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May 25, 2010

Lisa Settell, Chapter President, Executive President
Federation of Oregon Parole &
Probation Officers
615 East 6th Street
McMinnville, Oregon 97128

Re: Possession of Weapons and Concealed Weapons Permits

Dear Lisa:

This firm has been requested to provide a legal opinion relating to the carrying of firearms by parole and probation officers, and to answer the question of whether or not parole and probation officers are required to get a concealed weapons permit to carry a concealed firearm.

To answer that question, one must delineate between off duty and on duty, and the location where the weapon is carried. To begin with off duty, open carry is still unregulated by the State of Oregon. That is, as a citizen of this State, you can carry a sidearm or rifle in public (subject to any local ordinance) as long as the weapon is openly displayed. ORS 166.250(3). The criminal sanctions by statute apply to carrying a weapon in a concealed manner (or a vehicle), and the location of where the weapon is carried. See ORS 166.250 and ORS 166.370.

The employer (subject to collective bargaining), has the right to restrict the possession of weapons in the work place. That action is not prohibited by statute. For parole and probation officers ORS 166.263 codifies that right. That statute provides:

When authorized by the officer's employer, a parole and probation officer, as defined in ORS 181.610, may carry a firearm while engaged in official duties if the officer has:

- (1) A firearms training program recognized by the Board on Public Safety and Standards Training; and
- (2) A psychological screening.

This then brings us to the question of whether a concealed weapons permit is required to carry off duty. The simple answer is no. ORS 166.250 prohibits the carrying of a concealed weapon.

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ORS 166.260 provides: (1) ORS 166.250 does not apply to or affect:

- (a) Sheriffs, constables, marshals, parole and probation officers, police officers, whether active or honorably retired, or other duly appointed peace officers.

Therefore, a parole and probation officer carrying a concealed weapon off duty cannot be prosecuted for that crime. Unfortunately, the inquiry does not end there. ORS 166.370 prohibits the possession of a loaded or unloaded firearm while in or on the grounds of a public building.

The individuals who are exempt from that statute are duly appointed peace officers while acting in the scope of their employment, persons with a concealed weapons permit, and persons who have been authorized by the officer or agency that controls the public building.

Given that ORS 137.620 gives a parole and probation officer peace officer status only in the performance of their duties, it is clear that a parole and probation officer may not possess a weapon in a public building while off duty without a concealed weapons permit.

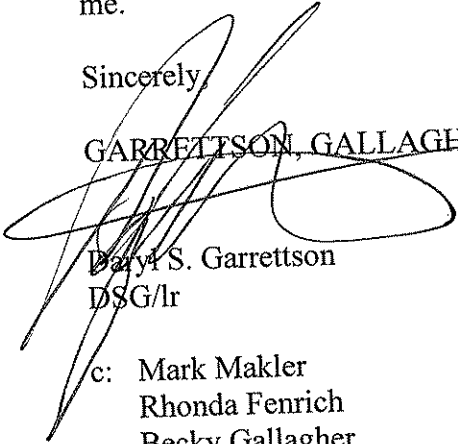
A public building as defined in ORS 166.360(4) to mean a hospital, a capitol building, a public or private school, a college or university, a city hall or the residence of any state official elected by the state at large, and the grounds adjacent to each such building. It also includes any other building occupied by an agency of the state or a municipal corporation.

Finally, we have the issue of possession of a weapon in a court facility. ORS 166.373 specifically provides that a peace officer as defined in ORS 161.015 may possess a weapon in a court facility if the individual is acting in their official capacity. Therefore, regardless of the peace officer status, a parole and probation officer may not possess a weapon in a court facility off duty unless authorized by the presiding judge. The question of whether or not the individual has a concealed weapons permit, is not applicable to a court facility.

I hope this opinion is of some assistance. If you have any questions, please feel free to contact me.

Sincerely,

~~GARRETTSON, GALLAGHER, FENRICH & MAKLER, P.C.~~



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