



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

January 25, 1994

Honorable Keith Oakley  
Chair  
Committee of Public Safety  
Texas House of Representatives  
P.O. Box 2910  
Austin, Texas 78768-2910

Letter Opinion No. 94-009

Re: Whether an individual may lawfully carry a handgun while fishing on a privately owned pier that is open to the public and licensed by the Texas Alcoholic Beverage Commission (ID# 21366)

Dear Representative Oakley:

You advise that in the city of Port Isabel, a local business controls access to a privately owned pier open to the public. This business is permitted by the Texas Alcoholic Beverage Commission (the "TABC") to sell alcoholic beverages. The business also charges a fee to fish on the pier for a specified period of time. Your request concerns an individual's right to carry a handgun on a privately owned pier open to the public and licensed by the TABC.

Section 46.02 of the Penal Code addresses the unlawful carrying of weapons and provides the following:

(a) A person commits an offense if he intentionally, knowingly, or recklessly carries on or about his person a handgun, illegal knife, or club.

(b) It is a defense to prosecution under this section that the actor was, at the time of the commission of the offense:

....

(4) engaging in lawful hunting, fishing, or other sporting activity on the immediate premises where the activity is conducted, or was directly en route between the premises and the actor's residence, *if the weapon is a type commonly used in the activity.* . . .

....

(f) An offense under this section is a felony of the third degree if the offense is committed on any premises licensed or issued a permit by this state for the sale of alcoholic beverages.

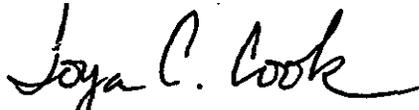
Acts 1993, 73d Leg., ch. 900, § 1.01, at 3989-90 (emphasis added).

The language of section 46.02 of the Penal Code is clear; only a weapon of the type commonly used in the activity may be exempted from the prohibition against carrying a weapon on one's person or in a place where alcoholic beverages are sold. Moreover, regulations issued by the Parks and Wildlife Department do not permit the use of a handgun to take or attempt to take fish from public waters. See 31 TAC §§ 65.11, 65.72.<sup>1</sup> Therefore, we conclude that under the circumstances which you describe, possession of a handgun would be in violation of section 46.02 of the Penal Code.

### S U M M A R Y

Section 46.02 of the Penal Code prohibits an individual from carrying a handgun while engaging in the sport of fishing on a privately owned pier that is open to the public and on which the owner of the pier is licensed by the Texas Alcoholic Beverage Commission to sell alcoholic beverages.

Yours very truly,



Toya C. Cook  
Assistant Attorney General  
Opinion Committee

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<sup>1</sup>Title 31, section 65.11 of the Texas Administrative Code states that "[i]t is unlawful to fish by the means and methods authorized by 31 TAC § 65.72 (relating to Firearms)". Section 65.72 of title 31 strictly prohibits the use of firearms to take fish; furthermore, it prohibits "the use of a hand-operated device held underwater, other than a spear gun or a spear." 31 TAC § 65.72 (e)(1)(B); See 31 TAC § 65.3 (defining spear gun).