



STATE OF OREGON
LEGISLATIVE COUNSEL COMMITTEE

April 13, 2007

Representative Jerry Krummel
900 Court Street NE H281
Salem OR 97301

Re: Foster Parents and Concealed Weapons

Dear Representative Krummel:

You have asked this office whether the Department of Human Services (DHS) may adopt a proposed administrative rule, OAR 413-200-0335, as finally issued March 20, 2007. We conclude that it may not.

The proposed rule would provide certification standards for foster parents, relative caregivers and preadoptive parents regarding the home environment. The standards relate to many aspects of health and safety, but the particular provisions at issue prescribe conditions for the storage and carrying of firearms and ammunition and for the carrying of concealed weapons. You ask whether these DHS proposed rules—or any others relating to firearms—would be valid in light of ORS 166.170. That statute generally vests authority to regulate matters relating to firearms solely in the Legislative Assembly, except as expressly authorized by state statute.

Clearly, the proposed rule falls within the broad grant of rulemaking authority found in ORS 418.640. That statute requires the department to “adopt such rules, not inconsistent with ORS 418.625 to 418.645, as it deems necessary or advisable to protect the best interests of children in foster homes[.]” Because the best interests of children include their physical safety and because the storage and handling of firearms reasonably relates to issues of child safety, the courts would conclude that the proposed rules are within the scope of the rulemaking power delegated to the department in ORS 418.640.

We turn to consider, then, whether ORS 166.170 limits the rulemaking power of DHS. It states, in relevant part:

(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.¹

By its terms, the statute limits all authority to regulate firearms, unless otherwise expressly authorized by state statute. No statute expressly authorizes DHS to regulate firearms. The

¹ Subsection (2) of ORS 166.170 is not relevant to this discussion because it preempts only the power of local governments to regulate firearms.

