

ORDINANCE NO. 0057

An ordinance prohibiting the possession of firearms on town property.

Be it ORDAINED by the Board of Alderman of the Town of Indian Lake,
Texas:

Section 1: No person in possession of a handgun or other firearm shall enter or remain upon property of or in a building of the Town of Indian Lake, Texas.

Section 2: For purposes of this Ordinance, the terms "handgun" and "firearm" have the meanings assigned by Section 46.01 of the Texas Penal Code.

Passed and Approved this 10th day of FEBRUARY 1997.

Mildred B. Gilmore
Mildred Gilmore, Mayor

Loretta Rymer
Loretta Rymer, City Secretary



Office of the Attorney General
State of Texas

Letter Opinion No. 95-058
September 15, 1995

Re: Whether a state or local governmental entity, by posting notice under the criminal trespass statute, may prohibit a concealed handgun licensee from carrying a handgun on premises of which the governmental entity is the "owner" as defined in the Penal Code (ID # 35896)

Honorable Gonzalo Barrientos
Chair
Committee of the Whole on Redistricting
Texas State Senate
P.O. Box 12068
Austin, Texas 78711

Dear Senator Barrientos:

You ask whether a state or local governmental entity, by posting notice under the criminal trespass statute, may prohibit a concealed handgun licensee from carrying a handgun on premises of which the governmental entity is the "owner" as defined in the Penal Code. [FN1] The Criminal trespass statute, Penal Code section 30.05, provides in part:

(a) A person commits an offense if he enters or remains on property or in a building of another without effective consent and he:

- (1) had notice that the entry was forbidden; or
- (2) received notice to depart but failed to do so.

(b) For purposes of this section:

....

(2) "Notice" means:

(A) oral or written communication by the owner or someone with apparent authority to act for the owner;

....

....

(C) a sign or signs posted on the property or at the entrance to the building, reasonably likely to come to the attention of intruders, indicating that entry is forbidden

Your question is similar to that asked in Attorney General Opinion DM-363: whether the concealed handgun law, Senate Bill 60, Act of May 16, 1995, 75th Leg., R.S., ch. 229, 1995 Tex. Sess. Law Serv. 1998, permits a business owner or operator to post notices prohibiting license holders carrying concealed handguns from the premises of the business. There we concluded:

Senate Bill 60 does not prevent a business owner or operator from excluding persons, including both employees and nonemployees, carrying concealed handguns. Under section 30.05 of the Penal Code, any person, including a license holder, who enters or remains on property or in a building of another carrying a concealed handgun without effective consent to carry and who has had notice that concealed handguns are prohibited commits a criminal offense. Senate Bill 60 is not intended to and does not permit a license holder

to carry a concealed handgun on the premises of a private business contrary to notice as defined by the criminal trespass statute prohibiting the carrying of a concealed handgun.

Attorney General Opinion DM-363 (1995) at 9 (footnote omitted). We are of the opinion that a state or local governmental entity has the same option to exclude handgun carriers from its premises.

A state or local governmental entity is by definition included within the meaning of "another" in section 30.05. The Penal Code defines (1) "another" as "a person other than the actor," Penal Code s 1.07(a)(5) (emphasis added), (2) "person" as "an individual, corporation, or association," id. s 1.07(a)(38) (emphasis added), (3) "association" as "a government or governmental subdivision or agency, trust, partnership, or two or more persons having a joint or common economic interest," id. s 1.07(a)(6) (emphasis added), and (4) "government" as "the state," "a county, municipality, or political subdivision of the state," or "any branch or agency of the state, a county, municipality, or political subdivision," id. s 1.07(a)(24). Therefore, the Penal Code expressly recognizes the power of a state or local governmental entity to withhold or withdraw its consent to a person's presence on its premises. [FN2] Nothing in the concealed handgun law affects this general power. [FN3] See Attorney General Opinions DM-364 (1995) at 3, 6; DM-363 (1995) at 1-2, 9.

We therefore conclude that a state or local governmental entity, by posting notice under the criminal trespass statute, may prohibit a gun-carrying concealed handgun licensee from entering or remaining on premises of which the governmental entity is the "owner" as defined in the Penal Code.

Summary

A state or local governmental entity, by posting notice under the criminal trespass statute, may prohibit a gun-carrying concealed handgun licensee from entering or remaining on premises of which the governmental entity is the "owner" as defined in the Penal Code.

Yours very truly,

James B. Pinson
Assistant Attorney General
Opinion Committee

FN1. In the Penal Code,

"Owner" means a person who:

(A) has title to the property, possession of the property, whether lawful or not, or a greater right to possession of the property than the actor; or

(B) is a holder in due course of a negotiable instrument.

Penal Code s 1.07(a)(35).

FN2. We note that the criminal trespass statute has been enforced in several cases involving trespass upon the premises of a state or local governmental entity. See *Robinson v. State*, 530 S.W.2d 592 (Tex. Crim. App. 1975) (state university campus); *Gollinger v. State*, 834 S.W.2d 553 (Tex. App.-Houston [14th Dist.] 1992, no writ) (rapid transit authority garage); *Olaniyi-Oke v. State*, 827 S.W.2d 537 (Tex. App.-Houston [1st Dist.] 1992, writ ref'd) (county jail); *Bader v. State*, 777 S.W.2d 178 (Tex. App.--Corpus Christi 1989, no writ) (state university campus); *Reed v. State*, 762 S.W.2d 640 (Tex. App.--Texarkana 1988, writ ref'd) (public high school campus), cert. denied, 493 U.S. 822 (1989).

FN3. Section 7 of the law does, however, amend section 215.001 of the Local Government Code to prohibit a municipality's regulation, at any of the following places or events, of the carrying of a handgun that a licensee is licensed to carry:

- (A) [a] public park;
- (B) [a] public meeting of a municipality, county, or other governmental body;
- (C) [a] political rally, parade, or official political meeting; or
- (D) [a] nonfirearms-related school, college, or professional athletic event.

Act of May 16, 1995, 74th Leg., R.S., ch. 229, s 7, 1995 Tex. Sess. Law Serv. 1998, 2015 (amending Local Gov't Code s 215.001(b)(6)). But see id. s 4, at 2014 (adding new Penal Code s 46.035, subsection (c) of which prohibits intentional, knowing, or reckless carrying of handgun "at any meeting of a governmental entity").

Tex. Atty. Gen. Op. LO95-058, 1995 WL 636494 (Tex.A.G.)

END OF DOCUMENT

JOHN E. CHOSY

ATTORNEY AT LAW

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January 10, 1997

TELEFAX and
FIRST CLASS MAIL

Mrs. Loretta Rymer
Town Secretary
Town of Indian Lake
62 South Aztec Cove Drive
Los Fresnos, Texas 78566

(210) 233-5140

Dear Loretta:

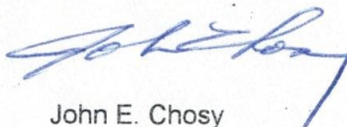
Enclosed is an ordinance prohibiting firearms in town buildings. Once the ordinance is passed, signs must be posted on town property and at each entrance to town hall to the effect that firearms and handguns are prohibited.

A violation of the ordinance will be criminal trespass under state law, prosecutable by the district attorney.

Also enclosed is an attorney general's opinion on this subject.

"Hard copies" are being mailed to you.

Sincerely,



John E. Chosy

JEC/lac
enc.