

NATIONAL RIFLE ASSOCIATION OF AMERICA  
INSTITUTE FOR LEGISLATIVE ACTION  
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# NRA-ILA

August 26, 2024

The Honorable Ken Paxton  
Attorney General  
State of Texas  
Post Office Box 12548  
Austin, Texas 78711

Dear Attorney Ken Paxton,

## **The State Fair of Texas License to Carry Holder Firearm Prohibition**

On August 8, the State Fair of Texas announced that it is changing its weapons policy to prohibit attendees from exercising their Right-to-Carry a firearm for self-defense at the event. In previous years, fair officials allowed License to Carry permit holders to go armed. A press release from fair organizers stated the following:

As a private not-for-profit organization, the State Fair of Texas prohibits fairgoers from carrying all firearms... This includes Holders of a License to Carry, Constitutional Carry, Concealed Carry, and the Open Carry of firearms anywhere on the fairgrounds including Cotton Bowl Stadium.<sup>1</sup>

The Texas Legislature has enacted a robust statutory scheme protecting the rights of law-abiding individuals to generally carry throughout the state for the defense of themselves, their families, and communities.<sup>2</sup> This scheme enumerates specific public property where firearms may be prohibited and makes clear that political subdivisions may not expand upon these locations.<sup>3,4</sup>

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<sup>1</sup> *State Fair of Texas Announced Safety & Security Measures for 2024 Event*, State Fair of Texas, August 8, 2024.

<sup>2</sup> Tex. Government Code §§ 411.171-411.209.

<sup>3</sup> Tex. Penal Code § 46.03.

<sup>4</sup> Tex. Government Code § 411.209.

The State Fair of Texas' firearm prohibition implicates Fair Park, which is public property owned by the City of Dallas.<sup>5</sup> Therefore, the firearm prohibition raises serious questions about the extent to which an ostensibly private actor may restrict firearms at an event held on public property.

### **NRA's Interest in the Pending Matter**

The National Rifle Association of America (NRA) is a non-partisan organization dedicated to using political and legal advocacy to advance the Second Amendment and the right of all peaceable, competent individuals to acquire, possess, and use firearms for legitimate purposes. It also educates and informs the public on issues relevant to this mission. The NRA has millions of members, including members residing in Texas, many of whom wish to carry a firearm for the defense of themselves, their families, and their communities as they go about their daily lives.

In this capacity, NRA has supported legislation constructing Texas' current statutory regime that respects law-abiding individuals' Right-to-Carry.

### **Texas Law Provides for Specific Public Property Firearm Prohibitions and Prohibits Political Subdivisions from Expanding Upon Them**

Texas law enumerates the types of property on which, or events during which, firearms are generally prohibited - subject to minor exceptions. In relation to locations that are likely to implicate public property, these include:

- “on the premises of a school or postsecondary educational institution”
- “on the premises of a polling place on the day of an election or while early voting is in progress”
- “on the premises of any government court or offices utilized by the court”
- “a secured area of an airport”
- “within 1,000 feet of premises the location of which is designated by the Texas Department of Criminal Justice as a place of execution”
- “on the premises where a high school, collegiate, or professional sporting event or interscholastic event is taking place”
- “on the premises of a correctional facility”
- “on the premises of a civil commitment facility”
- “on the premises of a mental hospital”
- “in the room or rooms where a meeting of a governmental entity is held”<sup>6</sup>

In prohibiting firearms in these few carefully enumerated locations, the Texas Legislature affirmed its intent to respect the rights of law-abiding individuals to generally carry firearms on most public property, including in public parks, for self-defense.

Texas law makes clear that state agencies and political subdivisions are prohibited from wrongly excluding License to Carry holders carrying a handgun for self-defense from government

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<sup>5</sup> *Fair Park*, Dallas Park & Recreation, <https://www.dallasparcs.org/242/Fair-Park>.

<sup>6</sup> Tex. Penal Code § 46.03.

property, aside from those locations enumerated by the Texas Legislature. Government Code § 411.209(a) provides:

a state agency or a political subdivision of the state may not take any action, including an action consisting of the provision of notice by a communication described by Section 30.06 or 30.07, Penal Code, that states or implies that a license holder who is 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, Penal Code, or other law.<sup>7</sup>

Further protecting License to Carry holders, the Texas Legislature imposed civil penalties on political subdivisions that disobey the Government Code § 411.209(a) mandate. Government Code § 411.209(b) provides:

(b) A state agency or a political subdivision of the state that violates Subsection (a) is liable for a civil penalty of:  
(1) not less than \$1,000 and not more than \$1,500 for the first violation; and  
(2) not less than \$10,000 and not more than \$10,500 for the second or a subsequent violation.

The Texas Legislature has also enacted a strong state firearms preemption statute that prohibits municipalities from regulating the carry of firearms. Local Government Code § 229.001(a) provides, in part:

a municipality may not adopt or enforce regulations that:  
(1) relate to:  
(A) the transfer, possession, wearing, carrying, ownership, storage, transportation, licensing, or registration of firearms, air guns, knives, ammunition, or firearm or air gun supplies or accessories;<sup>8</sup>

Taken together, these statutes demonstrate the Texas Legislature's unmistakable intent to respect law-abiding individuals' right to generally carry throughout the state for self-defense. This intent extends to public property, aside from a small and enumerated set of locations. The Texas Legislature has also made clear that political subdivisions have no authority to prohibit firearms beyond the locations enumerated in state law.

### **Private Firearm Prohibitions on Public Property**

On August 9, 2016, the Office of the Attorney General issued Opinion No. KP-0108, concerning private firearm bans on public property.<sup>9</sup> The opinion was in response to a request from

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<sup>7</sup> Tex. Government Code § 411.209.

<sup>8</sup> Tex. Local Government Code § 229.001.

<sup>9</sup> Tex. Atty. Gen. Op. KP-0108.

the Erath County Attorney who sought clarification on the potential legality of a firearm ban instituted by non-profit entities that “have offices on land owned” by a local government.

In general, the opinion was sympathetic to a private entity’s authority to prohibit firearms on land they lease from the government. However, the opinion went on to explain this private-public distinction is not absolute and that a fact pattern could arise in which a private entity operating on government property would be restricted from prohibiting firearms. The opinion provided:

If a private entity is operating jointly with a governmental entity or has been hired by the governmental entity to perform certain governmental functions, fact questions could arise about which entity effectively posted a notice prohibiting the carrying of guns. However, under the facts you describe, the private, nonprofit entity appears to have an arms-length agreement to lease city property and is not otherwise affiliated with the city.<sup>10</sup>

This language suggests that private entities “operating jointly” with government or hired “to perform certain governmental functions” are subject to the same limitations on instituting public property firearm bans as the government they are working in concert with. Moreover, this restriction extends to a private entity that is the beneficiary of a lease of government property that has arisen out of anything other than an “arms-length agreement.”

This is the logical interpretation of Texas’ statutory handgun carry regime. The Texas Legislature’s clear overarching public policy goal is to respect the rights of law-abiding individuals to carry throughout the state for self-defense, including on most public property.<sup>11</sup> Permitting ostensibly private entities working cooperatively with government to prohibit firearms on public property would undo the legislature’s mandate.

If not carefully curtailed, state agencies and political subdivision that do not share the Texas Legislature’s respect for the right to bear arms for self-defense would be able to deny the right through creative organizational maneuvering. Agencies or jurisdictions eager to ban firearms could attempt to lease public land to superficially private legal entities or politically allied private organizations to institute firearm restrictions on public property that the state has expressly prohibited state agencies and political subdivisions from tampering with. Such gamesmanship would amount to state action that contravenes the will of the Texas Legislature.

### **The State Fair of Texas and the City of Dallas**

The State Fair of Texas is a private 501(c)(3) nonprofit organization that leases the City of Dallas’s Fair Park to operate the fair.<sup>12</sup> As Opinion No. KP-0108 makes clear, the facts of the relationship between the Fair and Dallas are dispositive as to the legality of the State Fair of Texas’s proposed public property firearm ban.

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<sup>10</sup> Id. at 2.

<sup>11</sup> Tex. Government Code §§ 411.171-411.209.

<sup>12</sup> *State Fair of Texas Contract Briefing*, Dallas Park & Recreation, June 2, 2016, 3.

The Office of the Attorney General is in a position to investigate, and compel the production of, information pertaining to the exact nature and extent of the relationship between the State Fair of Texas and the City of Dallas. The readily available public information suggests a close relationship.

The City of Dallas Annual Budget FY 2023-2024 contained a portion titled “Parks and Recreation Services Descriptions.” A section on Fair Park noted that the item, “Provides for the development of projects within Fair Park. These projects often are completed in partnership with the State Fair of Texas, Inc. or other institutions who have a stake in the development of the park.”<sup>13</sup>

Further elucidating the partnership nature of the relationship, a March 21, 2018, press release from the State Fair of Texas explained,

As part of its lease agreement with the City of Dallas, the State Fair and the Park and Recreation Department share excess revenues from each year’s Fair. The Park and Recreation Department then determines how and when their portion of the money is used. For the past three years, the Fair has voluntarily given the contributions to the City to be used at their sole discretion, although the Fair’s contract calls for the City to consult with the Fair on capital improvement projects at Fair Park. That totals \$15 million given to the City for them to use at their discretion over the past three years. The Fair also currently pays more than \$1.3 million per year in rent to the City of Dallas, with escalators in place throughout the contract.<sup>14</sup>

The Dallas City Code also has numerous ordinances specifically regulating aspects of the fair.<sup>15</sup>

## **Conclusion**

Given these facts, the State Fair is “a private entity [] operating jointly with a governmental entity or [that] has been hired by the governmental entity to perform certain governmental functions,” and therefore cannot prohibit License to Carry holders from carrying on the grounds of Fair Park.

Signed,



Randy Kozuch  
Executive Director  
NRA-ILA

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<sup>13</sup> *Annual Budget FY 2023-2024*, City of Dallas, 621.

<sup>14</sup> Karissa Condoianis, *State Fair of Texas Contributes \$4 Million to the City of Dallas for Fair Park*, City of Dallas, March 21, 2018.

<sup>15</sup> Dallas City Code §§ 32-12 – 32-20.