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JERRY PATTERSON
STATE SENATOR

RQ-0007-JC

DISTRICT 11
PORTIONS OF HARRIS, BRAZORIA
& GALVESTON COUNTIES

Committees:
VETERAN AFFAIRS & MILITARY
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CRIMINAL JUSTICE
ECONOMIC DEVELOPMENT
HEALTH & HUMAN SERVICES

11 January 1999

Attorney General John Cornyn
P.O. Box 12548
Austin, Texas 78711-2548
ATTN: Opinion Committee
RE: Concealed Handgun Prohibitions

FILE # ML-40614-99
I.D. # 40614

RECEIVED

JAN 12 1998

Opinion Committee

Dear General Cornyn:

Since Senate Bill 60, the Texas Concealed Handgun Law was passed in 1995, a variety of governmental or tax-supported entities have implemented ordinances, policies, or rules to prohibit the licensed carry of handguns on property or premises under control of that entity.

Counties, cities, metropolitan transit authorities and state agencies have banned armed CHL holders from a variety of locations, such as county/city buildings, streets, sidewalks and parks. Several transit authorities prohibit licensed carry on buses or at bus stops. The Texas Department of Public Safety prohibits CHL license holders from entering drivers license offices.

The statute (Penal Code 46.035) lists certain prohibited locations for CHL holders such as offices of correctional facilities, athletic events, and bars. Other prohibited locations applicable to all firearms are found in the Penal Code, section 46.02 or 46.03.

It appears that these county / city / metro / agency prohibitions are intended to be enforced by use of the trespass statute (Penal Code 30.05 or 30.06) since the licensee would not be in violation of 46.02, 46.03, or 46.035.

In my opinion, this is not possible and therefore none of these prohibitions on concealed carry initiated by any entity other than the legislature or federal authority have any substance or enforceability under law for the following reasons:

1) The Texas Constitution Bill of Rights, Article 1 section 23 states, "Every Citizen shall have the right to keep and bear arms in the lawful defense of himself or the state, but the legislature shall have power, by law, to regulate the wearing of arms, with a view to prevent crime." Note only the Legislature, not the Commissioner's Court, not City Council, not MTA board, or DPS may regulate the wearing of arms.

2) The Texas Constitution Bill of Rights Article 1 Section 29 states in part "...

everything in this Bill of Rights is excepted out of the general powers of government and shall forever remain inviolate, and all laws contrary thereto, or to the following provisions shall be void.” If the legislature is the only body that can “regulate the wearing of arms,” that can never change, even if the legislature were to delegate that power to another government entity by statute.

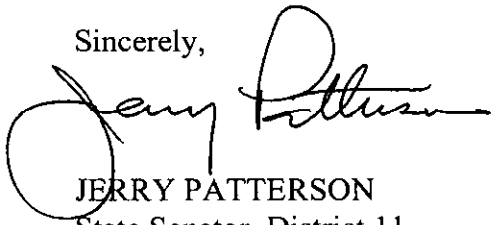
3) With regards to trespass, assume a citizen who is licensed by the state to carry a concealed handgun enters an municipal building in which concealed carry is prohibited for the purpose of initiating utility service. Entry occurs during normal working hours, into an area of the building open to the public. The citizen is not an employee of the city, and the citizens presence is required to personally apply for utility service. How would the city prosecute that person for trespass? In reality, the citizen would not need a reason, such as utility service to enter a public building.

4) In the case of a transit authority initiating a ban on lawful concealed carry on public buses, the trespass statute cannot apply since trespass can occur only on real property. A bus is not real property.

5) With regards to local government pre-emption, can a county or municipality establish a different standard for licensing doctors or dentists, or refuse to recognize a state-licensed chiropractor or even a driver’s license? Of course not, and those activities are not protected by the Bill of Rights of the Texas Constitution as is the Right to Keep and Bear Arms.

In conclusion, what latitude, if any, do local governments have in regulating the activities of citizens who have concealed handgun licenses and restricting their activities or locations where they may go?

Sincerely,

A handwritten signature in black ink, appearing to read "Jerry Patterson". The signature is written in a cursive style with a large initial "J".

JERRY PATTERSON
State Senator, District 11