Licensed Handgun Carry into Open Meetings: One Interpretation Argues it's Allowed by Right, But is that Interpretation Wrong?

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Introduction
A local government has – since the first licensed concealed carry bill in 1995 and continuing forward under the licensed open carry bill in 2017 – been authorized to prohibit licensed carry into an open meeting by the posting of state-mandated signage or by providing other appropriate notice.

H.B. 1927, the "constitutional carry" legislation that became effective September 1, prohibits an *authorized but unlicensed* carrier (e.g., someone over 21 who hasn't been convicted of certain crimes) from ever carry into the room or rooms during an open meeting.

With regard to *licensed carriers*, the common interpretation has been that the law remains as it has for some time: By providing proper notice, a local government may prohibit licensed concealed carry, licensed open carry, or both.

The Argument that Licensed Carry is Allowed by Right in Open Meetings
However, many now argue that the legislation allows a license holder to carry into a local government's meeting by right. In other words, they argue that a local government no longer has the option to provide notice that doing so is prohibited using a Penal Code 30.06 (concealed carry) and/or 30.07 (open carry) sign. The legal argument is somewhat complicated, but this step-by-step may help:

1. This provision prohibits *anyone* from carrying a handgun into an open meeting:

   Penal Code Section 46.03(a)(14): "A person commits an offense if the person…goes with a firearm…in the room or rooms where a meeting of a governmental entity is held, if the meeting is an open meeting subject to [the Open Meetings Act] and if the entity provided notice as required by that chapter."

2. This provision provides that the above *does not apply to a license holder*, meaning a license holder *is authorized to carry into a meeting*:

   Penal Code Section 46.15(b)(6): "Sections…46.03(a)(14)…do not apply to a person who…is carrying a license and…a handgun… concealed manner or [openly] in a holster"

3. These provisions, which are essentially identical in two sections of the Penal Code (one for concealed and one for open carry), appear to bring everything full-circle – they seem to

allow a political subdivision to *prohibit licensed carry (concealed, open, or both) if it chooses to do so* in an open meeting:

Penal Code Sections 30.06(a)&(e) and 30.07(a)&(e): "A license holder commits an offense if the license holder…carries a concealed handgun…[and] received notice that entry on the property…was forbidden [but, if the property is owned by a governmental entity, the property must be one] on which the license holder is prohibited from carrying the handgun under Section 46.03[(a)(14)]."

As noted above, Section 46.03(a)(14) prohibits a license holder from carrying into a meeting. The provision that exempts a license holder from that prohibition is Section 46.15(b)(6), and neither 30.06 nor 30.07 reference that section. Thus, many believe that a local government is still authorized to post signage to prohibit licensed carry in a meeting

The other position is that, because 46.15(b)(6) provides an exemption for license holders to carry in meetings, the reference in Sections 30.06(e) and 30.07€ no longer allows optional 30.06 and 30.07 signs to prohibit it. Does that interpretation comport with rules of statutory construction? It doesn't appear to, but no case or attorney general opinion is thus far directly on point.

Rules of Statutory Construction

Perhaps the most relevant precedent comes from *Taylor v. Taylor*, 608 S.W.3d 265 (Tex. App. – Houston [1st Dist.] 2020). In *Taylor*, the court examined a complex system of statutory cross-references related to family violence orders. It essentially concluded that one section's failure to expressly reference another prohibited a court from entering a family violence protective order based on a respondent's violation of a temporary *ex parte* order. According to the court:

> To hold otherwise would amount to rewriting the exception to include an additional statutory cross-reference to [other] provisions…which the exception lacks. We cannot rewrite the exception." *Silguero v. CSL Plasma*, 579 S.W.3d 53, 59 (Tex. 2019).(can't add terms legislature omitted); *Upjohn Co. v. Rylander*, 38 S.W.3d 600, 607 (Tex. App.—Austin 2000, pet. denied) (court couldn't ignore statute's cross-reference to single statutory provision and hold that statute also incorporated another statutory provision that wasn't cross-referenced).

Taylor, 608 S.W.3d at 270. *Upjohn v. Rylander* reaches a similar conclusion. In that case, Upjohn argued that then-Section 171.104 of the Tax Code should allow it to deduct certain drug and medicine receipts from gross receipts to reduce its state franchise tax because it was "earned surplus." Essentially, the company argued that the court should infer a reference to a cross-referenced statute that wasn't included in the referencing provision. *Upjohn,* 38 S.W.3d at 605–06. The court restated the relevant rules of statutory construction, several of which are instructive (emphasis is added):

1. The fundamental and dominant rule of construction requires us to ascertain the Legislature's intent in enacting the statute and to effectuate that intent.
2. The Legislature's intent should be determined by examining the language used in the statute.

3. Courts look to the entire act in determining the Legislature's intent with respect to a specific provision.
4. Every word, phrase, and expression in a statute should be read as if it were deliberately chosen for a purpose.
5. *Moreover, every word excluded from a statute must be presumed to have been excluded for a purpose.*
6. The supreme court has noted that, in construing statutes: "Courts must take statutes as they find them…They should search out carefully the intendment of a statute, giving full effect to all of its terms. But they must find its intent in its language and not elsewhere...*They are not responsible for omissions in legislation.* They are responsible for a true and fair interpretation of the written law."
7. *There is generally an inference that omissions in a statute are intentional.* See 2A Norman J. Singer, Sutherland Statutory Construction § 47.25 (6th ed.2000).
8. Because canons of statutory construction may be cited to support conflicting interpretations of the disputed statute, we look to "[t]he good sense of the situation and a simple construction of the available language to achieve that sense, by tenable means, out of the statutory language."

Id. The *Upjohn* court concluded that, "[u]nder the rules of statutory construction, we need not construe unambiguous statutes…Recognizing, however, that the issue is a complex and important one, we turn to the legislative history of the related sections." *Upjohn*, 38 S.W.3d at 607. Refusing to modify the statute based on legislative intent, the court held that:

> [H]ad the Legislature intended for the exclusion to apply to both the taxable capital and earned surplus components of the franchise tax, it could easily have amended the exemption provision to expressly refer to section 171.1032(a)(1) as well as section 171.103(1). This the Legislature did not do. The legislative intent becomes even more clear when we consider that the Legislature is presumed to enact a statute with complete knowledge of the existing law and with reference to it.

Upjohn, 38 S.W.3d at 608-09 (emphasis added)(citations omitted). These two cases and those cited therein seem to support the interpretation that the legislature could have cross-referenced Penal Code Section 46.15, had it intended to do so.

The Codification Issue

A final wrinkle arose recently based on how *Westlaw* and the *Texas Legislature Online* codified H.B. 1927 and a handful of other bills. The other bills ostensibly did nothing more than delete the requirement that a handgun be carried in a "shoulder or belt" holster, meaning an authorized carrier can now carry in any type of holster.

Section 26(10) of H.B. 1927 repealed Penal Code Section 46.035. Section 46.035 ("Unlawful Carry by License Holder") used to be necessary because only license holders could carry a handgun in public. The legislature saw fit to prohibit license holders from carrying in places in addition to the general firearms carry prohibitions in Section 46.03. When the requirement to hold a license was eliminated, most of the prohibitions that applied only to license holders were moved into Section 46.03, thus eliminating the need for Section 46.035.

The following bills relate to eliminating the "shoulder or belt" language from the holster requirement:

- Acts 2021, 87th Leg., R.S., Ch. 481 (H.B. 2112), Sec. 4, eff. September 1, 2021. (Last legislative vote in Senate on May 20, 2021 – Senate passage.)
- Acts 2021, 87th Leg., R.S., Ch. 518 (S.B. 550), Sec. 1, eff. September 1, 2021. (Last legislative vote in House on May 19, 2021 – House passage.)
- Acts 2021, 87th Leg., R.S., Ch. 1027 (H.B. 1407), Sec. 1, eff. September 1, 2021. (Last legislative vote in Senate on May 20, 2021 – Senate passage.)

Each of the above was enacted prior to H.B. 1927 (last legislative vote May 26, 2021 – Senate adopted conference committee report), which means the repeal in H.B. 1927 could – arguably – mean they shouldn't have been codified.

Westlaw indicates that H.B. 1927 repealed most of the Section 46.035 subsections, but it also continues to show the ones that were amended by the bills above, including the meeting prohibition for license holders:

> (c) A license holder commits an offense if the license holder intentionally, knowingly, or recklessly carries a handgun under the authority of Subchapter H, Chapter 411, Government Code, regardless of whether the handgun is concealed or carried in a holster, in the room or rooms where a meeting of a governmental entity is held and if the meeting is an open meeting subject to Chapter 551, Government Code, and the entity provided notice as required by that chapter.

The subsection above used to be modified by a subsequent subsection (i), which was repealed by H.B. 1927 and is shown as such. Subsection (i) provided that the prohibition above applied only if a local government posted a Penal Code Section 30.06 and/or 30.07 sign.

Texas Legislature Online has the following statement above Section 46.035:

> Without reference to the amendment of this section, this section was repealed by Acts 2021, 87th Leg., R.S., Ch. 809 (H.B. 1927), Sec. 26(10), eff. September 1, 2021.

Westlaw's "Editor's Notes" say the following:

> REPEAL
>
> <Without reference to the amendments by Acts 2021, 87th Leg., ch. 481 (H.B. 2112), § 4, Acts 2021, 87th Leg., ch. 518 (S.B. 550), § 1, and Acts 2021, 87th Leg., ch. 1027 (H.B.

1407), § 1, Acts 2021, 87th Leg., ch. 809 (H.B. 1927), § 26(10) repealed this section effective September 1, 2021.>

The Texas Government Code provides the following:

> Sec. 312.014. IRRECONCILABLE AMENDMENTS.
> (b) If amendments to the same statute are enacted at the same session of the legislature, one amendment without reference to another, the amendments shall be harmonized, if possible, so that effect may be given to each. If the amendments are irreconcilable, the latest in date of enactment prevails...
> (d) In this section, the date of enactment is the date on which the last legislative vote is taken on the bill enacting the statute.

Based on all of the above, the fact that *Westlaw* and *TLO* left Section 46.035 in codification is confusing to many. Regardless of how those organizations decided to codify the laws, it seems clear that Section 46.035 was repealed by H.B. 1927 and should be disregarded.

One More Thing – Local Government Code Preemption
The Local Government Code expressly authorizes a city to regulate the carrying of a firearm or air gun *other than a handgun carried by a person not otherwise prohibited by law from doing so at a public meeting of a city, county, or other governmental body*.

Assuming one takes the position that a city may still prohibit license holders by posting a 30.06 and/or 30.07 sign, which appears to be at odds with this section, as does Penal Code Section 46.03(a)(14), which prohibits carry at a meeting by an unlicensed person.

It seems that this section is superseded by those more specific others either prohibiting unlicensed carry in a meeting or arguably allowing a local government to prohibit licensed carry with proper signage.

Conclusion
These issues may fade away or may come to a head, perhaps by way of a complaint to the attorney general's office under Government Code Section 411.209 that a local government has improperly prohibited licensed carry in its meetings or by way of a formal attorney general opinion request. Several proponents of licensed carry have posted information online staking their claims, but their legal arguments are based solely on the amendment made by H.B. 1927, with little further legal analysis.

At this point, a city may want to review with legal counsel its current policies. Based on prior opinions, investigations, and lawsuits, if the issues go to the attorney general, his office generally sides with allowing licensed carry in the broadest sense possible. That's not necessarily a bad thing, unless his advice is incorrect and sends a license holder headlong into criminal charges.