



September 2, 2016  
Number 32

## **AG Files Yet Another Licensed Carry Lawsuit**

The Texas attorney general has filed a lawsuit against Waller County on the issue of licensed carry. In [\*Ken Paxton v. Waller County et al.\*](#), the attorney general is asking a Travis County district court to: (1) force the county to remove signs prohibiting any firearms in the county courthouse (including by license to carry holders); and (2) impose civil penalties on the county.

The attorney general's lawsuit comes on the heels of one that was [filed by Waller County last July on the exact same issues](#). The county filed its lawsuit against the person who complained to the attorney general about its signage.

The person is Terry Holcomb, the leader of the group known as "Open Carry Texas." The county's lawsuit seeks a declaratory judgment from a Waller County district court that: (1) the entire courthouse is off-limits to licensed carriers; and (2) the attorney general's office doesn't have as much enforcement authority over signage as it claims.

The ultimate answers from these court cases should provide guidance to cities that house municipal courtrooms and court offices in multi-use city facilities.

## **Proposed Public Safety Records Retention Schedule: Body-Worn Cameras**

Senate Bill 158, passed during the 84th legislative session, governs various facets of police body-worn cameras. The bill provides that a city's body-worn camera policy should require retention

of the videos for at least 90 days. However, it doesn't provide a comprehensive retention schedule for the video footage captured on these cameras. Thus, the Texas State Library and Archives Commission has [proposed rules](#) adding body-worn cameras to the local government public safety retention schedule.

According to the proposed rules, cities must retain video and audio recordings from an officer-worn camera that do not capture a violation, use of deadly force by an officer, or are otherwise related to an administrative or criminal investigation of an officer for 90 days, as required by the bill.

If the video and audio recording from an officer-worn camera captures the use of deadly force by an officer, is related to an administrative or criminal investigation of an officer, or captures a violation by any person, the proposed rules state that a city should follow retention periods for internal affairs investigation records or offense investigation records, as appropriate (but not less than 90 days).

Written comments on these proposed changes may be submitted to Sarah Jacobson, Manager, Records Management Assistance, by email to [sjacobson@tsl.texas.gov](mailto:sjacobson@tsl.texas.gov). The deadline for comments is September 23, 2016.

## **Austin Appeals Court Strikes Down State Billboard Authority**

Last week, the Austin Court of Appeals issued its opinion in [Auspro Enterprises, LP v. Texas Department of Transportation](#). The opinion essentially concludes that several provisions of the Texas Highway Beautification Act are unconstitutional because they regulate based on the written content of signs and billboards near state highways.

The dispute in *Auspro* related to a store owner placing a political sign supporting Ron Paul for president alongside a state highway. The Texas Department of Transportation (TxDOT) ordered the property owner to remove it because state law allows political signs along state highways only during certain periods before and after an election. (Interestingly, that type of time limitation has been found unconstitutional in many out-of-state cases prior to *Auspro*.) The owner also failed to seek a state permit to place the sign and refused to remove it.

TxDOT sued the owner in district court. That court ordered the sign removed and imposed a \$3,500 fine. The owner appealed, and the Austin Court of Appeals overturned the trial court based on a U.S. Supreme Court opinion from last year. In [Reed v. Town of Gilbert](#), the Supreme Court concluded that city ordinance provisions containing content-based restrictions violate the First Amendment.

The ordinance in *Reed* banned the display of outdoor signs in any part of the Town of Gilbert, Arizona, without a permit. The ordinance included exemptions from the permit requirement for 23 different categories of signs and, within those exemptions, imposed varying restrictions depending on the category. For example, "ideological signs" were freely allowed with no

restrictions, while “political signs” could be displayed without a permit but only within the 60 days preceding an election and the 15 days following an election

Similarly, the Texas Highway Beautification Act essentially bans signs and billboards near state highways, but sets forth a number of exemptions to the ban. For example, election signs, signs with the purpose of protecting life or property, public service signs, signs of nonprofits or other charitable organizations, neighborhood subdivision or homeowners-association signs, and signs showing the names of ranches are among those exempted.

According to the Austin Court of Appeals:

In *Reed*'s wake, our principal issue here is not whether the Texas Highway Beautification Act's outdoor-advertising regulations violate the First Amendment, but to what extent. Based on our determination that, under *Reed*, certain provisions...of the Act are facially content-based restrictions on speech that render those subchapters unconstitutional, we will reverse the district court's judgment and render judgment severing those unconstitutional subchapters from the Texas Highway Beautification Act.

The bottom line is that the Austin Court of Appeals adopted the U.S. Supreme Court's mandate that, if a person has to *read the content of the sign* to determine whether it is subject to regulation, the regulation will usually violate the First Amendment.

The *Auspro* opinion shouldn't be any more detrimental to city sign ordinances than was the *Reed* opinion. One result, however, might catch an unsuspecting city off guard: if a city has no sign ordinance, the opinion could mean that it can no longer rely on TxDOT regulations to stop signs from being placed along a state highway that runs through the city.

League staff will continue to monitor the issue in the wake of the opinion.

## **Public Hearing on Proposed EMS Rules**

The Department of State Health Service (DSHS) will hold a public hearing on [proposed rules](#) related to Emergency Medical Services (EMS) on September 9 in Austin.

The purpose of the proposed rules is to comply with new legislation and update current rule language to reflect state and national trends. Examples of the proposed revisions include the requirements: (1) that EMS providers have a permanent physical location as the provider's primary place of business and to own or hold a long-term lease for its equipment and vehicles; and (2) that emergency response employees or volunteers have a designated infection control officer to deal with employees' exposure to reportable diseases through blood or other body fluids.

City officials can participate in the public hearing with oral or written comments at 10:00 a.m. on September 9 at the DSHS Central Campus, Lecture Hall K-100, located at 1100 West 49<sup>th</sup> Street

in Austin. For more information on the public hearing, contact State EMS Director Joseph Schmider at (512) 834-6737 or [Joseph.Schmider@dshs.state.tx.us](mailto:Joseph.Schmider@dshs.state.tx.us).

## **Mandatory Local Debt Reporting**

Recent legislation will require cities and other local governments to put together an annual report on debt information and make the report available to the public. More information is available [here](#).

*TML member cities may use the material herein for any purpose. No other person or entity may reproduce, duplicate, or distribute any part of this document without the written authorization of the Texas Municipal League.*