

IN THE COURT OF APPEALS OF THE STATE OF OREGON

JANE DOE,

Plaintiff-Appellant,

v.

MEDFORD SCHOOL DISTRICT 549C,

Defendant-Respondent.

Jackson County Circuit Court No. 07-3765-E2

CA A137804

**APPELLANTS' BRIEF AND EXCERPT
OF RECORD**

**On Appeal from the General Final Judgment Entered December 14, 2007,
by the Honorable G. Philip Arnold in the Jackson County Circuit Court**

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Statement of the Case

Nature of the Proceeding

This appeal is from the General Final Judgment Entered December 14, 2007. The General Final Judgment was entered after a hearing on Shirley Katz's (hereafter, "Teacher") Motion for Preliminary Injunction.

The issue at the circuit court was: does ORS 166.170 preempt and make void Medford School District 549C's (hereafter, "District") Policy GBJ? ORS 166.170 says the State of Oregon, not its political subdivisions, is authorized and empowered to regulate firearms. District Policy GBJ purports to prohibit District employees from possessing firearms while engaged in District activities or while on District property.

Nature of the Judgment

The General Final Judgment is an appealable judgment.

Statutory Basis for Appellate Jurisdiction

Appellate jurisdiction lies in this court under ORS 19.205 and 19.255.

Facts Relevant to Appellate Jurisdiction

The General Final Judgment was entered December 14, 2007. Notice of Appeal was filed January 10, 2008.

Question Presented on Appeal

Does ORS 166.170 preempt and make void District Policy GBJ?

Summary of Argument

ORS 166.170 preempts and makes void District Policy GBJ.

Facts Material to Determination of Appeal

Teacher is an employee of District. Amended Complaint paragraph 1. The Jackson County Sheriff issued Teacher a concealed handgun license. Amended Complaint paragraph 2. Teacher sought a declaratory judgment

that District Policy GBJ is void and a preliminary injunction prohibiting the District from enforcing its Policy GBJ as to her.

Assignment of Error

ORS 166.170 preempts and makes void District Policy GBJ.

A. Preservation of Error

Teacher's Amended Complaint requests a judicial declaration that District Policy GBJ is void.

B. Standard of Review

De novo. Teacher is seeking a judicial declaration of the meaning of ORS 166.170 and the invalidity of District Policy GBJ. Legislative interpretations are done *de novo*.

Argument

ORS 166.170 reads:

“(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.*” (Emphasis added.)

District promulgated its policy GBJ which reads, in part:

“Employees ... shall not possess a ... firearm on district property or at school sponsored events. This prohibition includes those who may otherwise be permitted by law to carry such weapons.

....

“Employees in violation of this policy will be subject to discipline up to and including dismissal.... A referral to law enforcement may be made.”

District Policy GBJ is reproduced in full at ER - 4.

Statutory interpretation is guided by *PGE v. BOLI*, 317 Or 606 (1993). “In interpreting a statute, the court’s task is to discern the intent of the legislature To do that, the court examines both the text and the context of the statute.” *Id.*, 317 Or at 610.

The text of ORS 160.170(1) is clear. The Legislative Assembly defines and determines firearms law in Oregon. No other body of the state – state department or political subdivision – is allowed to “regulate in any manner whatsoever ... ownership, possession, transportation or use of firearms” unless “expressly authorized by state statute.”

No state statute authorizes District to restrict firearms ownership, possession, transportation or use of firearms.

District Policy GBJ is *ultra vires*.

The text of ORS 160.170(2) is clear. No “district” “may enact civil or criminal ordinances, including but not limited to zoning ordinances, to regulate, restrict or prohibit the ... ownership, possession, storage, transportation or use of firearms” “except as expressly authorized by state statute.”

District is a district.

District Policy GBJ is an ordinance¹ that purports to limit “ownership, possession, storage, transportation or use of firearms.”

No state statute authorizes District to limit “ownership, possession, storage, transportation or use of firearms.”

District Policy GBJ is, in the word of ORS 166.170(2), void.

The context in which 166.170 exists is ORS 166.173 and ORS 166.174.

¹ In the Circuit Court, District argued that its Policy GBJ is not an ordinance because it is a policy. The District has never explained or demonstrated why policies in general are not ordinances or why its Policy GBJ, in particular, is not an ordinance. “Policy” and “ordinance” are synonymous.

ORS 166.173 authorizes cities and counties, but not districts, to adopt ordinances to regulate possession of firearms. ORS 166.173 forbids cities and counties from adopting ordinances that regulate possession of firearms by persons licensed to carry a concealed handgun.

ORS 166.174 forbids districts from adopting ordinances that regulate possession of firearms in public buildings that are rented or leased.

The context provided by ORS 166.173 and 166.174 demonstrates that the Legislative Assembly jealously guards its power to regulate firearms possession and the statutorily granted power of concealed handgun licensees to carry firearms in public buildings.

The Legislative Assembly has spoken. Its word is final. The District does not have the power to promulgate Policy GBJ. Policy GBJ is void.

Conclusion

This Court should declare that District Policy GBJ is, pursuant to ORS 166.170, void.

Respectfully submitted this 19th day of March 2008.

JAMES E. LEUENBERGER PC

James E. Leuenberger OSB 89154
Attorney for Appellant

Certificates of Service and True Copy

I hereby certify that, on the above-stated date, I served two true copies of this brief by First Class, postage-paid, US Mail on the opposing party's attorney at the address listed on the front cover of this brief. If my signature appears below on a service copy, it shall signify that I certify the copy to be a true and complete copy of the original filed with the court.

James E. Leuenberger

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Amended Complaint ER -1-4

1 2007. Defendant’s agents confronted plaintiff about her concealed handgun license, demanded
2 that she not carry a concealed handgun with her on defendant’s property or while engaged in
3 work for defendant. Defendant’s agent, Dan Zaklan, confirmed their oral demands by a memo
4 dated June 6, 2007, a true copy of which is marked “Exhibit A,” is attached hereto, and made a
5 part hereof.

6 **6**

7 Defendant has promulgated School Board Policy policy code: GBJ, a true copy of which is
8 marked “Exhibit B,” is attached hereto, and made a part hereof.

9 **7**

10 Pursuant to ORS 166.170(2), School Board Policy policy code: GBJ is void because it
11 purports to regulate, restrict or prohibit the possession, transportation or use of firearms.

12 **Prayer**

13 Plaintiff prays for declaratory judgment holding that defendant’s School Board Policy policy
14 code: GBJ is void.

15 Plaintiff prays for a permanent injunction prohibiting defendant from regulating, restricting,
16 or prohibiting her possession, transportation, or use of a firearm for as long as defendant has a
17 valid concealed handgun license.

18 Plaintiff prays for costs pursuant to ORS 28.100, including attorney fees pursuant to ORS
19 28.100 and *Deras v. Myers*, 272 Or 47, 66, 535 P2d 541 (1975).

20 DATED: October 5, 2007.

JAMES E. LEUENBERGER PC

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22 James E. Leuenberger OSB 89154
23 Attorney for plaintiff
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Medford School District 549C
Human Resource Department
500 Monroe Street
Medford OR 97501
(541) 842-3625
FAX (541) 842-1089

MEMO

DATE: June 6, 2007
TO: Shirley Katz
FROM: Dan Zaklan
RE: Possession of a Weapon on School Sites

We recently discussed whether you had carried a weapon, specifically a firearm, on school campuses or at school activities in violation of School Board Policy G.BJ (Weapons in Schools). During our conversation, you denied ever bringing a weapon on campus and agreed that you would follow board policy in the future.

It is important that you abide by this School Board Policy and, as I expressed in our meeting, your failure to abide by board policy will result in disciplinary action up to dismissal from employment. Furthermore, I am directing you to conduct yourself in such a manner that does not lead students and staff to believe that you are carrying or in possession or control of a firearm in your vehicle or on your person on school campus or any site where a school activity is being held. You should be aware that if we have reasonable cause to believe that you are in possession or in control of a weapon we will have the police conduct a search for the weapon.

We understand your disagreement with the policy because of your concealed weapons permit; however it is our expectation that you abide fully with district policies and procedures regardless of your personal feelings toward those policies and procedures.

Should you have questions regarding this matter please feel free to contact me at 842-3625.

cc: Tim Gerking
Kevin Campbell
Robert Young

School Board Policy

Jackson County School District 549C
Medford, Oregon

POLICY CODE: GBJ

WEAPONS IN SCHOOLS - STAFF

Employees, district contractors and/or their employees and district volunteers shall not possess a dangerous or deadly weapon or firearm on district property or at school-sponsored events. This prohibition includes those who may otherwise be permitted by law to carry such weapons.

For purposes of this policy, and as defined by state and federal law, weapon includes:

1. "Dangerous weapon" - any weapon, device, instrument, material or substance, which under the circumstances in which it is used, attempted to be used or threatened to be used is readily capable of causing death or serious physical injury;
2. "Deadly weapon" - any instrument, article or substance specifically designed for and presently capable of causing death or serious physical injury;
3. "Firearm" - any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive, frame or receiver of any such weapon, any firearm silencer or any other destructive device including any explosive, incendiary or poisonous gas.

Weapons under the control of law enforcement personnel are permitted.

The superintendent will ensure notice of this policy is provided.

Employees in violation of this policy will be subject to discipline up to and including dismissal. Individuals contracting with the district and volunteers will be subject to appropriate sanctions. A referral to law enforcement may be made.

Legal Refs:

ORS 161.015
ORS 166.210 - 166.370
ORS 332.107 Gun-Free School Zones Act of 1990, 18 U.S.C. Sections 921(a) (25), (26) and 922(q); as amended by P.L. 104-208, Section 101(f) (1996) and P.L. 103-322, Section 320904 (1994).

Adopted: 02/15/05