



Legislative UPDATE

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Licensed Carry and Courts: Attorney General Opinions Confuse the Issues

Two just-released attorney general opinions may call into question Texas city attorneys' previous understanding of where firearms can be carried in and around city courts. Attorney general opinion requests RQ-0040-KP (July 24, 2015) and RQ-0051-KP (September 9, 2015) asked numerous questions about the statutory prohibition against carry a firearm onto the premises of any government court or office utilized by the provision. The attorney general released his opinion letters on Monday, and they appear to lead to further confusion on the issues. A discussion of each, along with an explanation of their practical effects, follows.

- [Tex. Att'y Gen. Op. No. KP-0047 \(2015\)](#) concludes that a person is prohibited from carrying a firearm only into the *room* that actually houses a court or court office. That opinion is contrary to what the League and most other attorneys have been advising for years under the concealed carry law. The previous advice was that a person is prohibited from carrying a firearm into the *entire building* that houses a court or court office.

Most governmental entities took that position because of the confusing nature of the law. In other words, because it wasn't (and still isn't) exactly clear into what "portion" of a building a licensee can carry, the licensee could (and still can) inadvertently commit a third degree felony for going to the wrong portion of the building.

The opinion states that “[w]hile we can’t be sure what the outside limits of the prohibition are, it is clear that ‘the legislature intended to prohibit concealed handguns from the rooms that house government courts and offices central to the business of the courts...in order to provide clarity, we construe subsection 46.03(a)(3) to encompass only government courtrooms and those offices essential to the operation of the government court.’”

The opinion further states that “[w]e routinely acknowledge that decisions like this are for the governmental entity in the first instance, subject to judicial review. Accordingly, the responsible authority that would notify license holders of their inability to carry on the respective premises must make the determination of which government courtrooms and offices are essential to the operation of the government court.”

In the past, it seemed clear that a license holder couldn’t go into the court building. That interpretation provided certainty. Contrary to the “would notify license holders” quote above, the court or court office prohibition *does not require signage*. Thus, the opinions actually shift the risk of compliance onto the license holder to know where he can carry.

- [Tex. Att’y Gen. Op. No. KP-0049 \(2015\)](#) interprets the provisions of S.B. 273, a bill that passed last session. The bill provides that – among other things – the attorney general can sue a state agency or a political subdivision that improperly posts a 30.06 notice.

As written, the bill applies only to a concealed handgun sign under Texas Penal Code Section 30.06. However, the opinion seems to incorrectly expand the attorney general’s authority under the bill to include any sign, including a signs pertaining to carry prohibitions that automatically apply (e.g., the court prohibition discussed above). The opinion also expands the attorney general’s authority to investigate *oral* notice that carry is prohibited.

If a city chooses to comply with the second opinion, and doing so may be wise given the possible fines under the new legislation, it should be noted that improper carrying near a court could still be a crime regardless of signage. The decision to prosecute that felony offense is made by county and district attorneys, not by city officials.

What are the practical effects of the opinions above? Some possible scenarios are these:

- **City (based on advice from city attorney) takes no action:** According to the opinions, a license holder can carry a handgun into any city facility, but may not carry into an actual room that houses a court or court office. No signage is necessary. However, some cities may deem it appropriate to post a sign of some type notifying the license holder that a room houses a court or court office.
- **City (based on advice from city attorney) takes position that a license holder may not enter a certain portion of the building that houses a court or court office:** No signage is necessary. However, some cities may deem it appropriate to post a sign of some type notifying the license holder that the portion of the building houses a court or court office. The attorney general’s office claims that it has enforcement authority over

the location of the city's signs and any verbal statements made by city employees to a license holder.

- **City (based on advice from city attorney) takes position that a license holder may not enter the building that houses a court or court office:** Again, no signage is necessary. However, some cities may deem it appropriate to post a sign of some type notifying the license holder that the building houses a court or court office. The attorney general claims that he has enforcement authority over the location of the city's signs and any verbal statements made by city employees to a license holder.

What would the signs mentioned in the bullet points above look like? Some would argue that they should be "criminal trespass by license holder" signs, which would be posted in accordance with the following:

- Texas Penal Code § 30.06(c)(3)(A) requires that the sign prohibiting concealed carry contain language *identical to the following*: "Pursuant to Section 30.06, Penal Code (trespass by license holder with a concealed handgun), a person licensed under Subchapter H, Chapter 411, Government Code (handgun licensing law), may not enter this property with a concealed handgun".
- Texas Penal Code § 30.07(c)(3)(A) requires that the sign prohibiting open carry contain language *identical to the following*: "Pursuant to Section 30.07, Penal Code (trespass by license holder with an openly carried handgun), a person licensed under Subchapter H, Chapter 411, Government Code (handgun licensing law), may not enter this property with a handgun that is carried openly".

A 30.06 or 30.07 sign must include the *exact* language above in *both English and Spanish*, be printed in contrasting colors with block letters *at least one inch in height*, and be displayed *in a conspicuous manner clearly visible to the public*.

Others would argue that a sign stating that the building, portion of a building, or room houses a court or court office is sufficient. Still others might say that the Penal Code section prohibiting carry into those places should be mentioned:

*This building houses courts and court offices.
All weapons are prohibited pursuant to Penal Code Section 46.03(a)(3).
An offense under that section is a third degree felony.*

The above analysis relates only to courts and court offices. A city can always prohibit licensed carry in the room in which a city council meeting is being conducted by posting the 30.06 and 30.07 signs mentioned above, and may in rare cases have other authority related to firearms. A more detailed paper on the issue is available [here](#).

These opinions did little more than further confuse an already complicated issue. Until this issue is decided by the courts, cities are advised to work closely with their local legal counsel before posting or removing any signs regarding courts and city buildings. We expect that a number of our member cities will have a different interpretation of the law than the attorney general. The

League will work closely with Texas cities on possible legislative proposals to clarify the law to protect the safety of everyone who works in or visits city courts.

Please contact Scott Houston, TML general counsel, at shouston@tml.org or 512-231-7464, with questions.

Mandatory Eminent Domain Reporting

[Senate Bill 1812](#), passed during the 2015 legislative session, requires cities to fill out a web-based form with the comptroller relating to each city's statutory eminent domain authority. The form is due by **February 1, 2016**, and the failure to fill out the form could result in a \$1,000 penalty against the city. The electronic reporting form is available at:

<http://comptroller.texas.gov/webfile/eminant-domain/>

Most of the required information is self-explanatory, but League staff has inserted some commentary below that may be of assistance. The reporting consists of providing the following information:

- 1. The entity's full legal name.**
- 2. The entity's address and public contact information.**
- 3. The name and contact information of the appropriate officer, or other person representing the entity.**
- 4. The type of entity.**

Obviously, "city" is the type of entity. However, the form also allows an economic development corporation (EDC) to file, and it lists Local government Code Section 505.105 as that entity's authority. (While most attorneys would agree that an EDC uses the city's eminent domain authority on its behalf, it may nonetheless make sense to report for the EDC.)

Cities with other city-created entities should review the eminent domain authority of those entities to determine whether additional forms should be sent to the comptroller on their behalf. Some statutory provisions are very specific (e.g., authority of cities that have created municipal parking authorities or defense base management authorities, or even a city with a charter-created board of a municipally owned electric utility system that has certain financial obligations).

- 5. The legal provision(s) granting the entity's eminent domain authority.**

This section of the form is titled "Eminent Domain Provisions: Codes." It asks "under what code(s) of the law has eminent domain authority been granted to this entity?"

The user selects the appropriate code (e.g., Local Government Code, etc.) and then selects the specific provisions (e.g., 251.001, etc.). Several provisions under each code can be selected by holding down the “control” key while clicking. The process is repeated for each additional code.

Each city should submit its own form after reviewing each of the provisions in these spreadsheets to determine whether they apply to that particular city. The following spreadsheets are available:

- [General law cities – basic provisions](#): Most general law cities will be fine submitting only the provisions listed in this spreadsheet.
- [Home rule cities – basic provisions](#): Most home rule cities will be fine submitting only the provisions listed in this spreadsheet.
- [Comprehensive list of all statutory provisions](#) granting eminent domain authority to cities.

6. The focus or scope of the eminent domain authority granted to the entity.

This section of the forms asks “what types of projects and/or purposes does this entity have eminent domain authority.”

For most cities, it makes sense to choose every project/purpose listed, except for “other.” (Only those cities with a specific project type that is authorized by law but not listed should choose “other” and enter a description.)

7. The earliest date the entity had authority to exercise the power of eminent domain.

For a city, enter the incorporation month and year in this section.

8. The entity’s taxpayer identification number, if any.

9. Whether the entity exercised its eminent domain authority in the preceding calendar year by filing a condemnation petition under Section 21.012, Property Code.

10. The entity’s Internet website address or, if the entity does not operate an Internet website, contact information to enable the public to obtain information from the entity.

It may be appropriate to seek the assistance of local legal counsel to advise on the reporting. Please contact Scott Houston, TML’s general counsel, with questions at shouston@tml.org or 512-231-7400.

Ethics Commission Releases Contracts Disclosure Tutorials

Section 2252.908 is a new ethics law that was enacted by H.B. 1295 in 2015. It prohibits a city from entering into certain contracts with a business entity unless the business entity submits a form called a disclosure of “interested parties,” and the city confirms with the Texas Ethics Commission that it received the form. Although the bill became effective on September 1, 2015, the reporting applies only to a contract entered into on or after January 1, 2016.

Previous editions of the *Legislative Update* have reported in detail on the bill and its implementing rules, as well as linked to the League’s [Q&A](#) on the new law. The Texas Ethics Commission prepared a [web page](#) with its Q&A and video tutorials of how the process is supposed to work. The Commission’s online reporting page should go live on January 1, 2016.

Payday Lending Clearinghouse Updates

The League’s “Payday Lending Clearinghouse” webpage, available at www.tml.org/payday-updates, includes information related to the regulation of payday and auto title lenders. It is updated from time-to-time to reflect recent developments. Interested city officials should note that ACE Cash Express has filed a petition for review with the Texas Supreme Court seeking to invalidate the City of Denton’s ordinance. The petition and other information is available on the page.

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