

WALLER COUNTY, TEXAS § IN THE DISTRICT COURT
v. § OF WALLER COUNTY, TEXAS
TERRY HOLCOMB, SR. § 506TH JUDICIAL DISTRICT

**FINDINGS OF FACT AND CONCLUSIONS OF LAW
ON PLAINTIFF'S MOTION FOR TRADITIONAL
SUMMARY JUDGMENT;
and, ORDERS OF THE COURT**

FILED
DISTRICT CLERK
WALLER COUNTY, TEXAS
2016 NOV 28 PM 4:00
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CLERK

The above-captioned cause came on for trial before the Court on November 18, 2016, on Plaintiff's Motion for Traditional Summary Judgment. All parties and their attorneys were present, Ms Elizabeth Dorsey for Plaintiff Waller County, Texas (the "County") and Mr. T. Edwin Walker for Defendant Mr. Terry Holcomb Sr., ("Holcomb").

Hearing on the Motion for Summary Judgment was preceded by a hearing on Defendant's Motion to Dismiss and for Sanctions, which was denied by the Court. A separate Findings of Fact, Conclusions of Law, and Orders of the Court have been filed by this Court on Defendant's Motion to Dismiss and for Sanctions.

The issues or questions raised in Plaintiff's Traditional Motion for Summary Judgment on the County's Original Petition for Declaratory Judgment, are as follows:

1. 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; and
2. Whether Penal Code § 46.03(a)(3) prohibits an individual from carrying firearms and other weapons throughout the entire building in which a court or court offices is located or only in an actual courtroom or court office.

After considering the pleadings, the evidence, the argument and briefs from counsel,

as well as the briefs of *Amicus Curiae*, the Court makes its findings of fact and conclusions of law as follows:

FINDINGS OF FACT

The following Findings of Fact are made by the Court:

1. It is uncontroverted that Waller County, Texas is a political subdivision and governmental entity having its principal office at 836 Austin Street, Suite 203, Hempstead, Texas 77445, in Waller County, Texas.
2. It is uncontroverted that Terry Holcomb Sr., is a Texas citizen and a person licensed to carry a handgun under Subchapter H, Chapter 411 of the Texas Government Code.
3. It is uncontroverted that the Factual Background stated in Plaintiff's Original Petition for Declaratory Judgment is undisputed, and that Factual Background is incorporated into these Findings of Fact as if written herein.
4. It is uncontroverted that Holcomb had a letter dated May 20, 2016 (the "demand letter"), delivered to Honorable County Judge Trey Duhon, a copy of which is attached to Plaintiff's Response to Defendant's Motion to Dismiss.
5. It is uncontroverted that Carbett J. "Trey" Duhon III, is the County Judge of Waller County, Texas.
6. It is uncontroverted that the demand letter states that Holcomb represents members of Texas Carry.
7. It is uncontroverted that in testimony on the hearing to dismiss, Holcomb stated that he is the president of Texas Carry.
8. It is uncontroverted that the demand letter requested specific actions by the County, to-wit: the removal of all "46.03" signs from the property of the Waller County courthouse.
9. It is uncontroverted that the demand letter stated a consequence of the County's failure to remove the "46.03" signs, to-wit: complaint would be filed with the Office of the Texas Attorney General.

10. It is uncontroverted that the demand letter stated that in the event the County had not removed the signs in three business days, Holcomb would “proceed with requesting all remedies available under the law.”
11. It is uncontroverted that Waller County filed its lawsuit against Holcomb on July 6, 2016.
12. It is uncontroverted that Texas Attorney General Ken Paxton (the “Texas Attorney General”) issued Opinion Number KP-0047, on December 21, 2015, addressing a similar question to the instant lawsuit.
13. It is uncontroverted that the Texas Attorney General issued Opinion Number KP-0049, on December 21, 2015, addressing a related issue, but not the same question to the instant lawsuit.
14. It is uncontroverted that the Texas Attorney General generally agrees with Holcomb’s interpretation of the relevant statutes.
15. It is uncontroverted that the Texas Attorney General generally disagrees with the County’s interpretation of the relevant statutes.
16. It is uncontroverted that on August 29, 2016, the Texas Attorney General filed its Original Petition for Writ of Mandamus and Civil Penalties against Waller County, Texas, and the relevant public officials of Waller County, in Cause Number D-1-GN-16-004091, in the District Court of Travis County, Texas.
17. It is uncontroverted that the Texas Attorney General’s opinions were released prior to the time that Holcomb issued his demand letter.
18. It is uncontroverted that the County disputes both Holcomb’s and Attorney General Paxton’s interpretation of the relevant statutes.
19. It is uncontroverted that Senate Bill 501, with the Senate committee amendment, was passed and was effective September 1, 2003, and the language of § 46.03(a)(3) of the Penal Code has not been amended since that time.

CONCLUSIONS OF LAW

The following Conclusions of Law are made by the Court:

1. This Court has jurisdiction to hear this matter under the Uniform Declaratory Judgments Act in Chapter 37 of the Texas Civil Practice and Remedies Code, and pursuant to its inherent powers in equity, and the relief sought is within the jurisdiction of this Court.
2. Waller County, Texas, is the proper venue to hear this matter because it is the county in which the principal office of the political subdivision claimed to be in violation of law is located, and the county in which the alleged violation of the law occurred.
3. The legislative history of the provisions of § 46.03(a)(3) establishes as a matter of law that the phrase “on the premises of a court or offices utilized by the court” means an entire courthouse or building housing a court.
4. The legislative history of the provisions of § 46.03(a)(3), as well as the plain language of the statute itself, establishes as a matter of law that prohibiting handguns from being brought into a courthouse or building housing a court or court offices was the purpose of the law.
5. Penal Code § 46.03(a)(3) prohibits all firearms and other weapons in the entire government building that houses a court.
6. Penal Code § 46.03(a)(3) prohibits an individual from carrying firearms and other prohibited weapons throughout the entire building of the Waller County Courthouse, it being a building that houses a court or court offices.
7. The signs at issue do not violate Government Code § 411.209.
8. The signs at issue, including but not limited to those posted by Waller County, at the Waller County Courthouse, being a building that houses a court or court offices, do not violate Government Code § 411.209.

This Court notes that the *Amicus Curiae* Brief of the County Judges and Commissioners Association of Texas, the Texas Association of Counties, and the Texas Conference of Urban Counties, as well as the *Amicus Curiae* brief of the Waller County Bar Association, including the consequences of Attorney General Paxton’s interpretation of the applicable statutes, were worthy of consideration to the Findings of Fact, Conclusions of Law, and Orders of the Court, as stated herein.

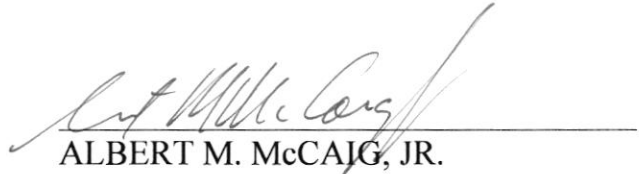
ORDERS OF THE COURT

IT IS THEREFORE ORDERED, ADJUDGED and DECREED that Plaintiff's Motion for Traditional Summary Judgment is in all things GRANTED.

All costs of the Court expended or incurred in this cause are adjudged against the party incurring same. All other relief not expressly granted is denied.

The Clerk of the Court is Ordered to provide copies of these Findings, Conclusions, and Orders to the parties through their counsel.

SIGNED this 28th day of November, 2016.


ALBERT M. McCAIG, JR.
Judge, Presiding