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FIREARMS--WEAPONS--SCHOOLS--Possession of firearms in facilities used exclusively by schools

RCW 9.41.280 prohibits possession of firearms in areas of facilities while being used exclusively by public or private schools. An area of a facility is used exclusively by a school when the school has sole possession, control, or use of an area of the facility, regardless of the duration of the use.

January 12, 1994

Honorable Linda Smith
 State Senator, District 18
 205 Institutions Building, MS 40418
 Olympia, WA 98504-0418

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Dear Senator Smith:

By letter previously acknowledged you requested our interpretation of Engrossed Substitute Senate Bill (ESSB) 5307, which was enacted as Laws of 1993, ch. 347. ESSB 5307 amended RCW 9.41.280 to prohibit the possession of firearms (and other weapons) in "areas of facilities while being used exclusively by public or private schools". Your question, which asks for an interpretation of the quoted language, is:

Does "exclusively" mean prolonged exclusive use as when a school rents a building for an extended period solely for school activities, like an off campus classroom, or does it include sporadic use of a multi-use facility such as the Kingdome during the football playoffs?

BRIEF ANSWER

We conclude that the term "used exclusively" refers to uses where the school or schools have sole possession, control, or use of an area of a facility. It is not limited by the duration of the use.

ANALYSIS

Before the 1993 legislative session, RCW 9.41.280(1) prohibited an "elementary or secondary school student under the age of twenty-one knowingly to carry onto public or private elementary or secondary school premises" a firearm, among other weapons. ESSB 5307 broadened both the class of persons subject to the prohibition and the areas to which the prohibition applied. The amendatory language reads:

(1) It is unlawful for ~~((an elementary or secondary school student under the age of twenty-one knowingly))~~ a person to carry onto public or private elementary or secondary school premises, school-provided transportation, or areas of facilities while being used exclusively by public or private schools:

(a) Any firearm[.]

Laws of 1993, ch. 347, § 1, p. 1388.

In interpreting a statute, the court's primary objective is to ascertain and carry out the intent of the Legislature. Rozner v. Bellevue, 116 Wn.2d 342, 804 P.2d 24 (1991); Cherry v. Municipality of Metropolitan Seattle, 116 Wn.2d 794, 808 P.2d 746 (1991). This objective governs the interpretation of penal, as well as civil, statutes. *See, e.g.*, State v. Johnson, 119 Wn.2d 167, 172, 829 P.2d 1082 (1992); State v. Clark, 96 Wn.2d 686, 638 P.2d 572 (1982). Penal statutes, however, are construed more strictly according to the plain meaning of their words to ensure that citizens have adequate notice of the proscribed conduct. Johnson, *supra*; State v. Shipp, 93 Wn.2d 510, 610 P.2d 1322 (1980).

In particular, when statutory language is ambiguous, the "rule of lenity" generally requires the ambiguity be resolved in favor of the defendant. State v. Martin, 102 Wn.2d 300, 684 P.2d 1290 (1984). The rule of lenity is not absolute. It "does not require a forced, narrow, or overstrict construction which defeats the intent of the legislature." State v. Johnson, *supra*, 119 Wn.2d at 172; quoting State v. Cann, 92 Wn.2d 193, 197-98, 595 P.2d 912 (1979).

In our opinion, the plain meaning of RCW 9.41.280 makes it unlawful to carry a firearm onto areas of facilities where schools have sole possession, control, or use, regardless of the temporal duration of the use. To derive a durational limitation from "used exclusively" would be a forced construction that is contrary to the plain meaning of the language, and contrary to the legislative intent, of ESSB 5307.

Again, ESSB 5307 prohibits persons from possessing weapons in "areas of facilities while being used exclusively by public or private schools". "Exclusively" modifies the word "used". Thus, ESSB 5307 did not prohibit weapon possession in every facility used by a school, but only in those used "exclusively" by the school. In construing a word that is not otherwise defined in the statute, it is appropriate to resort to a dictionary definition. American Legion Post No. 32 v. Walla Walla, 116 Wn.2d 1, 802 P.2d 784 (1991). "Exclusive" is defined as "excluding or having power to exclude" and "limiting or limited to possession, control, or use (as by a single individual or organization or by a special group or class)". Webster's Third New International Dictionary 793 (1981). Thus, if the school can exclude other potential users of a facility, the school has "exclusive use" of the facility. The definition, of itself, implies no limit on the duration of the exclusive use.

The context of words in a statute also may help in interpreting the words. State v. Stockton, 97 Wn.2d 528, 647 P.2d 21 (1982). The context of "used exclusively" indicates that the term has no durational meaning. The weapon prohibition applies to facilities "while being used exclusively" by schools. "While", of course, does refer to duration. It means "during the time that". Webster's Third New International Dictionary 2604 (1981). Read in context, "while being used exclusively" indicates that the weapons prohibition applies during the time that the school (or schools) has sole possession, control, or use of a facility. The statutory prohibition thus extends to all exclusive uses, whether the use is prolonged or sporadic. Because "while" supplies the durational limits on the weapons prohibition, it may be assumed that the Legislature did not intend for "used exclusively" to impose an additional durational limitation.

The legislative history of ESSB 5307 also suggests the Legislature was concerned about safeguarding facilities where school activities would be held, regardless of whether the use was "prolonged". The relevant

parts of section 1 of ESSB 5307, as it passed the Senate in March 1993, stated:

It is unlawful for ~~((an elementary or secondary school student under the age of twenty one knowingly))~~ a person to carry onto public or private elementary or secondary school premises, school-provided transportation, or athletic facilities leased by public or private schools:

(a) Any firearm[.]

ESSB 5307 was amended in the House to incorporate the current language, and the Senate concurred in the House's amendment. The language of the House amendment was apparently intended to encompass the lease of athletic facilities included in the Senate version (which by their nature might be used only on a "sporadic" basis) and to broaden the provision to also include other facilities used exclusively by schools. The amendatory language expanded the prohibition to all facilities, and areas of facilities, regardless of the nature of the schools' use or the means by which the possession of the facilities is obtained.

For these reasons, we believe the term "used exclusively" in RCW 9.41.280 refers to sole use, possession, or control of a facility, regardless of the duration of the use.

Yours very truly,

THORNTON WILSON
Assistant Attorney General

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