



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

February 19, 1997

The Honorable John Whitmire
Chair, Senate Committee on Criminal Justice
Texas State Senate
P.O. Box 12068
Austin, Texas 78711

Letter Opinion No. 97-007

Re: Whether an amusement park may prohibit a peace officer from carrying a concealed handgun on park premises under V.T.C.S. article 4413(29ee), section 32 or Penal Code section 46.035(b)(5) (ID# 39104)

Dear Senator Whitmire:

You ask whether an amusement park may prohibit a peace officer from carrying a concealed handgun on park premises under V.T.C.S. article 4413(29ee), section 32 or Penal Code section 46.035(b)(5). We assume you ask about a peace officer who is acting in the lawful discharge of an official duty or is a patron of the amusement park, rather than an off-duty peace officer who is an employee of the amusement park.¹ We conclude that the provisions you ask about apply to persons who carry concealed handguns pursuant to a license under article 4413(29ee) and do not authorize an amusement park to prohibit a peace officer from carrying a concealed handgun on park premises.

Both article 4413(29ee), section 32 and Penal Code section 46.035(b)(5) were enacted in 1995 by the Seventy-fourth legislature in Senate Bill 60, the concealed handgun legislation.² Article 4413(29ee) establishes a scheme whereby a person may apply to the Department of Public Safety for a license to carry a concealed handgun. Section 32 of article 4413(29ee) provides as follows:

This article does not prevent or otherwise limit the right of a public or private employer to prohibit persons who are licensed under this article from carrying a concealed handgun on the premises of the business.

This office considered this provision at length in Attorney General Opinion DM-363. We were asked whether section 32 gives business owners and operators the right to post notices prohibiting persons from carrying concealed handguns on the premises of the

¹We also assume that the peace officer does not carry the handgun solely under the authority of V.T.C.S. article 4413(29ee). See V.T.C.S. art. 4413(29ee), §§ 6 (general license), 27 (law enforcement officer alias license), 28 (license for retired peace officer); see also *infra* note 3.

²See Act of May 16, 1995, 74th Leg., R.S., ch. 229, § 4, 1995 Tex. Gen. Laws 1998, 2013.

business, or whether it is limited to permitting employers to restrict their employees from carrying concealed handguns on the premises. *See* Attorney General Opinion DM-363 (1995) at 5. After examining the law of trespass and the legislative history of Senate Bill 60, this office concluded that section 32 applies only to the employer-employee relationship and merely authorizes an employer to prevent an employee who is a concealed handgun license holder from carrying a concealed handgun on the employer's premises. *See id.* at 9. Therefore, section 32 is inapplicable to the relationship between an amusement park and a peace officer who is acting in the lawful discharge of an official duty or is a patron of the park.³

In addition to enacting article 4413(29ee), Senate Bill 60 also amended chapter 46 of the Penal Code regarding the unlawful carrying of weapons to provide certain exceptions and prohibitions applicable to concealed handgun license holders. Those amendments include Penal Code section 46.035, the other provision about which you ask.⁴ Subsection (b) of section 46.035 provides that a license holder commits an offense if he or she intentionally, knowingly, or recklessly carries a handgun under the authority of article 4413(29ee) in certain places, including an amusement park. *See* Penal Code § 46.035(b)(5). Section 46.035 refers only to "license holders"⁵ and deals only with the conduct of concealed handgun license holders. Because section 46.035 deals exclusively

³We also note that in Attorney General Opinion DM-363 this office concluded that despite the limited scope of section 32, article 4413(29ee) does not affect the right of a property owner to exclude a concealed handgun license holder carrying a concealed handgun from his or her premises under the criminal trespass statute. *See* Attorney General Opinion DM-363 at 9; *see also* Penal Code § 30.05. That conclusion, however, is not dispositive of the authority of an amusement park to exclude a peace officer carrying a concealed handgun because a peace officer generally does not carry a handgun under the authority of a concealed handgun license. A peace officer is excepted from the general Penal Code prohibitions against carrying an unlawful weapon, *see* Penal Code §§ 46.02, .03, by virtue of Penal Code section 46.15, a provision which was enacted in 1995 legislation unrelated to Senate Bill 60. *See* Act of May 28, 1995, 74th Leg., ch. 318, § 18, 1995 Tex. Gen. Laws 2734, 2741. Section 46.15 of the Penal Code provides:

Sections 46.02 and 46.03 do not apply to peace officers and neither section prohibits a peace officer from carrying a weapon in this state, regardless of whether the officer is engaged in the actual discharge of the officer's duties while carrying the weapon.

You do not ask and we do not address whether this provision gives a peace officer an affirmative right to carry a concealed handgun on property against the wishes of the property owner or whether it otherwise affects the rights of a property owner under the criminal trespass statute. *See* Penal Code § 30.05.

⁴*See* Act of May 16, 1995, 74th Leg., R.S., ch. 229, § 4, 1995 Tex. Gen. Laws 1998, 2013.

⁵Penal Code § 46.035(f)(2) (defining the term "license holder" to mean "a person licensed to carry a handgun under Article 4413(29ee), Revised Statutes.").

with the conduct of license holders, it does not authorize an amusement park to exclude a peace officer carrying a concealed handgun.⁶

S U M M A R Y

Neither V.T.C.S. article 4413(29ee), section 32 nor Penal Code section 46.035(b)(5) authorizes an amusement park to prohibit a peace officer, who is acting in the lawful discharge of an official duty or is a patron of the park, from carrying a concealed handgun on park premises.

Yours very truly,



Mary R. Crouter
Assistant Attorney General
Opinion Committee

⁶See *supra* note 1.