

[Cite as *Clark v. Dept. of Rehab. & Corr.*, 2002-Ohio-6402.]

IN THE COURT OF CLAIMS OF OHIO

LON A. CLARK, SR., #367-317 :  
68518 Bannock Road S.R. 331 :  
St. Clairsville, Ohio 43950 : Case No. 2002-03881-AD

Plaintiff : MEMORANDUM DECISION

v. :

OHIO DEPARTMENT OF :  
REHABILITATION AND CORRECTION :

Defendant :

: : : : : : : : : : : : : : : :

For Defendant: Gregory C. Trout, Chief Counsel  
Department of Rehabilitation and  
Correction  
1050 Freeway North  
Columbus, Ohio 43229

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FINDINGS OF FACT

{¶1} Plaintiff, Lon A. Clark, Sr., an inmate incarcerated at defendant's Belmont Correctional Institution, indicated he mailed his Brother SX-4000 typewriter for maintenance service on February 23, 2001. At the time plaintiff mailed his typewriter from defendant's institution, defendant had a policy in effect that restricted inmate possession privileges to typewriters which had been purchased from the institution commissary. However, plaintiff contended he was not restricted from retaining possession of his typewriter despite the fact the appliance had not been purchased from the institution commissary.

{¶2} Plaintiff stated he received a pass on June 18, 2001 to pick up his repaired typewriter from the institution mail room.

Plaintiff explained that when he arrived at the institution mail room to retrieve his property he was not given his typewriter, but was instead shown a document titled "Frequently Asked Questions." According to plaintiff this "Frequently Asked Questions" document contained language relating inmates were permitted to retain typewriters not purchased in the commissary only until the devices were mailed out or were no longer functional. Plaintiff suggested he was prohibited from retrieving his typewriter and consequently authorized the mailing of the restricted typewriter to his home address.

{¶3} Plaintiff has argued he should have either been allowed to keep his typewriter or been given specific instructions about policy directives prohibiting retention of typewriters mailed out for repairs. Plaintiff filed this complaint seeking to recover \$125.00, the original purchase price of the typewriter. Plaintiff also seeks recovery of damages in the amount of \$131.00, the repair cost of the typewriter, plus \$10.75 for shipping expenses. Furthermore, plaintiff claimed damages in the amount of \$70.00 for phone calls. Plaintiff's total damage claim amounts to \$336.75. Plaintiff did not offer any explanation regarding how he would be entitled to essentially double recovery for the loss of one typewriter. Plaintiff did not elaborate on the issue of phone call expenses as recoverable damages.

{¶4} On June 3, 2002, plaintiff submitted the filing fee.

{¶5} Defendant has denied any liability in this matter. Defendant has contended the actions taken with plaintiff in respect to typewriter possession accorded with departmental policy, DRC Policy 205-1. Under this policy effective April 1, 2000, inmates were not permitted to order or purchase electric typewriters such

as the Brother SX-4000 owned by plaintiff. However, as in plaintiff's situation, inmates who had previously possessed electric typewriters were permitted to retain their typewriters until such time as the items become unusable. Defendant reasoned plaintiff's typewriter became impermissible property under policy when the typewriter would not function, needed repair and was consequently "unusable."

{¶6} Plaintiff filed a motion for extension of time to respond to defendant's investigation report. Subsequently, plaintiff filed a response omitting his claim for telephone call expenses, but asserting his entitlement to all other damages previously claimed including double recovery for the loss of use of his typewriter. Plaintiff contended his typewriter situation was not governed by DRC Policy-205.01 as effective April 1, 2001, but was governed by DRC Policy-205.01 as effective September 9, 2001. Plaintiff asserted defendant's violation of its own policy directly led to the loss of use of his property.

#### CONCLUSIONS OF LAW

{¶7} The state cannot be sued for the exercise of any executive planning function involving the making of a policy decision characterized by a high degree of discretion. *Reynolds v. State* (1984), 14 Ohio St. 3d 68. In the instant claim, defendant is immune from suit based on a policy decision to declare plaintiff's typewriter impermissible property. An inmate plaintiff is barred from pursuing a claim for the loss of restricted property when such property is declared impermissible pursuant to departmental policy. *Zerla v. Dept. of Rehab. And Corr.* (2001), 2000-09849-AD. Therefore, plaintiff claim shall be dismissed.

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DANIEL R. BORCHERT  
Deputy Clerk

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68518 Bannock Road S.R. 331	:	
St. Clairsville, Ohio 43950	:	Case No. 2002-03881-AD
Plaintiff	:	ORDER OF ADMINISTRATIVE
	:	DETERMINATION
v.	:	
OHIO DEPARTMENT OF	:	
REHABILITATION AND CORRECTION	:	
Defendant	:	

: : : : : : : : : : : : : : : :

For Defendant: Gregory C. Trout, Chief Counsel  
Department of Rehabilitation and  
Correction  
1050 Freeway North  
Columbus, Ohio 43229

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Having considered all the evidence in the claim file and  
adopting the memorandum decision concurrently herewith;

IT IS ORDERED THAT:

- 1) Plaintiff's motion for extension of time is MOOT;
- 2) Plaintiff's claim is DISMISSED with prejudice;
- 3) Court costs are assessed against plaintiff.

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DANIEL R. BORCHERT  
Deputy Clerk

