

AG Opinion 2001-2

The Honorable L. Alma (Al) Mansell
President of the Senate
The Honorable Martin R. Stephens
Speaker of the House of Representatives

Re: Your request regarding the Legality of Department of Human Resource Management Rule 477-9-1(5) pertaining to firearms.

Gentlemen:

By letter dated October 26, 2001 you requested a formal written opinion from me on whether the Department of Human Resource Management's rule 477-9-1(5) prohibiting state employees from carrying firearms "in any facility owned or operated by the state, or in any state vehicle, or at any time or any place while on state business" is contrary to Utah law. ⁽¹⁾ This opinion responds to that specific request.

Background of Utah's Laws Concerning Firearms

Article I section 6 of the Utah Constitution clearly recognizes the "individual right of the people to keep and bear arms for security and defense of self, family, others, property, or the state, as well as for other lawful purposes," but also provides the Legislature with the authority to define the "lawful use of arms." ⁽²⁾ U.C.A. § 76-10-500 affirms this constitutional limitation of authority as a function of the Legislature in order to "provide uniform laws throughout the state" and protect this constitutional right. ⁽³⁾ Subsection (2) of that statute declares, "[a]ll authority to regulate firearms shall be reserved to the state except where the Legislature specifically delegates responsibility to local authorities or state entities. Unless specifically authorized by the Legislature by statute, a local authority or state entity may not enact or enforce any ordinance, regulation, or rule pertaining to firearms." [emphasis added.]

The Legislature has only provided specific statutory authorization to regulate firearms under prescribed limitations to the following entities: municipalities, ⁽⁴⁾ mental health facilities, law enforcement facilities, correctional facilities, ⁽⁵⁾ the Olympic Public Safety Commander, ⁽⁶⁾ airports, ⁽⁷⁾ courts, ⁽⁸⁾ houses of worship, private residences, ⁽⁹⁾ inns, ⁽¹⁰⁾ elementary and secondary schools, ⁽¹¹⁾ buses and bus terminals. ⁽¹²⁾ Because the Legislature has provided such limited statutory authorization to regulate firearms to only a few entities, all other ordinances, regulations, and rules pertaining to firearms that are promulgated by any other local authorities or state entities would be illegally promulgated. ⁽¹³⁾

The Department of Human Resource Management's Rule

The Legislature has provided that the Department of Human Resource Management "shall establish a career service system" that provides for "recruiting, selecting, and advancing employees . . . equitable and competitive compensation . . . training employees as needed to assure high-quality performance . . . [and] retaining employees on the basis of the adequacy of their performance." U.C.A. § 67-19-3.1. Since the Legislature has not specifically delegated the authority to enact or enforce ordinances, regulations or rules pertaining to firearms to the Department of Human Resource Management, the only issue is whether U.A.C. R 477-9-1(5) pertains to firearms. By its own terms it does. Consequently, the rule is not only unenforceable, it is also null and void because it has been promulgated in direct contravention of a statutory provision forbidding such a rule. It is my understanding that based on a similar informal opinion provided to the Governor's Office on October 22, 2001, DHRM is currently in the process of rescinding the rule by January 1, 2002.
Sincerely

MARK SHURTLEFF
Attorney General

¹ U.A.C. Rule 477-9-1. The full text reads:
Administration--Employee Conduct--Standards of Conduct.

. . .
5) Employees shall not carry firearms in any facility owned or operated by the state, or in any state vehicle, or at any time or any place while on state business.
(a) This rule shall not apply to sworn officers as defined by Section 53-13-103, or employees whose assigned duties require them to use a firearm.
(b) Employees who violate this rule shall be subject to disciplinary action pursuant to R477-11.

² Ut. Const. art. I § 6 The text of the provision reads: The individual right of the people to keep and bear arms for security and defense of self, family, others, property, or the state, as well as for other lawful purposes shall not be infringed; but nothing herein shall prevent the legislature from defining the lawful use of arms.

³ U.C.A. § 76-10-500 provides: (1) The individual right to keep and bear arms being a constitutionally protected right, the Legislature finds the need to provide uniform laws throughout the state. Except as specifically provided by state law, a citizen of the United States or a lawfully admitted alien shall not be:

(a) prohibited from owning, possessing, purchasing, selling, transferring, transporting, or keeping any firearm at his place of residence, property, business, or in any vehicle lawfully in his possession or lawfully under his control; or

(b) required to have a permit or license to purchase, own, possess, transport, or keep a firearm.

(2) This part is uniformly applicable throughout this state and in all its political subdivisions and municipalities. All authority to regulate firearms shall be reserved to the state except where the Legislature specifically delegates responsibility to local authorities or state entities. Unless specifically authorized by the Legislature by statute, a local authority or state entity may not enact or enforce any ordinance, regulation, or rule pertaining to firearms.

⁴. In U.C.A. § 10-8-47, the legislature has authorized municipalities to "regulate and prevent the discharge of firearms, rockets, powder, fireworks or any other dangerous or combustible material." [Emphasis added.] U.C.A. § 10-8-94 grants towns the same authority as cities, but prohibits towns from attempting "to regulate an area which by the nature of the subject requires uniform state regulation."

⁵. The Legislature, in U.C.A. § 76-8-311.1 (2), has specifically delegated authority to correctional, law enforcement, and mental health facilities wherein they "may establish secure areas within the facility and may prohibit or control by rule any firearm." [Emphasis added.]

⁶. The Legislature, in U.C.A. § 53-12-301.1 (2)(a), has specifically delegated to the Olympic law enforcement commander the authority to establish rules "designating the locations of secure areas within Olympic venues where a firearm . . . is prohibited between January 25, 2002, and April 1, 2002."

⁷. The Legislature, in U.C.A. § 76-10-529, has specifically authorized an "airport authority, county or municipality regulating the airport" to establish a secure area where firearms are prohibited. In addition, the airport authority, county or municipality regulating the airport may use "reasonable means . . . to detect . . . firearms" and shall provide notice at the entrance of each secure area that firearms are prohibited.

⁸. The Legislature, in U.C.A. § 78-7-6, has specifically authorized the judicial council to "provide, through the rules of judicial administration, for security in or about the courthouse or courtroom, or establish a secure area" where a person may not possess a firearm unless authorized by the rules of judicial administration. In addition, the court may also prohibit an abusive cohabitant under protective order (U.C.A. § 30-6-4.2), a person convicted of domestic violence (U.C.A. § 77-36-5.1), or a defendant whose conviction is on appeal, while on bail (U.C.A. § 77-20-10), from possessing a firearm.

⁹. The Legislature, in U.C.A. § 76-10-530, has specifically delegated the authority to religious organizations operating a house of worship or an owner, lessee, or person with lawful right of possession of a private residence to post signs prohibiting firearms or communicate the prohibition directly to a person transporting a firearm so that the person in possession of a firearm may not enter or remain in a house of worship or private residence with his or her firearm.

¹⁰. The Legislature, in U.C.A. § 29-2-103 (1), has specifically delegated the authority to innkeepers wherein they may "refuse or deny accommodations, facilities, or privileges of a lodging establishment to any person who is "in the reasonable belief of the innkeeper, bringing in property that may be dangerous to other persons, including firearms." [Emphasis added.] A "lodging establishment" is defined as a place providing temporary sleeping accommodations to the public, including: a bed and breakfast establishment, a boarding house, a hotel, an inn a lodging house, a motel, a resort, or a rooming house.

¹¹. The Legislature, in U.C.A. §§ 76-10-505.5(1) and 76-3-203.2(1), has prohibited the possession of firearms "on or about school premises" or within 1,000 feet of school grounds. Section 76-3-203.2(1) defines "school premises" as public or private elementary, secondary, *vocational or postsecondary* school. This prohibition does not apply to concealed firearm permit holders. U.C.A. §76-10-505.5(3). However, the Legislature, in U.C.A. § 53A-3-502(2), has delegated authority to "the responsible school administrator" to approve the possession of firearms but only at public or private elementary and secondary school premises. These schools may approve a lawful activity where firearms are present and to be used in connection with the activity. Consequently, since the legislature has only authorized elementary and secondary school administrators to approve the possession of firearms, postsecondary schools, such as universities, and vocational schools have not been delegated authority to approve possession of firearms on their campuses.

¹². The Legislature, in U.C.A. § 76-10-1504 and § 76-10-1507, has prohibited the possession of firearms aboard buses or in bus terminals. In § 1504, the legislature made it a second degree felony for a person to board a bus while carrying a concealed dangerous weapon, but the legislature has provided an exception for "a person licensed to carry a concealed weapon." However in § 1507 the legislature has made it a third degree felony for a person to carry a firearm into a bus terminal or aboard a bus and there is no exception for a concealed weapon permit holder. In 76-10-1507, the Legislature has authorized the bus company to "employ reasonable means, including mechanical, electronic or x-ray devices to detect [a firearm] concealed in baggage or upon the person of any passenger. Upon the discovery of any [firearm], the company may obtain possession and retain custody thereof until it is transferred to a peace officer."

¹³. The administrative rule that is the subject of your inquiry, R 477-9-1(5) may not be the only rule that has been promulgated without authorization from the Legislature. For instance, your letter requesting this opinion had as an attachment, Formal Opinion No. 98-01 from the Office of Legislative Research and General Counsel. That opinion concludes that the University of Utah's policy prohibiting students and faculty from possessing firearms on University premises was contrary to law. [As of this date, those policies are still listed in the University of Utah Policy and Procedures Manual: Policy: 8-10, Rev. 3, July 14, 1997 and Policy 2-9, Rev. 7, July 13, 1998 Section IV Subsection F.] I agree with the

reasoning and conclusions of the Legislative General Counsel that those policies are unlawful and in violation of the laws of this State.