



Legislative UPDATE

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Texas Supreme Court Denies Petition for Review in Water Rights Case

Last week, the Texas Supreme Court denied the Texas Commission on Environmental Quality's (TCEQ) petition for review in a case involving drought rules adopted by TCEQ in April 2012.

During the severe drought of 2012-2013, Dow Chemical Company notified TCEQ that it was making a "senior call" on its water rights in the Brazos River. (A senior call occurs when the holder of a senior water right demands priority to use the water and that the holders of more junior water rights cease their use.)

In response to Dow's senior call, TCEQ issued a series of orders suspending water rights. However, the TCEQ elected *not* to suspend the use of certain water rights designated for use as municipal water supplies, as permitted under TCEQ's drought rules. The Texas Farm Bureau then filed suit challenging the validity of TCEQ's drought rules. The district court declared the drought rules invalid, and TCEQ appealed

The Thirteenth Court of Appeals agreed with the district court. The court noted that TCEQ has authority to manage and regulate the state's scarce water resource, but this authority cannot exceed its express legislative mandate. The court concluded that TCEQ's authority does not allow TCEQ to exempt junior water rights from suspension. It held so even though TCEQ was attempting to protect the drinking water of cities based on public health, safety, and welfare concerns.

Following the court of appeals' decision, TCEQ filed a petition to the Texas Supreme Court, but the Court refused to hear the case. That denial means that the "prior appropriations doctrine" remains the law for surface water in Texas. (The prior appropriations doctrine simply means that the first person to take a quantity of water from a water source for beneficial use has the right to continue to use that quantity of water for that purpose. Subsequent users can take the remaining water for their own beneficial use, but they may not impinge on the rights of the "prior appropriator.")

What's the bottom line? For TCEQ to implement its drought rules in a way that would favor junior municipal water rights, the state legislature would have to expressly grant the agency the authority to do so.

Open Carry: The Gift that Keeps on Confusing?

Yet another request for an attorney general opinion relating to the handgun license law has been submitted. In the latest request ([RQ-0097-KP](#)), the Erath County Attorney asks the attorney general whether a non-profit entity that has offices on land owned by a city may restrict the carrying of concealed handguns on the property. Thus far, no less than six attorney general opinion requests related to open carry have been submitted. Four opinions have been issued:

- [Tex. Att'y Gen. Op. No. KP-0047 \(2015\)](#): Reviews the Penal Code provision making it a third degree felony for any person to carry any firearm on the premises of any government court or offices utilized by the court, unless pursuant to written regulations or written authorization of the court. 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.)
- [Tex. Att'y Gen. Op. No. KP-0049 \(2015\)](#): Reviews a new provision in the Government Code authorizing the attorney general to sue a state agency or a political subdivision that improperly posts a 30.06 notice. As written, the law 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.
- [Tex. Att'y Gen. Op. No. KP-0050 \(2015\)](#): Reviews the Penal Code provision making it a third degree felony for any person to carry any firearm on any grounds or building on which an activity sponsored by a school or educational institution is being conducted. Concludes that the provision "prohibits handguns from places on which a school-sponsored activity is occurring, which places can include grounds otherwise excluded from the definition of 'premises' such as public or private driveways, streets, sidewalks or walkways, parking lots, parking garages, or other parking areas."

- [Tex. Att’y Gen Op. No KP-0051 \(2015\)](#): Reviews the provisions of the new campus carry law that allow public colleges and universities to adopt rules relating to where a license holder can concealed carry on campus. Concludes that an institution may not adopt rules that are so strict they, as a practical matter, prohibit concealed carry by a license holder.

Two opinions, both of which relate specifically to cities, are pending:

- [RQ-0087-KP](#) asks several questions on behalf of the City of Alice city attorney relating to where Penal Code Section 30.06 and/or 30.07 signage should be posted.
- [RQ-0097-KP](#) is the most recent request and asks whether a non-profit entity that has offices on land owned by a city may restrict the carrying of concealed handguns on the property. (The League has opined that, as a general proposition, licensed carry may not be prohibited on property that is owned by the city.) Cities that wish to comment on this request should do so immediately.

The League has prepared a [Q&A](#) that provides the most current information available on the handgun license law.

U.S. Supreme Court Stays Clean Power Plan Implementation

On February 9, the U.S. Supreme Court granted the request of a coalition of states to block the implementation of the federal “Clean Power Plan” pending the outcome of several legal challenges. Texas and West Virginia are leading a 27-state coalition challenging the plan, which would require states to cut carbon emissions by shifting from coal power to natural gas and renewables over the next 15 years. The coalition argues that the regulations could push electricity costs too high and threaten reliability.

The U.S. Court of Appeals for the District of Columbia initially denied the coalition’s request. However, the U.S. Supreme Court subsequently granted the request pending disposition of litigation in the lower courts.

The recent death of Justice Scalia – who voted to block the plan’s implementation – is not expected to have an impact on the decision to stay implementation. A vote of five justices is necessary to reverse the stay, and only four justices originally voted against granting the stay. The stay should remain in place until after the District of Columbia Circuit Court hears its challenges. Oral arguments in that case have been set for June 2, 2016, and a decision in the case is expected in late summer or early fall.

The National League of Cities and the U.S. Conference of Mayors plan to file an amicus brief in support of the plan.

Comptroller Unveils New Transparency Program

The Texas Comptroller of Public Accounts has announced the Transparency Stars Program, which recognizes local governments for going “above and beyond” in their transparency efforts. The comptroller will recognize governmental entities that accomplish the following:

- Open their books not only in their traditional finances, but also in the areas of contracts and procurement, economic development, public pensions, and debt obligations.
- Provide clear and meaningful financial information not only by posting financial documents, but also through summaries, visualizations, downloadable data, and other relevant information.

The program will launch on Tuesday, March 1, and the comptroller’s office will begin taking applications at that time. Please visit the [comptroller’s transparency website](#) to learn more about the program and how to apply.

House Committee on Urban Affairs Cybersecurity Hearing

The House Committee on Urban Affairs held a hearing on cybersecurity last Tuesday to hear invited testimony on the following interim charge:

Identify and address potential gaps in cities’ cybersecurity policy and ensure that personal information held by cities and other municipal entities is secure.

Carol Alvarado, former TML President and chair of the committee, issued the following press release after the hearing:

TEXAS LEGISLATURE MUST MAKE CYBERSECURITY A TOP PRIORITY

Austin – Today the Texas House Committee on Urban Affairs held a public hearing on cybersecurity at the University of Texas at San Antonio (UTSA), Main Campus.

This committee was directed by the Speaker of the Texas House to identify and address potential gaps in cities' cybersecurity policy and ensure that personal information held by cities and other municipal entities is secure. The committee heard expert testimony from Dr. Mauli Agrawal, Vice President for Research at UTSA, and Dr. Greg White, Director for the Center for Infrastructure Assurance and Security at UTSA, as well as various city and utility representatives and private sector businesses located in San Antonio.

“I think there was a strong consensus at the hearing that although Texas has made great strides in cybersecurity, our state must do more to help our state agencies, cities, municipalities and utilities have the proper resources and a strong workforce to protect their entities from cybersecurity attacks,” said State Representative Carol Alvarado.

"The question is not if our cities and municipal entities will have a cybersecurity attack, but when they will experience a breach and how they will respond."

This was the committee's second hearing on cybersecurity. The committee previously received testimony from various experts from the Texas Department of Information Resources (DIR), large metropolitan cities, and growing technology companies.

"San Antonio, and most notably UTSA, have shown themselves to be at the forefront of cybersecurity and are a prime example of how a city has created various partnerships with the public and private sector to address the growing technological needs of a city and its community," said Representative Alvarado. "It is going to take a collaborative effort from the public and private sectors and an investment from the state to help make sure we can protect our cities and our citizens' information. Our committee looks forward to working with UTSA, the business community, DIR, and other cities to find solutions to strengthen cybersecurity in our state."

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The league intends to work closely with Chairwoman Alvarado as the committee further explores municipal cybersecurity.

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