

THE ATTORNEY GENERAL

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Opinions

Opinion No. KP-0107

Mr. J. Winston Krause

Chairman

Texas Lottery Commission

Post Office Box 16630

Austin, Texas 78761-6630

Re: Authority of the Texas Lottery Commission to deny, suspend, or revoke a lottery ticket sales agent license in specific instances (RQ-0096-KP)

SUMMARY

The language the Legislature utilized in section 53.021 of the Occupations Code does not authorize the Lottery Commission to deny, suspend, or revoke a sales agent license due to deferred adjudication for the offense of gambling. The Commission may comply with applicable statutes and consider deferred adjudication on a gambling-related offense to be a conviction if the circumstances meet the requirements of subsection 53.021(d), thereby authorizing it to deny, suspend, or revoke a license.

Whether the Commission may consider the presence of illegal gambling activity at an applicant's retail location in examining an applicant's character and fitness under subsection 466.151(e) of the State Lottery Act would depend on the facts. To the extent the Commission may consider the presence of illegal gambling activity, a court would likely conclude that the Commission's express authority to make findings under subsection 466.151(e) implies the authority to determine whether a particular activity would constitute illegal gambling, or a particular item would constitute an illegal gambling machine, under the Penal Code.

A court would likely conclude that a rule broadening the scope of the term "professional gambler" to include a person who conducts or allows illegal gambling activity at a proposed or existing lottery retail location would exceed the authority the Legislature has granted to the Commission.

A court is not likely to infer authority from sections 466.351 and 466.355 of the Act for the Commission to consider the presence of illegal activity at a retail location in deciding whether to deny, suspend, or revoke a sales agent license.

Opinion No. KP-0108

The Honorable Lisa Pence

Erath County Attorney

100 West Washington

Stephenville, Texas 76401

Re: Whether a nonprofit entity that has offices on land owned by a municipality may restrict the licensed carrying of handguns on the property (RQ-0097-KP)

SUMMARY

Section 411.209 of the Government Code creates a civil penalty for a state agency or a political subdivision that provides notice that a license holder carrying a handgun is prohibited on property owned by the governmental entity unless carrying a handgun in such locations is expressly prohibited under the Penal Code. Section 411.209 applies only to a state agency or political subdivision of the State and does not address whether a private entity, including an independent nonprofit entity, may provide notice to license holders that the carrying of handguns is prohibited in the private entity's offices. As long as the state agency or political subdivision leasing the property to the private entity has no control over the decision to post such notice, the state agency or political subdivision lessor would not be the entity responsible for the posting and would therefore not be subject to a civil penalty under section 411.209.

A court would likely conclude that a license holder who carries a handgun on property that is owned by a governmental entity but leased to a private entity and that is not a premises or other place from which the license holder is prohibited from carrying a handgun under sections 46.03 or 46.035 of the Penal Code is excepted from the offenses in subsections 30.06(a) and 30.07(a) of the Penal Code.

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

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