

THE ATTORNEY GENERAL

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Requests for Opinions, Opinions, Open Records Decisions.

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Requests for Opinions

RQ-0082-KP

Requestor:

The Honorable Jane Nelson
Chair, Committee on Finance
Texas State Senate
Post Office Box 12068
Austin, Texas 78711-2068

Re: Whether a school district, municipality, or county may reduce or repeal the local option homestead exemption from the amount that was adopted for the 2014 tax year through the 2019 tax year (RQ-0082-KP)

Briefs requested by January 15, 2016

For further information, please access the website at www.texasattorneygeneral.gov or call the Opinion Committee at (512) 463-2110.

TRD-201505883
Amanda Crawford
General Counsel
Office of the Attorney General
Filed: December 21, 2015



Requests for Opinions

RQ-0083-KP

Requestor:

The Honorable Dan Flynn
Chair, Committee on Pensions
Texas House of Representatives
Post Office Box 2910
Austin, Texas 78768-2910

Re: The extent to which a judge may refuse to apply the law of a jurisdiction outside of the United States in certain family law disputes (RQ-0083-KP)

Briefs requested by January 15, 2016

RQ-0084-KP

Requestor:

The Honorable James Keffer
Chair, Committee on Natural Resources
Texas House of Representatives
Post Office Box 2910
Austin, Texas 78768-2910

Re: Whether a rental property owner's use of an online payment option that is accompanied by a convenience fee involves the imposition of a credit card surcharge in violation of state law (RQ-0084-KP)

Briefs requested by January 22, 2016

RQ-0085-KP

Requestor:

Mr. Michael Williams
Commissioner of Education
Texas Education Agency
1701 North Congress Avenue
Austin, Texas 78701-1494

Re: Application of section 39.112 of the Education Code to a board of managers in specific circumstances (RQ-0085-KP)

Briefs requested by January 22, 2016

RQ-0086-KP

Requestor:

Mr. Michael Williams
Commissioner of Education
Texas Education Agency
1701 North Congress Avenue
Austin, Texas 78701-1494

Re: The legal status of real property described by section 12.128 of the Education Code that is returned to the state from a charter school (RQ-0086-KP)

Briefs requested by January 22, 2016

For further information, please access the website at www.texasattorneygeneral.gov or call the Opinion Committee at (512) 463-2110.

TRD-201505983

Amanda Crawford
General Counsel
Office of the Attorney General
Filed: December 29, 2015



Opinions

Opinion No. KP-0047

The Honorable Allison Palmer
51st Judicial District Attorney
124 West Beauregard
San Angelo, Texas 76903-5850

Re: The extent to which firearms may be excluded from buildings that contain courts, offices utilized by the courts, and other county officials (RQ-0040-GA)

S U M M A R Y

For purposes of section 411.209 of the Government Code, the phrase "premises of any government court" used in Penal Code subsection 46.03(a)(3) generally means either (1) a structure utilized by a court created by the Texas Constitution or the Legislature, or (2) a portion of such a structure. The premises of a "government court or office utilized by the court" means a government courtroom or those offices essential to the operation of the government court. The responsible authority that would notify license holders of their inability to carry on the respective premises must make the determination of which government courtrooms and offices are essential to the operation of the government court, in consultation with the government court.

Opinion No. KP-0048

The Honorable Glenn Hegar
Texas Comptroller of Public Accounts
Post Office Box 13528
Austin, Texas 78711-3528

Re: Effect of the Governor's vetoes of the General Appropriations Act (RQ-0047-KP)

S U M M A R Y

Article 4, section 14 of the Texas Constitution authorizes the Governor to veto "items of appropriation." The Texas Supreme Court has explained that "where a certain provision designates a specified purpose and the amount to be used therefor, it is an item of appropriation even though it may be included in a larger, more general item." The provisions vetoed by the Governor each designate a specific purpose and the amount to be used therefor, and they are items of appropriation subject to the Governor's veto.

The Governor's authority to veto items of appropriation is purely negative. An effective veto nullifies the setting aside of an amount of funds for a specific purpose. If additional funds apart from what was vetoed by the Governor are available, and if authority outside of the vetoed language permits expenditure of those funds for a given purpose, an entity is likely authorized to spend its other funds accordingly.

Opinion No. KP-0049

The Honorable Wesley H. Mau
Hays County Criminal District Attorney
712 South Stagecoach, Suite 2057

San Marcos, Texas 78666

Re: Questions regarding a notice prohibiting entry with a handgun onto certain premises under section 30.06 of the Penal Code and section 411.209 of the Government Code (RQ-0051-KP)

S U M M A R Y

Pursuant to Opinion KP-0047, it is only the courtrooms, and those offices determined to be essential to their operations, from which Hays County may prohibit concealed handguns without risk of incurring a civil penalty under section 411.209 of the Government Code.

A court would likely conclude that section 411.209 of the Government Code can be implicated by a governmental entity that seeks to improperly prohibit handguns from a place where handguns may be lawfully carried through oral notice or by a written notice that does not conform to section 30.06 of the Penal Code.

By the terms of section 30.06 of the Penal Code, a license holder carrying a concealed handgun who refuses, after notice by the governmental entity, to exit premises from which Penal Code sections 46.03 or 46.035 prohibit handguns commits an offense punishable as a misdemeanor. Conversely, a licensee who refuses to relinquish any concealed handgun or refuses to exit the building after being given notice by a governmental entity does not commit an offense if the building is not one from which sections 46.03 and 46.035 prohibit concealed handguns.

Opinion No. KP-0050

The Honorable John Whitmire
Chair, Committee on Criminal Justice
Texas State Senate
Post Office Box 12068
Austin, Texas 78711-2068

Re: Application of Penal Code sections 30.07 and 46.03, relating to the open carry of handguns, to school districts (RQ-0054-KP)

S U M M A R Y

Subsection 46.03(a)(1) of the Penal Code prohibits handguns from places on which a school-sponsored activity is occurring, which places can include grounds otherwise excluded from the definition of "premises" such as public or private driveways, streets, sidewalks or walkways, parking lots, parking garages, or other parking areas.

Opinion No. KP-0051

The Honorable Brian Birdwell
Chair, Committee on Nominations
Texas State Senate
Post Office Box 12068
Austin, Texas 78701-2068

Re: Authority of an institution of higher education to establish certain rules regarding the carrying of handguns on campus (RQ-0076-KP)

S U M M A R Y

An individual whose legal rights have been infringed due to a president or chief executive officer of a public institution adopting regulations that exceed the authority granted in Senate Bill 11 would likely have standing to bring an *ultra vires* cause of action against the president or chief executive officer.

If a court concludes that the rules established by an institution of higher education with regard to where concealed handguns may be carried are

not authorized by statute, it would follow that any further enforcement of such provisions would be *ultra vires*.

Opinion No. KP-0052

The Honorable Marco A. Montemayor

Webb County Attorney

1110 Washington Street, Suite 301

Laredo, Texas 78040

Re: Authority of a commissioners court, after adoption of the budget, to adopt a standing budget policy that automatically reduces the salary line item of an employee of an elected official upon the employee's departure from the position (RQ-0033-KP)

S U M M A R Y

Chapter 111 of the Local Government Code does not prohibit as a matter of law the adoption of an order that automatically transfers funds to reduce compensation for a position when the position has been vacated and filled by a new employee. Whether a commissioners court may implement such an order with respect to a specific position depends on the particular circumstances, including any law that specifically governs compensation for the position.

Section 74.104 of the Government Code does not permit a commissioners court to reduce a court coordinator's salary by automatic operation of standing commissioners court orders without a determination of reasonable compensation by the judge who selected the court coordinator.

Opinion No. KP-0053

Raymund A. Paredes, Ph.D.

Commissioner of Higher Education

Texas Higher Education Coordinating Board

Post Office Box 12788

Austin, Texas 78711

Re: Eligibility for forgiveness of a B-On-Time loan (RQ-0034-KP)

S U M M A R Y

A court would likely conclude that additional credit hours taken at an institution other than the one awarding the baccalaureate degree that do not cause the total hours credited to the student by the institution awarding the baccalaureate degree to exceed the statutory limit and that were taken for the purpose of maintaining a job with the student's employer do not disqualify the student from having a B-On-Time loan forgiven under section 56.462 of the Act.

Opinion No. KP-0054

The Honorable Val J. Varley

Red River District and County Attorney

400 North Walnut Street

Clarksville, Texas 75426-4012

Re: Whether the common-law doctrine of incompatibility prohibits simultaneous service as a county sheriff and a member of the board of trustees of a school district (RQ-0036-KP)

A court would likely conclude that, under the facts you describe, the common-law doctrine of incompatibility does not prohibit an individual's simultaneous service as the Red River County Sheriff and as a board trustee of the Clarksville Independent School District.

For further information, please access the website at www.texasattorneygeneral.gov or call the Opinion Committee at (512) 463-2110.

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Amanda Crawford

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