

## OAG 97-9

March 21, 1997

*Subject:* Authority of Kentucky circuit and district courts to ban deadly weapons in a courthouse and courthouse annex in which those courts are located.

*Written by:* Kent T. Young, Assistant Attorney General

*Requested by:* Robert R. Damron, State Representative, 39th Legislative District

*Syllabus:* Kentucky circuit and district courts may ban deadly weapons in courthouse or courthouse annex space provided those courts by county government in accordance with the express provisions of KRS 26A.100. Notwithstanding such a ban, peace officers may carry deadly weapons when necessary for their protection in the discharge of their official duties.

*Statutes Construed:* KRS 26A.090(6); 26A.100; 26A.110; 26A.130; 65.870; 67.080(2)(b); 67.130; 237.110(12)(a), (b), (c), (d); 237.115; 527.020

### *Opinion of the Attorney General*

We have been asked to address whether the law authorizes the judges of the Kentucky circuit and district courts in a county to ban all deadly weapons from a courthouse and courthouse annex not occupied exclusively by those courts. We provide this opinion on a question of public law pursuant to KRS 15.025(2). To simplify the opinion, we will refer to the judges of the Kentucky circuit and district courts in a county as the “local courts.”

The Kentucky General Assembly has expressed a clear preference for locating local courts in county courthouses, or if ordered by the Kentucky Supreme Court, in other county buildings. The legislature therefore has placed an obligation on county and urban-county governments to “provide such reasonably available space which would not disrupt the operation of county government as necessary” for the following:

- (a) A courtroom or courtrooms for the circuit and district court;
- (b) Chambers for the circuit judge and district judge or judges;
- (c) Office space for the circuit and district court staffs;
- (d) Office and storage space for the circuit clerk's operations;
- (e) Jury facilities for the circuit and the district court;
- (f) Office space for other officers of the Court of Justice including pretrial release officers, court reporters, court administrators, judges' secretaries, friends of the court and commissioners; and

(g) Such other facilities necessary for the operation of the circuit and the district court as may be agreed upon by the county or urban-county government and the Administrative Office of the Courts.

KRS 26A.100(2).

With respect to courthouse or courthouse annex space provided local courts by county government in accordance with the express provisions of KRS 26A.100, local courts may generally ban deadly weapons. We find authority for such action in the following:

1. Courts have inherent power to act to preserve decorum and ensure the orderly administration of justice in the conduct of judicial proceedings. *Smothers v. Lewis*, Ky., 672 S.W.2d 62 (1984); *Arnette v. Meade*, Ky., 462 S.W.2d 940 (1971); *Craft v. Commonwealth*, Ky., 343 S.W.2d 150, 151 (1961); *Young v. Basnight*, Ky., 329 S.W.2d 195, 199 (1959); *Burton v. Mayes*, Ky., 118 S.W.2d 547 (1938); *see, also*, 20 Am Jur 2d Courts § 43, 45 (1995). This includes the authority to regulate the admission of the public to court proceedings. *Jackson v. Commonwealth*, Ky., 138 S.W.2d 422 (1896).

2. Implicit in KRS 26A.100 is local court control of space provided the local court pursuant to KRS 26A.100. This implicit right of control extends to controlling the carrying of firearms in space local courts have been provided pursuant to KRS 26A.100.

- “The State, no less than a private owner of property, has power to preserve the property under its control for the use to which it is lawfully dedicated.” *Adderly v. Florida*, 385 US 39, 47, 17 L.Ed.2d 149, 156, 87 S.Ct. 242 (1966). Not all local court space in a courthouse or courthouse annex is customarily open to members of the general public. A judge's chambers would be one example.
- The right to bear arms set forth at Section 1, Seventh of the Kentucky Constitution is not absolute. *See* OAG 96-40.
- There is little doubt that in some circumstances the government may ban the entry on to public property . . . of all persons except those who have legitimate business on the premises.” *United States v. Grace*, 461 US 171, 178, 75 L.Ed.2d 736, 744, 103 S.Ct. 1702 (1983). The legitimate business that members of the general public have on local court premises does not require that they carry deadly weapons onto those premises.

3. Kentucky circuit and district courts are a part of state government. KRS 65.870, which prohibits firearms regulation by city, county or urban- county governments, does not apply to Kentucky circuit and district courts.

4. KRS 527.020 sets forth a general prohibition against carrying a concealed deadly weapon in Kentucky.

5. A Kentucky license to carry a concealed deadly weapon does not authorize the licensee to carry a concealed firearm into “[a]ny courthouse, solely occupied by the Court of Justice courtroom, or court proceeding.” KRS 237.110(12)(c).

6. KRS 237.115(1) states in relevant part that “[n]othing contained in KRS 237.110,” the statute which authorizes the issuance of licenses to carry concealed deadly weapons, “shall be construed

to limit, restrict, or prohibit in any manner . . . the right of a unit of state . . . government to prohibit the carrying of concealed deadly weapons by licensees in that portion of a building actually owned, leased, or occupied by that unit of government.” A Kentucky circuit court and a Kentucky district court are each units of state government. Since no applicable meaning of the term “unit” is contained in the Kentucky Revised Statutes, the term is given its ordinary meaning. *See, e.g., Lynch v. Commonwealth, Ky.*, 902 S.W.2d 813, 814 (1995).

While local courts may ban concealed deadly weapons from their premises, we note one exception. Peace officers are entitled to carry deadly weapons lawfully “when necessary for their protection in the discharge of their official duties.” KRS 527.020(2). This statutory provision would appear to further the orderly administration of justice.

A local court deadly weapons ban limited in scope to courthouse and annex space which has been provided the local court pursuant to KRS 26A.100 implicates no separation of powers concern. Local court control of such space is implicit in KRS 26A.100. Generally speaking, local court orders which derive from authority that is necessarily implicit in a statute “do not violate § 27 and § 28 of the Kentucky Constitution.” *Commonwealth v. Partin, Ky.App.*, 702 S.W.2d 51, 53 (1985).

Moreover, pursuant to Sections 27 and 109 of the Kentucky Constitution, the judicial power of the Commonwealth is reposed in the Court of Justice. Pursuant to Section 109, the Court of Justice includes the Kentucky Supreme Court, the Kentucky Court of Appeals, the Kentucky circuit courts, and the Kentucky district courts. “[T]he judicial branch of . . . state government has exclusive authority to manage its own affairs.” *Ex parte Auditor of Public Accounts, Ky.*, 609 S.W.2d 682, 685 (1980). “[T]he grant of judicial power to the courts by the constitution carries with it, as a necessary incident, the right to make that power effective in the administration of justice.” *Craft v. Commonwealth, Ky.*, 343 S.W.2d 150, 151 (1961). As the court explained in *Young v. Knight, Ky.*, 329 S.W.2d 195, 199 (1959), “[i]t is not possible for any judicial tribunal to fulfill its functions without power to preserve decorum and to enforce its orders.” This inherent power includes the authority to regulate admission of the public to court proceedings. *Jackson v. Commonwealth, Ky.*, 38 S.W. 422 (1896); 20 Am Jur 2d Courts § 45 (1995). Additionally, the local courts possess inherent power to enforce their orders through contempt proceedings. *Arnett v. Meade, Ky.*, 462 S.W.2d 940 (1971).

Section 116 of the Kentucky Constitution, which recognizes the authority of the Kentucky Supreme Court to prescribe rules of practice and procedure for the Court of Justice, is not implicated by a local court deadly weapons ban. Such a ban, strictly speaking, is not a rule of practice or procedure; i.e., the ban does not purport to prescribe a formal means or method for enforcing a substantive legal right in a cause of action before the court.

We recognize access to county offices and local courts may as a practical matter be obtained through shared building entrances and hallways. We can find no authority, however, for the proposition that local courts may ban deadly weapons in county offices located in the same courthouse or courthouse annex as those local courts. Indeed, we note that ownership, operation, and maintenance of a county courthouse, generally, are county functions. KRS 26A.090(6); 26A.110; 26A.130; 67.080(2)(b); 67.130.

Of course, the legislative body of a county may act pursuant to KRS 237.115 to prohibit those who are licensed to carry concealed deadly weapons from carrying concealed deadly weapons in portions of buildings owned, leased or controlled by the county. *See* OAG 96-39. Additionally, a license to carry a concealed deadly weapon does not authorize the licensee to carry a concealed deadly weapon into a police station or sheriff's office, a detention facility or jail, or a meeting of the governing body of the county. KRS 237.110(12)(a), (b), and (d). Finally, with respect to the authority of the county to prohibit the open carrying of *deadly weapons* in a courthouse or courthouse annex, we note the ordinance prohibition embodied in KRS 65.870 extends only to “any part of the field of regulation of the transfer, ownership, possession, carrying or transportation of *firearms, ammunition, or components of firearms or combination thereof.*” (Emphasis added.)

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