

CAUSE NO. D-1-GN-16- 003340

KEN PAXTON,	§	IN THE DISTRICT COURT OF
TEXAS ATTORNEY GENERAL,	§	
<i>Relator/Plaintiff,</i>	§	
	§	
v.	§	TRAVIS COUNTY, TEXAS
	§	
CITY OF AUSTIN, MAYOR	§	
STEVE ADLER, ORA HOUSTON,	§	
DELIA GARZA, SABINO	§	
RENERIA, GREGORIO CASAR,	§	
ANN KITCHEN, DON	§	
ZIMMERMAN, LESLIE POOL,	§	
ELLEN TROXCLAIR, KATHIE	§	
TOVO, and SHERI GALLO, each	§	
in their official capacity ,	§	
<i>Respondents/Defendants.</i>	§	<u>53rd</u> JUDICIAL DISTRICT

**PLAINTIFF/RELATORS’S ORIGINAL PETITION FOR
WRIT OF MANDAMUS AND CIVIL PENALTIES**

TO THE HONORABLE JUDGE:

COMES NOW Relator/Plaintiff, Ken Paxton, Texas Attorney General, and files this Original Petition for Writ of Mandamus and Civil Penalties to compel the City of Austin, Mayor Steve Adler, in his official capacity, and Austin City Council Members Ora Houston, Delia Garza, Sabino Renteria, Gregorio Casar, Ann Kitchen, Don Zimmerman, Leslie Pool, Ellen Troxclair, Kathie Tovo, and Sheri Gallo, each in their official capacity, (collectively referred to as the City) to comply with Texas Government Code § 411.209 and to seek civil penalties, costs, and fees against the

City for its continued violations. In support thereof, the Attorney General would respectfully show the Court as follows:

I. JURISDICTION AND VENUE

1.1 This Court has jurisdiction to issue a writ of mandamus to require the City's compliance with § 411.209. Tex. Gov't Code §§ 24.011, 411.209(g).

1.2 This Court has jurisdiction to assess civil penalties, costs, and fees against the City pursuant to § 411.209(g).

1.3 Venue is proper in Travis County pursuant to Texas Government Code § 411.209(g).

II. PARTIES

2.1 Relator/Plaintiff is Ken Paxton, Texas Attorney General. Pursuant to Texas Government Code § 411.209(g), the Attorney General is charged with enforcement of § 411.029.

2.2 Defendant is the City of Austin. Pursuant to Texas Government Code § 411.209, the City is a political subdivision that is subject to mandamus, civil penalties, and expenses (costs and fees) for violation of § 411.209(a). The City of Austin may be served with citation by serving Mayor Steve Adler, or his authorized agent or legal representative, at 301 West 2nd Street, Austin, Texas 78701.

2.3 Respondent Steve Adler is the Mayor of the City of Austin and is sued in his official capacity for purpose of mandamus pursuant to Texas Government

Code §§ 24.011, 411.209(g). Mayor Steve Adler may be served with citation at 301 West 2nd Street, Austin, Texas 78701.

2.4 Respondent Austin City Council Members Ora Houston, Delia Garza, Sabino Renteria, Gregorio Casar, Ann Kitchen, Don Zimmerman, Leslie Pool, Ellen Troxclair, Kathie Tovo, and Sheri Gallo are sued in their official capacities for purpose of mandamus pursuant to Texas Government Code §§ 24.011, 411.209(g). They may each be served with citation at 301 West 2nd Street, Austin, Texas 78701.

III. DISCOVERY CONTROL PLAN

3.1 Discovery in this case is intended to be conducted under Level 2 of the discovery control plan provided by Texas Rule of Civil Procedure 190.3.

IV. FACTS

4.1 This mandamus proceeding and action seeking civil penalties, costs, and fees is brought in response to the City's failure to comply with Texas Government Code § 411.209. Tex. Gov't Code § 411.209.

4.2 Section 411.209 prohibits state agencies and political subdivisions from wrongfully excluding handgun license holders from property owned or leased by the government. The law prohibits the City from providing notice by a communication described in Texas Penal Code § 30.06, or by any sign expressly referring to that law or to a concealed handgun license, that a license holder carrying a handgun is prohibited from entering or remaining on a premises or other place owned or leased

by the governmental entity unless the license holder is prohibited from carrying a handgun on the premises or other place by Texas Penal Code §§ 46.03 or 46.035. *Id.* § 411.209(a).

4.3 A state agency or political subdivision is liable for civil penalties, fees, and costs if it has been found to be in violation of § 411.209. *Id.* § 411.209(g).

4.4 On or about September 2015, the Attorney General received a complaint that the City was in violation of § 411.209 based on its display of § 30.06 signage at the Austin City Hall building, a building that does not fall within any exception under Texas Penal Code §§ 46.03, .035. On March 30, 2016, the Attorney General closed that complaint after the City removed the signage, seeming to comply with § 411.209.

4.5 On or about April 4, 2016, the Attorney General received a citizen complaint that the City was in violation of § 411.209 based on: (a) the display of a permanent etched glass “no guns” sign; and (b) oral warnings prohibiting the carrying of handguns on the premises of Austin City Hall, a building that does not fall within any exception under Texas Penal Code §§ 46.03, .035.

4.6 On or about April 22, 2016, the Attorney General sent a letter advising the City that it received another complaint of wrongful exclusion of a handgun license holder, again based on: (a) the display of a permanent etched glass “no guns” sign; and (b) oral warnings prohibiting the carrying of handguns on the

premises of Austin City Hall, a building that does not fall within any exception under Texas Penal Code §§ 46.03, .035.

4.7 On June 16, 2016, the City responded generally that it believed Austin City Hall fell within the government court exception set out in Texas Penal Code § 46.03(a)(3). The City provided no authority for its assertion that Austin City Hall is a government court. *See, e.g.,* Tex. Att’y Gen. Op. KP-0047 n.5 (2015).

4.8 On July 5, 2016, the Attorney General emailed and sent via certified mail a Final Notice of Violation (Final Notice) to the City pursuant to Texas Government Code § 411.209. *See* Ex. A, attached hereto and incorporated herein.

4.9 The Final Notice informed the City that it had fifteen days from receipt to cure the violation and send proof of the cure to the Attorney General. Tex. Gov’t Code § 411.209(f)(3); *see* Ex. A. The Final Notice also notified the City that if it failed to cure the violation it may be liable for a proposed civil penalty of \$1,500 per day for each day of violation beginning on the sixteenth day after the issuance of the Final Notice, in addition to expenses of prosecution incurred by the Attorney General. *See* Ex. A.

4.10 To date, the City has not cured the violation, resulting in this proceeding.

V. CIVIL PENALTIES

5.1 Texas Government Code § 411.209(b) provides that a political subdivision that violates § 411.209(a) is liable for civil penalties in an amount not less than \$1,000 or more than \$1,500 per day, with each day of violation constituting a separate violation. Tex. Gov't Code § 411.209(b), (c).

5.2 The Attorney General asks the Court to award civil penalties in the amount of \$1,500 per day based on the City's continued violation, beginning on July 25, 2016.

VI. MANDAMUS RELIEF

6.1 In addition to civil penalties, § 411.209(g) authorizes the Attorney General to seek a writ of mandamus to compel the City to comply with § 411.209(a). The Attorney General asks the Court to issue a writ of mandamus against Mayor Adler and the Austin City Council to require them to ensure Austin City Hall is in compliance with § 411.209.

VII. EXPENSES

7.1 Texas Government Code § 411.209(g) authorizes the Court to award to reasonable expenses including court costs, reasonable attorney's fees, investigative costs, witness fees, and deposition costs. The Attorney General hereby requests to recover all expenses incurred in obtaining relief in this cause.

VIII. PRAYER

FOR THESE REASONS, Texas Attorney General Ken Paxton prays for the following:

- (1) The Court award civil penalties in the amount of \$1,500 per day of violation commencing on July 25, 2016, running through judgment;
- (2) The Court issue a writ of mandamus compelling Mayor Adler and the Austin City Council to bring the City Hall into compliance with § 411.209;
- (3) The Court award reasonable expenses against the City, including court costs, reasonable attorney's fees, investigative costs, witness fees, and deposition costs; and
- (4) That Relator/Plaintiff be awarded all such other and further relief, at law and in equity, to which it may show itself justly entitled.

Respectfully submitted,

KEN PAXTON
Attorney General of Texas

JEFFREY C. MATEER
First Assistant Attorney General

BRANTLEY STARR
Deputy First Assistant Attorney General

JAMES E. DAVIS
Deputy Attorney General for Civil Litigation

NICHOLE BUNKER-HENDERSON
Chief, Administrative Law Division

/s/ John S. Langley _____

JOHN S. LANGLEY

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Assistant Attorney General

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Attorney for Relator/Plaintiff

Ken Paxton, Texas Attorney General

EXHIBIT A



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 5, 2016

The Honorable Steve Adler
The Mayor of the City of Austin
Austin City Hall
P.O. Box 1088
Austin, Texas 78767-1088

***Via CM/RRR: #7006 0810 0000 1155 5157
and Regular U.S. Mail***

RE: Wrongful Exclusion of Handgun License Holder Complaint
Austin City Hall
OAG Complaint No. 62

Dear Mayor Adler:

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 Austin City Hall. After investigating the citizen complaint, the OAG has determined the City of Austin is in 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 at 2 (2011), GA-0271 at 3 (2009), GA-0472 at 3 (2006); *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 alleges that, upon entering the Austin City Hall (“city hall”), located at 301 West 2nd Street, Austin, Texas 78701, a uniformed security officer with authority to act for the City of Austin (the “city”) provided notice by oral communication that handgun license holders are prohibited from entering the city hall while in possession of a handgun. The complainant further provided photographs of the entrance to the city hall where an image warning that handguns are prohibited within the building is posted. After reviewing the complaint, the OAG finds the city hall is a multi-story, multipurpose building that houses the city council chambers and the offices of the council members and other city officials, including the city’s mayor, manager, and auditor. The city hall also contains the offices of the city’s finance and economic development departments, as well as the offices of the city’s law department.

In a letter to the OAG dated June 16, 2016, the city provided a response to the citizen complaint, asserting that the city hall building “meets the statutory definition of a ‘government court or offices utilized by the court’ in section 46.03(a)(3) of the Penal Code.” The city further states. “[t]he signage requirements in section 30.06 of the Penal Code do not apply in this case.” Based on the city’s representations, the OAG concludes the city intends to exclude the carrying of weapons from the entire premises of the city hall, purportedly pursuant to section 46.03(a)(3) of the Penal Code.

Upon review, however, the OAG is unable to determine which government court or office utilized by a government court, if any, is located within the city hall building. Regardless, the city hall houses numerous non-judicial city administrative offices that are not identified as places where weapons are prohibited 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 government courts or the offices of the courts are located in a portion of that multipurpose building. Consequently, the OAG has determined the signs at the entrance of the city hall, as well as the oral communications utilized by city hall security officers, are in violation of the Government Code.

The city has fifteen (15) days from the receipt of this written notice to cure the violation. If the city fails to cure the violation within this fifteen day period, the OAG may proceed to file suit in district court, including seeking civil penalties pursuant to section 411.209(g) of the Government

The Honorable Steve Adler
July 5, 2016
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Code. Section 411.209(b) of the Government Code authorizes the court to assess civil penalties in the amount 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. TEX. GOV'T CODE § 411.209(c). Accordingly, beginning on the sixteenth (16th) day following the receipt of this written notice the city may be liable for a proposed maximum penalty of \$1,500 for each day the city remains in violation, as well as any reasonable expenses incurred by the Attorney General in obtaining relief under section 411.209(g) of the Government Code.

Sincerely,



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cc: Complainant
B. Lee Crawford, Jr.

Via U.S. Regular Mail
Via Electronic Mail