

261ST DISTRICT COURT

LORA J. LIVINGSTON

Judge
(512) 854-9309

BRENT D. MCCABE
Staff Attorney
(512) 854-9625

MARY JANE LAWSON
Court Operations Officer
(512) 854-9337

TRAVIS COUNTY COURTHOUSE

P. O. BOX 1748
AUSTIN, TEXAS 78767
FAX (512) 854-9332

RUBEN TAMEZ
Court Clerk
(512) 854-9457

LA SONYA THOMAS
Official Court Reporter
(512) 854-9331

December 22, 2017

John S. Langley
Todd Lawrence Disher
Office of the Attorney General of Texas
P.O. Box 12548, Capitol Station
Austin, Texas 78711-2548
Via email: john.langley@oag.texas.gov
Via email: todd.disher@oag.texas.gov

Michael Siegel
Assistant City of Austin Attorney
P.O. Box 1546
Austin, Texas
Via email: Michael.siegel@austintexas.gov

Re: Cause No. D-1-GN-16-003340; *Paxton v. City of Austin, et al.*; In the 53rd District Court of Travis County, Texas

Dear Counsel:

I have considered the pleadings, the pleas, the motion, responses, replies, evidence and the arguments of counsel and have signed the enclosed order. Additionally, the Court provides this letter as the basis for the Court's order.

I. BACKGROUND

The central question presented to the Court is whether the City of Austin improperly gave notice that handguns were prohibited from City Hall in violation of Texas Government Code Section 411.209. There is evidence to support the following timeline that gives rise to the present dispute:

1. Initial Complaint

- September 1, 2015 – Senate Bill 473 became effective as Texas Government Code § 411.209, creating a civil penalty for political subdivisions who improperly provide notice that license holders are prohibited from entering the government premises.

- September 1, 2015 – A private citizen sends a letter to Austin Mayor Steve Adler that the City Hall is in violation of Section 411.209 because a Texas Penal Code Section 30.06 notice is displayed at the security checkpoint at the entrance of Austin’s City Hall.
- September 2, 2015 – The private citizen sends a complaint to the Office of the Attorney General (“OAG”) pursuant to Section 411.209(d) regarding the Section 30.06 notice displayed at City Hall.
- September 30, 2015 – The private citizen sent a letter to Captain Greg Lucas at the OAG. The letter states that City Hall has removed the Section 30.06 notice and is refusing license holders from carrying a handgun pursuant to an exception to Texas Government Code Section 411.209(a) and Texas Penal Code 46.03(a)(3).
- From the record before the Court, it appears that the OAG took no further action on this citizen complaint.

2. Second Complaint and Investigation

- April 4, 2016 – The private citizen sent another letter to Mayor Adler to inform him that City Hall was “in violation of Texas Penal Code §30.06(e) and is actionable under Texas Government Code § 411.209.” The citizen demanded that the City immediately cease and desist.
- April 6, 2016 – The private citizen sent a new complaint to the OAG, complaining that City Hall prohibited handguns through verbal communication in violation of Texas Government Code Section 411.209.
- April 22, 2016 – The OAG sent a letter to Mayor Adler that it was reviewing the complaint it received and would inform the Mayor of its decision.
- June 16, 2016 – The City’s Law Department responded that the City was not in violation of Section 411.209 because City Hall meets the exception for government courts described in Texas Penal Code Section 43.06(a)(3) (the “courthouse exception”).
- July 1, 2016 – Capt. Lucas went to City Hall. At the security checkpoint, he asked whether he was allowed to carry a handgun if he were licensed to carry. The security guard told

him that handguns were not allowed and that the City considered City Hall to be a courthouse. Capt. Lucas stated that he examined the first floor and found no evidence of a court or courtroom on the first floor. He also observed a symbol etched into the glass doors to City Hall. The symbol is a handgun surrounded by a circle with a line through it (the “gun prohibition symbol”). There is no allegation, in the record before the Court, that the security guards referenced Texas Penal Code Section 30.06.

- July 5, 2016 – The OAG sent a letter to Mayor Adler that the OAG had determined, after investigation, that the City of Austin was in violation of Texas Government Code § 411.209. In it, the OAG recognized that the City had alleged that City Hall was excepted from Section 411.209 under the courthouse exception. The OAG stated that it was unable to determine that City Hall meets the statutory definition of “government court or offices utilized by the court” and that the City may only limit handguns under the courthouse exception for the portions of the building that fit the definition.

- July 29, 2016 – Capt. Lucas returned to City Hall. Again, the security guard told him that handguns were not allowed because the City considers the building to be a courthouse. The security guard also told him that juvenile court is held at City Hall once a week. While there, Capt. Lucas asked a security guard and clerk’s office employee for a directory. Neither had a building directory but informed him that the City Clerk’s Office is on the first floor, the Mayor’s Office and City Council Offices are on the second floor, the City Manager’s Office is on the third floor, and the City of Austin legal offices are on the fourth floor. Capt. Lucas noted that neither mentioned a courtroom. He observed the gun prohibition symbol on the glass doors again. There is no allegation, in the record before the Court, that the security guards referenced Texas Penal Code Section 30.06.

- August 12, 2016 – Capt. Lucas returned to City Hall. On this trip, he observed the gun prohibition symbol and observed the security station, noting that no significant changes had been made.

- September 7, 2016 – Capt. Lucas and Lieutenant Tim Ferguson, also an investigator with the OAG, went to City Hall. Both have licenses to carry and were carrying handguns when they arrived at City Hall. Neither identified themselves as law enforcement officers or investigators for the OAG. Capt. Lucas took a picture of the gun prohibition symbol. The investigators recorded their interactions with the security guards. The security guards refused

to allow Lt. Ferguson beyond the security checkpoint with a handgun. The security guards told Lt. Ferguson and Capt. Lucas that City Hall was designated as a courthouse, and provided the investigators with a statement that, in part, states “‘WEAPONS ARE NOT ALLOWED IN CITY HALL BECAUSE IT IS DESIGNATED AS A COURT FACILITY’ REPEAT IF NECESSARY, DO NOT ADD OR OMIT ANY VERBIAGE FROM THE STATEMENT ABOVE!!” Multiple security guards reiterated the statement that Lt. Ferguson and Capt. Lucas were prohibited from entering City Hall with a handgun. When asked about courts and courtrooms, a person associated with the security guards stated that he was enforcing the policy and that the investigators should discuss any issues with the legal department. The security guards refused admittance of Lt. Ferguson and stated he was prohibited from entering the building with a handgun. The security guards knew that Lt. Ferguson had a license to carry a handgun and expressly referenced Lt. Ferguson’s concealed handgun license. There is no allegation that the security guards referenced Texas Penal Code Section 30.06.

- March 2, 2017 – The OAG sent a letter to Interim City Manager Elaine Hart, enclosing the July 5, 2016, letter that it had sent to Mayor Adler.

3. Procedural History

- July 27, 2016 – The OAG filed a petition against the City of Austin, the Mayor, and its City Council. In it, it alleges that Defendants violated Section 411.209 by prohibiting people with licenses to carry handguns from carrying handguns into City Hall. The lawsuit seeks civil penalties for the alleged violation and a writ of mandamus preventing the City from continued violations of Section 411.209.

- August 22, 2016 – Defendants filed their Plea to the Jurisdiction alleging that the pleadings of the OAG were not enough to trigger Section 409.209’s waiver of sovereign immunity.

- September 9, 2016 – The OAG filed an amended petition addressing Defendants’ Plea and alleging that the oral communications prohibiting a person from entering City Hall expressly referenced the citizen’s license to carry a handgun.

- November 10, 2016 – The OAG filed its motion for summary judgment on all issues including a writ of mandamus, civil penalties, and award costs and attorney’s fees.

- February 10, 2017 – Defendants filed their second Plea to the Jurisdiction, responding to the OAG’s amended petition.
- August 31, 2017 – The Court heard arguments from the parties on (1) the OAG’s motion for summary judgment and (2) Defendants’ Plea to the Jurisdiction to the OAG’s Amended Petition.

II. STATUTORY AND LEGAL STANDARD

This case focuses on the construction and application of Texas Government Code Section 411.209(a), which in relevant part states:

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 place by Section 46.03 or 46.035, Penal Code.

Tex. Gov’t Code Section 411.209(a).¹ By its language, Section 411.209 is limited to only particular types of notices that tell a license holder that he or she may not enter with a handgun: (1) a Section 30.06 communication and (2) a sign expressly referring to Section 30.06 or a

¹ During the 85th Legislative Session, the Legislature amended Section 411.209(a), which became effective on September 1, 2017:

Except as provided by Subsection (i), 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 license to carry a handgun, 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 place by Section 46.03 or 46.035, Penal Code.

Act of June 15, 2017, 85th Leg., R.S. ch. 1143, 2017 Tex. Sess. Law Serv. Ch. 1143 (H.B. 435).

No party at the hearing argued that the amendments affected the State’s claim for prospective relief by writ of mandamus. For convenience, references to Section 411.209 in this Order will refer to the pre-September 1, 2017, version of the statute.

“concealed handgun license.” Additionally, it is not a violation of Section 411.209(a) if license holders are otherwise prohibited by Texas Penal Code Section 46.03 or 46.035.

For a “communication described by Section 30.06, Penal Code,” the statute incorporates the communications referenced or defined in Texas Penal Code Section 30.06, which states: “For purposes of this section, a person receives notice if the owner of the property or someone with apparent authority to act for the owner provides notice to the person by oral or written communication.” Tex. Penal Code § 30.06(b).² “Written communication” is a defined term in Section 30.06, requiring—among other things—language identical to “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.” *Id.* § 30.06(c)(3). “Oral communication” is not defined in the statute. *See id.* § 30.06. At least one Court of Appeals Justice has reasoned that “oral communication” under Section 30.06 must include an express reference to Section 30.06—the statute imposing criminal liability. *Tafel v. State*, 524 S.W.3d 642, 671 (Tex. App.—Waco 2016, pet. denied) (Gray, C.J., dissenting) (“This brings home the need to reference section 30.06 in the oral communication—it informs the recipient of the basis for being excluded from the property whether it is an oral communication or a written sign.”); *see* Tex. Penal Code § 30.06.

As for “any sign expressly referring to that law or to a concealed handgun license,” Section 411.209 does not define “sign” and, therefore, the Court looks to the plain and ordinary meaning. Tex. Gov’t Code § 411.209(a).

Pursuant to Section 411.209, a political subdivision may provide notice prohibiting a license holder from entering or remaining with a handgun if “license holders are prohibited from carrying a handgun on the premises or other place by Section 46.03 or 46.035, Penal Code.” *Id.* Relevant to this case, Texas Penal Code Sections 46.03 or 46.035 create criminal liability for persons bringing handguns³ on to certain types of property including:

² Like Texas Government Code Section 411.209, Section 30.06 was amended, taking effect September 1, 2017. Act of June 15, 2017, 85th Leg., R.S. ch. 1143, 2017 Tex. Sess. Law Serv. Ch. 1143 (H.B. 435). No party at the hearing argued that the amendments affected the State’s claim for prospective relief by writ of mandamus. For convenience, references to Section 30.06 in this Order will refer to the pre-September 1, 2017, version of the statute.

³ Section 46.03 includes other weapons beyond handguns, but for purposes of this case, it is relevant that handguns even if possessed by license holders may be prohibited.

- “on the premises of any government court or offices utilized by the court” (Texas Penal Code Section 460.03(a)(3)) (the “courthouse exception”);
- “on . . . any grounds or building on which an activity sponsored by a school or educational institution is being conducted . . .” (Texas Penal Code § 46.03(a)(1)) (the “school-sponsored activity exception”); and
- “in the room or rooms where a meeting of a governmental entity is held and if the meeting is an open meeting subject to Chapter 551, Government Code, and the entity provided notice as required by that chapter” (Texas Penal Code § 46.035(c)) (the “open meetings exception”).

“Premises” is defined as “a building or a portion of a building. The term does not include any public or private driveway, street, sidewalk or walkway, parking lot, parking garage, or other parking area.” Tex. Penal Code §§ 46.03(c)(2); 46.035(f)(3).

Texas Government Code Section 411.209 also requires the OAG to send written notice to the political subdivision’s chief administrative officer and provide an opportunity to cure prior to bringing suit. Tex. Gov’t Code § 411.209(f)–(g).

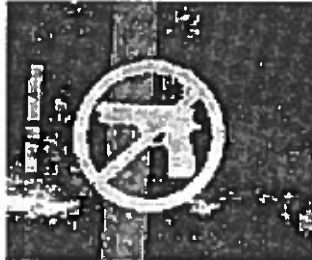
III. ANALYSIS

A. Did the City Provide the Required Notices Under Section 411.209?

The OAG complains of two potential “notices” from the City upon entering City Hall: (1) the gun prohibition symbol and (2) the oral prohibition from city security officers.

1. *The Gun Prohibition Symbol*

The OAG has presented evidence that etched on the doors to City Door is a gun prohibition symbol—a gun with a circle around it and a line through it:



The OAG alleges that this symbol violates Section 411.209 as a notice that prohibits license holders from entering City Hall. However, the gun prohibition symbol fails to meet the requirements of a notice of Section 411.209.

a. Communication Described by Section 30.06

A 30.06 communication may be written communication or oral communication. The gun prohibition symbol is not oral communication and, therefore, would need to meet the definition of written communication. To constitute written communication, the symbol would need to include the following identical language: “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.” Tex. Penal Code § 30.06(c)(3).

The gun prohibition symbol does not include this language, is not written communication as defined by Section 30.06 and, therefore, cannot be “notice by a communication described by Section 30.06, Penal Code” pursuant to Section 411.209.

b. Any sign expressly referring to Section 30.06 or to a concealed handgun license

If the symbol is not a communication described by Section 30.06, it must expressly reference Section 30.06 or to a concealed handgun license. *See* Tex. Gov’t Code § 411.209(a). In the case of the gun prohibition symbol, it is a sign; however, it neither references Section 30.06 nor a concealed handgun license. Therefore, the gun prohibition symbol cannot be “notice . . . by any sign expressly referring to [Section 30.06, Penal Code,] or to a concealed handgun license.” *See id.*

Because the gun prohibition symbol does not meet the type of notices required, it does not constitute a violation of Section 411.209. Therefore, the City’s Plea to the Jurisdiction as to the

OAG's claims that gun prohibition symbol violates Section 411.209(a) should be and is granted and the OAG's motion for summary judgment as to these claims is denied as moot.

2. *The Oral Prohibitions*

The OAG also claims that oral statements made to investigators by the City Hall security officers violate Section 411.209. There is some evidence that, on three separate occasions, OAG investigators approached the security checkpoint at City Hall and were told variations of the same oral prohibition:

- "Weapons are not allowed in City Hall because it's designated as a Court Facility."⁴
- "You cannot bring a pistol in here because this is used as a courthouse, okay? Only Peace Officers and Security Personnel."
- "Yeah, we're not allowed to have any handguns because we are an extent [sic] of the courthouse."
- "The security guard responded that I could not [carry a handgun in Austin City Hall] and explained that the City of Austin considers the building a courthouse."
- "The security guard simply repeated his explanation that Austin City Hall is a courthouse."
- "I asked the security guard whether I could carry a handgun in Austin City Hall if I were licensed to carry a handgun in Texas. The security guard responded in the negative. . . . The security guard explained that the City of Austin considers the building a courthouse."

The OAG alleges that the security guards' oral statements to the investigators qualify as one of the types of notices required by Section 411.209.

⁴ This statement was made in accordance with a written statement, which was handed to the investigators, for the security guards to refer to. It is unclear whether the OAG is arguing that this is a separate violation above and beyond the oral statements. However, as with the gun prohibition symbol, it neither contains the language required for a written communication under Section 30.06 nor does it expressly reference Section 30.06 or concealed handgun licenses. Therefore, it is not a violation.

a. Any sign expressly referring to Section 30.06 or to a concealed handgun license

The Court will begin with the second type of notice described in Section 411.209 as it is easily disposed. Given that Section 411.209 does not define “sign,” the Court should apply its plain and ordinary meaning. In the context of the statute, the plain and ordinary meaning of “sign” would require a written or tangible display or posting. This definition is reinforced by Texas Penal Code Section 30.06’s—referenced in Section 411.209—use of sign as part of the definition of “written communication,” which means “a sign posted on the property”

Because the oral statements by the security guard are not signs under the plain and ordinary meaning, the oral statements are not “notice . . . by any sign expressly referring to [Section 30.06, Penal Code,] or to a concealed handgun license.”

b. Communication Described by Section 30.06

For a statement to be a violation of Section 411.209, it must be an oral communication described by Section 30.06. *See* Tex. Gov’t Code § 411.209(a); Tex. Penal Code § 30.06. “Oral communication” is not defined in the statute. *See* Tex. Penal Code § 30.06. The plain and ordinary meaning of “oral communication”—e.g., spoken interchange of information—provides little insight as to whether the statement is sufficient under Section 30.06.

Apparently, the OAG has concluded that any communication prohibiting handguns is a violation of Section 411.209:

A court would likely conclude that section 411.209 of the Government Code can be implicated by a governmental entity that seeks to improperly prohibit handguns from a place where handguns may be lawfully carried through oral notice or by a written notice that does not conform to section 30.06 of the Penal Code.

Tex. Att’y Gen. Op. No. KP-0049 (2015).

However, often the plain language of the statute is the best indicator of the Legislature’s intent. In Section 411.209, the Legislature incorporated communications as the term in used and intended in Section 30.06.

Section 30.06 is a criminal statute which makes it a Class A misdemeanor (in the case of oral communications) if a license holder (1) carries a handgun on property under the authority of the concealed handgun license and (2) received notice that entry on the property by a license holder with a concealed handgun was forbidden. Tex. Penal Code § 30.06. “A person receives notice if . . . someone with apparent authority to act for the owner provides notice to the person by oral . . . communication.” *Id.*

The question then becomes at what point does an oral statement give rise to notice and criminal liability for the license holder. The question triggers a balance of interests between “oral communication” as defined in an Section 30.06 criminal context and as defined in the context of Section 411.209. A concealed handgun license holder, who may be subject to criminal liability, would reasonably wish to have a narrow interpretation that prevents application of the statute without express notice of the basis and authority for the exclusion. The City, in this case, would likewise prefer a limited interpretation as it will limit what types of notice are violative of Section 411.209. On the other hand, a private property owner, who does not want concealed handgun on his or her property, would reasonably want a broader application of the statute to allow flexibility in the oral communications to invoke Section 30.06 criminal application. Likewise, the OAG, in this case, wants a broad application of Section 30.06 (no “magic words” required) in order to invoke its enforcement obligations in the Section 411.209 liability context and limit what it sees as improper prohibition by government entities.

On one hand, in this case, a limited interpretation of Section 30.06 could lead to the result where the City is not in violation for improperly prohibit handguns only because it provided an inaccurate reasoning for the prohibition.⁵ A result under Section 411.209 that seemingly endorses a governmental entity’s inaccurate statement over complying with its obligation to allow license holders to carry a handgun on government property is likely an absurd result and counter to the Legislature’s intent of Section 411.209.

On the other hand, an overly broad interpretation could lead to the result where a license holder is found guilty of trespass under Section 30.06 when a property owner states, “No handguns” without further explanation. Would this statement adequately give notice to the license holder that he or she is subject to criminal liability under Section 30.06? Justice Gray of the Waco Court of Appeals suggests that this would not be sufficient. *Tafel v. State*, 524 S.W.3d

⁵ The Court addresses the City’s reliance on the courthouse exception below.

642, 671 (Tex. App.—Waco 2016, pet. denied). He concluded that oral communications, like written communications, should reference Section 30.06 to adequately give notice to the license holder of his potential criminal liability. *Id.* Section 30.06 is about notice—not knowledge—in determining whether the potential criminal defendant is informed of the basis of the exclusion and the owner’s authority under Section 30.06. *See id.* Criminal liability without notice of the basis seems counter to the Legislature’s intent of Section 30.06, especially given the Legislature’s strict requirements for “written communication.”⁶

On the summary judgment record, the OAG has not conclusively established that the oral statements of the security guards at City Hall constitute oral communications pursuant to Texas Penal Code Section 30.06 and Texas Government Code Section 411.209, but have presented some evidence that the oral statements made to the investigators could qualify as an “oral communication.” Therefore, and subject to the discussion below, the City’s Plea to the Jurisdiction and the OAG’s Motion for Summary Judgment are denied as to the oral statements made by the security guards at City Hall.

B. Is the City Able to Exclude License Holders Under Texas Penal Code Section 46.03 or 46.035?

In their briefings, Defendants contend that City Hall includes three types of government property that would allow the City to prohibit license holders from carrying handguns in the governmental building: (1) the courthouse exception (Tex. Penal Code § 46.03(a)(3)); (2) school-sponsored activity exception (Tex. Penal Code § 46.03(a)(1); and (3) the open meetings exception (Tex. Penal Code § 46.035(c)). Section 411.209(a) is inapplicable to a governmental entity that is authorized to prohibit license holders from carrying handguns under Texas Penal Code Sections 46.03 and 46.035.

1. The Courthouse Exception

Defendants argue that City Hall is the premises of government court or offices utilized by the court. Defendants presented some evidence that City Hall is used by municipal judges for

⁶ In this case, Defendants did not rely on Section 30.06—but on Section 46.03, which has no notice requirement. It, therefore, makes some sense that Defendants would not reference Section 30.06, and it would not be implicated in prohibiting license holders from the property. For purposes of the motion and plea before the Court, the Court is not a factfinder and must determine the motion and plea as a matter of law.

community court and teen court on certain days throughout the month, which would allow Defendants to prohibit weapons and provide notice in City Hall.

The OAG responded that application of Section 46.03(a)(3) is limited because (1) the City is only entitled to limit handguns for the portion of the building that the government court or its offices uses and (2) the City only utilizes portions of City Hall as a court for a couple days each month.

a. Building or Portion of a Building

Section 46.03(a)(3) creates criminal liability for a person who possesses a firearm (or other weapon) “on the premises of any government court or offices utilized by the court.” Section 46.03 incorporates Section 46.035(f)(3)’s definition of “premises,” meaning “a building or a portion of a building.” The OAG argues that, to give meaning to the entire definition, the Court must apply the narrower interpretation in this case; otherwise, the City would be able to prohibit handguns for an entire building for one small court in violation of the Legislature’s intent for Section 411.209. Defendants note that “premises” definition is disjunctive, allowing for application for either the broader “building” or the narrower “portion of a building.”

The Court agrees with the Defendants’ position that either or both satisfy the definition of premises. Perhaps telling is replacing the defined term with its definition: “A person commits an offense if the person intentionally . . . possesses . . . a firearm . . . [in] [a building or a portion of a building] of any government court or offices utilized by the court.” Again, Section 43.06 is criminal in nature and demonstrates the elements of what must be shown to subject a person to criminal liability. In *Dupree v. State*, the Texarkana Court of Appeals, in reviewing a criminal case involving Section 46.03, it concluded that the evidence was legally insufficient because “there is no evidence that Dupree possessed the firearm in a building or a portion of a building on the campus of Kilgore College.” 433 S.W.3d 788, 792 (Tex. App.—Texarkana May 16, 2014, no pet.). The unambiguous meaning from the language of the statute shows that prosecutors could demonstrate this element by proving that a defendant possessed the firearm in a building or a portion of a building.

Because Section 411.209 incorporates Section 46.03 and, therefore, its definitions, a governmental entity may prohibit handguns, pursuant to Section 46.03(a)(3), in a building *or* a

portion of a building. In this case, if City Hall is a government court or offices utilized by the court, firearms may be prohibited from the entire building.

b. Timing of Exception

Having decided that City Hall may prohibit firearms throughout the building, the remaining question is, “When does City Hall qualify as a government court or offices?” From the record before the Court, it appears that Defendants’ evidence refers to courts, temporarily occupying space at City Hall for only a few days each month. Defendants argue that, because City Hall is the premises of government court at certain points throughout the month, it may prohibit firearms at all times without violating Section 411.209. The OAG responds that court three to four times a month cannot authorize prohibition of firearms at all times.

The Court agrees with the OAG that firearms, in the case of court at City Hall, may only be prohibited on the days when court or its offices are conducted at City Hall. However, on the record before the Court, it cannot determine the days that court used City Hall as a government court and whether the OAG’s asserted violations include those days. Therefore, a fact issue exists as to which days are potential violations versus potentially exempted. In light of this fact issue, among the others, summary judgment is improper and should be denied.

2. *School-Sponsored Activity*

Defendants also argue that they may provide notice prohibiting a license holder from bringing a weapon into City Hall because City Hall qualifies under the school-sponsored activity exception, arguing that its art gallery—the People’s Gallery—is a school sponsored activity. The City argues that, because the People’s Gallery includes works by students and is conducted in cooperation with Austin Independent School District. The OAG acknowledges that City Hall may properly prohibit firearms on “field trips” or when an activity is school-sponsored and “is conducted.”

The Court agrees with the OAG that Section 43.06(a)(1) contemplates that the grounds or building may only prohibit weapons under this provision while a school-sponsored activity is being conducted. The People’s Gallery, by passively presenting works of art from AISD students (even if selected in cooperation with AISD), is not a school-sponsored activity pursuant to Section 43.06(a)(1). Defendants also presented some evidence that City Hall hosts AISD events,

like the People’s Gallery award reception, in which students are invited to City Hall as part of a school-sponsored activity. During these events, Defendants may be entitled to rely on Section 43.06(a)(1). However, on the record before the Court, it cannot determine the days City Hall hosted school-sponsored activities and whether the OAG’s asserted violations include those days.

3. *City Meetings*

Defendants argue that it may provide notice prohibiting firearms because City Hall hosts open meetings under Texas Government Code Chapter 551 that qualify under Texas Penal Code Section 46.035(c). The OAG responds that Section 46.035(c) is very limited in scope as it only subjects a license holder to criminal liability if he or she carries “in the room or rooms where a meeting of a government entity is held.” Additionally, the OAG argues that it only applies when a meeting is properly convened as an open meeting under Chapter 551 of the Texas Government Code.

The Court agrees with the OAG’s position that Section 46.035(c) is limited only to rooms where the open meeting is being held. Therefore, Defendants may provide notice prohibited by Section 411.209 for those meeting rooms; however, the remainder of City Hall is not a prohibited place under Section 46.035(c) that would allow City Hall to provide notice under this particular exception of Texas Government Code Section 411.209.

C. *Did the OAG Properly Provide Pre-Suit Notice?*

Defendants argue that Section 411.209’s waiver of sovereign immunity was not invoked because the statute requires that the OAG give pre-suit notice to the chief administrative officer of the political subdivision. Defendants note that the OAG sent a letter to Mayor Adler, informing the City that OAG considered the City in violation of Section 411.209. Defendants provided evidence that Mayor Adler is not the chief administrative officer; instead, pursuant to the City’s governing documents, the city manager is the chief administrative officer. The OAG responded that the purpose of the provision is to provide notice to the governmental entity, which it did by its letter to the mayor with a copy to the law department. It argues that it substantially complied, which is all that should be required.

The Court rejects the argument of substantial compliance and finds that the OAG failed to provide pre-suit notice in accordance with Section 411.209(f). However, the OAG provided


evidence in its response to Defendants' Plea to the Jurisdiction that on March 2, 2017, it cured this defect by sending a letter to Interim City Manager Elaine Hart, enclosing the previous letter sent to Mayor Adler. Because the OAG has provided notice to the chief administrative officer and the 15-day cure period has run, the Court denies Defendants' Plea to the Jurisdiction as to the OAG's failure to comply with Section 411.209(f).

IV. CONCLUSION

In summary in accordance with the above discussion, the Court renders the following rulings:

- Defendants' Plea to the Jurisdiction is granted as to the etched glass symbol at the entrance of City Hall;
- Defendants' Plea to the Jurisdiction is denied in all other respects; and
- Plaintiff's Motion for Summary Judgment is denied.

Sincerely,


Lora J. Livingston
Judge, 261st District Court

cc: Ms. Velva L. Price, Travis County District Clerk