

THE COMMISSIONERS COURT *
McLENNAN COUNTY *
THE STATE OF TEXAS *
TO ALL PERSONS INTERESTED:

NOTICE IS HEREBY GIVEN that, in accordance with the Government Code, Chapter 551, (known as the Open Meetings Act), as amended, a special meeting of Commissioners' Court, the governing body of McLennan County, will be held on **Friday, the 8th day of April, 2016 at 9:00 a.m.** in the Commissioners Courtroom, 1st Floor, West Wing, McLennan County Courthouse, City of Waco, Texas, at which time the subjects listed below, will be considered

AGENDA

- I. **PROOF OF POSTING OF NOTICE** in accordance with the provisions of Chapter 551.041, Government Code, as amended, known as the Open Meeting Act.
- II. **A MOMENT OF SILENCE / INVOCATION; PLEDGE OF ALLEGIANCE**
- III. **CONSIDERATION OF, AND/OR ACTION ON, THE FOLLOWING:**
 - A. **HEARING FROM MEMBERS OF THE PUBLIC ON COUNTY BUSINESS MATTERS**
- IV. **Executive Session:** A closed meeting will be held pursuant to:
 - A. **Section 551.071 of the Government Code (V.C.T.A.):** An executive/closed session will be held so that the Commissioners Court can seek and receive legal advice from its attorneys regarding pending or threatened litigation, settlement offers, claims, or other matters for which the attorneys' duties to their client under the Texas State Bar Disciplinary Rules of Professional Conduct Conflicts with the Open Meetings Act (Ch.551, Gov. Code) if necessary for a subject contained on this agenda, and legal issues and potential liabilities regarding handgun laws and regulation of handguns in certain County buildings, including: OAG Complaint No. 30.
- V. Discussion and action on responding or taking action in response to Attorney General threat of litigation and penalties regarding Courthouse and Courthouse Annex restriction on handguns.

Signed this the 5th day of April, 2016



SCOTT M. FELTON, County Judge

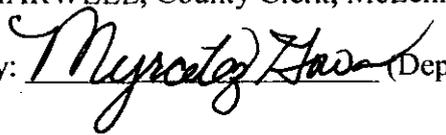
STATE OF TEXAS *
COUNTY OF McLENNAN *

I, J.A. "ANDY" HARWELL, County Clerk, and the Ex-Officio Clerk to the Commissioners Court, hereby certify that the above and foregoing is a true and correct copy of a NOTICE OF MEETING posted by me at the Courthouse door in Waco, McLennan County, Texas, where notices are customarily posted this the 5th day of April, 2016 at 8:55 o'clock p.m.

Witness my hand and seal of office at Waco, McLennan County, Texas this 5th day of April, 2016.

J.A. "ANDY" HARWELL, County Clerk, McLennan County, Texas

SEAL

By:  (Deputy)

Notice: Persons with disabilities in need of auxiliary aide or services may contact the County Judge's Office, (254) 757-5049, prior to the meeting date

FILED: APR 08 2016

J.A. "ANDY" HARWELL, County Clerk
McLennan County, Texas
By Myrcator Gowan, Deputy

AGENDA: APRIL 8, 2016

II. A MOMENT OF SILENCE / INVOCATION; PLEDGE OF ALLEGIANCE

CD-383, 9:03

County Judge Felton stated that at this time we will have a moment of silence. County Judge Felton then stated that we will now have the Pledge of Allegiance led by Commissioner Jones.

AGENDA: APRIL 8, 2016

III. CONSIDERATION OF, AND / OR ACTION ON, THE FOLLOWING:

**A. HEARING FROM MEMBERS OF THE
PUBLIC ON COUNTY BUSINESS MATTERS**

**Mr. Scott Gates
Mr. Christopher J Grisham
Mr. Denny Lessman
Mrs. Chrissy Staff
Mr. Wesley Lloyd
Sheriff Parnell McNamara**

CD-383, 9:03

County Judge Felton opened the floor to anyone present who wished to address the Court on County business matters. Mr. Scott Gates, Mr. Christopher J. Grisham, Mr. Denny Lessman, Mrs. Chrissy Staff, Mr. Wesley Lloyd and Sheriff Parnell McNamara addressed the court regarding the handgun laws and regulation of handguns in certain County Buildings. Not hearing anyone else speak, County Judge Felton closed the hearing.

ORDER RECESSING TO EXECUTIVE SESSION

On this the 8 day of April, 2016, at 9:21 o'clock a.m. the County Judge announced that at this time we will go into Executive Session in accordance with Section 551.071 of the Local Government Code (V.C.T.A.)

ORDER RECONVENING SPECIAL SESSION

On this the 8 day of April, 2016, at 10:33 o'clock a.m. the Court reconvened in Special Session with County Judge Scott M. Felton presiding and Commissioners Kelly Snell, Will Jones, Ben Perry and the Clerk thereof being in attendance, the following proceedings were had and done to-wit:

ORDER RECESSING SPECIAL SESSION

On this the 8 day of April, 2016, at 10:33 o'clock a.m., the County Judge Scott M. Felton announced that this meeting of April 8, 2016 stands in recess for two minutes.

ORDER RECONVENING SPECIAL SESSION

On this the 8 day of April, 2016, at 10:35 o'clock a.m. the Court reconvened in Special Session with County Judge Scott M. Felton presiding and Commissioners Kelly Snell, Will Jones, Ben Perry and the Clerk thereof being in attendance, the following proceedings were had and done to-wit:

AGENDA: APRIL 8, 2016

III. CONSIDERATION OF, AND/OR ACTION ON, THE FOLLOWING:

- V. Discussion and action on responding or taking action in response to Attorney General threat of litigation and penalties regarding Courthouse and Courthouse Annex restriction on handguns.

Approved

CD-383, 10:35

ORDER APPROVING:

**ACTION ON RESPONDING OR TAKING ACTION IN RESPONSE
TO ATTORNEY GENERAL THREAT OF LITIGATION
AND PENALTIES RE: COURTHOUSE AND COURTHOUSE
ANNEX RESTRICTION ON HANDGUNS**

On this the 8 day of April, 2016, came on for consideration the matter of Discussion and action on responding or taking action in response to Attorney General threat of litigation and penalties regarding Courthouse and Courthouse Annex restriction on handguns. After discussion, Judge Felton made a motion to approve the order for McLennan County Commissioners' Court and it was seconded Commissioner Snell. A vote being called for, voting in favor of said motion was Judge Felton, Commissioner Snell, Commissioner Jones and Commissioner Perry. It is ordered by the Court that said Authorization be, and the same is hereby, approved by unanimous vote.

ORDER OF THE MCLENNAN COUNTY COMMISSIONERS COURT

WHEREAS, as required by Section 46.03 of the Texas Penal Code, McLennan County prohibits weapons from being carried in the McLennan County Courthouse and Courthouse Annex by other than peace officers and persons otherwise specifically authorized by statute to carry a weapon onto the premises of a court. This prohibition has been in effect for many years and was not changed in the recent legislative session. This prohibition includes the carrying of handguns by handgun license holders; and

WHEREAS, the Commissioners Court has found, as did the courts in the Courthouse and Annex, that the Courthouse and Courthouse Annex are almost entirely devoted to courtrooms, court officers, court support offices, and offices involved in the judicial process; and that the hallways, common areas, stairwells, elevators and restrooms in these buildings are essential to the operations of the courts and an integral part of the judicial system in McLennan County; and

WHEREAS, the Commissioners Court has found that judges, jurors, witnesses, and others involved in the judicial process could not be adequately protected if persons are permitted to roam the same hallways, common areas, stairwells, elevators and restrooms with handguns; and

WHEREAS, McLennan County has installed signs at the Courthouse and Courthouse Annex notifying the public that weapons are not allowed, and specifically notifying handgun licensees that they cannot bring their handguns into the buildings; and

WHEREAS, McLennan County received a letter dated March 30, 2016 from the Texas Attorney General's Office demanding that these signs be removed and warning that if they are not removed the County may be held liable for civil penalties under Section 411.209 of the *Government Code*; and

WHEREAS, despite publically opining that *he does not actually know* what "premises of any government court or offices utilized by the court" means, the Attorney General is seeking to impose against McLennan County very expensive financial penalties under a statutory scheme that provides no avenue for the County to appeal before such penalties are incurred; and

WHEREAS, a simple reading of the clear legislative history of the actual provision at issue would inform the Attorney General of the meaning of this statutory provision; and

WHEREAS, the Attorney General has been repeatedly provided with this information but has refuse to acknowledge or address this clear legislative intent; and

WHEREAS, by way of background, the statute creating concealed carry in Texas was passed in 1995. At that time, Section 46.03 of the *Penal Code* ("Places Weapons Prohibited") prohibited concealed handgun licensees from carrying guns "in any government court or offices utilized by the court, unless pursuant to written regulations or written authorization of the court." In 2001, Attorney General Cornyn concluded in Opinion JC-0325 that a unit of government had statutory authority to bar concealed handgun licensees from entering its property, either by giving verbal notice to the licensee or by erecting a sign or other written

communication that complied with Section 30.06 of the *Penal Code*, and that notified licensees that they cannot enter while carrying concealed handguns; and

WHEREAS, in response to AG Cornyn's opinion, the Legislature passed SB 501 in 2003 for the purpose of permitting concealed handgun licensees to carry guns on property owned or leased by a governmental entity, but excluding any place on which a licensee was prohibited from carrying by sections 46.03 or 46.035 of the *Penal Code*; and

WHEREAS, as originally introduced, SB 501 proposed no changes to section 46.03. However, in the Senate committee hearing on the bill, an amendment was added to the following section of the bill:

SECTION 3. Subsection (a), Section 46.03, Penal Code, is amended to read as follows:

(a) 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):

...

(3) on the premises of ~~in~~ any government court or offices utilized by the court, unless pursuant to written regulations or written authorization of the court;

....; and

WHEREAS, Senator Armbrister, the author of SB 501, explained the amendment during a hearing on SB 501 before the Texas Senate Criminal Justice Committee 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 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.”; and

WHEREAS, Representative Hupp explained the amendment to the Texas House of Representatives Criminal Jurisprudence Committee hearing on SB 501 as follows:

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...; and

WHEREAS, SB 501, with the Senate committee amendment, passed and was effective September 1, 2003. *The language of Section 46.03(a)(3) of the Penal Code has not been amended since, including by the 2015 legislation which added Section 411.209 of the Government Code; and*

WHEREAS, the legislative history of the *actual provision involved*, Section 46.03(a)(3) of the *Penal Code*, clearly establishes the legislature's intent that "on the premises of a court or offices utilized by the court" was intended to mean a courthouse or any building housing a court. In fact, it is clear that *prohibiting* handguns from being brought into a courthouse or building housing a court was *the very purpose of the amendment*; and

WHEREAS, the Attorney General's interpretation *would be untenable even without the existence of this clear legislative history*. First, as stated above, the 2003 amendment to SB 501 to change the language of 46.03(a)(3) from "in a government court..." to "on the premises of a government court..." did not occur in a vacuum. **This amendment was to legislation that was aimed at allowing handguns to be carried on government properties.** A rule of statutory construction is to consider the object sought to be obtained. Obviously, the object sought to be obtained was to extend the prohibition on handguns *beyond just courtrooms*. Otherwise there would have been no need to change the language of Section 46.03(a)(3) from "in" a court to "on the premises of" a court. A rule of statutory construction is that the Legislature is not assumed to have done a useless or vain thing by enacting language that is mere surplusage or that was not intended to be effective. *However, the Attorney General ignores this basic rule and essentially construes Section 46.03(a)(3) to read the same as it did before it was amended.* That is, the Attorney General apparently considers the amended language added in 2003 to be mere surplusage and to have been a useless act of the legislature. In addition, the 2015 legislature had no problem restricting application of a provision to a certain room or rooms when it intended to do so; like it did with its changes to Section 46.035 (c) of the *Penal Code*:

(c) A license holder commits an offense if the license holder intentionally, knowingly or recklessly carries a handgun..., in the room or rooms where a ~~at any~~ meeting of a governmental entity is held...

However, it made no attempt to similarly restrict the "on the premises of a court or offices utilized by the court" language of Section 46.03(a)(3) of the *Penal Code* to actual courtrooms and actual court offices.

Furthermore, statutes must be interpreted to avoid unintended or absurd results. The Attorney General's interpretation would result in quite absurd and hopefully unintended results, including but not limited to:

- No ability to control courthouse security through a single entrance. Once in the building with a handgun, nothing stops a person from coming into contact with judges, judicial

officers, jurors, witnesses, prosecutors, attorneys, family members, etc. in common areas, stairwells, elevators, hallways, and restrooms. Furthermore, once that entry occurs, if the individual does try to enter a courtroom or court-related office, or confront a witness, party, prosecutor, judge, etc.---a security officer's response, which could include the use of force if the person refuses commands, is taking place in the middle of the courthouse;

- Allowing persons carrying handguns to walk the same halls, use the same stairs and elevators, and use the same common areas and restrooms, gives them complete access to the persons that Section 46.03(a)(3) is intended to protect (judges, jurors, witnesses, parties, prosecutors, attorneys, and judicial personnel) unless those persons are in their "safe zone" of the actual courtroom or court office;
- Counties having to establish security checkpoints at every courtroom and court office with metal detectors and personnel, creating a highly expensive and less effective provision of security. Again, once a gunman is in the courthouse, any law enforcement response is going to be taking place in the middle of the courthouse; and
- Once the licensee is in the courthouse, and then decides to go to a court, what does he do with his gun? Is the county now required to provide gun lockers for CHL holders?

Clearly, the legislature would not have intended to create these problems.

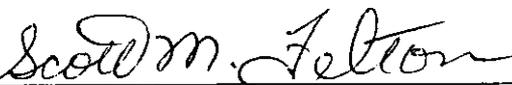
WHEREAS, there are a myriad of other legal authorities which show the Attorney General to be acting well beyond the bounds of his jurisdiction and authority, in violation of law, and in violation of the Texas Constitution; and

WHEREAS, there is a need to obtain court relief from the Attorney General's threats of penalties against McLennan County for enforcing the statutes of this state; and

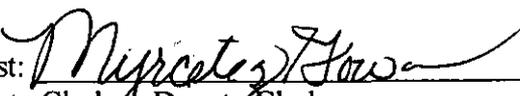
WHEREAS, there is a need to protect the County against the Attorney General's *command, backed by financial penalties, that the County actually violate the law.*

NOW, THEREFORE, BE IT ORDERED BY THE MCLENNAN COUNTY COMMISSIONERS COURT THAT: Haley & Olson, P.C. (and Allison, Bass & Magee, LLP as assisting or local counsel) is authorized to take such action as the County's legal counsel believes in its professional judgment is necessary to protect the County's rights and obligation to provide a safe, secure environment for the courts and all participants in the judicial process, to protect the County from the threatened actions of the Attorney General, and to vindicate the County's authority and responsibility to restrict handguns from being brought into the Courthouse or Courthouse Annex; including conferring with the Attorney General's Office, defending litigation, or filing litigation.

PASSED THIS 8th DAY OF APRIL, 2016.



Scott M. Felton, County Judge

Attest: 

County Clerk or Deputy Clerk

FILED: APR 08 2016

J.A. "ANDY" HARINELL, County Clerk
McLennan County, Texas
By Myrcenez Gowen DEPUTY

ORDER ADJOURNING SPECIAL SESSION

On this the 8 day of April, 2016, at 10:51 o'clock a.m. County Judge Scott M. Felton announced that the meeting of April 8, 2016 is adjourned.

APPROVAL OF MINUTES

The above and foregoing minutes having been read in open Court and found to be correct, the same are hereby, approved this the _____ day of _____, 2016.

**Kelly Snell,
Commissioner Precinct 1**

**Lester Gibson,
Commissioner Precinct 2**

**Will Jones,
Commissioner Precinct 3**

**Ben Perry,
Commissioner Precinct 4**

**Scott M. Felton,
County Judge**

**ATTEST: J. A. "Andy" Harwell,
McLennan County Clerk**

By _____ **Deputy County Clerk**
Myrce'tez Gowan