



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 14, 2020

The Honorable Geanie W. Morrison
Chair, House Local & Consent Calendars
Committee
Texas House of Representatives
Post Office Box 2910
Austin, Texas 78768-2910

Opinion No. KP-0332

Re: Authority of a county investigator to carry a firearm in a courtroom (RQ-0338-KP)

Dear Representative Morrison:

You seek an opinion on behalf of the Aransas County Sheriff's Office about the authority of a county investigator to carry a firearm in a courtroom.¹ You explain that a civilian employee investigator of a prosecutor's office carried a firearm into a district courtroom and the sheriff's office disarmed the investigator because she was not a licensed peace officer. *See* Request Letter at 1. You further explain that the prosecutor defends the investigator's right to carry her firearm in the courtroom because she holds a concealed carry permit and the county judge allowed it. *Id.* You ask about the authority of the investigator who is not a licensed peace officer to carry a firearm in a courtroom. *Id.*

Penal Code subsection 46.03(a)(3) makes it an offense for a person to "intentionally, knowingly, or recklessly possess[] or go[] with a 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."² TEX. PENAL CODE § 46.03(a)(3). Thus, by its plain language, subsection 46.03(a)(3) authorizes a court to issue written regulations allowing a person to bring a firearm into the premises of a government court or office utilized by the court. *See id.* You tell us that the county judge has "allowed" the individual in question to carry a firearm in the court, but you do not tell us whether the judge of the court at issue provided written regulations or provided written

¹*See* Letter from Honorable Geanie W. Morrison, Chair, House Local & Consent Calendars Comm., to Honorable Ken Paxton, Tex. Att'y Gen. at 1 (Mar. 11, 2020), <https://www2.texasattorneygeneral.gov/opinions/opinions/51paxton/rq/2020/pdf/RQ0338KP.pdf> ("Request Letter").

²You specifically ask about a courtroom. A courtroom of a particular court is included in "the premises of any government court or offices utilized by the court." TEX. PENAL CODE § 46.03(a)(3). We limit this opinion to the courtroom used by a particular court that you describe here and do not address the scope of the phrase "the premises of any government court or offices utilized by the court."

authorization. *See* Request Letter at 1–3. While this office does not determine as a matter of law whether a criminal violation occurred, to the extent the judge of the court at issue did provide written authorization or written regulations and the investigator took the firearm into the courtroom pursuant to such authorization or regulations, a court would likely conclude that the investigator did not violate subsection 46.03(a)(3). *See* Tex. Att’y Gen. Op. Nos. GA-0760 (2010) at 3 (“Whether particular conduct constitutes a violation of a criminal statute involves questions of fact that are outside the purview of the opinion process.”), JM-0286 (1984) at 2 (declining to opine on a violation of then-current Penal Code sections 46.02 and 46.03).

Absent written authorization or written regulations, subsection 46.03 and chapter 46 as a whole contain exceptions or defenses to the commission of an offense under subsection 46.03(a)(3). Yet, holding a license to carry a handgun under subchapter H, chapter 411, Government Code, is not generally a defense to prosecution under that subsection. *See* TEX. PENAL CODE § 46.03(f); *see also* TEX. GOV’T CODE §§ 411.171–.209 (subchapter H entitled “License to Carry a Handgun”). You inform us that the prosecutor defends the investigator’s authority to carry the firearm because the investigator holds a concealed carry permit. *See* Request Letter at 1. Because of subsection 46.03(f), that fact alone does not offer the investigator a defense to carrying the firearm into a prohibited location under subsection 46.03(a)(3). That said, we consider other exceptions.

As an initial matter, subsection 46.15(a)(1) provides that Penal Code section 46.02 and section 46.03 do not apply to “peace officers or special investigators under Article 2.122, Code of Criminal Procedure,” and that “neither section prohibits a peace officer or special investigator from carrying a weapon in this state, . . . regardless of whether the peace officer or special investigator is engaged in the actual discharge of the officer’s or investigator’s duties while carrying the weapon.” TEX. PENAL CODE § 46.15(a)(1). Thus, a peace officer or special investigator may carry a weapon into the premises of a government court even if not engaged in the discharge of their duties. A “special investigator” is one of the federal officers listed in Code of Criminal Procedure article 2.122. *See id.*; *see also* TEX. CODE CRIM. PROC. art. 2.122(a)–(g) (“Special Prosecutors”). Article 2.122 does not include an investigator employed by a local prosecutor. Accordingly, subsection 46.15(a)(1) applies only if the investigator about whom you ask is a peace officer.

Your questions focus on the fact that the investigator is “not a licensed peace officer.” *See* Request Letter at 1. However, by its plain language, subsection 46.15(a)(1) includes all peace officers without regard to whether they are licensed under chapter 1701 of the Occupations Code. TEX. PENAL CODE § 46.15(a)(1); *see Colorado Cty. v. Staff*, 510 S.W.3d. 435, 444 (Tex. 2017) (stating that courts seek the Legislature’s intent “first and foremost in the statutory text” and where the text is clear, it is determinative of intent). And a “peace officer” in Texas for purposes of the Penal Code is a “a person elected, employed, or appointed as a peace officer under Article 2.12, Code of Criminal Procedure . . . or other law.” TEX. PENAL CODE § 1.07(36). A “peace officer” under article 2.12, Code of Criminal Procedure, includes any of the positions listed therein. *See* TEX. CODE CRIM. PROC. art. 2.12. Article 2.12 includes sheriffs, constables, and other marshals and municipal officers, along with their deputies and their reserve deputies “who hold a permanent peace officer license issued under Chapter 1701, Occupations Code.” *Id.* art. 2.12(1) (applying to sheriffs, their deputies, and reserve deputies), (2) (applying to constables, their deputies, and reserve deputies), (3) (applying to marshals or police officers of municipalities, and reserve

municipal officers). By contrast, subarticle 2.12(5) identifies investigators of the district attorneys', criminal district attorneys', and county attorneys' offices as peace officers without regard to whether the investigator holds a permanent peace officer license under chapter 1701, Occupations Code. *See id.* art. 2.12(5). The best indication of the Legislature's intent in a statute is the language it chose. *See Cadena Comercial USA Corp. v. Tex. Alcoholic Beverage Comm'n*, 518 S.W.3d 318, 325–26 (Tex. 2017) (“We presume the Legislature ‘chooses a statute’s language with care, including each word chosen for a purpose, while purposefully omitting words not chosen.’” (citation omitted)). Here, the Legislature did not condition these specified investigators’ status as a peace officer on the requirement that the investigator be licensed under chapter 1701.

This office examined the authority of a constable who did not have a permanent peace officer license to carry a weapon on prohibited premises under section 46.03. *See Tex. Att’y Gen. Op. No. JC-0514* (2002) at 6–7. Opinion JC-0514 clarified that the constable was authorized to carry a gun not because of his chapter 1701 license but because he was a “peace officer” under the Penal Code and the Code of Criminal Procedure. *Id.* The opinion considered the language of Code of Criminal Procedure subarticle 2.12(2), which included as peace officers “[c]onstables, deputy constables, and those reserve deputy constables who hold a permanent peace officer license issued under Chapter 1701, Occupations Code.” *Id.* (quoting TEX. CODE CRIM. PROC. art. 2.12(2)). The opinion determined that the qualifying language in article 2.12(2) “who hold a permanent peace officer license issued under Chapter 1701, Occupations Code” applied to only the reserve deputy constables and not the constables or deputy constables. *See id.* (citing *Spradlin v. Jim Walter Homes, Inc.*, 34 S.W.3d 578, 580 (Tex. 2000) (utilizing the statutory construction doctrine of last antecedent)). As the qualifying language did not apply to constables, the opinion concluded that a “constable’s status as a ‘peace officer’ under this definition, in contrast to reserve deputy constables, is not dependent on holding a permanent peace officer’s license issued under chapter 1701 of the Occupations Code.” *Id.* at 6; *see also Tex. Att’y Gen. Op. No. DM-322* (1995) at 5 (stating that once an individual assumes the office of a constable, “he is a legitimate peace officer, and as such, he is excepted from the scope of section 46.02 of the Penal Code”). The lack of the qualifying phrase in subarticle 2.12(5) here warrants the same conclusion for an investigator. *See Baylor Scott & White, Hillcrest Med. Ctr. v. Weems*, 575 S.W.3d 357, 364 n.22 (Tex. 2019) (“When the Legislature uses a word or phrase in one portion of a statute but excludes it from another, the term should not be implied where it has been excluded.”), *cert. denied*, 140 S. Ct. 540 (2019)). A court would likely not construe subarticle 2.12(5) to require an investigator to be licensed under chapter 1701 to be considered a peace officer.

Chapter 1701 of the Occupations Code provides for the licensure of specified peace officers. *See TEX. OCC. CODE* §§ 1701.301, .303. Holding a license, or being eligible to hold a license, under chapter 1701 of the Occupations Code is an express qualification for the office of sheriff or constable imposed by the Local Government Code. *See TEX. LOC. GOV’T CODE* §§ 85.0011(2) (“A person is not eligible to serve as sheriff unless the person . . . is eligible to be licensed under Sections 1701.309 and 1701.312, Occupations Code.”), 86.0021(a)(1) (“A person is not eligible to serve as constable unless . . . the person is eligible to be licensed under Sections 1701.309 and 1701.312, Occupations Code. . . . or . . . the person is an active or inactive licensed peace officer under Chapter 1701, Occupations Code.”), 86.0021(b) (“A constable who fails to provide evidence of licensure under this subsection or who fails to maintain a permanent license while serving in office forfeits the office and is subject to removal in a quo warranto

proceeding . . .”). In contrast, licensure under chapter 1701 is not a qualification for being an investigator of a prosecuting attorney. Chapter 41 of the Government Code, which authorizes a prosecuting attorney to employ an investigator, imposes no requirement that the investigator hold a peace officer license, or be eligible to hold such a license, under chapter 1701. *See generally* TEX. GOV’T CODE § 41.102(a); *see also Cadena Comercial USA Corp.*, 518 S.W.3d at 326 (stating that courts “take statutes as we find them and refrain from rewriting the Legislature’s text”).

For these reasons, a court would likely conclude that a prosecuting attorney’s investigator is a peace officer authorized to carry a firearm into government court premises under Penal Code section 46.15(a)(1) even if the investigator does not hold a peace officer license under chapter 1701 of the Occupations Code.

S U M M A R Y

Penal Code section 46.03 prohibits a person from carrying a firearm on certain premises, including the premises of any government court without written regulations or authorization from the court. Penal Code subsection 46.15(a)(1) exempts peace officers from section 46.03. Under Code of Criminal Procedure subarticle 2.12(5), an investigator of a district attorney, criminal district attorney, or county attorney is not required to be licensed under Occupations Code chapter 1701 to be a peace officer. Accordingly, a court would likely conclude that a prosecuting attorney's investigator is not prohibited by Penal Code section 46.03 from carrying a firearm into a government court.

Very truly yours,

A handwritten signature in black ink that reads "Ken Paxton". The signature is written in a cursive, flowing style with a large initial "K".

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