



# Lavaca-Navidad River Authority

P.O. Box 429 Edna, Texas 77957

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OPINION COMMITTEE

**RQ-0077-KP**

FILE # ML-47875-15

I.D. # 47875

November 18, 2015

Honorable Ken Paxton  
Attorney General of Texas  
Office of the Attorney General  
Attention: Opinion Committee  
P.O. Box 12548  
Austin, Texas 78711-2548

Re: Whether a river authority may prohibit persons from openly carrying handguns on river authority parklands

Dear General Paxton:

As President and Chair of the Lavaca-Navidad River Authority Board of Directors, I respectfully request your opinion as to whether a river authority in the State of Texas may prohibit persons from openly carrying handguns on parklands of the river authority.

Lavaca-Navidad River Authority (LNRA) is a body politic and corporate created and existing pursuant to Article XVI, Section 59 of the Texas Constitution. Its mission is clearly stated in its enabling legislation, a series of acts formerly compiled as Article 8280-131 of Vernon's Texas Annotated Civil Statutes, as amended. LNRA is authorized and empowered for the purposes of controlling, storing, preserving, and distributing the waters of the rivers and streams of Jackson County, Texas for domestic, municipal, irrigation, and other useful purposes. Protecting and improving the quality of the available water resources of the Lavaca Basin for beneficial use by the public is an important purpose of the LNRA. Consistent with Texas Parks & Wildlife Code section 25.003, the LNRA has acquired property for park purposes. The Brackenridge Recreation Complex consists of 1017 acres of land owned and operated by the LNRA and contains two parks, Brackenridge Park and Campground (240 acres) and Texana Park (590 acres) The parks are adjacent to or in the vicinity of Lake Texana. A Main Event Center (187 acres) immediately adjacent to Brackenridge Park and Campground is utilized for community events, trade shows, arena events, and other public gatherings.

The LNRA Board of Directors is currently considering adopting a rule that would prevent persons from openly carrying handguns on the Authority's park premises unless specifically authorized for permitted hunting purposes. Such a rule relates to the use, operation, management, administration, and policing of the LNRA's water-related park areas and is authorized by Texas Parks & Wildlife Code section 25.004.

Currently, various laws restrict the ability of governmental entities to prohibit persons from entering government premises with a handgun. By example, and without limitation, the following laws restrict the rights of local governments to prohibit the carrying of handguns:

- As of January 1, 2016, it will be a defense to prosecution under the criminal trespass statute that entry to property was prohibited if entering with a handgun and the person was carrying a concealed handgun or a handgun in a shoulder or belt holster and was also carrying a license issued under Chapter 411 of the Texas Government Code. TEX. PENAL CODE ANN. § 30.05 (f).
- As of January 1, 2016, it is not a criminal trespass for a person licensed by Chapter 411 of the Texas Government Code to carry a concealed handgun on property which is owned or leased by a governmental entity unless such carry is specifically prohibited by Penal Code section 46.03 or section 46.035. TEX. PENAL CODE ANN. § 30.06.
- As of January 1, 2016, it is not a criminal trespass for a person licensed by Chapter 411 of the Texas Government Code to openly carry a handgun on property which is owned or leased by a governmental entity unless such carry is specifically prohibited by Penal Code section 46.03 or section 46.035. TEX. PENAL CODE ANN. § 30.07 (e).
- A political subdivision may not provide notice under Penal Code section 30.06 that a license holder carrying a handgun under authority of Subchapter H of Chapter 411 of the Texas Government Code 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 by section 46.03 or 46.035 of the Penal Code. TEX. GOV'T CODE ANN. § 411.209 (a).

Despite these restrictions on the ability of governmental entities, generally, to prohibit the carrying of handguns on their premises, LNRA believes that an LNRA rule that would prevent a person from openly carrying a handgun is a valid and effective exercise of its authority under Chapter 25 of the Texas Parks & Wildlife Code. Pursuant to Parks & Wildlife Code section 25.006, a river authority may exercise the powers granted by Chapter 25 for the regulation of its water-related park areas “without regard to any provision, restriction, or limitation of any general or special law or specific act.” TEX. PARKS & WILD. CODE ANN. § 25.006 (b). This statute is similar in impact to Parks & Wildlife Code section 62.081 which prohibits, with limited exception, persons from possessing a firearm on or across the land of the Lower Colorado River Authority (LCRA). However, unlike section 25.006, in the 84<sup>th</sup> legislative session the legislature added an exception to LCRA’s firearm prohibition for a person who possesses a handgun and license under Subchapter H, Chapter 411, Government Code. TEX. PARKS & WILD. CODE ANN. § 62.082 (d) (4) (A). No such exception has been made to section 25.006 of the Texas Parks and Wildlife Code. Therefore, the LNRA may adopt and enforce rules governing the use and

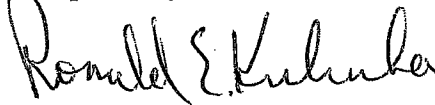
operation of its parklands without regard to general or special statutes which might otherwise limit such authority.

A river authority's power to regulate firearms is like the authority of a county to prohibit firearms in county parks analyzed in Attorney General Opinion DM-364 (1995). In Opinion DM-364, the Attorney General examined the authority of a municipality and county to exercise police power over parks under § 331.007 of the Local Government Code. At that time, that section provided in pertinent part: "A park . . . shall be open for the use of the public under rules prescribed by the governing body of the park . . ." Opinion DM-364 noted that Local Government Code § 215.001 (a), (b)(6) was amended to take away municipal authority to prohibit or restrict the licensed carrying of a concealed handgun in a public park. In distinguishing the authority of a county, the opinion noted that neither the concealed handgun law nor any other statute had restricted a county's police power over its parks. The opinion concludes that the county could adopt a rule providing for the exclusion or ejection of persons carrying handguns from a county park if such a rule is reasonably necessary and appropriate for the accomplishment of a legitimate object falling within the county's police power.

Under the rationale of DM-364, a river authority also may adopt such rules for its parklands under §§ 25.004 and 25.006 of the Parks and Wildlife Code.

In consideration of the foregoing, I am respectfully requesting your opinion regarding the ability of Texas river authorities to adopt regulations which prohibit the possession of firearms on parklands of the river authority.

Respectfully submitted,



Ronald Kubecka  
President

Lavaca-Navidad River Authority Board of Directors