



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 30, 2016

The Honorable Clay Jenkins
Dallas County Judge
411 Elm Street
Dallas, Texas 752002

RE: Wrongful Exclusion of Handgun License Holder Complaint
Dallas County Government Center
OAG No. 27

Dear Judge Jenkins:

The Office of the Attorney General ("OAG") received a citizen complaint, pursuant to section 411.209 of the Government Code, concerning the wrongful exclusion of handgun license holders from the Dallas County Government Center, located at 10056 Marsh Lane, Dallas, Texas 75220.¹ After investigating the citizen complaint, the OAG has determined there is a violation of section 411.209.

Section 411.209(a) of the Government Code states as follows:

A state agency or a political subdivision of the state may not provide notice by a communication described by Section 30.06, Penal Code, or by any sign expressly referring to that law or to a concealed handgun license, that a license holder carrying a handgun under the authority of this subchapter is prohibited from entering or remaining on a premises or other place owned or leased by the governmental entity unless license holders are prohibited from carrying a handgun on the premises or other places by Section 46.03 or 46.035, Penal Code.

TEX. GOV'T CODE § 411.209(a).

Generally, a political subdivision may post a Penal Code section 30.06 ("30.06") or concealed handgun sign to warn handgun license holders against trespassing on the premises where weapons are prohibited by section 46.03 or 46.035 of the Penal Code.

Section 46.03 of the Penal Code prohibits a person, including a handgun license holder, from bringing weapons on certain premises. Violation of this section constitutes a third degree felony. Specifically, section 46.03(a)(3) allows the exclusion of weapons from "the premises of any

¹ The OAG notes our initial letter notifying Dallas County of the complaint referred to the "Dallas County Tax Office," which reflected the description provided in the citizen complaint. However, upon further review, the OAG has determined the premises in question is more accurately described as the Dallas County Government Center.

government court or offices utilized by the court, unless pursuant to written regulations or written authorization of the court[.]” Further, Attorney General Opinion KP-0047 (2015) stated “[t]he premises of a ‘government court or office utilized by the court’ means a government courtroom or those offices essential to the operation of the government court.”

Additionally, Attorney General Opinion KP-0047 stated “the responsible authority that would notify license holders of their inability to carry on respective premises must make the determination of which government courtrooms and offices are essential to the operation of the government court.” The OAG acknowledges that decisions such as this are for the governmental entity in the first instance, subject to review for abuse of discretion. Tex. Att’y Gen. Op. Nos. KP-0007 at 2 (2015), GA-0843 (2011) at 2, GA-0271 (2009) at 3, GA-0472 (2006) at 3; *see also Comm’rs Ct. of Titus Cnty. v. Agan*, 940 S.W.2d 77, 80 (Tex. 1997) (recognizing district court’s supervisory control over a commissioners court that abuses its discretion).

In this instance the citizen complaint states there are 30.06 signs posted outside the entrance to the Dallas County Government Center (the “government center”), as well as inside the entry hall, warning handgun license holders not to enter the premises with their handguns. The complaint further states the complainant inquired about the signs and was informed by the clerk’s office of the justice of the peace court that the prohibition against the carrying of handguns applied to the entire building. After investigating this complaint, the OAG notes the government center is a multi-story, multipurpose building, housing various Dallas County (the “county”) government offices. The government center contains, among other offices, a justice of the peace court, a county tax office, a county constable, an office of the county clerk that handles marriage licenses, an office of the district clerk that handles passports, and a truancy court.

In correspondence dated March 18, 2016, Assistant District Attorney Russell Roden provided the OAG a response to the complaint on behalf of the county. Mr. Roden’s response indicates the county has interpreted section 46.03 of the Penal Code to prohibit the carrying of firearms within an entire government building if a portion of the building houses a government court. Based on this representation, the OAG concludes the county intends to exclude the carrying of weapons from the entire premises of the government center, purportedly pursuant to section 46.03(a)(3) of the Penal Code.

But while the government center houses government courts, not all of the offices located in the government center are courts or offices essential to the operation of the courts. For example, a county clerk, county tax office, or an office of a county constable are non-judicial county administrative offices that are not included in the specific exempted places listed under section 46.03 or 46.035 of the Penal Code. Section 46.03(a)(3) of the Penal Code does not allow a political subdivision to prohibit licensed handgun holders from entering into an entire building simply because the courts or the offices of the courts are located in a portion of that multipurpose building.

Although the county has made a determination that it may lawfully prohibit the carrying of handguns throughout the entirety of the government center, a reviewing court would likely conclude the county abused its discretion by seeking to protect areas of the multiuse building that are clearly neither a government court nor offices essential to the court. *See Agan*, 940 S.W.2d at

80 (commissioners court abuses discretion by acting “illegally, unreasonably, or arbitrarily”). Consequently, the OAG has determined the signs located at the entrance and in the entry hall of the government center are in violation of section 411.209 of the Government Code.

The county has fifteen (15) days from the receipt of this written notice to remove the signs and cure this violation. Please send proof that the signs have been removed and the violation has been cured to the OAG by mail, fax or email. If the OAG does not receive proof by the close of business on the fifteenth (15th) day, the OAG may proceed to file suit in district court for civil penalties pursuant to section 411.209(g) of the Government Code. The county may be liable for a civil penalty of:

- Not less than \$1,000 and not more than \$1,500 for the first violation; and
- Not less than \$10,000 and not more than \$10,500 for the second or a subsequent violation.

Be advised that each day of a continuing violation constitutes a separate violation according to section 411.209(c) of the Government Code.

If you do not think that the county is in violation of section 411.209 of the Government Code, please submit detailed information explaining why you are not in violation for the OAG for review. Any such information must be received by the OAG not later than the close of business on the fifteenth (15th) day from the receipt of this written notice. Once we have received this information, the OAG will review and reconsider whether there is a violation.

If you have any questions, feel free to email me at matthew.entsminger@texasattorneygeneral.gov or call me at 512-475-4186.

Sincerely,



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cc: Complainant