the statute prohibits the policy. The issue before this Court is whether or not the State statute prohibits the District from having its policy which prohibits the carrying of weapons by those persons mentioned in the policy.

ORS 166.170 reads:

State preemption. (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.

At oral argument Plaintiff asserted section 1 should be read by itself to exclude any action that affects any aspect of firearms as described in that section. Plaintiff's view contradicts the accepted manner in which a statute should be read. It is necessary to read both sections together to understand both the intent of the legislature and the manner in which that intent is carried out. For instance, section 2, as it implements

section 1, does not make actions prohibiting firearms criminal; rather it prohibits the enactment of civil or criminal ordinances. The Court must look to “the statute as a whole to determine what meaning the legislature intended.” *Sunflower v. Bladorn*, 168 Or. App. 206, 208, 1 P3d 513 (2000), *rev den*, 331 Or 283, 28 P3d 1174 (2000); *Mitchell v. City of St. Paul*, 178 Or App 312, 317-318, 36 P3d 513 (2001), *rev den*, 334 Or 76, 45 P3d 450 (2002) (courts must “interpret statutes so as to give each part meaning” and must not “render part of the statute superfluous” by interpreting one part so broadly that another part “would add nothing.”)

“In interpreting a statute, the court’s task is to discern the intent of the legislature.” *PGE v. Bureau of Labor and Industries*, 317 Or 606, 610, 859 P2d 1143 (1993).

If a statute is clear on its face, a court must use the literal words of the statute to define its meaning. Here, the word “ordinance” is not defined by the statute and is not defined anywhere in the Oregon statutes or case law. Because the word is not defined the Court must look to extraneous sources to seek a definition, including the legislative history when necessary.

When a statute does not define a term, a court must apply an ordinary meaning of that term. *Perez v. State Farm Mutual Insurance Co.*, 289 Or 295, 299, 613 P3d 32 (1980). Since 1965, when looking to determine the ordinary meaning of a word or words, the Oregon Appellate Courts have consulted *Webster’s Third New International*

Dictionary (Webster's) approximately 288 times and *Black's Law Dictionary (Black's)* approximately 219 times. In some cases both dictionaries were consulted.

The parties in this case refer this Court to both *Webster's* and *Black's*. *Webster's* defines ordinance as follows:

1 a : an authoritative decree or direction : ORDER <our swift ordinances on their way over the whole earth Walt Whitman> b : a public enactment, rule, or law promulgated by governmental authority: as (1) : one of a number of laws or regulations issued at various periods of English history without the assent of one of the three powers (Crown, House of Lords, and House of Commons) necessary to an act of Parliament (2) : a regulation or decree promulgated in Great Britain by any authority less than the sovereign enacting power (3) : any of several acts of the United States Congress under the Articles of Confederation (4) : a local law or regulation enacted by a city council or other similar body under powers delegated to it by the state.

2 a : the act or an instance of ordering or arranging : DIRECTION, DISPENSATION, CONTROL <insistence upon a higher and rational ordinance throughout the world G.G.Coulton> b : something ordained or decreed by fate or a deity : a decree or disposition of divine or providential origin <an ordinance of the Christian God G.F.Hudson> c obsolete : ordained or appointed place or condition.

3 a : established rule, policy, or practice <a positive ordinance T that there should be no sketching until lessons were done Arnold Bennett> b : an established and fully authoritative religious ceremony, rite, or usage that is not considered a sacrament synonyms see LAW

Black's Law Dictionary, Sixth Edition (1990) defines ordinance as:

A rule established by authority; a permanent rule of action; a law or statute. In its most common meaning, the term is used to designate the enactments of the legislative body of a municipal corporation. It designates a local law of a municipal corporation. It designates a local law of a municipal corporation, duly enacted by the proper authorities, prescribing general, uniform, and permanent rules of conduct relating to the corporate affairs of the municipality. * * * An ordinance is the equivalent of a municipal statute, passed by the city council, or equivalent body, and governing matters not already covered by federal or state law. Ordinances commonly govern zoning, building, safety, etc. matters of municipality.

Plaintiff asserts the word “ordinance” in ORS 166.170 includes the term “policy” as noted above in the *Webster’s* definition at Subsection 3a. Defendant asserts the definition contained in *Black’s* is the appropriate definition of this legal term.

Plaintiff’s chosen definition of “ordinance” in *Webster’s* which includes the term “policy” came from a quotation by Arnold Bennett, a British novelist who lived from 1867 to 1931. This definition of “ordinance” attributed to Mr. Bennett appears to be a less fitting definition than the more common one in *Webster’s*, “a public enactment rule, or law promulgated by governmental authority” “When using dictionary definitions, usually, the most sensible meaning...is found in...[the] primary dictionary definition.” *State v. Couch*, 341 Or 610, 618, 147 P3d 322 (2006).

“[W]ords of common usage typically should be given their plain, natural, and ordinary meaning.” *PGE*, 317 Or at 611. The definition contained in *Black’s* is the commonly understood definition. “In its most common meaning, the term is used to designate the enactments of the legislative body of a municipal corporation.”

Here, of course, the District is not a municipal corporation; it is a school district. Assuming the word “district” in ORS 166.170(2) includes a school district,¹ the Court must analyze whether the above stated meaning of “ordinance” will fit ORS 166.170. In other words, can a district pass an ordinance? If it cannot, then the term “ordinance” must have some broader meaning than that used in *Black’s*.

¹ The District argues it is not a “district” as that word is used in ORS 166.170(2). It is not necessary to decide that question.

In *Wilson v. Tri-County Metropolitan Transportation District of Oregon*, 343 Or 1, 161 P3d 933 (2007) the transportation district (Tri Met) had passed an ordinance dealing with uninsured motorist coverage. *Id.* at 3. Clearly, some districts can and do pass ordinances. ORS 166.170(2) is intended to apply to ordinances passed by counties, cities, municipal corporations and districts.

In this case, it is clear the District's prohibition on weapons is contained in a school board employee policy, and is not an ordinance. By the very words of the statute, ORS 166.170(2) does not apply to school board policies. "In the construction of a statute, the office of the judge is simply to ascertain and declare what is, in terms or in substance, contained therein, not to insert what has been omitted, or to omit what has been inserted... ." ORS 174.010. Plaintiff's effort to insert another term, "employment policies," in the statute is inappropriate.

Further analysis shows the legislature uses the word "policy" when it intends to refer to a policy and if the legislature is addressing both policies and ordinances, it clearly states both. For instance, when addressing building inspection programs of a municipality, the legislature referred to "the policies and ordinances" ORS 455.469. When addressing matters of local laws singling out persons on account of sexual orientation, the legislature prohibited said laws whether contained in a "charter provision, ordinance, resolution or policy" ORS 659.870. See similar provisions in ORS 757.649, 196.684, and 215.402 in which the legislature uses both "ordinance" and "policy" in statutes.

When the legislature means “ordinances” and “policies,” it uses those terms separately and does not include the term “policy” within the definition of “ordinance”. In ORS 166.170 the legislature used only the word “ordinance,” and did not mention employment policies.

This Court finds the legislature intended the word “ordinance” in ORS 166.170(2) to have “its most common meaning ... the enactments of the legislative body of a municipal corporation” and of counties and in those districts which enact ordinances. *Black’s Law Dictionary, Sixth Edition (1990)*.

This reading of the statute is consistent with the legislative history which demonstrates the purpose of the statute was to have uniform laws around the state. While consulting legislative history is not necessary in this case, it confirms the Court’s conclusion about the meaning of the statute. See *State v. Trenary*, 316 Or 172, 178 n 5, 850 P2d 356 (1993). For instance, Representative Tiernan, a sponsor of ORS 166.170 stated, “We need to have one rule so that people can carry their weapon with the insurance that they won’t violate different jurisdiction laws.” (March 23, 1995 public hearing on HB 2784).

The District policy applies to only employees and others working for the District. The policy is known to those persons in advance. They accept their jobs subject to, and knowing, the policy.

ORS 166.170 does not prohibit the District from enacting the challenged employment policy. The District has the right to enforce its policy. Plaintiff's motion for preliminary injunction is denied.

SO ORDERED.

DATED: November 9, 2007.

/s/ G. PHILIP ARNOLD
G. Philip Arnold, Circuit Judge

cc: James E. Leuenberger
Timothy Gerking