

FILED

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

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CATHY S. GATSON, CLERK
KANAWHA COUNTY CIRCUIT COURT

**WEST VIRGINIA CITIZENS DEFENSE
LEAGUE, INC., a West Virginia nonprofit
Corporation, ON BEHALF OF ITS MEMBERS
WHO ARE RESIDENTS OF CHARLESTON,
WEST VIRGINIA, and all others similarly situated,**

Plaintiff(s),

v.

**Civil Action No.: 13-C-2328
14-C-604
Honorable James C. Stucky**

**THE CITY OF CHARLESTON, WEST
VIRGINIA, a West Virginia Municipal
Corporation,**

Defendant.

ORDER

On the 28th day of August, 2017, Plaintiffs, West Virginia Citizens Defense League, Inc., (hereinafter "WVCDL"), by and through counsel, Shawn R. Romano, Esq., and Miles B. Berger, Esq. and the law firm of Romano & Associates, PLLC, and Defendant, the City of Charleston, a West Virginia Municipal Corporation (hereinafter "City"), by and through counsel, Paul D. Ellis, Esq, City Attorney of Charleston, and Sean P. McGinley, Esq., and Ditrapano Barrett Dipiero McGinley & Simmons, PLLC, came before this Court on the Plaintiff's motion for Declaratory Judgment and Defendant's Motion for Declaratory Judgment. After extensively reviewing the briefs filed herein and considering the oral argument of all parties involved, this Court **FINDS** as follows:

FINDINGS OF FACT

1. In 1993, the City of Charleston passed Municipal Ordinance 78-165. The Ordinance prohibits, inter alia, the possession of firearms and other dangerous or deadly weapons on City property, including City's recreation facilities, regardless of whether a person has a license for a concealed firearm. Municipal Ordinance 78-165 states as follows:

It shall be unlawful for any person to carry on or about his person any revolver or pistol, dirk, bowie knife, slingshot, razor, billy, metallic or other false knuckles, or other dangerous or deadly weapon of like kind or character in or upon city hall, municipal auditorium, the civic center, and all parks and recreation buildings and facilities, including recreation centers, playgrounds, swimming pools, dressing areas, tennis courts, parks and recreation areas and all parking facilities, owned or occupied by the City of Charleston; however, the provisions of this section shall not apply to city, county, state and federal law enforcement officers and to exhibitors and performers at city-sanctioned events who obtain advance written authorization from the chief of police.

2. On December 17, 2013, the WVCDL filed a *Complaint for Declaratory Judgment and Permanent Injunctive Relief* against the City, seeking to invalidate the Municipal Ordinance 78-165 on the basis of Constitutional grounds.
3. On January 31, 2014, the City filed an *Answer* to the complaint.
4. In March of 2014, the Legislature amended *W. Va. Code* § 8-12-5a to include language preserving the rights of individuals with a valid concealed handgun permit to carry their firearms into municipally owned recreation facilities. *W. Va. Code* § 8-12-5a(2), in pertinent part, states as follows:

(c)(1) A municipality may enact and enforce an ordinance or ordinances that prohibit or regulate the carrying or possessing of a firearm in municipally owned or operated buildings.

(2) A municipality may enact and enforce an ordinance or ordinances that prohibit a person from carrying or possessing a firearm openly or that is not lawfully concealed in a municipally

owned recreation facility: *Provided, That a municipality may not prohibit a person with a valid concealed handgun permit from carrying an otherwise lawfully possessed firearm into a municipally owned recreation facility and securely storing the firearm out of view and access to others during their time at the municipally owned recreation facility.*

5. Gov. Earl Ray Tomblin signed the amended *W. Va. Code* § 8-12-5a into law on March 25, 2014.
6. Following receipt of the City's *Answer* and the enactment of new legislation, the City filed a *Complaint for Declaratory Judgment* in an effort to have the Circuit Court issue an advisory opinion on two conflicting state statutes.
7. On April 17, 2014, the State of West Virginia, by and through its Attorney General, file the State's *Motion to Intervene and Motion to Dismiss for Lack of Subject Matter Jurisdiction*.
8. Shortly thereafter, the City filed an *Amended Complaint* naming the WVCDL as a Defendant therein. Civil Action, 14-C-604, has been consolidated into the WVCDL's initially filed Civil Action, 13-C-2328, before this Court. The City's *Amended Complaint* alleges the only dispute between parties related to the amended version of *W. Va. Code* § 8-12-5a is whether a concealed firearm licensee may bring a gun onto the grounds or into buildings of Charleston's municipal recreation centers where school activities occur and/or where such centers do not have gun safes or similar secure storage areas.
9. The WVCDL also filed an Amended Complaint due to the aforementioned legislative changes.
10. The City and WVCDL have agreed on Stipulations to narrow the issues currently before this Court. The Stipulations are as follows:

- A. The parties stipulate that, to the extent *W. Va. Code* § 8-12-5a conflicts with Charleston Municipal Ordinance § 78-165, the provisions of *W. Va. Code* § 8-12-5a as amended in 2014, by operation of state law, supersede and control. Specifically, the parties stipulate that, unless otherwise prohibited by law, pursuant to *W. Va. Code* § 8-12-5a persons with a valid concealed handgun permit may carry a lawfully possessed firearm into municipally owned recreation facilities, as that term is defined by *W. Va. Code* § 8-12-5a(b)(2), so long as the firearm is securely stored out of view and access to others during that person's time at the municipally owned recreation facility.
- B. Charleston and the WVCDL stipulate that Charleston may lawfully prohibit firearms, concealed or otherwise, at any municipally owned or operated building, including but not limited to City Hall, the City Service Center, the Municipal Auditorium, the Charleston Civic Center, and all other similar buildings used for a municipal purpose permitted by state law.
- C. The parties stipulate that *W. Va. Code* § 8-12-5a does not apply to Charleston's Municipal Ordinance § 78-165 insofar as that Municipal Ordinance prohibits anyone without a valid concealed handgun permit from possessing a firearm at municipally owned or operated buildings and at municipally owned recreation facilities.
- D. The parties stipulate that Charleston, like all municipalities within the State of West Virginia, must comply with and enforce State law including, but not limited to, State law as codified in *W. Va. Code* § 61-7-11a; furthermore, the parties stipulate that certain properties owned and/or operated by the City,

including, but not limited to, municipally owned recreation facilities, are, at times, utilized as a primary or secondary education building, facility, structure or grounds, or for school-sponsored activities, and thus, at the times and locations at and during which such municipally owned recreation facilities are used as a primary or secondary education building, facility, structure or grounds or for school-sponsored activities, the provisions of *W. Va. Code* § 61-7-11a prohibit the possession of firearms upon such properties.

- E. The parties stipulate that program(s) affiliated with and/or operated by the Kanawha County Board of Education are located in or at the Martin Luther King, Jr. Recreation Center and, accordingly, at the times that such program(s) are occurring in the buildings or upon the grounds of the Martin Luther King, Jr. Recreation Center, the Martin Luther King, Jr. Recreation Center is and shall be considered to be a “public education building, structure, facility or grounds” as those terms are used within *W. Va. Code* § 61-7-11a and, accordingly, firearms are prohibited at the Martin Luther King, Jr. Recreation Center at and during such times. The parties further stipulate that so long as the Martin Luther King, Jr. Recreation Center is being leased by the Kanawha County Board of Education, at the times when said facility is being utilized for such program(s) as aforementioned, as well as during school-sponsored activities, firearms are prohibited.
- F. The parties stipulate that municipally owned recreation facilities are used, at times, for public or private primary or secondary education, for secondary vocational education programs and/or for school-sponsored functions and

activities and, accordingly, at such times, firearms are prohibited at said municipally owned recreation facilities.

G. The parties stipulate that, at times, school-sponsored activities, public or private primary or secondary educational activities, secondary vocational education programs and/or school-sponsored functions are not occurring at municipally owned recreation facilities.

H. The parties stipulate that the City does not at this time have secure storage lockers for firearms or staff trained to transition, store or otherwise handle firearms at any of its municipally owned recreation facilities and that *W. Va. Code* § 8-12-5a contains no affirmative duty or obligation for the City to provide such secure storage lockers for firearms or such trained staff to transition, store or otherwise handle firearms at its municipally owned recreation facilities.

11. Notwithstanding the foregoing Stipulations, the City and the WVCDL continue to disagree about the context, breadth, meaning and interpretation of the phrase, “and securely storing the firearm out of view and access to others during their time at the municipally owned recreation facility” as stated in *W. Va. Code* § 8-12-5a(c)(2).

12. The parties also disagree concerning whether the Charleston’s municipally owned recreation facilities used for public or private primary or secondary education, for secondary vocational education programs and for school-sponsored activities or functions are or are not “a public or private primary or secondary education building, structure, facility or grounds including a vocational education building, structure, facility or grounds where secondary vocational education programs are conducted or

at a school-sponsored function” pursuant to *W. Va. Code* § 61-7-11a, at times when no such school-related or school-sponsored activities actually are occurring.

13. The foregoing areas of disagreement are ripe for this Court to resolve through issuance of a declaratory judgment.

14. On August 28th, 2017, a hearing was set for a determination on the Declaration Judgment Motions filed by both parties.

CONCLUSIONS OF LAW

1. Courts of record within their respective jurisdictions shall have power to declare rights, status and other legal relations whether or not further relief is or could be claimed. No action or proceeding shall be open to objection on the ground that a declaratory judgment or decree is prayed for. The declaration may be either affirmative or negative in form and effect; and such declarations shall have the force and effect of a final judgment or decree. *W. Va. Code* § 55-13-1 (2000).
2. This Court **CONCLUDES** that “[i]t is generally within the discretion of the court as to whether it will take jurisdiction to enter or decline to enter a declaratory judgment, and also the manner in which it is done, but such discretion cannot be abused.” *Hall v. Hartley*, 146 W.Va. 328, 332, 119 S.E.2d 759, 762 (1961).
3. The principal purpose of a declaratory judgment action is to resolve legal questions. *Black v. St. Joseph's Hosp. of Buckhannon, Inc.*, 234 W.Va. 175, 764 S.E.2d 335 (2014).
4. A declaratory judgment action is a proper procedural means for adjudicating the legal rights of parties to an existing controversy that involves the construction and

application of a statute. *City of Bridgeport v. Matheny*, 223 W.Va. 445, 675 S.E.2d 921 (2009).

5. “The primary object in construing a statute is to ascertain and give effect to the intent of the Legislature.” Syl. pt. 1, *Smith v. State Workmen's Compensation Commissioner*, 159 W.Va. 108, 219 S.E.2d 361 (1975).’ Syl. pt. 2, *Farley v. Buckalew*, 186 W.Va. 693, 414 S.E.2d 454 (1992).” Syl. pt. 2, *State ex rel. Water Development Authority v. Northern Wayne County Public Service District*, 195 W.Va. 135, 464 S.E.2d 777 (1995).

EDUCATIONAL FACILITY OR GROUNDS

6. Under *W. Va. Code* § 61-7-11a, it is felony punishable by two to ten years in prison to possess a firearm in buildings or on grounds owned or operated by schools or at any location where school functions are being held. There is not and nor has there ever been an exemption for a person possessing a valid West Virginia concealed carry license.
7. *W. Va. Code* § 61-7-11a expresses the legislative intent clearly and unequivocally at the forefront of the statute itself. The statutory purpose is as follows:

“The Legislature finds that the safety and welfare of the citizens of this state are inextricably dependent upon assurances of safety for children attending and persons employed by schools in this state [.] It is for the purpose of providing assurances of safety that subsections (b), (g) and (h) of this section and paragraph (I), subdivision (2), subsection (b) of this section are enacted as a reasonable regulation of the manner in which citizens may exercise the rights accorded to them pursuant to section twenty-two, article three of the Constitution of the State of West Virginia.

(Emphasis added).

8. "The primary rule of statutory construction is to ascertain and give effect to the intention of the Legislature." Syl. pt. 8, *Vest v. Cobb*, 138 W.Va. 660, 76 S.E.2d 885 (1953).
9. W. Va. Code § 61-7-11a is inextricably tied to the safety and welfare of the citizens of the state and thus must be determined to be remedial in nature. "Where an act is clearly remedial in nature, we must construe the statute liberally so as to furnish and accomplish all the purposes intended." *State ex rel. McGraw v. Scott Runyan Pontiac Buick, Inc.*, 194 W. Va. 770, 777, 461, S.E.2d 516, 523 (1995).
10. While the purpose of the Legislature is unequivocal, the complications remain with an application between potential conflicting statutes.
11. This Court **CONCLUDES**, as do the parties through the aforementioned stipulations, State Criminal Law controls the possession of firearms at municipal recreation centers where school functions are held under *W. Va. Code* § 61-7-11a.
12. This Court **CONCLUDES** as a matter of law, *W. Va. Code* § 8-12-5a was meant to create and preserve an individual's rights to bear arms so long as that individual has obtained a valid license for concealed carry and lawfully possesses the firearm. Individuals with concealed carry training were granted an exemption to the Municipal Ordinance 78-165, prohibiting the carry of firearms into municipal recreation centers. To the extent that Ordinance 78-165 and *W. Va. Code* § 8-12-5a are in conflict, the ordinance is rendered null and void as to those with aforesaid exemption. *W. Va. Code* § 8-12-5a was not intended to supersede state criminal law as pertains to school grounds and educational facilities.

13. The Supreme Court has held that “[i]mplicit within the West Virginia constitutional guarantee of ‘a thorough and efficient system of free schools’ is the need for a safe and secure school environment. Without a safe and secure environment, a school is unable to fulfill its basic purpose of providing an education.” Syl. Pt. 4, in part, *Phillip Leon M. v. Greenbrier Cty. Bd. of Educ.*, 199 W. Va. 400, 484 S.E.2d 909 (1996) *holding modified by Cathe A. v. Doddridge Cty. Bd. of Educ.*, 200 W. Va. 521, 490 S.E.2d 340 (1997)).
14. To properly secure the Constitutional guarantee of safe school environments for our children, the Court must develop a manageable standard for recreational centers conducting school functions and activities.
15. Therefore, this Court **CONCLUDES**, the only manageable standard is to bar firearms completely and at all times if such programs are conducted at certain municipal recreation centers. Those recreation centers are determined to be an educational facility and protected by *W. Va. Code* § 61-7-11a. If the municipal recreation center is not leased or used by the Board of Education to conduct school activities or functions than *W. Va. Code* § 8-12-5a allows individuals with a license for concealed carry to possess their lawfully owned firearms on such premises. This interpretation and application of both statutes will best serve the Legislature’s intent and purpose behind each statute.

“SECURELY STORING”

16. As for those municipally owned recreation centers that are not used or leased for school functions or activities, an interpretation of the phrase “securely storing” is necessary for West Virginia citizens to understand the proper meaning of *W. Va. Code* § 8-12-5a to ensure compliance.

17. “Judicial interpretation of a statute is warranted only if the statute is ambiguous[.]” Syl. pt. 1, in part, *Ohio County Com'n v. Manchin*, 171 W.Va. 552, 301 S.E.2d 183 (1983). Syl. pt. 1, *Meadows v. Wal-Mart Stores, Inc.*, 207 W. Va. 203, 530 S.E.2d 676 (1999).
18. In the interpretation of a statute, the legislative intention is the controlling factor; and the intention of the legislature is ascertained from the provisions of the statute by the application of sound and well established canons of construction. Syl. pt. 2, *Meadows v. Wal-Mart Stores, Inc.*, 207 W. Va. 203, 530 S.E.2d 676 (1999).
19. “Generally the words of a statute are to be given their ordinary and familiar significance and meaning, and regard is to be had for their general and proper use.” Syl. pt. 4, *State v. General Daniel Morgan Post No. 548, V.F.W.*, 144 W.Va. 137, 107 S.E.2d 353 (1959).
20. A cardinal rule of statutory construction is that significance and effect must, if possible, be given to every section, clause, word or part of the statute. Syl. pt. 3, *Meadows v. Wal-Mart Stores, Inc.*, 207 W. Va. 203, 530 S.E.2d 676 (1999).
21. The Court accepts the ordinary meaning of “Securely” as to be free from harm and risk of loss. “Secure.” Merriam-Webster Online Dictionary. 2017. <https://www.merriam-webster.com/dictionary/secure> (14 Sept. 2017).
22. The Court accepts the ordinary meaning of “Storing” as to place or leave in a location. “Store.” Merriam-Webster Online Dictionary. 2017. <https://www.merriam-webster.com/dictionary/secure> (14 Sept. 2017).
23. “Concealed” means hidden from ordinary observation so as to prevent disclosure or recognition. A deadly weapon is concealed when it is carried on or about the person in such a manner that another person in the ordinary course of events would not be placed

on notice that the deadly weapon was being carried. *W. Va. Code* § 61-7-2(10). To ensure the purpose given under the Concealed Carry statutes is preserved, the Court **CONCLUDES** the weapon must be allowed to be securely stored on one's person and not only stored in a case or locker.

24. When interpreting a statute, the Court must view the statute as a whole to truly see the intent behind each section. When viewing *W. Va. Code* § 8-12-5a, the Court must render an interpretation that preserves the purpose and integrity of the Concealed Carry License.
25. This Court **CONCLUDES** the phrase "securely storing" as being on one's person and in a holster, purse, or bag so long as the weapon remains attached to the individual, firmly adhered to one's body and is not freely placed.
26. The City's argument that such a reading will render the remaining words of the statute, "out of view and access to others" superfluous is unfounded. One may store a firearm in a holster displayed on the exterior of one's clothing. Such display would be would not qualify for the exemption under *W. Va. Code* § 8-12-5a for not being out of view of others. One may also store the firearm in a holster and leave said holster in a position away from oneself. This again would not qualify for the exemption under said statute for not being away from access to others. The words "out of view and access to others" help modify the understanding and interpretation of securely stored and provide specific instructions to help ensure safety for others in the recreation centers. Individuals who have obtained the license for concealed carry have obtained more training than the average constitutional carrier and therefore have been granted said exemption to the Municipal Ordinance so long as they adhere to the modifiers of "out

of view and access to others.” Once the firearm is no longer secure, the exemption status is removed.

27. The Court **CONCLUDES** the burden of “securely storing” the firearm is placed on the person who possesses it in order to qualify for the statutory exemption.

RULING

WHEREFORE, on the basis of the foregoing Findings of Fact and Conclusions of Law, this Court does hereby **FIND** that anytime the Board of Education leases a municipal recreation center for the operation of school sponsored events, activities or functions, that building is considered an public educational facility, building and grounds, by which the possession of firearms are prohibited by *W. Va. Code* § 61-7-11a. This prohibition of firearms in these leased and used municipal buildings shall extend permanently, at all times and not just the times the functions or activities are taking place, so long as the Board of Education has a valid lease or right of possession of such facility. The Legislature found that the safety and well-being of our children and the employees undertaking the task to educate and supervise our children is of the utmost importance and demands full protection from firearms. To hold or limit the prohibition to only the times when activities are ongoing will produce an unworkable standard for society to follow, therefore a blanket prohibition is necessary and vital to preserve the intent and purpose of the Legislature. This Court does hereby further **FIND** that if the municipal recreation center is not leased or used by the Board of Education for school activities, events or functions then individuals with a valid license to carry a concealed weapon may carry their lawfully possessed firearm onto said premises so long as the firearm is securely stored, out of view and access to others as prescribed by *W. Va. Code* § 8-12-5a. The phrase “**securely storing the firearm out of view and access to others**” is interpreted by this Court as being on one’s person and in a holster, purse, or

bag so long as the weapon remains attached to the individual, firmly adhered to one's body and is not freely placed. Storing a firearm within the confines of one's locker or gun case is also acceptable, so long as the locker or case is locked and secured by key or combination. The City of Charleston is under no obligation to provide locks and/or cases for such storage.

The objections of any party to the entry of this Order are noted and preserved. It is further **ORDERED** that the Clerk of this Court is hereby directed to forward a certified copy of this Order to the parties and all counsel of record.

ENTERED on this 21 day of Sept, 2017.

James C. Stucky
JAMES C. STUCKY, JUDGE
THIRTEENTH JUDICIAL CIRCUIT

STATE OF WEST VIRGINIA
COUNTY OF KANAWHA, SS
I, Cathy Staddon, CLERK OF CIRCUIT COURT OF SAID COUNTY
AND IN SO DOING, DO HEREBY CERTIFY THAT THE FOREGOING
IS A TRUE AND CORRECT COPY OF SAID COURT
RECORDS AND IS FILED IN THE OFFICE OF SAID COURT THIS
21st
September 2017
Cathy Staddon CLERK
CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA JL