

# The State of Texas




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Secretary of State

## ELECTION ADVISORY NO. 2018-29

TO: Election Officials

FROM: Keith Ingram, Director of Elections 

DATE: September 21, 2018

RE: Handguns in Polling Places (KP-0212)

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On August 27, 2018, the Office of the Attorney General issued Opinion [No. KP-0212](#) (“opinion”) which opined on whether presiding election judges are permitted to carry a handgun in a polling place on Election Day. The Office of the Attorney General concluded that because a presiding election judge has the same power of a district judge to enforce order and keep the peace it is likely that Section 46.03 of the Penal Code does not apply to presiding election judges that are licensed to carry a handgun under Chapter 411 of the Government Code, when they are performing their law enforcement duties under Section 32.075 of the Texas Election Code. This means that a presiding judge that possesses a handgun license is permitted to carry a handgun while serving as an election judge on Election Day in limited circumstances.

### **Types of Polling Places Affected**

The OAG made several distinctions with respect to the types of polling places at which a presiding judge may carry a handgun.

**Public Buildings:** A state agency or political subdivision may not prohibit the carrying of handguns on the property it owns or leases unless the Penal Code section 46.03 or 46.035 expressly allows the prohibition. The express prohibition affected by this decision is discussed below under “higher education institution.” Generally, presiding judges are permitted to carry a handgun at polling places that are located in public buildings.

**Public Schools:** As public schools are located on property that is owned or leased by a governmental entity, presiding judges are not prohibited from carrying a handgun in a polling place located in a public school. However, Section 37.125 of the Education Code makes it an offense to intentionally exhibit a firearm “in a manner intended to cause alarm or personal injury” on school property.

**SOS Recommendation:** SOS recommends that if your presiding judge chooses to carry a firearm to the polling place in a public school that they only carry a **concealed** weapon to avoid a conflict with Section 37.125 of the education code. Otherwise, the

presiding judge may risk committing an offense which could potentially impede the judge from completing their duties as an election judge.

**Private Property:** If a polling place is located on private property and the owner or someone acting on authority of the owner provides proper notice, then the carrying of weapons is prohibited on their premises. This notice can take different forms. First, if the property has a posted “30.06 or 30.07” sign on their premises, this would constitute sufficient notice that carrying a handgun is prohibited. Additionally, the owner of the building may provide such notice to the election official orally.

**SOS Recommendation:** The SOS recommends that election officials (the authority conducting the election) that are using private property as polling places confirm in writing prior to election day if the private property owner will permit election judges to carry a handgun on the premises. In the written agreement or contract that the election official has with the building owner they should specify whether the presiding judge is permitted to carry a handgun on the premises. If the building owner does NOT permit the carrying of a handgun, we also recommend that the document contains language that indicates that pursuant to Section 30.06(b) and 30.07(b) of the Texas Penal Code, the owner of the private property authorizes the election official to act for the owner to provide notice to the presiding judge of the prohibition of carrying weapons on the property. If applicable, the election official should then provide written notice to the election judges of the prohibition.

**Higher Education Institutions:** Section 46.035 of the Texas Penal Code specifically prohibits a licensed gun-holder from openly carrying a handgun on the premises of both public and private institutions of higher education. Additionally, Section 46.035 also prohibits an election judge from carrying a concealed handgun in a location on campus where the institution has prohibited the carrying of a handgun by rule. If you are using a building on the premises of a higher education institution, we would advise you to consult with the owner of the building to determine if they have enacted a rule prohibiting the concealed carrying of a handgun. If they have such a rule, then election judges are not permitted to open carry or conceal carry a handgun on the premises.

### **Voter Intimidation**

Please be advised that if your presiding judges choose to carry a handgun into a polling place, they MUST do so responsibly. They should NOT be displaying or discussing the weapon in a way that would be intimidating to voters, poll watchers, state inspectors, candidates, or other election workers (See § 62.0115(b), Texas Election Code).

### **Guidelines for Presiding Judges**

A presiding judge is defined under Chapter 32 of the Texas Election Code and must be appointed to serve by the proper authority. This OAG opinion is only directed to those presiding judges that possess a handgun license under Chapter 411 of the Texas Government Code. This opinion is specific to presiding judges and does NOT apply to alternate judges, election clerks, early voting clerks, or deputy early voting clerks. However, if a presiding judge is unable to serve on Election Day, the alternate judge would assume that role and would then be permitted to carry a handgun while serving at their polling place if they possess a handgun license. Additionally, the authority for licensed presiding judges to carry a handgun in a polling place is limited to “the time the judge arrives at the polling place on election day until the time the judge leaves the polling place after the polls close.”

The presiding judge's authority also only extends to the polling place and the area within which electioneering and loitering are prohibited.

### **SOS Recommendations**

In order to address potential questions about your own elections and presiding judges, we recommend you take the following actions.

1. Confirm in writing which of your polling places will allow for the open or concealed carry of a handgun. This should be addressed with the building owners when discussing the use of their building.
2. If a polling place located on private property prohibits the carrying of a firearm on the property, provide your presiding judge with written notification of this fact regardless of whether the property owner already has the proper signage posted. Your written notice should contain the language required in Sections 30.06 and 30.07 of the Texas Penal Code related to the requirements for written communication that provides notice to the voter that entry on the property with a handgun is forbidden.
  - a. "Pursuant to Section 30.06 or 30.07, Penal Code (trespass by license holder with a concealed handgun), a person licensed under Subchapter H, Chapter 211, Government Code (handgun licensing law), may not enter this property with a concealed handgun."
3. For polling places located on private property, confirm in writing with the building owner whether or not they prohibit the carrying of a handgun on their property.

### **General Prohibition of Firearms in Polling Place**

Section 46.03(a) of the Texas Penal Code generally prohibits a person from bringing a firearm onto the premises of a polling place. In addition to the circumstances described above, this prohibition does not apply to a peace officer, regardless of whether the peace officer is on or off duty. For this and other potentially applicable exceptions, see Tex. Pen. Code § 46.15.

Although there is no requirement that you place any sort of signage in the polling place in order to inform voters of the restrictions regarding handguns in the polling place, if you wish to provide a notice to that effect, you may post form AW-7-9a, "Notice of Prohibition of Handguns in the Polling Place." Alternatively, if you wish to submit your own proposed notice to our office for approval, you may do so by emailing the form to us at [elections@sos.texas.gov](mailto:elections@sos.texas.gov). Note that any such notice must be in English and Spanish as well as any other languages required in your political subdivision.

### **School District Personnel Authorized to Carry Handguns**

Local school districts can adopt a policy that authorizes certain school district personnel to possess a firearm on the school's premises. (See §46.031, Texas Penal Code) Those individuals are NOT permitted to bring their handguns with them in to a polling place that is located on the school property. The area that contains the polling place is governed by different rules than the school. There is nothing that would provide armed school district employees with authority to carry their weapons in the polling place itself or in the electioneering area.

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If you have any questions or situations that are not covered by this memo, please do not hesitate to contact the Elections Division toll-free at 1-800-252-2216.

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