

RECEIVED

SEP 23 2015

OPINION COMMITTEE



RQ-0054-KP

FILE # ML-47820-15

ID. # 47820

The Senate of The State of Texas

SENATE COMMITTEES.

Criminal Justice, Chair
Business & Commerce
Finance

Senator John Whitmire

Dean of the Texas Senate

DISTRICT OFFICE:
803 Yale Street
Houston, Texas 77007
(713) 864-8701
FAX: (713) 864-5287

CAPITOL OFFICE:
P.O. Box 12068
Austin, Texas 78711
(512) 463-0115
FAX: (512) 475-3737
Dial 711 for Relay Calls

September 22, 2015

The Honorable Ken Paxton
Attorney General of Texas
P.O. Box 12548
Austin, Texas 78711

Dear General Paxton:

As Chair of the Senate Criminal Justice Committee, I am requesting an Attorney General's opinion on the following:

1. Does the trespass provision of the new "Open Carry" law under section 30.07 of the Texas Penal Code (TPC) apply to school district property, including parking lots, driveways, sidewalks and walkways?

There is discussion that it was not the intent of the legislature to allow open carry on any property or grounds of K-12 school districts that desire to utilize the open carry trespassing section found in the new law. However, this position may not withstand a challenge as subsection 30.07 (e) of the new open carry trespassing section states that:

It is an exception to the application of this section that the property on which the license holder openly carries the handgun is owned or leased by a governmental entity and is not a premises or other place on which the license holder is prohibited from carrying the handgun under Section 46.03 or 46.035." (emphasis added).

The purpose of this section is to disallow filing a trespassing charge against a person openly carrying on governmental property as long as the governmental entity that owns the property on which the license holder openly carries is not one of those entities for which the TPC already prohibits weapons. Since a school district is one of those governmental entities listed in TPC section 46.03, we contend the school district could post the appropriate no trespass signs at all entrances, including parking lots, driveways, sidewalks and walkways, and then pursue trespassing charges for those who refuse to conceal their firearms anywhere on the school property.



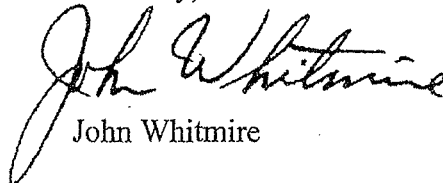
An opposing interpretation of this section might be that the term "premises" found toward the end of subsection (e) is to have the same restrictive definition as that found in section TPC 46.035 of the current law. We believe this interpretation would be incorrect for three primary reasons. First, the legislature does not state the term "premises" in the new law has the same meaning as found in TPC 46.035, and a statutory construction should not add words to legislation that the legislature itself has not inserted into the legislation. Secondly, this extraneous interpretation of the term "premises" would then change the meaning of the word "property" found in the beginning of subsection (e) by limiting the term "property" to only "premises, but not including parking lots, sidewalks or walkways" of the governmental entity. This is not the common meaning of the word property. Moreover, to accept this interpretation requires adding extraneous language that is not found in the legislation as written and signed into law. Third, the legislature included the term "or other places" in subsection (e) of the trespassing section of the new law. We would therefore also contend that the term "other places" should also be construed to include "on any grounds or building on which an activity sponsored by a school or educational institution is being conducted." As discussed below, our position is that activity sponsored by a school includes classes, athletics, band practice, and any other school sponsored extra-curricular activity.

2. Does TPC 46.03(a)(1) prohibit the carrying of firearms on the grounds of a school district where educational activity is being conducted to include parking lots, driveways sidewalks or walkways of the school property?

One interpretation of TPC 46.03(a)(1) holds that weapons are not prohibited on school parking lots, sidewalks or walkways by operation of the definition of "premises" found in TPC 46.035 and incorporated by reference into TPC 46.03. However, there is additional language in section 46.03(a)(1) that goes beyond the term "physical premises." Specifically, that same section adds that weapons are prohibited, "on any grounds ... on which an activity sponsored by a school or educational institution is being conducted." School classes, educational activities, athletic activities, band activities, etc., are all activities sponsored by the school district. The "grounds" needed, or being used, to conduct the activities include the sidewalks, walkways, driveways and parking lots of the schools. These are all necessary grounds being used so that the activities sponsored by the school can be performed.

I appreciate your attention to this request. Please do not hesitate to contact me if you need additional information or clarification.

Sincerely,



John Whitmire