

JIM MURPHY
Member
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Ways & Means

4/18/17

APR 20 2017

OPINION COMMITTEE

FILE # ML-48141-17
I.D. # 48141

Via Certified Mail, Return Receipt Requested

Office of the Attorney General
Attention: Opinion Committee
P.O. Box 12548
Austin, Texas 78711-2548

RQ-0158-KP

Re: Request for Opinion Concerning Issues Relating to Texas Penal Code Section 46.035(c)

Dear Attorney General Paxton:

Pursuant to Texas Government Code Section 402.042, I request your opinion regarding the authority of the board of trustees of a public junior college to allow licensed concealed handguns in the room of a properly noticed open meeting of the board of trustees, and other related issues. This matter has come to my attention via one of our local institutions and clearly impacts others in Texas. Accordingly, I seek your opinion as to the following questions:

1. Does a board of trustees of a public junior college possess the authority under Texas Government Code Chapter 411.2031(d-1) to explicitly authorize concealed carry of handguns by license holders in the room or rooms where a properly noticed open meeting of the board of trustees is being held, thus decriminalizing the offense in Texas Penal Code Section 46.035(c)?
2. Can the board of trustees of a public junior college permit the concealed carry of handguns by license holders in the room or rooms where a properly noticed open meeting of the board of trustees is being held in circumvention of Texas Penal Code Section 46.035(c) by intentionally failing to post the required notice under Texas Penal Code Section 30.06?
3. If the board of trustees of a public junior college desires to permit the concealed carry of handguns at board meetings, is the board of trustees required to expressly authorize such conduct in its written rules established pursuant to Texas Government Code Section 411.2031(d-1)?

Discussion

The 84th Legislature enacted Senate Bill 11, referred to as the “campus carry” law, allowing concealed carry of handguns by license holders on campuses of institutions of higher education. Senate Bill 11 added Section 411.2031(d-1) to the Government Code, which requires each institution of higher education to establish rules concerning “the carrying of concealed handguns by license holders on the campus of the institution or on premises located on the campus of the institution.” Tex. Gov’t Code § 411.2031(d-1). Public junior colleges and community colleges are required to establish such rules to be effective by August 1, 2017.

The 84th Legislature also enacted Senate Bill 273, which amended Texas Penal Code Section 46.035(c). Pursuant to Section 46.035(c), “a license holder commits an offense if the license holder intentionally, knowingly, or recklessly carries a handgun under the authority of Subchapter H, Chapter 411, Government Code, regardless of whether the handgun is concealed or carried in a shoulder or belt holster, 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.” Tex. Penal Code § 46.035(c). However, Section 46.035(i) provides that subsection (c) does not apply “if the actor was not given effective notice under Section 30.06 or 30.07.” Tex. Penal Code § 46.035(i).

During the process of establishing the rules required by Government Code Section 411.2031(d-1), the Board of Trustees of at least one public junior college has determined that it does not seek to prohibit licensed concealed carry at properly noticed open meetings of the Board of Trustees. However, it is unclear as to whether the Board possesses the authority to decriminalize, by intentional actions or omissions, conduct that the legislature has intended to be a criminal offense under Section 46.035(c).

In GA-1051 (2014), the Attorney General considered this issue as it applied to a public school district regarding the previous language of Section 46.035(c), which prohibited licensed concealed carry, “under the authority of Subchapter H, Chapter 411, Government Code,” at any meeting of a governmental entity. The Attorney General noted that the school district could establish written policies pursuant to Penal Code Section 46.03(a)(1) to permit the carry of concealed

handguns in meetings of its board of trustees. Tex. Att’y Gen. Op. No. GA-1051 (2014) at 3. An individual carrying a concealed handgun in a meeting of the district’s board of trustees pursuant to written regulations established by the school board did so pursuant to “other law,” and not under the authority of Subchapter H, Chapter 411, Government Code. *Id.* Thus, such an individual did not commit an offense under Section 46.035(c). *Id.* With the implementation of the campus carry bill and the rules required by Government Code Section 411.2031(d-1), I seek clarification as to how this analysis applies to the board of trustees of a public junior college.

Further, it is unclear as to whether the Board of Trustees of a public junior college may permit the licensed concealed carry of handguns in properly noticed meetings of the Board by simply declining to post the notice required by Section 30.06.¹ Since Penal Code Section 46.035(i) states that the offense established in Section 46.035(c) does not apply if the actor was not given proper notice in accordance with Section 30.06, I seek your opinion as to whether the Legislature intended for the absence of posted, required notice to equate to an implicit authorization of the conduct prohibited in Section 46.035(c). If the Board of a public junior college may permit such conduct by inaction, it is also uncertain as to whether that privilege extends to the general public.

Finally, I request clarification as to whether the Board must explicitly allow the licensed carry of concealed handguns in the room(s) of a properly noticed open meeting of the Board in the written rules established pursuant to Government Code Section 411.2031(d-1). These rules would constitute written regulations of the educational institution in accordance with Penal Code Section 46.03(a)(1)(A).² *See* TEX. PENAL CODE § 46.03(a)(1)(A). Thus, following the reasoning of GA-1051, the rules established under Government Code Section 411.2031(d-1) would constitute authorization by “other law,” allowing licensed individuals to carry concealed handguns in the room(s) of a properly noticed open meeting of the Board without violating Penal Code Section 46.035(c). Given that the rules

¹ Section 46.035(c) also prohibits open carry of a handgun by a license holder, provided that the license holder is provided proper notice under Section 30.07. The Board of Trustees does not seek to allow licensed open carry of handguns in the room(s) of its properly noticed open meetings, thus, the request is limited to a discussion of licensed concealed carry.

² Consider also that Section 46.035(a-3) of the Texas Penal Code makes it an offense to carry a concealed handgun on premises located on the campus of an institution of higher education, “on which the carrying of a concealed weapon is prohibited by rules, regulations, or other provisions established under Section 411.2031 (d-1)...”

established by the College are enacted pursuant to Subchapter H, Chapter 411, Government Code, a different statutory section than that considered in GA-1051, I request confirmation as to whether the rules of the public junior college would constitute "other law" permitting such conduct.

I appreciate your time and attention to this matter. Please do not hesitate to contact me should you need further information.

Sincerely,

A handwritten signature in black ink, appearing to read "Jim Murphy". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Jim Murphy