



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

April 20, 1994

Honorable Tim Curry  
Criminal District Attorney  
Tarrant County  
Justice Center  
401 West Belknap  
Fort Worth, Texas 76196-0201

Letter Opinion No. 94-038

Re: Whether Tarrant County criminal district court bailiffs must be licensed by the Texas Commission on Law Enforcement Officer Standards and Education, whether the bailiffs may carry firearms, and related questions (RQ-636)

Dear Mr. Curry:

On behalf of the district judges of Tarrant County, you ask whether the Tarrant County criminal district court bailiffs must be licensed by the Texas Commission on Law Enforcement Officer Standards and Education ("TCLEOSE"), whether the bailiffs may carry firearms, and a number of other related questions. You explain that in the past, bailiffs in Tarrant County have not been required to be licensed as peace officers by TCLEOSE. A number of bailiffs have been deputized by the sheriff but have not been licensed by TCLEOSE. Apparently, TCLEOSE takes the position that these bailiffs must be licensed. You state that the district judges in your county are divided on this issue: "some want their bailiff (and all bailiffs in the courthouse) to be fully licensed peace officers. . . . Other judges want complete discretion over who their bailiffs are and whether or not they are armed, without interference from the state regulatory agency TCLEOSE."

**I. Relevant Statutory Provisions**

We begin by examining the statutory provisions most relevant to your inquiry, specifically those governing: (i) the appointment and assignment of bailiffs to the criminal district courts in Tarrant County; (ii) the authority to carry firearms; and (iii) the licensing authority of TCLEOSE.

**A. Appointment and Assignment of Bailiffs**

Subchapter A of chapter 53 of the Government Code governs the appointment, qualifications, and duties of certain bailiffs in certain courts, including the Tarrant County criminal district courts. Section 53.001(c) of the Government Code provides that "[e]ach criminal district court in Tarrant County must have at least three bailiffs assigned regularly

to the court. Each judge of a criminal district court in Tarrant County shall appoint two officers of the court to serve as bailiffs for his court." In addition, the county sheriff is required to furnish a bailiff to each criminal district court. Gov't Code § 53.001(f); Code Crim. Proc. art. 36.24. You are concerned about the status of both the bailiffs appointed by the criminal district court judges in Tarrant County pursuant to subchapter A (who you refer to as "judges' bailiffs") and those assigned by the sheriff (who you refer to as "sheriff's bailiffs").

### **1. Judges' Bailiffs**

Section 53.006 provides that a judge's bailiff appointed under section 53.001 is an officer of the court, Gov't Code, § 53.006(a), and "shall perform in the court to which the bailiff . . . is appointed all duties imposed on bailiffs under general law and shall perform other duties required by the judge of the court that the bailiff . . . serves," *id.* § 53.006(b). Section 53.007, subsections (a)(3) and (b), provides that at the request of a judge of the criminal district courts of Tarrant County, the sheriff of the county shall deputize a judge's bailiff appointed under subchapter A.

Although they pertain to other counties, several other provisions of subchapter A are relevant to your inquiry. Section 53.004(e) provides that to be eligible to be appointed bailiff in a district court in Midland County, for the 355th District Court, or under section 53.001(g) (Potter and Randall counties), a person must hold a peace officer license from TCLEOSE. Section 53.0071 provides that a bailiff appointed under sections 53.001(b), (g) (Nueces, Potter and Randall counties) and 53.002(c), (e) (El Paso and Tom Green counties) is a peace officer for purposes of article 2.12 of the Code of Criminal Procedure, unless the appointing judge provides otherwise in the order of appointment.

Article 2.12 of the Code of Criminal Procedure enumerates officials who are "peace officers." The list includes sheriffs and their deputies, and officers appointed by an appellate court under subchapter F of chapter 53 of the Government Code. Code Crim. Proc. art. 2.12 (1), (26). It does not include district court bailiffs *qua* bailiffs.

### **2. Sheriffs' Bailiffs**

The appointment of a bailiff under subchapter A does not affect the requirement under general law that the sheriff furnish a bailiff for each court. Gov't Code § 53.001(f). Article 36.24 of the Code of Criminal Procedure provides that the sheriff "shall furnish the court with a bailiff during the trial of any case to attend the wants of the jury and to act under the direction of the court." In Attorney General Opinion M-973 (1971), this office concluded that a district court bailiff furnished to the court by the sheriff under this provision is not required to be a deputy sheriff.

## **B. Firearms**

Section 46.02 of the Penal Code makes it an offense to carry a firearm. Section 46.03(a)(6) provides that section 46.02 does not apply to a person "who is a peace officer, other than a person commissioned by the Texas State Board of Pharmacy." In addition, section 46.04 of the Penal Code generally provides that it is an offense to carry a firearm in certain public places. These places include "any government court or offices utilized by the court, unless pursuant to written regulations or written authorization of the court." Penal Code § 46.04(a)(3). It is a defense to prosecution under section 46.04 that the person possessed a firearm "while in the actual discharge of his official duties as a peace officer or . . . an officer of the court." *Id.* § 46.04(b).

The term "peace officer" in the Penal Code is defined as a person elected, employed or appointed as a peace officer under article 2.12 of the Code of Criminal Procedure, sections 51.212 or 51.214 of the Education Code, or "other law." *Id.* § 1.07(a)(25); *see also* Attorney General Opinion JM-1050 (1989) (statutory definition of "peace officer" rather than pre-1973 case law governs meaning of the term). Although a judge is not a "peace officer," this office has concluded that section 46.04 authorizes a judge to possess a gun in the courtroom and to permit others, including non-peace officers, to bring a gun into the courtroom pursuant to written regulations or written authorization. Attorney General Opinion JM-1028 (1989); Letter Opinion 88-70 (1988).

## **C. TCLEOSE**

TCLEOSE is governed by chapter 415 of the Government Code. Section 415.001(5) of that chapter defines a "peace officer" as a "person elected, employed, or appointed as a peace officer under Article 2.12, Code of Criminal Procedure, or other law." Section 415.051 provides that a person may not appoint "an officer" unless he or she is licensed by TCLEOSE. The term "officer" includes both "peace officer" and "reserve law enforcement officer" under section 85.004 of the Local Government Code. Gov't Code § 415.001(4), (5), (7). A peace officer serving under a permanent appointment before September 1, 1970, is not required to obtain a license as a condition of tenure, continued employment, or promotion unless the officer seeks a new appointment. *Id.* § 415.051(c).

Section 415.035 of the Government Code mandates an entity that employs more than two peace officers to designate a firearms proficiency officer and to require each peace officer to demonstrate weapons proficiency to that officer at least once a year. *Id.* § 415.035(a). TCLEOSE is required to adopt rules to define weapons proficiency. *Id.* § 415.035(b).

## **II. Application of the Law**

### **A. Bailiffs and Firearms Generally**

First, you ask if bailiffs are "required to be deputized and/or licensed to be armed."<sup>1</sup> We understand you to ask about both sheriff's and judges' bailiffs. As noted above, a person may carry a firearm in a court or the offices utilized by a court "pursuant to written regulations or written authorization of the court." Penal Code § 46.04(a)(3). We believe that a sheriff's or judge's bailiff need not be a "peace officer" within the meaning of section 1.07(a)(25) of the Penal Code or article 2.12 of the Code of Criminal Procedure in order to carry a handgun in a courtroom or a court's offices pursuant to this provision. *Cf.* Attorney General Opinion JM-1028 (Penal Code section 46.04 authorizes judge to possess gun in courtroom and to permit others to do so).

Furthermore, it is a defense under section 46.04 that the person possessed a firearm "while in the actual discharge of his official duties as a peace officer or . . . an officer of the court." A judge's bailiff appointed under section 53.001(c) of the Government Code is an officer of the court, Gov't Code § 53.006(a), and a judge's bailiff who has been deputized, or a sheriff's bailiff who is a deputy sheriff or reserve deputy sheriff, is a peace officer. *See* discussion *infra* pp. 6-7 (regarding reserve deputy sheriffs). A bailiff who is an officer of the court or a peace officer may raise this defense. Section 46.04(a)(3) of the Penal Code, however, does not authorize any person to carry a firearm in any location other than a courtroom or court's offices, or provide any person a defense to the carrying of a firearm in any other location.

With respect to bailiffs' authority to carry firearms, you also suggest that a person who has demonstrated weapons proficiency to a firearms proficiency officer pursuant to section 415.035 of the Government Code should have the same authority to carry a firearm as a peace officer. We disagree. Section 415.035 merely requires entities that employ peace officers, as defined by chapter 415, to ensure those peace officers' weapons proficiency. It does not give a non-peace officer who demonstrates weapons proficiency the same authority to carry a firearm as a peace officer.

### **B. Sheriff's Bailiffs**

Next you ask whether "bailiffs assigned by the Sheriff's Department [are] required to be TCLEOSE-licensed peace officers." Bailiffs assigned by the sheriff pursuant to article 36.24 of the Code of Criminal Procedure are not required to be peace officers and

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<sup>1</sup>We consider your questions in the order asked. Because the 12 subparts to your questions are somewhat repetitive, we do not address those subparts which we believe have been answered in response to earlier questions.

they do not become peace officers merely by virtue of their assignment by the sheriff. *See* Attorney General Opinion M-973. Therefore, we conclude that sheriff's bailiffs are not required to be licensed as officers by TCLEOSE unless they are officers by operation of some other law such as, for example, section 85.003 of the Local Government Code which provides for deputy sheriffs or section 85.004 of the Local Government Code which provides for reserve deputy sheriffs. *See* Gov't Code § 415.001(4), (5), (7); *see also* discussion *infra* pp. 6-7 (regarding reserve deputy sheriffs).

You ask about the conditions under which a sheriff's bailiff may carry a firearm. Again, any person may carry a firearm in a court or the offices utilized by a court "pursuant to written regulations or written authorization of the court." Penal Code § 46.04(a)(3). A sheriff's bailiff need not be a "peace officer" within the meaning of section 1.07(a)(25) of the Penal Code or article 2.12 of the Code of Criminal Procedure in order to carry a handgun in a courtroom or a court's offices pursuant to this provision. Furthermore, it is a defense under section 46.04 that the person possessed a firearm "while in the actual discharge of his official duties as a peace officer." A sheriff's bailiff who is a deputy sheriff or reserve deputy sheriff under sections 85.003 or 85.004 of the Local Government Code may raise this defense. *See* discussion *infra* pp. 6-7 (regarding reserve deputy sheriffs). Section 46.04(a)(3) of the Penal Code does not authorize any person to carry a firearm in any location other than a courtroom or court's offices, or provide any person a defense to the carrying of a firearm in any other location. Section 46.03(a)(6) of the Penal Code, which provides an exemption to the general prohibition against carrying handguns in section 46.02, does not apply to a sheriff's bailiff who is not a deputy sheriff (or a reserve deputy sheriff on active duty) and therefore not a peace officer. The exemption does apply to a sheriff's bailiff who is a deputy sheriff (or a reserve deputy sheriff on active duty).

### C. Deputized Judges' Bailiffs

You also ask if a judge's bailiff is required to be licensed by TCLEOSE if a court requests that he or she be deputized by the sheriff. We believe that a Tarrant County judge's bailiff who is deputized by the sheriff at the request of the court pursuant to section 53.007 of the Government Code is a "peace officer." The definition of "peace officer" in article 2.12 of the Code of Criminal Procedure includes "sheriffs and their deputies." Code Crim. Proc. art. 2.12(1). Furthermore, section 415.001 of the Government Code defines the term "peace officer" to include a person appointed under article 2.12 of the Code of Criminal Procedure "or other law." Gov't Code § 415.001(5) (emphasis added). Because a deputized judge's bailiff is a peace officer under section 415.001(5) of the Government Code, which defines the term for purposes of the provisions governing TCLEOSE, such a bailiff must be licensed.

We stress that a judge's bailiff in Tarrant County need not be licensed by TCLEOSE unless he or she has been deputized pursuant to section 53.007 of the Government Code or some other law. As noted above, section 53.004(e) of the Government Code provides that a person must hold a peace officer license from TCLEOSE in order to be eligible to be appointed judge's bailiff in certain district courts. Furthermore, under section 53.0071 of the Government Code, judges' bailiffs in certain counties are defined as peace officers for purposes of article 2.12 of the Code of Criminal Procedure. Neither of these sections applies to judges' bailiffs in Tarrant County. For this reason, we do not believe that the judges' bailiffs in Tarrant County are automatically "peace officers" for purposes of section 1.07(a)(25) of the Penal Code or article 2.12 of the Code of Criminal Procedure, or "officers" for purposes of the TCLEOSE licensing provisions, Gov't Code §§ 415.001(4), (5), (7), .051(a).

#### **D. Undeputized Judges' Bailiffs**

Next you ask, if judges' bailiffs may carry firearms if they are not required to be licensed by TCLEOSE. We gather that you refer to bailiffs who have not been deputized under section 53.007 or some other law and are therefore not "officers" for purposes of the TCLEOSE licensing requirements. *See id.* As we conclude above, section 46.04 of the Penal Code permits judges to authorize persons in writing to carry handguns in their courtrooms and offices. It does not permit judges to authorize persons to carry handguns in any other locations. Section 46.03(a)(6) of the Penal Code, which provides an exemption to the general prohibition against carrying handguns in section 46.02, does not apply to a bailiff who is not a peace officer. An undeputized judges' bailiff is not authorized to carry a handgun outside of the courtroom and its attendant offices. In order to carry a handgun outside the courtroom and its attendant offices, a judge's bailiff would need to be deputized pursuant to section 53.007 of the Government Code or some other law. Once deputized, a judge's bailiff would be an officer subject to the TCLEOSE licensing requirements. Gov't Code §§ 415.001(4), (5), .051(a).

#### **E. Reserve Peace Officers**

You ask if a bailiff who is licensed as a "reserve peace officer" has the same authority with respect to carrying handguns and making arrests as a peace officer. We understand that you are interested in "reserve deputy sheriffs" under section 85.004 of the Local Government Code, which provides in pertinent part:

(a) The commissioners court of a county may authorize the sheriff to appoint reserve deputy sheriffs who may be called on by the sheriff to serve as peace officers during the actual discharge of their official duties. . . .

(b) A reserve deputy serves at the discretion of the sheriff and may be called into service if the sheriff considers it necessary to have additional officers to preserve the peace and enforce the law.

....

(d) A reserve deputy on active duty at the call of the sheriff and actively engaged in assigned duties has the same rights, privileges, and duties as any other peace officer of the state.

Under subsection (d) of this provision, a reserve deputy sheriff who is on active duty has the same authority as a regular peace officer, including the authority to carry a handgun. *See* Attorney General Opinion M-1026 (1971) (a reserve deputy sheriff may be armed and function as peace officer when, and only when, called into service) (interpreting statutory predecessor).<sup>2</sup>

You also ask if an assignment as a sheriff's bailiff constitutes a call to active duty within the meaning of subsection (d). Subsection (b) of section 85.004 vests the decision to call a reserve deputy sheriff to active duty to the discretion of the sheriff. We believe that the assignment of a reserve deputy sheriff as a bailiff to a criminal district court may constitute "active duty" under subsection (d) if it is so designated by the sheriff. Chapter 415 of the Government Code requires that a "reserve law enforcement officer," which includes a reserve deputy sheriff under section 85.004 of the Local Government Code, must be licensed by TCLEOSE. *See* Gov't Code §§ 415.001(4), (7), .051(a).

#### **F. Bailiffs' Arrest Powers**

Next you ask, "May a non-licensed 'sheriff's bailiff' arrest someone? Is the answer the same as to non-licensed individuals who are deputized at the request of the judge ('judges' bailiffs)?" A bailiff's arrest powers depend upon his or her status as a peace officer. A judge's bailiff who has been deputized or a sheriff's bailiff who is a deputy sheriff (or a reserve deputy sheriff on active duty) and therefore a peace officer has the powers of arrest set forth in articles 14.01, 14.02 and 14.03 of the Code of Criminal Procedure for peace officers. A bailiff who is not a peace officer has the powers of arrest of any other citizen, *i.e.*, the power to arrest an offender without a warrant when the offense is committed in his or her presence or view, if the offense is classed as a felony or is an offense against the public. Code Crim. Proc. art. 14.01(a).

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<sup>2</sup>This conclusion is supported by subsection (e) of section 85.004 which provides that marine reserve deputies, unlike other reserve deputies, "may not carry firearms in the performance of their duties."

**G. Applicability of TCLEOSE Grandfather Provision**

Finally, you ask whether bailiffs "who were hired before TCLEOSE standards were enacted [are] 'grandfathered in' and not subject to any licensure standards." Section 415.051(c) of the Government Code provides in pertinent part as follows:

A peace officer serving under a permanent appointment before September 1, 1970, is not required to obtain a license as a condition of tenure, continued employment, or promotion unless the officer seeks a new appointment. . . .

You state that "we understand that individuals were permitted to 'grandfather in' if they were carried as peace officers on the TCLEOSE roster. Tarrant County bailiffs initially were carried on this list, but . . . this practice changed and bailiffs were no longer carried as peace officers." Under the foregoing provision, it is irrelevant whether or not a peace officer has been carried on a TCLEOSE list. Section 415.051(c) provides that a peace officer is not required to obtain a license if the peace officer has served under permanent appointment since before September 1, 1970. It imposes no other condition. Therefore, a sheriff's or judge's bailiff who has been a peace officer serving under permanent appointment since before September 1, 1970, is not required to be licensed.<sup>3</sup>

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<sup>3</sup>The section 415.051(c) exception to the general TCLEOSE licensing requirement does not appear to apply to reserve deputy sheriffs who have served since before September 1, 1970. Subsection (c) refers to a "peace officer," a term which excludes a "reserve law enforcement officer" including a reserve deputy sheriff under section 85.004 of the Local Government Code. See Gov't Code § 415.001(4), (5), (7). As noted above, see discussion *supra* p. 7, chapter 415 of the Government Code provides that a reserve law enforcement officer must be licensed. Gov't Code §§ 415.001(4), (7), .051(a).

## S U M M A R Y

A sheriff's or judge's bailiff may carry a firearm in a court or the offices utilized by a court "pursuant to written regulations or written authorization of the court," under section 46.04(a)(3) of the Penal Code, even if he or she is not a peace officer. This provision does not authorize a bailiff to carry a firearm in any other location. Section 46.03(a)(6) of the Penal Code, which provides an exemption to the general prohibition against carrying handguns in section 46.02, does not apply to a bailiff who is not a peace officer.

Sheriff's bailiffs are not peace officers and are not required to be licensed by the Texas Commission on Law Enforcement Officer Standards and Education ("TCLEOSE") unless they are officers as defined by chapter 415 of the Government Code by virtue of some other law. A deputized judge's bailiff is a peace officer under section 415.001(5) of the Government Code, and must be licensed by TCLEOSE. An undeputized judges' bailiff is not a peace officer and is not authorized to carry a handgun outside of the courtroom and court's offices. In order to carry a handgun elsewhere, a judge's bailiff would need to be deputized pursuant to section 53.007 of the Government Code or some other law. Once deputized, a judge's bailiff would be an officer subject to the TCLEOSE licensing requirements.

The assignment of a reserve deputy sheriff as a bailiff to a criminal district court may constitute "active duty" under section 84.005 of the Local Government Code if it is so designated by the sheriff. Under subsection (d) of this provision, a reserve deputy sheriff who is on active duty has the same authority as a regular peace officer.

A judge's bailiff who has been deputized or a sheriff's bailiff who is a deputy sheriff (or a reserve deputy sheriff on active duty) has the powers of arrest set forth in articles 14.01, 14.02 and 14.03 of the Code of Criminal Procedure for peace officers. A bailiff who is not a peace officer has the powers of arrest of any other citizen, *i.e.*, the power to arrest an offender without a warrant when the offense is committed in his or her presence or view, if the offense is classed as a felony or is an offense against the public. Code Crim. Proc. art. 14.01(a).

A sheriff's or judge's bailiff who has been a peace officer serving under permanent appointment since before September 1, 1970, is not required to be licensed by TCLEOSE. Gov't Code § 415.051(c).

Very truly yours,

A handwritten signature in cursive script that reads "Mary R. Crouter".

Mary R. Crouter  
Assistant Attorney General  
Opinion Committee