

16-07-23803

CAUSE NO. \_\_\_\_\_

<b>WALLER COUNTY, TEXAS</b>	§	<b>IN THE DISTRICT COURT</b>
<i>Plaintiff</i>	§	
	§	
<b>V.</b>	§	<b>506<sup>TH</sup> JUDICIAL DISTRICT</b>
	§	
<b>TERRY HOLCOMB SR.</b>	§	
<i>Defendant</i>	§	<b>WALLER COUNTY, TEXAS</b>

**ORIGINAL PETITION FOR DECLARATORY JUDGMENT**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Waller County, Texas (hereinafter “Waller County” or “County”) and files its Original Petition for Declaratory Judgment against Defendant Terry Holcomb Sr. (hereinafter “Defendant”) and alleges as follows:

**I.**

**Discovery Level**

1.01 Waller County intends for discovery to be conducted, should any discovery be necessary, under Level 2 pursuant to Tex. R. Civ. P. 190.1 and 190.3.

1.02 Waller County affirmatively pleads that this suit is not governed by the expedited actions process under Tex. R. Civ. P. 169 because Waller County seeks Declaratory Judgment.

**II.**

**Claim for Relief**

2.01 Waller County seeks Declaratory Judgment and damages of less than \$100,000.

2.02 The remedies sought are within the jurisdictional authority of the court pursuant to Tex. R. Civ. P. 47.

### **III.**

#### **Parties**

3.01 Waller County is a political subdivision and governmental entity having its principal office at 836 Austin Street, Suite 203, Hempstead, Texas 77445.

3.02 As a governmental entity, Waller County does not have a driver's license or a social security number. Tex. Civ. Prac. & Rem. Code § 30.014(a).

3.03 Defendant Terry Holcomb Sr. is a Texas citizen and person licensed to carry a handgun under Subchapter H, Chapter 411 of the Texas Government Code.

3.04 Defendant may be served at 610 W Rocky Creek Road, Coldspring, TX 77331.

### **IV.**

#### **Jurisdiction**

4.01 This Court has jurisdiction to hear this case under the *Uniform Declaratory Judgments Act* and pursuant to its inherent powers in equity. All relief sought by County is within the jurisdictional limits of this Court.

### **V.**

#### **Venue**

5.01 Waller County is a proper venue because it is the county in which the principal office of the political subdivision claimed to be in violation of the law is located. It is also the county in which the alleged violation of the law occurred.

### **VI.**

#### **Summary of the Case**

6.01 The question before this Court is whether signs posted at courthouses citing Penal Code § 46.03(a)(3), which prohibits an individual from entering the courthouse carrying a

prohibited weapon or firearm, violate Government Code § 411.209. A related question before this Court is whether Penal Code § 46.03(a)(3) prohibits an individual from carrying firearms and other weapons<sup>1</sup> throughout the entire building in which a court or court office is located or only in an actual courtroom or court office.

## VII.

### Factual Background

7.01 Waller County expects the factual background in this lawsuit to be undisputed and that this lawsuit will involve solely a question of law.

7.02 The Texas Legislature passed Senate Bill 273 during the 84<sup>th</sup> Legislative Session. Senate Bill 273, which became effective on September 1, 2015, added Section 411.209 to the Texas Government Code. Pursuant to Section 411.209, a political subdivision may be fined up to \$10,500 per day if the political subdivision

provide[s] notice by a communication described by Section 30.06, Penal Code, or by any sign expressly referring to that law or to a concealed handgun license, that a license holder carrying a handgun under the authority of this subchapter is prohibited from entering or remaining on a premises or other place owned or leased by the governmental entity unless license holders are prohibited from carrying a handgun on the premises or other place by Section 46.03 or 46.035, Penal Code.

Tex. Gov't Code § 411.209(a). Penal Code § 46.03 prohibits the carrying of a firearm on the premises of a government court. The text of Government Code § 411.209 assigns no liability for posting notice pursuant to Penal Code § 46.03.

7.03 Government Code § 411.209 created a process by which a citizen may file a complaint with the political subdivision and subsequently with the Attorney General regarding

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<sup>1</sup> Tex. Penal Code § 46.03(a) states that “[a] person commits an offense if the person intentionally, knowingly, or recklessly possesses or goes with a firearm, illegal knife, club, or prohibited weapon listed in Section 46.05(a)” any of the enumerated places. In this Petition the term “other weapon(s)” means illegal knives, clubs, and weapons prohibited by Section 46.05.

wrongfully posted signage under Penal Code § 30.06.

7.04 If the subsequent Attorney General investigation concludes with a finding that the political subdivision is in violation of Section 411.209, the Attorney General may file suit<sup>2</sup> against the political subdivision to recover the civil penalties and other monetary expenses authorized under Government Code § 411.209. A political subdivision so sued has no sovereign immunity. *See* Tex. Gov't Code § 411.209(h).

7.05 Waller County received a citizen complaint pursuant to Section 411.209 from Defendant on May 25, 2016. The complaint alleges that the sign outside the Waller County Courthouse referencing Penal Code § 46.03(a)(3) violates Government Code § 411.209. *Exhibit I*. The complaint also states that Defendant will file a complaint with the Attorney General if the sign is not removed.

7.06 The Waller County Courthouse is located at 836 Austin Street, Hempstead, Texas 77445. The building is owned by Waller County and houses various courts and county offices including: (1) the Waller County Court at Law, offices utilized by the County Court at Law, and the associated courtroom; (2) the Waller County Commissioners' Court, offices utilized by the Commissioners' Court, and the associated courtroom; (3) the 506<sup>th</sup> District Court, offices utilized by the District Court, and the associated courtroom; (4) the Waller County District Clerk's Office; (5) the Waller County Clerk's Office; (6) the Waller County Auditor's Office; (7) the Waller County Treasurer's Office; (8) the Waller County Elections Office; and (9) the Waller County Veterans Service Office.

7.07 The Waller County Courthouse has four entrances: three that require an employee security code and one for the general public. Signs in English and Spanish are located near each

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<sup>2</sup> Before filing a suit to collect penalties, the Attorney General must give the political subdivision proper notice to cure the violation. TEX. GOV'T CODE § 411.209(f).

entrance to notify members of the public that they may be charged with a third degree felony if they enter the building with a firearm or other prohibited weapon. The English version of the signs states:

### **Warning**

Pursuant to Texas Penal Code Section 46.03(a)(3), a person commits an offense if the person intentionally, knowingly, or recklessly possesses or goes with a firearm, illegal knife, club, or prohibited weapon listed in Section 46.05(a) on the premises of any government court or offices utilized by the court, unless pursuant to written regulations or written authorization of the court. Violators may be charged with a 3<sup>rd</sup> degree felony.

## **VIII.**

### **Suit for Declaratory Relief**

8.01 This is a suit for declaratory judgment finding: (1) that Penal Code § 46.03(a)(3) prohibits an individual from carrying firearms and other prohibited weapons throughout an entire courthouse, including the Waller County Courthouse and (2) that signs at a courthouse, including those at the Waller County Courthouse, citing Penal Code § 46.03(a)(3) do not violate Government Code § 411.209.

8.02 This suit for declaratory judgment is brought pursuant to the *Uniform Declaratory Judgments Act* in Chapter 37 of the Texas Civil Practice and Remedies Code. “A court of record within its jurisdiction has power to declare rights, status, and other legal relations whether or not further relief is or could be claimed.” Tex. Civ. Prac. & Rem. Code § 37.003(a). “A person...whose rights, status, or other legal relations are affected by a statute...may have determined any question of construction or validity arising under the...statute...and obtain a declaration of rights, status, or other legal relations thereunder.” *Id.* at 37.004(a).

8.03 Government Code § 411.209(a) provides a governmental entity “may not provide notice by a communication described by Section 30.06, Penal Code, or by any sign expressly

referring to that law or to a concealed handgun license,” that a license holder may not carry a handgun on a premises owned or leased by the governmental entity “unless license holders are prohibited from carrying a handgun on the premises or other place by Section 46.03 or 46.035, Penal Code.” The Texas Court of Criminal Appeals, advising courts on how to interpret Texas statutes, has stated:

"[u]nder the canons of statutory construction, we are to construe a statute according to its plain language, unless the language is ambiguous or the interpretation would lead to absurd results that the legislature could not have intended."<sup>3</sup> To do so, we focus on the literal text of the statutory language in question, reading it in context and construing it "according to the rules of grammar and common usage."<sup>4</sup> In an attempt to discern the fair, objective meaning of the text at the time of its enactment, "[w]e assume that every word has been used for a purpose and that each word, phrase, clause, and sentence should be given effect if reasonably possible."<sup>5</sup> "Where the statute is clear and unambiguous, the Legislature must be understood to mean what it has expressed, and it is not for the courts to add or subtract from such a statute."<sup>6</sup> It is only "[w]hen the application of the statute's plain language would lead to absurd consequences that the Legislature could not possibly have intended," that a court, out of absolute necessity, may stray from applying the literal language and resort to such extra-textual factors as legislative history, intent, or purpose.<sup>7</sup>

*Tapps v. State*, 294 S.W.3d 175, 177 (Tex. Crim. App. 2009). Section 411.209(a) only prohibits “communication described by Section 30.06, Penal Code, or by any sign expressly referring to that law or to a concealed handgun license.” That language is very clear, unambiguous, and specific. Signs referring to Penal Code § 46.03 are clearly not prohibited by the language of Section 411.209(a).

8.04 Additionally, Section 411.209(a) does not create any liability for posting any signs prohibiting individuals from carrying a handgun on the premises or other place if Penal Code §

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<sup>3</sup> *Williams v. State*, 253 S.W.3d 673, 677 (Tex. Crim. App. 2008) (citing *Thompson v. State*, 236 S.W.3d 787, 792 (Tex. Crim. App. 2007); *Boykin v. State*, 818 S.W.2d 782, 785 (Tex. Crim. App. 1991)).

<sup>4</sup> TEX. GOV'T CODE § 311.011(a).

<sup>5</sup> *Campbell v. State*, 49 S.W.3d 874, 876 (Tex. Crim. App. 2001) (citing *State v. Hardy*, 963 S.W.2d 516, 520 (Tex. Crim. App. 1997)).

<sup>6</sup> *Coit v. State*, 808 S.W.2d 473, 475 (Tex. Crim. App. 1991).

<sup>7</sup> *State v. Mason*, 980 S.W.2d 635, 638 (Tex. Crim. App. 1998) (citing *Boykin*, 818 S.W.2d at 785-86).

46.03 or 46.035 prohibit weapons on the premises. Penal Code § 46.03(a)(3) prohibits individuals, license holders<sup>8</sup> included, from carrying a firearm or other weapon “on the premises of any government court or offices utilized by the court, unless pursuant to written regulations or written authorization of the court.” Pursuant to Penal Code § 46.03(c)(1) and 46.035(f)(3), “premises” is defined as “a building or a portion of a building.”<sup>9</sup> The term does not include any public or private driveway, street, sidewalk or walkway, parking lot, parking garage, or other parking area.” The plain language of Penal Code § 46.03(a)(3), combined with the definition of “premises,” clearly and unambiguously prohibits an individual from carrying a firearm into a building that houses a government court.

8.05 Despite the clear and unambiguous language of Government Code § 411.209(a) and Penal Code § 46.03(a)(3) and 46.03(c)(1), two recent Attorney General Opinions<sup>10</sup> suggest: (1) that Section 411.209 creates liability for a governmental entity that gives oral or written notice “that seeks to improperly prohibit handguns from a place where handguns may be lawfully carried,” even if the notice “does not conform to section 30.06 of the Penal Code;”<sup>11</sup> and (2) that pursuant to Section 46.03 “it is only the courtrooms, and those offices determined to be essential

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<sup>8</sup> "License holder" means a person licensed to carry a handgun under Subchapter H, Chapter 411, Government Code. TEX. PENAL CODE § 46.035(f)(2).

<sup>9</sup> *Dupree v. State*, 433 S.W.3d 788, 792 (Tex. App. – Texarkana) (2014) (“The plain meaning of the phrase “building or a portion of a building” is clear and unambiguous. While the meaning most typically ascribed to the term “premises” would likely include more than a building or a portion of a building, our inquiry is not whether the Legislature’s definition of premises comports with ordinary usage; rather, we are to determine if the plain meaning of the Legislature’s definition is clear and unambiguous. We find that it is. As further support for this interpretation, we look to the second sentence of the definition of “premises,” which unambiguously establishes that the term premises does not include “any public or private driveway, street, sidewalk or walkway, parking lot, parking garage, or other parking area.” It is clear, then, that the possession of a firearm on a street, sidewalk, or parking lot, or even in a parking garage—which may well be a building—is not a violation of *Section 46.03 of the Texas Penal Code*. We find nothing in this portion of the statutory definition of premises to suggest that we should deviate from the plain meanings of the words “building or a portion of a building.”” (citations omitted)).

<sup>10</sup> See Tex. Att’y Gen. Op. No. KP-0047 (2015) and KP-0049 (2015).

<sup>11</sup> Tex. Att’y Gen. Op. No. KP-0049 at 5 (2015) (emphasis added).

to their operations,” not the entire building of a courthouse, “from which [a governmental entity] may prohibit concealed handguns without risk of incurring a civil penalty.”<sup>12</sup>

8.06 Notably, the Texas Penal Code has incorporated the *Code Construction Act* found in Chapter 311 of the Texas Government Code. See Tex. Penal Code § 1.05. Pursuant to Government Code § 311.021, “[i]n enacting a statute, it is presumed that...the entire statute is intended to be effective,”<sup>13</sup> and that “a result feasible of execution is intended.”<sup>14</sup> The Attorney General’s interpretation of the definition of “premises” violates the *Code Construction Act* and completely ignores the statutory interpretation advice given by the Texas Court of Criminal Appeals. By opining that the prohibition against carrying a firearm “on the premises of any government court or offices utilized by the court”<sup>15</sup> means that firearms may not be excluded from an entire courthouse building, but may only be excluded from individual “courtrooms and those offices...essential to their operations,”<sup>16</sup> the Attorney General improperly ignored the plain language of the statute, ignored a result feasible of execution, did not give effect to all the words in the statute, and ultimately removed “a building or” from the definition of “premises.”

8.07 The *Code Construction Act* also states that

[i]n construing a statute, whether or not the statute is considered ambiguous on its face, a court may consider among other matters the:

- (1) object sought to be attained;
- (2) circumstances under which the statute was enacted;
- (3) legislative history;
- (4) common law or former statutory provisions, including laws on the same or similar subjects;
- (5) consequences of a particular construction;
- (6) administrative construction of the statute; and
- (7) title (caption), preamble, and emergency provision.

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<sup>12</sup> *Id.* (emphasis added).

<sup>13</sup> TEX. GOV'T CODE § 311.021(2).

<sup>14</sup> *Id.* at § 311.021(4).

<sup>15</sup> TEX. PENAL CODE § 46.03(a)(3).

<sup>16</sup> Tex. Att’y Gen. Op. No. KP-0049 at 5 (2015).



TEX. GOV'T CODE § 311.023. Considering these factors lends further support to the interpretation of Penal Code § 46.03 that firearms are prohibited throughout an entire building that houses a government court.

8.08 In 1993 the 73<sup>rd</sup> Texas Legislature passed Senate Bill 1067, which re-codified the Texas Penal Code. At the time, Penal Code § 46.03(a)(3) read “in any government court or offices utilized by the court, unless pursuant to written regulations or written authorization of the court.”<sup>17</sup> In 1995, the 74<sup>th</sup> Legislature passed Senate Bill 60, which has become known as the “Texas Concealed Handgun Law.” That bill added section 46.035 to the Texas Penal Code and included the current definition of “premises” in Penal Code §46.035(f)(3).

8.09 In 2003, the 78<sup>th</sup> Legislature passed Senate Bill 501 (“SB 501”), which changed language found in Penal Code § 46.03(a)(3) from “in any government court . . .”<sup>18</sup> to “on the premises of any government court . . .”<sup>19</sup> This change indicates a clear legislative intent to clarify that firearms and other weapons are not merely prohibited only from individual courtrooms and offices, but rather are prohibited from the entire building. Transcripts from legislative hearing committees demonstrate that the legislature considered this exact issue and expressly intended exclude firearms from entire courthouse buildings. Senator Armbrister authored SB 501 and amended his bill in response to an objection from Senator Hinojosa. During a hearing before the Texas Senate Criminal Justice Committee, Senator Armbrister explained that the amendment was intended to expand the meaning of Section 46.03(a)(3) as follows:

What this amendment does members is add a section to the bill to change the existing prohibition against carrying guns into the courtroom to prohibit guns in the courthouse. The use of the word premises tracks other provisions in the statute and is defined to include the building, not parking lots or sidewalks insuring that concealed handgun permit holders can still carry their gun until they enter the

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<sup>17</sup> Tex. S.B. 1067, 73<sup>rd</sup> Leg., R.S. (1993) (emphasis added).

<sup>18</sup> *Id.* (emphasis added).

<sup>19</sup> Tex. S.B. 501, 78<sup>th</sup> Leg., R.S. (2003) (emphasis added).

courthouse. Courthouses where only administrative offices are held are excluded. If this is not adopted counties would not be able to prevent CHP holders from carrying their handgun into courthouses past security checkpoints. So this I think should address that concern.

See [http://tlcsenate.granicus.com/MediaPlayer.php?view\\_id=20&clip\\_id=4603](http://tlcsenate.granicus.com/MediaPlayer.php?view_id=20&clip_id=4603) (actual relevant discussion begins at approximately 42:28 on the hearing tape) (emphasis added). This was in response to the following exchange:

Sen. Hinojosa: Sen. Armbrister. I actually, I like your bill and the principles that are behind it and that the local municipalities and counties cannot supersede state law [inaudible] this bill is about, but one of the things I need to correct if I may, I have a friendly amendment to offer at the proper time as a substitute, is that right now I think that state law says that we can't carry a concealed handgun weapon into the courtroom or, uh, that we cannot carry a concealed weapon into a courthouse and I understand there is an attorney general's opinion that says that that meant into a courtroom but not the actual courthouse and I think what we intend to do with our exemption, an exception, was to make sure that concealed weapons would not be carried into the courthouse. At the proper time I would like to make an amendment.

Sen. Armbrister: Right, my staff tells me that y'all should have an amendment to the committee substitute that I think covers that. Yeah.

*Id.* (emphasis added).

8.10 The Texas House of Representatives Criminal Jurisprudence Committee hearing on SB 501 also addressed the issue and clearly stated their intent:

Rep. Hupp: Thank you Mr. Chairman, members. To refresh your memory Senate Bill 501 and House Bill 878, which is what you all have heard before, seeks to close a loophole that has allowed cities and municipalities to set up ordinances and rules to disallow law-abiding concealed handgun license holders from carrying on city property. Uh . . . that was not prohibited in 46.03 and 46.035 of the Penal Code. . . . . Secondly, there was a concern over the courts and whether or not they would be fully exempted, it was not my intention under HB 878 to affect any of the prohibited places in the original Concealed Carry Bill. But, the Senate companion again . . . uh . . . have added premises of the court which basically prohibits license holders from carrying in any building in which there is a courtroom. I have agreed to keep those two changes in the language in the Bill...

See [http://tlchouse.granicus.com/MediaPlayer.php?view\\_id=22&clip\\_id=2915](http://tlchouse.granicus.com/MediaPlayer.php?view_id=22&clip_id=2915) (relevant discussion begins at 3:37:40 of the hearing tape) (emphasis added).

8.11 SB 501, with the amendment to Penal Code § 46.03(a)(3), passed and became effective September 1, 2003. The language of Section 46.03(a)(3) has not been amended since, including by Senate Bill 273 which added Government Code § 411.209.

8.12 The legislative history of the actual provision involved, Section 46.03(a)(3), the circumstances of the amendment, and the former version of the section clearly establish the Legislature's intent that "on the premises of a court or offices utilized by the court" was intended to mean an entire courthouse or any building housing a court. In fact, it is clear that prohibiting firearms from being brought into a courthouse or building housing a court was the very purpose of the amendment.

8.13 Thus, in applying (1) the rules of the *Code Construction Act*, (2) the Legislature's clear intent to expand Penal Code § 46.03(a)(3) to include the entire building, and (3) the testimony of Representative Hupp and Senators Armbrister and Hinojosa, it is clear that Penal Code § 46.03(a)(3), as written, prohibits all firearms and other weapons in the entire government building that houses a court.

8.14 This Court can resolve and terminate the controversy by clarifying Government Code § 411.209 as to its scope and applicability as it relates to the Waller County Courthouse, courthouses in general, and government buildings in which courts are located. Further, by clarifying Penal Code § 46.03(a)(3) and the definition of "premises" as to their scope and applicability as they relate to the Waller County Courthouse, courthouses in general, and government buildings in which courts are located

**IX.**

**Conditions Precedent**

9.01 All conditions precedent have been performed or have occurred. Tex. R. Civ. P. 54.

**X.**

**Objection to Associate Judge**

10.01 Waller County objects to the referral of this case to an associate judge for hearing hearing a trial on the merits or presiding at a jury trial. Tex. Gov't Code § 54A.106(c).

**XI.**

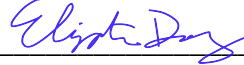
**Conclusion and Prayer**

11.01 Waller County prays for the following relief:

- A. Declaratory Judgment that Penal Code § 46.03(a)(3) prohibits an individual from carrying firearms and other prohibited weapons throughout an entire building that houses a government court, including but not limited to the Waller County Courthouse.
- B. Declaratory Judgment that signs, including but not limited to those posted by Waller County, at a building that houses a government court citing Penal Code § 46.03(a)(3) do not violate Government Code § 411.209.
- C. Court costs and reasonable attorneys' fees.
- D. All other relief to which Waller County is entitled.

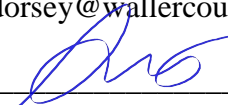
Respectfully submitted,

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