KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 10, 2016

The Honorable Duane Peters
Brazos County Judge
200 S. Texas Avenue, Suite 332
Bryan, Texas 77803

RE: Wrongful Exclusion of Handgun License Holder Complaint – Resolved
Brazos County Courthouse
OAG Complaint No. 26

Dear Judge Peters:

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 Brazos County Courthouse (the "courthouse"), located at 300 E. 26th Street, Bryan, Texas 77803. By correspondence dated March 30, 2016, we notified Brazos County (the "county") of our determination that a violation of section 411.209 had occurred and that the county had fifteen days to either cure the violation and come into compliance or submit detailed information explaining why the county was not in violation.

By e-mail dated April 20, 2016, the county provided further information explaining the signs forming the basis of the complaint were removed from the front entrance of the courthouse. Upon review, we conclude this modification of the posted signage is sufficient to bring the county into compliance with section 411.209 of the Government Code and the relevant provisions of the Penal Code. Accordingly, the OAG is closing this complaint.

Sincerely,

Matthew R. Entsminger
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CC: Complainant

KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 30, 2016

The Honorable Duane Peters
Brazos County Judge
200 S. Texas Avenue, Suite 332
Bryan, Texas 77803

RE: Violation of Wrongful Exclusion of Handgun License Holder Complaint
Brazos County Courthouse
OAG Complaint No. 26

Dear Judge Peters:

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 Brazos County Courthouse. 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 a 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, on the door of the main entrance to the Brazos County Courthouse (the "courthouse"), located at 300 E. 26th Street, Bryan, TX 77803, there is a 30.06 sign warning handgun license holders not to enter the premises with their handguns. At the same location, the complaint alleges the door to a side entrance bears a general "no firearms" sign referencing section 46.03 of the Penal Code and advising handgun license holders may not enter the premises with their handguns. After investigating the complaint, the OAG notes the courthouse is a multi-story, multipurpose building that houses the district courts and county courts-at-law, as well as county and district clerks, the collections department, the district attorney, and constables' offices, among others.

In correspondence dated March 14, 2016, you provided a response to the complaint on behalf of Brazos County (the "county"). You state that, in accordance with Attorney General Opinion KP-0047, county officials have determined that various enumerated areas within the courthouse, including but not limited to the hallways, stairwells, elevators, common areas, and restrooms, are integral and necessary to the operation of the courts. Based on this representation and the posted signage, the OAG concludes the county intends to exclude the carrying of weapons from the entire premises of the courthouse, purportedly pursuant to section 46.03(a)(3) of the Penal Code.

Although the courthouse houses several courts, such as the district courts and the county courts-at-law, not all of the offices located in the courthouse are offices essential to the operation of the courts. For example, the county clerk and the district and county attorneys' offices 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 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 the entire courthouse is essential to the operations of the government courts contained therein, a reviewing court would likely conclude the county abused its discretion by seeking to protect areas of the multiuse courthouse 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 main and side entrances of the courthouse 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 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) calendar 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
Assistant Attorney General
Administrative Law Division
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