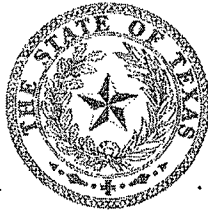


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OPINION COMMITTEE



FILE # ML-48325-18  
ID. # 48325

STATE REPRESENTATIVE  
**JAMES WHITE**

CORRECTIONS - CHAIR  
INTERNATIONAL TRADE &  
INTERGOVERNMENTAL AFFAIRS

DISTRICT 19  
HARDIN, JASPER  
NEWTON, POLK, TYLER

**RQ-0214-KP**

The Honorable Ken Paxton  
Office of the Attorney General  
Attention Opinion Committee  
PO Box 12548  
Austin, Texas 78711-2548

RE: Request for Opinion on Texas Election Judges Exercising their Discretion as LTC holders in a Polling Place on Election Days

Via email to [opinion.committee@oag.texas.gov](mailto:opinion.committee@oag.texas.gov)

Dear Attorney General Paxton:

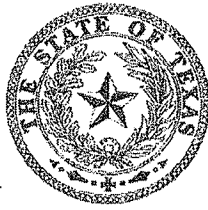
Over the last several years, election judges have inquired about their discretion to exercise their right to carry a firearm in a concealed manner if they are an authorized Texas license to carry (LTC) holder. Due to the latest events, the public has a heightened awareness of the security posture in public spaces. Especially among election judges, who serve in rural areas in which local law enforcement must provide public safety with limited manpower over vast areas, these inquiries are resurfacing. These election judges are evaluating the security posture and they are discovering that their polling places are in remote locations. Their duties require them to arrive at the polling place early in the morning, sometimes before daylight begins, and then requires them to close their polling place in the evening.

In Section 46.03 (a)(2), there is a prohibition on entering "a polling place on the day of an election or while early voting is in progress".

Sec. 46.03. PLACES WEAPONS PROHIBITED. (a) A person commits an offense if the person intentionally, knowingly, or recklessly possesses or goes with a firearm, location-restricted knife, club, or prohibited weapon listed in Section 46.05(a):

(2) on the premises of a polling place on the day of an election or while early voting is in progress.

**Specifically, the question arises in the actual election code where it says that election judges have the same power as a district judge. Section 32.075 provides election judges with law enforcement duties and powers.**



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STATE REPRESENTATIVE  
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Sec. 32.075. LAW ENFORCEMENT DUTIES AND POWERS. (a) The presiding judge shall preserve order and prevent breaches of the peace and violations of this code in the polling place and in the area within which electioneering and loitering are prohibited from the time the judge arrives at the polling place on election day until the judge leaves the polling place after the polls close.

In this role, Section 32.075 provides election judges the discretion to appoint special peace officers for the polling place.

(b) In performing duties under Subsection (a), the presiding judge may appoint one or more persons to act as special peace officers for the polling place. A special peace officer may not enforce the prohibition against electioneering or loitering near the polling place unless the officer's appointment is approved by the presiding officer of the local canvassing authority.

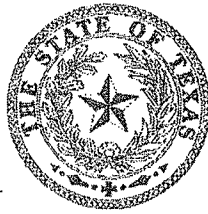
Section 32.075 continues by providing election judges powers congruent with a state district judge at a polling place during an election.

(c) In performing duties under Subsection (a), a presiding judge has the power of a district judge to enforce order and preserve the peace, including the power to issue an arrest warrant. An appeal of an order or other action of the presiding judge under this section is made in the same manner as the appeal of an order or other action of a district court in the county in which the polling place is located.

Nevertheless, Section 32.075, in the performance of their law enforcement duties and powers, does **not** give election judges the power to deny voting rights to eligible voters, prohibit statutory electioneering, or appoint unlicensed peace officers.

(d) A person who is arrested at a polling place while voting or waiting to vote shall be permitted to vote, if entitled to do so, before being removed from the polling place.

(e) The presiding judge or a special peace officer appointed under this section may not enforce the prohibition against electioneering or loitering outside of the area within which electioneering and loitering are prohibited under Section 61.003 or 85.036.



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(f) A person is eligible for appointment as a special peace officer under Subsection (b) only if the person is licensed as a peace officer by the Texas Commission on Law Enforcement.

Establishing the powers of an election judge, this brings us back to the congruent nature of those powers with a state district judge. Texas Penal Code Section 46.15 (a)(4) exempts judges from Texas Penal Code Sections 46.02 and 46.03.

(a) Sections 46.02 and 46.03 do not apply to:

(4) an active judicial officer as defined by Section 411.201, Government Code, who is licensed to carry a handgun under Subchapter H, Chapter 411, Government Code;

**Therefore, the question arises as to whether or not an election judge who has an LTC is exempt from 46.02 and 46.03 while serving only in that capacity on the days of elections to carry in a polling place? Realizing that election polling places are situated in various venues, this request for an opinion should include guidance on the porting of firearms by election judges with an LTC in polling places that are either government or non-government buildings.**

For God and Texas,

A handwritten signature in black ink, appearing to read "J. White".

James White  
State Representative  
House District 19