

COMMONWEALTH OF KENTUCKY
BULLITT CIRCUIT COURT
DIVISION ONE
CASE NO. 13-CI-00292

KENTUCKY CONCEALED CARRY COALITION, INC.

PLAINTIFF

VS.

ORDER

CITY OF HILLVIEW, KENTUCKY, *et al.*

DEFENDANTS

* * * * *

This matter comes before the Court on the Plaintiff's Motion for Summary Judgment. A hearing was held on June 9, 2014. The Plaintiff was represented by the Hon. Christopher Hunt. The Defendants were represented by the Hon. Mark Edison.

~~The facts are not in dispute and this case is an issue of statutory construction.~~

This case involves a challenge City of Hillview Ordinance 96-20. 96-20 is an ordinance preventing people from carrying a concealed firearm or other deadly weapon on any building or portion of a building owned, leased or controlled by the city. KRS 65.870(1) mandates that local governments may not occupy any part of the field as to the carrying of firearms. However, KRS 237.115 expressly authorizes cities to pass ordinances to regulate the carrying of concealed deadly weapons on buildings owned by the city, not withstanding KRS 65.870.

City of Hillview Ordinance 96-20 defines buildings as "any structure, vehicle, water craft, or air craft where city citizens are permitted to assemble for purposes of business, government, education, religion, entertainment or public transportation." Thus by defining "building" so broadly, the City of Hillview has exceeded the limited scope authorizing them to limit the carrying of firearms in buildings owned by them in KRS

237.115. The Court finds that City of Hillview Ordinance 96-20 to be in violation of KRS 65.870(1).

The City of Hillview Ordinance was passed in 1996. At that time KRS 65.870 had no provision for enforcement. In 2012 KRS 65.870 was amended to add sections two through seven.

“(2) Any existing or future ordinance, executive order, administrative regulation, policy, procedure, rule, or other form of executive or legislative action in violation of this section of the spirit thereof is hereby declared null, void, and unenforceable.

(3) Any person or organization specified in subsection (1) of this section shall repeal, rescind, or amend to conform, any ordinance, administrative regulation, executive order, policy, procedure, rule, or other form of executive or legislative action in violation of this section or the spirit thereof within six (6) months after July 12, 2012.

(4) Pursuant to Section 231 of the Constitution of Kentucky, insofar as any person or organization specified in subsection (1) of this section is considered an agent of the Commonwealth, it is the intent of the General Assembly to exempt them from any immunity provided in Section 231 of the Constitution of Kentucky to the extent provided in this section. A person or an organization whose membership is adversely affected by any ordinance, administrative regulation, executive order, policy, procedure, rule, or any other form of executive or legislative action promulgated or caused to be enforced in violation of this section or the spirit thereof may file suit against any person or organization specified in subsection (1) of this section in any court of this state having jurisdiction over any defendant to the suit for declaratory and injunctive relief. A court shall award the prevailing party in any such suit:

(a) Reasonable attorney's fees and costs in accordance with the laws of this state; and

(b) Expert witness fees and expenses.

(5) If any person or organization specified in subsection (1) of this section violates this section or the spirit thereof, the court shall declare the improper ordinance, administrative regulation, executive order, policy, procedure, rule, or other form of executive or legislative action specified in subsection (1) of this section null, void, and unenforceable, and issue a permanent injunction against the person or organization specified in subsection (1) of this section prohibiting the enforcement of such ordinance, administrative regulation, executive order, policy, procedure, rule, or any other form of executive or legislative action specified in subsection (1) of this section.

(6) A violation of this section by a public servant shall be a violation of either KRS 522.020 or 522.030, depending on the circumstances of the violation.

(7) The provisions of this section shall not apply where a statute specifically authorizes or directs an agency or person specified in subsection (1) of this section to regulate a subject specified in subsection (1) of this section." KRS 65.870.

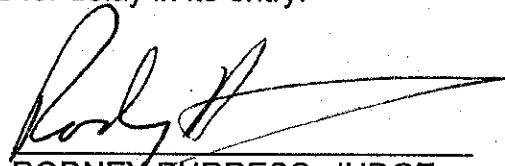
The City states that as Section 2 provides that the ordinance is "null, void, and unenforceable" that no further action is necessary. The City has not been enforcing Ordinance 96-20. The City's position is that there is no reason to repeal Ordinance 96-20 as it has already been declared "null, void, and unenforceable."

The Court is required to give effect to the General Assembly's intent and "the plain meaning of the statutory language is presumed to be what the legislature intended, and if the meaning is plain, then the court cannot base its interpretation on any other method or source." Revenue Cabinet v. O'Daniel, 153 S.W.3d 815 (Ky. 2005). The City's interpretation ignores the plain meaning of Section 3, which requires the city to take the affirmative step to "repeal, rescind, or amend" the ordinance by January 12, 2013. Section 4 authorizes an organization such as the Plaintiff who has been adversely affected by an ordinance to file suit. The Plaintiff filed affidavits from members who state they have been on property owned by the City of Hillview. The Court finds the City of Hillview Ordinance has a chilling effect on these members' ability to lawfully carry a concealed firearm.

It is HEREBY ORDERED AND ADJUDGED that the Plaintiff's Motion for Summary Judgment is HEREBY GRANTED. It is HEREBY ORDERED that City of

Hillview Ordinance 96-20 is hereby declared null, void, and unenforceable. The City of Hillview is hereby permanently enjoined from enforcing Hillview Ordinance 96-20. This is a final and appealable order and there is no just cause for delay in its entry.

ENTERED
JUL 22 2014
BULLITT CIRCUIT DISTRICT CLERK
BY: *WBC* D.C.



RODNEY BURRESS, JUDGE
BULLITT CIRCUIT COURT
DIVISION ONE

7-17-14
DATE