



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 15, 2016

The Honorable Scott Felton
McLennan County Judge
501 Washington Avenue
Room 214
Waco, Texas 76701

RE: Wrongful Exclusion of Handgun License Holder Complaint – Resolved
McLennan County Courthouse and Annex
OAG Complaint No. 30

Dear Judge Felton:

Based on the further information provided by your office and our April 13, 2016, tour of the current county facilities and planned modifications we hereby find that the plans, as set forth in Judge Felton's letter dated April 15, 2016, for the McLennan County Courthouse and Courthouse Annex are sufficient to comply with section 411.209 of the Government Code and the relevant provisions of the Penal Code. Based on the foregoing, this office will not file suit or seek the collection of civil penalties.

Sincerely,

A handwritten signature in black ink, appearing to read "M. Entsminger".

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cc: Complainants



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 30, 2016

The Honorable Scott Felton
McLennan County Judge
501 Washington Avenue
Room 214
Waco, Texas 76701

RE: Wrongful Exclusion of Handgun License Holder Complaint
McLennan County Courthouse and Annex
OAG Complaint No. 30

Dear Judge Felton:

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 McLennan County Courthouse and Annex. 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 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 that, at the entrance of the McLennan County Courthouse and Annex located at 501 Washington Ave., Waco, TX 76701, there are two 30.06 signs warning handgun license holders not to enter the premises with their handguns. The complaint further indicates there is a general “no weapons allowed” sign in this location, as well as two signs prohibiting the open carry of handguns by license holders under section 30.07 of the Penal Code. After investigating this complaint, the OAG notes the McLennan County Courthouse and Annex are multi-story, multipurpose buildings. The McLennan County Courthouse (the “courthouse”) contains, among others, the commissioners court, county district courts, county courts-at-law, the Tenth Court of Appeals, and the county clerk, while the McLennan County Courthouse Annex (the “annex”) houses various offices including the district attorney, district clerk, and a justice of the peace court.

You sent responses to both the complainant and the OAG. In your December 30th letter to the complainant you stated that, in accordance with Attorney General Opinion KP-0047, the commissioners court made a determination that the courthouse and annex “are almost entirely devoted to courts and court functions.” This includes the hallways, common areas, restrooms, stairwells, and elevators, which the commissioners court considers to be both integral and essential to the operation of the courts. In your March 2nd letter to the OAG, you included a copy of the joint order determining the areas essential to the operations of the courts, as well as photographs showing the current placement of the 30.06 signs, 30.07 signs, and a sign referencing section 46.03 of the Penal Code, warning handgun license holders that weapons are not allowed on the premises of a court or office utilized by the court. Based on your representations and the posted signage, the OAG concludes McLennan County (the “county”) intends to exclude the carrying of weapons from the entire premises of the courthouse and annex, purportedly pursuant to section 46.03(a)(3) of the Penal Code.

Although both the courthouse and annex house government courts, such as district courts and county courts-at-law, not all of the offices located in the courthouse or the annex are offices essential to the operation of the courts. For example, the commissioners court, located in the courthouse, is a non-judicial county administrative office that is not included in the specific premises listed under section 46.03 or 46.035 of the Penal Code. Further, section 46.03(a)(3) of the Penal Code does not address the district attorney’s office, which is located in the annex, as it is not an office essential to the operation of the courts. In short, 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.

The Honorable Scott Felton

March 30, 2016

Page 3

Although the county issued a joint order determining the entire courthouse and annex to be essential to the operations of the courts, a reviewing court would likely conclude the county abused its discretion by implementing a joint order that protects areas of the courthouse and annex that are clearly neither a government court nor offices essential to the operation of a 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 entrances of the courthouse and the annex are in violation of the Government Code and the Penal 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,



Matthew R. Entsminger
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