



Texas Gun Rights

P.O. Box 1776, Weatherford, TX 76086 | (512)774-5309
TexasGunRights.org

August 18, 2024

**The Honorable Ken Paxton, Attorney General
Office of the Attorney General
Opinion/Open Records Division
P.O. Box 12548
Austin, Texas 78701-2548**

Re: Texas Gun Rights Briefing on Authority of a local government to create a gun ban, otherwise prohibited by law, through a 501(c)(3) or other private entity (RQ-0558-KP)

Dear Attorney General Paxton:

On August 14, 2024, Senator Mayes Middleton and Representative Dustin Burrows filed a request for an Attorney General opinion on whether the State Fair of Texas, Inc. (“the Fair”) can legally prohibit licensed gun owners from carrying a handgun into the 2024 State Fair at Fair Park. On August 16, 2024, your office responded requesting a briefing from various government entities.

Texas Gun Rights (“TXGR”) is a non-profit organization under section 501(c)4 of the IRS code. It is the largest “No Compromise” gun rights group in the Lone Star State, celebrating its 10th year of fighting with Texans to protect our basic constitutional right to keep and bear arms in peaceful self-defense and defense of others. Its mission is to empower citizens with the knowledge they need to hold politicians and elected officials accountable for their anti-gun views and preserve our Second Amendment rights. With its dedicated, expanding membership of grassroots activists, TXGR leads the charge to halt the radical anti-gun agenda across Texas, including the recent decision of the Texas State Fair to ban law-abiding, licensed gun owners from carrying an open or concealed handgun in self-defense or defense of others.

Up until this year, the Fair allowed fairgoers with a license to carry (LTC) to have a handgun at the fair provided they did not get on any rides. However, 22-year-old Cameron Turner brought a gun into the State Fair...without a license. Turner was charged with three counts of aggravated assault with a deadly weapon after wounding three people in a shooting on October 14, 2023.

The Fair is using the actions of one individual who was illegally carrying a handgun at the state fair to disarm thousands of law-abiding Texans who have a valid Texas License to Carry. According to the latest annual statistics published by the Texas Department of Public Safety, LTC holders consisted of just 0.6% of the total number of convictions for Class B Misdemeanor and

higher criminal offenses. By contrast, approximately 2% of law enforcement officers are convicted of Class B misdemeanors or higher.¹

The City of Dallas contracts with the Fair to run the annual Texas State Fair at Fair Park. Fair Park has been owned by the City of Dallas since 1904 which sets aside a period each Fall to hold the annual exposition. A private entity may be deemed a state actor if it performs functions traditionally exclusive to the state or if there is significant government involvement or encouragement in the private entity's actions.

According to its financial statements,

*In 2003, the Fair entered into the Fair Park Agreement (the Agreement) with the City, which gives possession and occupancy of Fair Park to the Fair for 24 days in September and October for the operation of the annual fair, the Grambling University vs. Prairie View A&M football game in the Cotton Bowl Stadium (Cotton Bowl), and the University of Texas-University of Oklahoma football game in the Cotton Bowl, and for a period not to exceed 60 days prior to the annual fair and 30 days after the annual fair for setup and takedown, respectively. The Fair is also responsible for the operation of the midway area of Fair Park throughout the year.*²

The City of Dallas codified its memorandum of understanding (MOU) with the Fair beginning on January 1, 2019, until December 31, 2038. The MOU provided for the Fair managing public grounds. Both the City of Dallas and the Fair contribute to a fund that pays for major maintenance projects and Fair Park improvements known as the Fair Park Improvement Fund. The City of Dallas spends money collected from Hotel Occupancy Taxes on facility improvements at Fair Park and expanding the convention center.

The Supreme Court has identified at least four frameworks for analyzing state action. First, a private entity may be deemed a state actor when the entity performs a function that is traditionally the exclusive province of the state.³ Second, state action may be found when the state "has exercised coercive power or has provided such significant encouragement, either overt or covert, that the choice must in law be deemed to be that of the State."⁴ Third, state action may be found when there is "public entwinement in the management or control of an organization."⁵ Lastly, a private party acts under color of state law when "he is a willful participant in joint activity with the State or its agents."⁶ Here, there is plenty of "public entwinement in the management or control" of the State Fair as shown below.

¹ Stinson, Philip. *Study of Sworn Nonfederal Law Enforcement Officers Arrested in the United States, 2005-2011*. Inter-university Consortium for Political and Social Research [distributor], 2017-06-30. <https://doi.org/10.3886/ICPSR35648.v1>

² Ernst & Young LLP, State Fair of Texas, *Financial Statements, Years Ended December 31, 2023 and 2022 with Report of Independent Auditors*.

³ See *Flagg Bros., Inc. v. Brooks*, 436 U.S. 149, 158, 98 S. Ct. 1729, 56 L. Ed. 2d 185 (1978); *Wong v. Stripling*, 881 F.2d 200, 202 (5th Cir. 1989).

⁴ *Blum v. Yaretsky*, 457 U.S. 991, 1004, 102 S. Ct. 2777, 73 L. Ed. 2d 534 (1982).

⁵ *Brentwood Academy v. Tenn. Secondary Sch. Athletic Ass'n*, 531 U.S. 288, 298-99 (2001).

⁶ *Id.* at 152.

The City of Dallas charter lists among its powers the power “[to] acquire, by purchase, gift or devise, or by the exercise of the right of eminent domain by and through condemnation proceedings, and own, in fee simple or otherwise, either public or private property located inside or outside of the corporate limits of the city or within any county in the state...parks.”⁷ Additionally, the City of Dallas conveys jurisdiction “over the control, management and maintenance of the public parks of the city” to its Park and Recreation Board.⁸

Under the state compulsion test, a state will be held responsible for a private decision only when it has exercised coercive power or provided such encouragement such that the choice is deemed to be a choice of the state.⁹ “Under the nexus or joint action test, state action may be found where the government has ‘so far insinuated itself into a position of interdependence with the [private actor] that it was a joint participant in the enterprise.’”¹⁰ Applying the joint action test, the Fifth Circuit has held that where a plaintiff alleges that there was an agreement between the private citizen and the state or its agents to commit an illegal act and that there was a deprivation of his constitutional rights, a private citizen may be held liable under § 1983 if he has been a willful participant in joint activity with the state or its agents.¹¹

The focus of the inquiry is whether there is such a close nexus between the state and the challenged act by a private actor such that “seemingly private behavior may be fairly treated as that of the State itself.”¹²

Here, the City of Dallas is actively involved in the execution of the state fair. The City’s Code of Ordinances provides for “certain rules and regulations governing design, construction, equipment, use and operation of temporary buildings, establishments, concessions and exhibits within the grounds of the state fair.”¹³ The City of Dallas, in controlling nearly every aspect of how the Fair is operated on its property, dominates the State Fair “to such an extent that its participants must be deemed to act with authority of the government and, as a result, be subject to constitutional constraints.”¹⁴

Tex. Local Gov. Code § 229.001 prohibits a municipality from adopting or enforcing any regulation regarding the “transfer, **possession, wearing, carrying**, ownership, storage, transportation, licensing, or registration of firearms.” Additionally, Tex. Gov. Code § 411.209 states that state agencies and political subdivisions may not prohibit who is open or concealed carry “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.” Tex. Pen. Code § 46.03 lists

⁷ City of Dallas, *Dallas City Charter*, Chapter II, Sec. 1(46).

⁸ City of Dallas, *Dallas City Charter*, Chapter XVII, Sec. 4(a).

⁹ *Blum*, 457 U.S. at 1004.

¹⁰ *Bass v. Parkwood Hospital*, 180 F.3d 234, 42 (5th Cir. 1999), citing *Jackson v. Metropolitan Edison Co.*, 419 U.S. 345, 357-58 (1974).

¹¹ *Priester v. Lowndes County*, 354 F.3d 414, 420 (5th Cir. 2004).

¹² *Able Security and Patrol v. Louisiana*, 569 F.Supp.2d 617, 630 (E.D. La. 2008), citing *Brentwood Acad. v. Tennessee Secondary Sch. Athletic Assoc.*, 531 U.S. 288, 295, 121 S. Ct. 924, 148 L. Ed. 2d 807 (2001).

¹³ City of Dallas, *Code of Ordinances*, Art. II, Sec. 32.13.

¹⁴ *Edmonson v. Leesville Concrete Co., Inc.*, 500 U.S. 614, 111 S. Ct. 2077, 2082, 114 L. Ed. 2d 660 (1991).

“amusement parks” as one such place where handguns are prohibited. The state fair is not an amusement park as defined because it is not a permanent indoor or outdoor facility or park where amusement rides are available for use by the public. The state fair is a temporary event that has, as part of its many attractions, some carnival-type rides. TPC 46.03 also lists the premises where a professional sporting event “is taking place.” As such, the Fair may prohibit guns on the amusement rides and at the specific locations where the rodeo is actively taking place, but not the entire grounds.

Because the Fair is a private company operating as a government contractor, it is subject to the same legal and constitutional restrictions as a government entity within the jurisdiction of the Fifth Circuit. The Fair is violating State law and the constitutionally protected rights of Texans to carry lawfully, peacefully, and in self-defense or defense of others. Article I, Section 23, of the Texas Constitution vests power in the regulation and wearing of arms solely with the Texas Legislature, not the City of Dallas or the Fair. The Texas Legislature has already spoken on this issue and it has not conveyed any authority to the City or the Fair to restrict the carrying, possession, or wearing of handguns beyond what is contained within TPC 46.03.

If you have any questions, please feel free to contact me at (254) 405-1726.

In liberty,



CJ Grisham, Esq.
Lead Attorney, Texas Gun Rights
Law Offices of CJ Grisham, P.L.L.C.
3809 S. General Bruce Dr. #103-101
Temple, Texas 76502
254-405-1726
cj@cigrisham.com