

IN THE COURT OF COMMON PLEAS
WARREN COUNTY, OHIO

COMMON PLEAS COURT
WARREN COUNTY, OHIO
FILED

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CAROL DONOVAN, DAVID IANNELLI,
and BROOKE HANDLEY,

Plaintiffs,

v.

CITY OF LEBANON and MARK YURICK,
in his official capacity as City Attorney of the
City of Lebanon,

Defendants.

Case No. 21 CV 94117

Judge Tepe
Magistrate Moll

JAMES L. SPAETH
CLERK OF COURTS

**PLAINTIFFS' ADDITIONAL BRIEF IN SUPPORT OF THEIR MOTION FOR
SUMMARY JUDGMENT**

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ARGUMENT

Plaintiffs submit this brief in accordance with the Court's Order dated December 7, 2022, which instructed the parties to submit additional briefing regarding "the fact that the City of Lebanon represents to the public that the Lebanon Municipal Court is located at 50 South Broadway, Lebanon, Ohio 45036 and the hours of operation are Monday-Friday 8:00 a.m. to 4:00 p.m."

As it represents, and the parties do not dispute, the Lebanon Municipal Court is located in the Lebanon City Building. The City Building is therefore a "building or structure in which a courtroom is located," and Ohio law prohibits, at all times, the possession of firearms and other deadly weapons and dangerous ordnances within the building. R.C. 2923.123 and 2923.126(B)(3).

As to the Municipal Court's publicly posted hours of operation, they are immaterial to the resolution of the legal issues before this Court, for several reasons. First, and most significantly, the Municipal Court's posted hours do not alter the scope of *Ohio* law, which always and plainly prohibits firearms in the City Building. Ordinance No. 2020-022 (the "Ordinance") violates that clear state law.¹

Second, even if the Municipal Court's hours of operation were relevant to the meaning of state law (and they are not), the hours published by the Municipal Court would not be the correct point of reference because they capture only part of the court's *actual* operating hours. Plaintiffs assume, for purposes of this brief, that the Court's December 7 Order refers to either the Lebanon Municipal Court's website² or the Municipal Court's local rules,³ both of which make the representations noted

¹ The Ordinance's operative provision provides: "Pursuant to Ohio Revised Code section 2923.126, a licensee under Ohio Revised Code section 2923.125 or section 2923.1213 is authorized to carry a concealed handgun in the City of Lebanon, Ohio City Building located at 50 South Broadway, Lebanon, Ohio, except during the operation of any function of the Lebanon Municipal Court." Pls.' Ex. A (adopting Lebanon Code of Codified Ordinances 508.13). The Ordinance does not define the scope of "the operation of any function of the Lebanon Municipal Court."

² Available at <https://court.lebanonohio.gov/>; *see also* <https://perma.cc/6KJR-49AF> (last visited Jan. 8, 2023)

³ The relevant excerpt of the Municipal Court's local rules appears in Plaintiffs' Exhibit B.

by the Order. The City of Lebanon—through the direction of Lebanon City Manager Scott Brunka and the approval of Defendant City Attorney Mark Yurick—also posted signage on the doors of the City Building that list similar, but not identical, Municipal Court operating hours. *See* Pls.’ Mot. for Summary Judgment (“Pls.’ Mot.”) 15 n.16; Pls.’ Ex. C at ¶ 9 and DONOVAN0018; Brunka Dep. 94:2-95:5; Pls.’ Ex. D. That signage states: “Municipal Court Operating Hours . . . Are *Typically* Monday – Friday From 8 a.m. to 5 *p.m.*” Pls.’ Ex. C at ¶ 9 and DONOVAN0018 (emphases added). When presented with photographs of the City Building signage, Lebanon Municipal Court Judge Martin E. Hubbell stated that “the municipal court operating hours are not accurate . . . I don’t think that part is particularly accurate.” Hubbell Dep. 142:15-20. As discussed herein, neither the weekday hours of operation published by the Municipal Court (8 a.m. to 4 p.m.) nor those listed on the City Building signage (“typically” 8 a.m. to 5 p.m.) are comprehensive. Though they may indicate hours that the clerk’s office is generally open for business with the public, they significantly understate the Municipal Court’s total hours of operation, as discussed herein.

Third, although not dispositive, it is worth noting that *both* parties have adopted positions throughout this litigation that would be inconsistent with any finding that anchors the meaning of Ohio law to the Municipal Court’s published hours of operation.

Plaintiffs address each of these points in more detail below.

A. The Lebanon Municipal Court’s Publicly Posted Operating Hours Do Not Affect the Scope of State Law

Ohio law prohibits carrying and possessing firearms, along with other deadly weapons and dangerous ordnances, into “a courthouse or into another *building* or *structure* in which a courtroom is located.” R.C. 2923.123(A)-(B) (emphases added); *see also* R.C. 2923.126(B)(3). As it represents to the public, the Lebanon Municipal Court is located in the Lebanon City Building, at 50 South Broadway, Lebanon, Ohio 45036. *See* Pls.’ Ex. B at 1. The Lebanon City Building is therefore a “building or

structure in which a courtroom is located,” and Ohio law prohibits the possession of firearms within the City Building.

As detailed in Plaintiffs’ earlier briefing, the prohibition plainly applies all the time, whether or not the relevant court is operating. *See* Pls.’ Mot. 11-15; Pls.’ Opp. to Defs.’ Mot. for Summary Judgment (“Pls.’ Opp.”) 14-18; Pls.’ Reply in Support of Mot. for Summary Judgment (“Pls.’ Reply”) 4-7. The statutory text does not limit the firearms prohibition to, or in any way reference, periods of court functions or operations; it simply prohibits deadly weapons in courthouses and other buildings containing courtrooms, full stop. *See* R.C. 2923.123(A)-(B) and 2923.126(B)(3), (7). Adopting a reading of the state law that turns on court operations would require this Court to insert into the state statutes words that simply are not there—i.e., re-writing the prohibition to reach a “building or structure in which a courtroom is located” (as the state statutes say) but only *while the court is “in operation”* (which the statutes do not say). *See In re Foreclosure of Liens for Delinquent Land Taxes*, 140 Ohio St.3d 346, 2014-Ohio-3656, 18 N.E.3d 1151, ¶ 12 (“This court must give effect to the words used [in a statute], refraining from inserting or deleting words.”) (citation omitted.).

Because the state law prohibition is always in force, the Lebanon Municipal Court’s posted hours of operation do not affect the scope of the prohibition. Indeed, to conclude otherwise would run afoul of the “guiding principle of statutory construction” that “when the General Assembly enacts a statute, it does not intend to produce an absurd result.” *State ex rel. Clay v. Cuyahoga Cty. Med. Examiner’s Office*, 152 Ohio St.3d 163, 2017-Ohio-8714, 94 N.E.3d 498, ¶ 22; *see also* R.C. 1.47(C). If the application of state law to a building containing a municipal courtroom depended on the municipal court’s publicly listed hours of operation, then local governments would be effectively empowered to thwart the state law. For example, a municipality that disagreed with the state law prohibition on possessing firearms could vitiate it by posting just one public hour of operation per week—thereby limiting the state law prohibition to one hour per week—even if the court operates for longer periods

in practice.⁴ Conversely, a municipality seeking to maximize the state law prohibition could represent to the public that its court operates 24 hours a day, seven days a week. In other words, if the state law prohibition applied only during publicly listed hours of court operation, municipalities could customize the state law to fit their preferences. Clearly, this would be an absurd result and could not have been the General Assembly's intent. *See Ohioans for Concealed Carry, Inc. v. Clyde*, 120 Ohio St.3d 96, 2008-Ohio-4605, 896 N.E.2d 967, ¶ 52 (finding "R.C. 2923.126 is a general law because it is part of a statewide and comprehensive legislative enactment, (2) appl[ies] to all parts of the state alike and operate[s] *uniformly throughout the state*" (emphasis added) (alterations in original) (quotation and citation omitted)).

Instead, the General Assembly promulgated a straightforward rule that provides clear guidance to the public: Individuals can never carry firearms or other deadly weapons into buildings containing courtrooms. The hours of operation listed in Lebanon Municipal Court's local rules do not alter this plain prohibition.

B. The Lebanon Municipal Court Operates Beyond the Hours of 8 a.m. to 4 p.m.

Even if the Lebanon Municipal Court's operating hours were relevant to the meaning of Ohio law (and they are not), the publicly listed hours of 8 a.m. to 4 p.m., Monday through Friday, cover only part of the Municipal Court's actual operating hours. In practice, the hours of the Municipal Court's operations vary day to day and extend beyond both formal court sessions and the publicly posted hours—a fact that further demonstrates the General Assembly's wisdom in legislating a rule to protect judges and court personnel at all times, and not just during formal court sessions or the court's published operating hours.

⁴ As Lebanon itself demonstrates (*see infra*, at Part B), a municipal court's publicly-posted hours of operation do not necessarily match its actual hours of operation. Thus, a municipality determined to undermine the state law prohibition could artificially restrict its publicly listed operating hours.

Plaintiffs' earlier briefing includes an overview of the Municipal Court's facilities and operations. Pls.' Mot. 4-5, 14; *see also* Hubbell Dep. 12:7-20 (describing the court's facilities on the second floor of the City Building). As Judge Hubbell testified during his deposition, it is "atypical" for the Municipal Court's criminal/traffic court sessions—which occur on Mondays and Thursdays—to conclude by 4 p.m. Hubbell Dep. 68:15-25; *see also* Hubbell Dep. 74:4-9 ("Q. ...you were saying that it's not uncommon for the criminal traffic session to go past 4:00 p.m., correct? A. Correct."); Pls.' Ex. B at R. 2.0(A) (Municipal Court local rule providing that court sessions run "until concluded"). The Municipal Court can remain in session as late as 6 or 7 p.m. on criminal/traffic days. Hubbell Dep. at 68:15-25. Judge Hubbell also has the discretion to keep the Municipal Court in operation later than 7 p.m. Hubbell Dep. 110:13-21. ("If I deemed that that's appropriate for the circumstances, yes. You know, if we're in the middle of a trial, everybody wants to get done, I would go until, until we're completed."). And Judge Hubbell has the power to operate the Court on the weekends. Pls.' Ex. B at R. 2.0(A). Although weekend court sessions are rare, Defendant Mark Yurick, the City Attorney, has personally participated in a trial held in the Municipal Court on Saturday. Yurick Dep. 38:5-39:11 ("Most of it was during the week, but we did come in on Saturday and the person was sentenced."). Moreover, even after a court session concludes, there are "a tremendous amount of administrative tasks that need to be performed," Hubbell Dep. 73:12-20, before Municipal Court operations are done for the day. *See also* Hubbell Dep. 74:10-13 ("Q. And then after a court session, there's more work for the court employees to do? A. Correct."). Thus, even on days where the formal court session finishes by 4 p.m., court staff regularly continue performing administrative work beyond that time.

Additionally, Judge Hubbell regularly works in his Municipal Court chambers in the City Building in the evenings and on weekends. Hubbell Dep. 75:20-76:7 (stating he worked in the City Building until 7:30 p.m. on the Monday before his deposition and that he does not "have a set time when I'm here and when I'm not"); Hubbell Dep. 76:21-77:2 ("Oh, I would say at least two weekends

a month I'm here."); Hubbell Dep. 105:21-23 (Judge Hubbell has 24/7 access to the City Building). In fact, Judge Hubbell sometimes works in his Municipal Court chambers in the City Building at the same time that City Council meetings occur in the courtroom. Hubbell Dep. 150:18-24. ("I have been working in my office here during council meetings."). Similarly, the probation department holds "unscheduled meetings with probationers all the time." Hubbell Dep. 103:6-104:24. In other words, even outside formal court sessions, Municipal Court operations can occur in the City Building in the evenings and on the weekends—including during City Council meetings. Thus, the Municipal Court's publicly listed hours of operation do not cover all of the court's actual hours of operation.

C. The Municipal Court's Publicly Posted Hours of Operation Are Not Relevant to Either Plaintiffs' or Defendants' Litigation Position

The Municipal Court's published hours of operation—8 a.m. to 4 p.m., Monday through Friday—are immaterial to the positions offered by both Plaintiffs *and* Defendants thus far.

As stated above and throughout their earlier briefing, Plaintiffs' position is that state law prohibits firearms in the City Building at all times. Defendants, for their part, have argued throughout this case that state law only prohibits firearms in the City Building when the Municipal Court is *in session*. *See, e.g.*, Defs.' Opp. to Pls.' Mot. for Summary Judgment ("Defs.' Opp.") 11-16. Defendants expressly disavowed reading the state law to mean that firearms are prohibited whenever court is operating, whether or not in formal session. Defs.' Opp. 15-16 (stating that, for purposes of "the meaning of state law," "when functions of the court such as the clerk's office or the probation department are in operation and when court personnel are present. . . . are irrelevant to the legal issues in this case.")⁵

⁵ Incidentally, the reading of state law disavowed by Defendants in their briefing is the reading that Defendant Yurick offered to the City Council and other colleagues during consideration of the Ordinance. *See* Pls.' Ex. I at 56:3-59:11 ("I think that court operations are—are sort of what make a courthouse, and that means more than just having court in session."); Pls.' Ex. H at 2 ("Mr. Yurick is recommending that the Lebanon ordinance prohibits concealed carry of firearms any time that

Generally, formal court sessions occur on Mondays, Tuesdays, and Thursdays, beginning at 1 p.m. Pls.' Ex. B at R. 2.0(A). Even when court is not in session, other court operations occur. *See* Hubbell Dep. at 94:2-11 (Q: "So even when the afternoon [court] sessions described in the second paragraph [of Lebanon Municipal Court Local R. 2.0(A)] are not taking place, court operations are occurring in the offices of—other offices of the court, the clerk's office, probation office that you mentioned? A: "Unless there's a holiday. . . . Correct."). On some occasions, court sessions can occur on other days and may begin earlier. *See, e.g.*, Hubbell Dep. 41:22-42:6 (explaining that, on Tuesdays following a Monday holiday, the magistrate hears video arraignments at 12 p.m., prior to civil docket beginning at 1 p.m.); Hubbell Dep. 59:4-61:2 (recounting his practice, while serving as the civil magistrate, to schedule civil jury trials outside the normal Tuesday civil session "every two to three months"); Hubbell Dep. 109:22-110:9 (the courtroom can be used as early as 8 a.m. on weekdays). And, as detailed above, formal court sessions often run past 4 p.m. In other words, the Municipal Court's publicly posted hours of operation (8 a.m. to 4 p.m., Monday through Friday) do not match the hours that it is usually in session (1 p.m. until conclusion, Mondays, Tuesdays, and Thursdays, plus additional discretionary sessions). Thus, by Defendants' own logic, the state law prohibition is not bounded by the Municipal Court's published hours of operation.

The disconnect between the Municipal Court's publicly posted hours of operation, its formal court sessions, and its total hours of operation further underlines the absurdity of interpreting the state law firearms prohibition to be time-limited. There is simply no set, invariable period of hours when the Municipal Court operates. The Municipal Court clerk's office is generally open for business with the public from 8 a.m. to 4 p.m., Monday to Friday. But, as detailed above, court sessions

Lebanon Municipal Court employees are present in City Hall"); Pls.' Ex. J. (email from Defendant Yurick stating: "I don't think that Lebanon's City Council may allow weapons in the building when court is in session or when court personnel (clerks, probation officers, etc.) are present and on duty."). Neither reading is correct.

generally begin in the afternoon, and often do not conclude until the evening. Court staff continue to perform administrative tasks after the conclusion of formal court sessions; Judge Hubbell often works in chambers in the evenings and on weekends, on a varying schedule; and the probation department frequently holds unscheduled meetings with probationers. Neither the hours of operation listed in the Municipal Court's local rules nor the signs posted on the City Building provide the public with a clear and comprehensive explanation of the Municipal Court's actual operating hours. The Ordinance itself is likewise unhelpful: It states that concealed firearms are not permitted in the City Building during "the operation of any function of the Lebanon Municipal Court," but does not define that phrase or otherwise alert the public that Municipal Court operations occur beyond the weekday hours of 8 a.m. to 4 p.m. *See* Pls.' Ex. A. And the Lebanon Municipal Court is unlikely to be unique in this regard. The reality in many courts is that the actual hours of operation can and do vary according to the courts' dockets and other practical considerations, and they often extend beyond the hours that the court conducts business with the public. The General Assembly surely understood this reality when it chose to enact a weapons prohibition that covers buildings containing courtrooms, without interruption.

CONCLUSION

For the reasons stated above and in Plaintiffs' prior briefing, Plaintiffs respectfully request that the Court grant summary judgment to Plaintiffs.

January 9, 2023

Respectfully submitted,

/s/ Carolyn Shanahan

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing Plaintiffs' Additional Brief in Support of Their Motion for Summary Judgment has been served by electronic mail on the following counsel of record, this 9th day of January 2023:

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