



Office of the Attorney General  
State of Texas

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January 29, 1996

The Honorable Irma Rangel  
Chair  
Committee on Higher Education  
Texas House of Representatives  
P.O. Box 2910  
Austin, Texas 78768-2910

Letter Opinion No. 96-009

Re: Whether Penal Code section 46.035 prohibits carrying a licensed handgun on the premises of a public school or university where a school- or university-sponsored sporting or interscholastic event is taking place (ID# 36491)

Dear Representative Rangel:

You ask the following two questions:

- a) Does section 46.035(b)(2) of the Texas Penal Code apply to on campus facilities which host high school, collegiate, or professional events?
- b) Does the term "physical premises" as used in section 46.03(a)(1) of the Texas Penal Code refer to both the grounds and buildings of a university campus?

For the following reasons we believe (1) that a person would violate both sections 46.03 and 46.035 of the Penal Code if the person carried a licensed concealed handgun on the "premises" (as that word is defined in section 46.035) of a school or educational institution where a high school, collegiate or sporting or interscholastic event was occurring and (2) that the word *premises* as used in section 46.03(a)(1) means those portions of a structure, and of the land, including appurtenances, on which the structure is situated, of which a school or educational institution has ownership or control.

Penal Code section 46.035, which the last legislature added in the concealed handgun law, Act of May 16, 1995, 74th Leg., R.S., ch. 229, § 4, 1995 Tex. Sess. Law Serv. 1998, 2013, provides in pertinent part:

- (b) A license holder commits an offense if the license holder intentionally, knowingly, or recklessly carries a handgun under the authority of Article 4413(29ee), Revised Statutes, regardless of whether the handgun is concealed, on or about the license holder's person:

...

(2) on the premises where a high school, collegiate, or professional sporting event or interscholastic event is taking place, unless the license holder is a participant in the event and a handgun is used in the event . . . .

Penal Code section 46.03 provides in pertinent part:

(a) A person commits an offense if, with a firearm, illegal knife, club, or prohibited weapon listed in Section 46.05(a), he intentionally, knowingly, or recklessly goes:

(1) on the physical premises of a school or educational institution, any grounds or building on which an activity sponsored by a school or educational institution is being conducted, or a passenger transportation vehicle of a school or educational institution, whether the school or educational institution is public or private, unless pursuant to written regulations or written authorization of the institution . . . .

The prohibitions in the two sections share certain elements, but each section also prohibits conduct that the other does not.

Section 46.03(a)(1) in most respects is the broader of the two. Section 46.035(b)(2) prohibits only the licensed carrying of handguns, *but see* Penal Code § 46.02(a) (generally prohibiting carrying of handgun on or about one's person), (b)(7) (providing defense to prosecution under section 46.02 if handgun is licensed), while section 46.03(a)(1) prohibits the carrying of handguns without reference to licensure, *see also id.* § 46.03(f) (providing that it is not defense to prosecution that actor was licensed to carry handgun). Section 46.035(b)(2) prohibits only the carrying of handguns, while section 46.03(a)(1) prohibits the carrying of other weapons. Section 46.035(b)(2) applies only to sporting or interscholastic events of educational institutions that are high schools or colleges or universities, while section 46.03(a)(1) applies to any school or educational institution. Section 46.035(b)(2) does not apply to a passenger vehicle, while section 46.03(a)(1) also prohibits the carrying of a handgun on any passenger transportation vehicle of a school or educational institution. Regarding "premises" in section 46.03(a)(1) and section 46.035(b)(2), we will go into greater detail below in answer to your second question, but it is sufficient at this point to note that the word has a broader meaning in the former provision.

On the other hand, section 46.035(b)(2) also reaches conduct that is not covered by section 46.03(a)(1). Only the former section applies also to non-school-related activities, that is, professional sporting events.

Regarding the first question, whether section 46.035(b)(2) applies on-campus, you suggest that the pre-existence of section 46.03(a)(1), which already, even before the last legislative session, prohibited the carrying of a firearm on school or educational institution

premises,<sup>1</sup> requires an interpretation of section 46.035 as applying only to off-campus sporting and interscholastic events. You elaborate as follows:

Section 46.035(b)(2) of the Texas Penal Code makes it a criminal offense to carry a handgun "on the premises where a high school, collegiate, or professional sporting event or interscholastic event is taking place" . . . , while section 46.03(a)(1) makes it an offense for an individual to carry an unlawful weapon onto the physical premises of an educational institution . . . . When read together with section 46.03(a)(1) of the Texas Penal Code, section 46.035(b)(2) appears only to address off campus facilities. It seems logical that any on campus facility like Memorial Stadium at the University of Texas would be covered by section 46.03(a)(1) because the stadium is "on the physical premises of an educational institution." It appears that the Legislature created section 46.035(b)(2) to cover those facilities that are not covered by section 46.03(a)(1)—off campus facilities. For example, the Cotton Bowl hosts both collegiate (S.M.U.) football games and high school playoff football games, but the Cotton Bowl would not be covered by section 46.03(a)(1), because it is not on the premises of a school or educational institution.<sup>2</sup> Section 46.035(b)(2) - also covers professional venues such as Texas Stadium and the Astrodome; facilities that are not covered by section 46.03(a)(1). In other words, it appears that the Legislature did not want anyone carrying firearms to congested areas where families and students were present. The Legislature knew that they had covered on campus locations with section 46.03(a)(1), but they wanted to address those facilities that

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<sup>1</sup>Before section 46.03(a)(1) was amended in 1995, *see infra* note 2, it provided as follows:

(a) A person commits an offense if, with a firearm, illegal knife, club, or prohibited weapon listed in Section 46.05(a), he intentionally, knowingly, or recklessly goes:

(1) on the physical premises of a school, an educational institution, or a passenger transportation vehicle of a school or an educational institution, whether the school or educational institution is public or private, unless pursuant to written regulations or written authorization of the institution

....

Act of May 29, 1993, 73d Leg., R.S., ch. 900, § 1.01, 1993 Tex. Gen. Laws 3586, 3687-88.

<sup>2</sup>The Seventy-fourth Legislature expanded the reach of section 46.03(a)(1) to include "any grounds or building on which an activity sponsored by a school or educational institution is being conducted," Act of May 27, 1995, 74th Leg., R.S., ch. 260, § 42, 1995 Tex. Sess. Law Serv. 2207, 2490. We therefore believe that section 46.03(a)(1), as amended, would prohibit handguns at the Cotton Bowl during a collegiate or high school football game.

were not located on school property by using the language in section 46.035(b)(2). [Footnote added.]

Although we agree with you that section 46.035 applies to off-campus events, we do not believe that that section should be construed as applying *only* to off-campus events. We recognize that section 46.035(b)(2) prohibits no conduct on the premises of a school or educational institution that is not prohibited by section 46.03(a)(1), but we find no conflict between the two provisions. No rule of statutory analysis requires that section 46.035(b)(2) be construed as applying only where section 46.03(a)(1) does not apply. We conclude that the carrying of a licensed concealed handgun on the “premises” (as that word is defined in section 46.035<sup>3</sup>) of a school or educational institution where a high school or collegiate sporting or interscholastic event is occurring would violate both sections 46.03 and 46.035.

Your second question, whether the reference to “premises” in section 46.03(a)(1) includes both the grounds and buildings of a school or educational institution, draws our attention to the absence of a statutory definition of *premises* for purposes of section 46.03(a)(1). We note that Penal Code section 46.035(f)(3) has an express definition of *premises*:

In this section:

....

(3) “Premises” means a building or a portion of a building. The term does not include any public or private driveway, street, sidewalk or walkway, parking lot, parking garage, or other parking area.

Because the above-quoted statutory definition expressly applies only to section 46.035, it is not relevant to the meaning of the word as used in section 46.03. We therefore must ascribe to *premises* in section 46.03 the ordinary meaning of the word. See Gov’t Code § 312.002 (generally, “words [in statutes] shall be given their ordinary meaning”). The relevant definition in *Black’s Law Dictionary* is as follows:

*In estates and property.* Land with its appurtenances and structures thereon. Premises is an elastic and inclusive term, and it does not have one definite and fixed meaning; its meaning is to be determined by its context and is dependent on circumstances in which used, and may mean a room, shop, building, or any definite area. *Allen v. Gentry*, Ala., 97 So.2d 828, 832.

A dwelling unit and the structure of which it is a part and faculties and appurtenances therein and grounds, areas, and facilities

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<sup>3</sup>See *infra* page 4 (noting statutory definition of *premises* in Penal Code section 46.035(f)(3)).

held out for the use of tenants generally or whose use is promised to the tenant. Uniform Residential Landlord and Tenant Act, 1.301(a).

BLACK'S LAW DICTIONARY 1180-81 (6th ed. 1990). In *Webster's Ninth New Collegiate Dictionary*, the word is defined similarly, in relevant part, as "a : a tract of land with the buildings thereon b : a building or part of a building usu. with its appurtenances (as grounds)." WEBSTER'S NINTH NEW COLLEGIATE DICTIONARY 928 (1989).

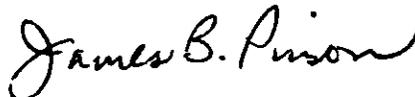
In light of the foregoing definitions, we believe that the word *premises* as used in section 46.03(a)(1) means those portions of a structure, and of the land, including appurtenances, on which the structure is situated, of which a school or educational institution has ownership or control. If a school or educational institution owns or controls all of a building and the parcel of land on which the building is situated, then all of the building and the land, including its appurtenances, are the "premises" of the school or educational institution for purposes of section 46.03(a)(1). If a school or educational institution owns or controls only certain portions of a building, then only those portions are the "premises" of the school or educational institution for purposes of section 46.03(a)(1).

### S U M M A R Y

A person would violate both sections 46.03 and 46.035 of the Penal Code if the person carried a licensed concealed handgun on the "premises" (as that word is defined in section 46.035) of a school or educational institution where a high school or collegiate sporting or interscholastic event was occurring.

The word *premises* as used in section 46.03(a)(1) means those portions of a structure, and of the land, including appurtenances, on which the structure is situated, of which a school or educational institution has ownership or control.

Yours very truly,



James B. Pinson  
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Opinion Committee