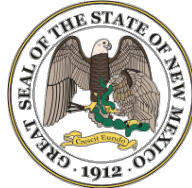


STATE OF NEW MEXICO
OFFICE OF THE ATTORNEY



GENERAL

HECTOR H. BALDERAS
ATTORNEY GENERAL

December 1, 2022

Honorable Javier Martínez
State Representative (D-Bernalillo-11)
P.O. Box 25491
Albuquerque, NM 87125
javier.martinez@nmlegis.gov

Honorable Maria I. Dominguez
Chief Judge, Bernalillo County Metropolitan Court
P.O. Box 133
401 Lomas NW
Albuquerque, NM 87102

The Honorable Cristy J. Carbon-Gaul
Probate Judge
Bernalillo County Probate Court
One Civic Plaza NW, 6th Fl.
Albuquerque, NM 87102

Re: Opinion Request – Prohibition of Weapons in Multi-Use County-Owned Building

Dear Representative Martínez, Chief Judge Domínguez, and Judge Carbón-Gaul:

This office has completed its review of the questions raised in the request for Attorney General opinion submitted by Representative Martínez, former Bernalillo Metropolitan Court Chief Judge Sarah Engel and Bernalillo County Probate Judge Carbón-Gaul regarding whether the introduction of weapons, specifically including firearms, may be prohibited in a public government building owned by the County of Bernalillo and housing the Bernalillo County Probate Court, courtroom personnel from the Probate Court and Bernalillo Metropolitan Court, public safety officers, county offices and various state agencies, and private businesses.¹

¹ The following entities were identified as being housed within the Bernalillo County Government Center: Bernalillo County Probate Court; Bernalillo County Sheriff's Office; Bernalillo County Treasurer; Bernalillo County Legal Department, including one employee of the New Mexico Tax and Revenue Department; Bernalillo County Planning and Development Services Department; Bernalillo County Assessor's Office; Bernalillo County Commission; Bernalillo County Clerk's Office; Employees of the Bernalillo County Metropolitan Court funded collaboratively by

You stated the Bernalillo County Government Center will have one main public entrance located on the ground-floor of the multi-story Center. The Bernalillo County Probate Court will be located on the second floor. Members of the public will be expected to access the building for a range of government and private services, including payment of property taxes, voter registration, obtaining marriage licenses and building permits, attending probate court proceedings, as well as utilizing the café and health clinic. Approximately 1,000 Bernalillo County employees are expected to work in the Government Center, as well as state employees from the Bernalillo County Metropolitan Court, and one state employee from the Taxation and Revenue Department.

ANALYSIS

1. County Police Powers and State Constitutional Preemption

Bernalillo County, like all New Mexico counties, is delegated what are commonly known as “general welfare powers” or “police powers.” *Bd. of Com’rs of Rio Arriba County v. Greacen*, 2000-NMSC-016, ¶ 12, 3 P.3d 672, 677. This legislative grant of powers allows counties to ensure the public safety and welfare by, *inter alia*, passing and enforcing ordinances. *See* NMSA 1978, § 4-37-1. Pursuant to the statute:

All counties are granted the same powers that are granted municipalities except for those powers that are inconsistent with statutory or constitutional limitations placed on counties. Included in this grant of powers to the counties are those powers necessary and proper to provide for the safety, preserve the health, promote the prosperity and improve the morals, order, comfort and convenience of any county or its inhabitants. The board of county commissioners may make and publish any ordinance to discharge these powers not inconsistent with statutory or constitutional limitations placed on counties.

Id. The scope of local police powers include local traffic ordinances, road construction and repair, and zoning. *Bd. of Com’rs of Rio Arriba County*, ¶ 12. Prior to 1986, local police powers also included the ability to regulate the public’s right to bear arms so long as the regulation did not conflict with constitutional provisions governing the right to bear arms. *See City of Las Vegas v. Moberg*, 1971-NMCA-074, 82 N.M. 626, 485 P.2d 737 (holding void a municipal ordinance banning carrying of unconcealed firearms within city limits because it completely prohibited the right to bear arms).

In 1986, the New Mexico Constitution was amended to preempt a municipality or county’s ability to regulate the possession and bearing of firearms. The constitutional amendment consisted of the addition of a single sentence, which stated:

Bernalillo County; and two private businesses, consisting of a café and a health clinic, leasing space directly from Bernalillo County.

No municipality or county shall regulate, in any way, an incident of the right to keep and bear arms.

N.M. Const. Art. II, § 6. The amendment effectively reserved to the State the right to regulate firearms, and removed local governments' ability to regulate firearms. The proscription on local regulation is both clear and unambiguous.

The Office of the Attorney General opined in 1990 that the 1986 amendment did not restrict regulation of firearms exclusively to the New Mexico State Legislature. N.M. Att'y Gen. Op. 90-07 (1990). The Attorney General concluded the plain language of the amendment simply removed from local governments the authority they previously possessed under their police powers to regulate matters incident to the right to bear arms. *Id.*, p. 2. The Attorney General noted that while the plain language of the amendment did not restrict regulation exclusively to the Legislature, the practical result was to allow firearm regulation only by the State and state agencies with the requisite statutory authority.² *Id.*, p. 2.

In 2002, the New Mexico Supreme Court relied on the language of the constitutional amendment to invalidate, in its entirety, the first version of the Concealed Handgun Carry Act. *Baca v. N.M. Dept. of Public Safety*, 2002-NMSC-017, ¶ 5, 132 N.M. 282, 284-85, 47 P.3d 441, 443-44. The Act contained a provision directing the Department of Public Safety to promulgate a rule allowing local governments to disallow carrying concealed weapons within county or municipal limits.³ *Baca*, ¶ 5. The Supreme Court held that this provision violated Article II, Section 6's "constitutional proscription against municipal and county regulation of an incident of the right to keep and bear arms." *Id.*, ¶ 13. The Supreme Court determined the provision could

² Before and since then, the legislature has made it a criminal offense to carry deadly weapons, including firearms, at certain, explicitly identified entities and locations. For example, as discussed in Part 2 below, courts have been expressly exempted from the Concealed Handgun Carry Act. Only designated personnel, ROTC members, and students engaged in certain approved courses/activities can carry firearms on college and university campuses. *See* § 30-7-2.1 & 30-7-2.4. All other adults are permitted firearms only inside a vehicle in a campus parking lot. *Id.* Similar provisions apply to schools. *See* § 30-7-2.1. The legislature has also largely criminalized the carrying of firearms in certain liquor establishments, absent a valid concealed handgun license. *See* § 30-7-3. It is also unlawful to board a bus while in possession of a firearm without the bus company's prior approval. § 30-7-13. Finally, relevant to your request, we found no statutory provision making criminal the carrying of weapons in a local government public building.

³ The provision, contained in NMSA 1978, § 29-18-11 (2001) repealed by L. 2003, Ch. 255, § 14, eff. July 1, 2003, stated in part: "The department shall promulgate rules . . . includ[ing] . . . provision of authority for a county or municipality to disallow the carrying of a concealed handgun within the limits of the county or municipality."

not be severed from the remainder of the Concealed Handgun Carry Act, requiring the Court to declare the entire Act unconstitutional. *Id.*

Based on the clear language of Article II, Section 6 of the state constitution, we must conclude that Bernalillo County as an entity lacks the authority to prohibit firearms at the Bernalillo County Government Center. This does not mean the County is prohibited from banning any other dangerous weapons from County property. Nor does it mean the County would be prohibited from enforcing criminal laws such as § 30-7-2, Unlawful Carrying of a Deadly Weapon, were there to be any violations of that law.

2. Courts' Abilities to Regulate Security

New Mexico's statutes have ensured that the courts are afforded security. Since territorial days, county sheriffs have been required to "attend upon such courts during their sittings." NM Terr. Laws, Kearney Code, Sheriffs, § 3; *see also* NMSA 1978, § 4-41-16(C)(1)-(2)(requiring sheriff's attendance at district and probate courts). Courts are among the few entities expressly exempted from the provisions of the Concealed Handgun Carry Act. *See* § 29-19-11 (stating concealed handgun licenses are invalid in a courthouse or court facility unless authorized by the presiding judicial officer); *see also* § 29-19-10 (stating concealed handgun licenses are invalid on tribal land without approval of the tribe, nation or pueblo).

Further, New Mexico's probate and district courts have the statutory authority to promulgate their own rules controlling activities in their courts and court facilities.⁴ *See, i.e.,* § 34-7-13 (stating judges of probate courts have full power and authority to make and publish rules regulating the business and practice of their courts); § 34-6-28 (stating district court judges have the power to adopt any rule governing the administration of the courts). Courts have used this authority to prohibit the introduction of weapons, including firearms, into courts and court facilities. *See* LR2-108(C); LR3-105(A); LR6-109(A); LR3-112(A).

You have stated there will be only one public entrance into the Bernalillo County Government Center, and that this entrance will be located on the first floor of the Center. You further stated that this one public entrance will provide access to all of the various departments and businesses, including the Bernalillo County Probate Court. Your letter indicates that, according to design-build plans, the public will be able to access the Probate Court on the second floor. Given New Mexico courts' authority to regulate security at courts and court facilities, and given the public's ability to access the Court on the second floor, it is reasonable to infer that the Probate Court would have authority to prohibit the introduction of firearms and other deadly

⁴ Currently, there is no specific statute on point authorizing rulemaking by metropolitan courts. However, the Supreme Court explicitly authorizes rulemaking by metropolitan courts. *See* Rule 3-103.

weapons onto the second floor of the Government Center, as that portion of the Center clearly would constitute a “court facility,” a term not otherwise defined in the Concealed Handgun Carry Act or other provision of New Mexico law. However, based on our review of the laws from other jurisdictions, we believe the Probate Court’s authority to regulate deadly weapons likely would not extend to the entire Center or any portion thereof not specifically used for court-related functions. See, e.g., West’s Ann.Cal.Gov.Code § 70301 (As used in this chapter: (d) “Court facilities” consist of all of the following: (1) Rooms for holding superior court. (2) The chambers of the judges of the court. (3) Rooms for the attendants of the court, including, but not limited to, rooms for accepting and processing documents filed with the court. (4) Heat, ventilation, air-conditioning, light, and fixtures for those rooms and chambers. (5) Common and connecting space to permit proper and convenient use of the rooms. (6) Rooms for secure holding of a prisoner attending court sessions, together with secure means of transferring the prisoner to the courtroom. (7) *Any other area within a building required or used for court functions.* (8) Grounds appurtenant to the building containing the rooms. (9) Parking spaces historically made available to one or more users of court facilities.)*(emphasis added)*; MD Rules, Rules 16-208 (“Court facility” means the building in which a circuit court or the District Court is located. *If the court is in a building that also is occupied by county or State executive agencies having no substantial connection with the court, “court facility” means only that part of the building occupied by the court*)*(emphasis added)*; O.R.S. § 166.360 (“Court facility” means a courthouse *or that portion of any other building* occupied by a circuit court, the Court of Appeals, the Supreme Court or the Oregon Tax Court or occupied by personnel related to the operations of those courts, or in which activities related to the operations of those courts take place); and 18 Pa.C.S.A. § 913(f)(defining a “court facility” to include courtrooms, judges’ chambers and witness rooms, jury deliberation rooms; holding cells and attorney conference rooms, offices of court clerks, district attorneys, sheriff and probation and parole officers, *and any adjoining corridors*)*(emphasis added)*. See also, 18 U.S.C.A. § 930 (g)(As used in this section: (3) The term “Federal court facility” means the courtroom, judges’ chambers, witness rooms, jury deliberation rooms, attorney conference rooms, prisoner holding cells, offices of the court clerks, the United States attorney, and the United States marshal, probation and parole offices, and adjoining corridors of any court of the United States).

The same analysis would hold true for those areas of the Center that will be occupied by Bernalillo Metropolitan Court personnel. Mr. Robert Padilla, Court Executive Officer for the Bernalillo Metropolitan Court, previously indicated that there will be approximately fifteen (15) to twenty (20) Metropolitan Court employees housed in the Center. These employees, including seven (7) probation officers, will provide services to defendants under pretrial services supervision and defendants awaiting a preliminary hearing on felony charges, as well as to felony probationers. As such, it is reasonable to conclude that the Metropolitan Court also will have a “court facility” housing court operations and the provision of services to defendants and probationers within the Center. Accordingly, the Metropolitan Court may prohibit the introduction of deadly weapons, including firearms, into its facility and immediate areas where the public might gain access to the facility.

Representative Javier Martínez,
Chief Judge Maria I. Domínguez, and Judge Cristy J. Carbón-Gaul
December 1, 2022
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Please be advised that this opinion is a public record, not subject to the attorney-client privilege. Accordingly, copies of this opinion may be provided to the public and will be posted to the Office of the Attorney General's website. If this office may be of further assistance, or if you have any questions regarding this opinion, please contact our office.

Sincerely,

A handwritten signature in cursive script that reads "Sally Malavé". The signature is written in black ink and is positioned above the printed name and title.

Sally Malavé
Director, Open Government Division