KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 24, 2020

The Honorable Dustin Burrows
Chair, House Ways and Means Committee
Texas House of Representatives
Post Office Box 2910
Austin, Texas 78768-2910

Via E-Mail

Re: Whether section 229.001 of the Local Government Code prohibits municipal or county officials from restricting the sale of firearms through an emergency declaration (RQ-0341-KP)

Dear Representative Burrows:

We received your request for an attorney general opinion and have designated it as Request No. 0341-KP. Section 402.042 of the Government Code provides that the Attorney General shall issue an opinion not later than the 180th day after the date that an opinion request is received, unless before that deadline the Attorney General notifies the requesting person in writing that the opinion will be delayed. TEX. GOV'T CODE § 402.042(c)(2). We received your request on March 24, 2020, setting a due date for your opinion of September 21, 2020. However, we note that you have requested the opinion be issued as expeditiously as possible. We will therefore make every effort to issue this opinion as promptly as possible.

By copy of this letter we are notifying those listed below of your request and asking them to submit briefing on your questions if they have a special interest or expertise in the subject matter. If you are aware of other interested parties, please forward this request for briefing to them or let us know, so that we may notify them as soon as possible. Briefs may be submitted by e-mail to opinion.committee@oag.texas.gov. Please note that briefs and other correspondence are subject to the Public Information Act.

If you have any questions, please do not hesitate to contact me.

Sincerely,

Virginia K. Hoelscher
Chair, Opinion Committee

VKH/som

Attachment: Request No. 0341-KP

cc: Ms. Susan M. Redford, Executive Director, Texas Association of Counties
Mr. Michael Pichinson, General Counsel, Texas Association of Counties
Mr. James Allison, General Counsel, County Judges and Commissioners Association
Mr. Bennett Sandlin, Executive Director, Texas Municipal League
Mr. Scott Houston, Deputy Executive Director, Policy & General Counsel, Texas Municipal League
NRA Institute for Legislative Action
Mr. Richard Briscoe, Open Carry Texas
Ms. Johanna Meade, General Counsel Division, Office of the Governor

RECEIVED
By Opinion Committee at 4:07 pm, Mar 24, 2020

RQ-0341-KP
FILE# **ML-48738-20**
I.D.# **48738**

P.O. Box 2910
Austin, Texas 78768-2910

STATE OF TEXAS
HOUSE OF REPRESENTATIVES

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DUSTIN BURROWS
District 83

March 24, 2020

The Honorable Ken Paxton
Texas Attorney General
300 W. 15th Street
Austin, TX 78701

Dear General Paxton:

This letter serves as a formal request of your opinion regarding the sales of firearms in Texas municipalities and counties, specifically, whether or not city and or county officials can prohibit the sales of firearms by an emergency declaration, issued under the "Texas Disaster Act" of 1975, and which excludes firearms retailers as "essential businesses".

Below is Texas' state firearms preemption law restricting city and county authority to regulate firearms. It does not appear that cities or counties have the authority to restrict the transfer of firearms, even during a natural disaster. None of the city or county orders which have been issued thus far have designated firearms manufacturers, firearms retailers or shooting ranges as "essential businesses".

LOCAL GOVERNMENT CODE

TITLE 7. REGULATION OF LAND USE, STRUCTURES, BUSINESSES, AND RELATED ACTIVITIES

SUBTITLE A. MUNICIPAL REGULATORY AUTHORITY

EMAIL: DUSTIN.BURROWS@HOUSE.TEXAS.GOV

CHAPTER 229. MISCELLANEOUS REGULATORY AUTHORITY OF MUNICIPALITIES

SUBCHAPTER A. REGULATION OF FIREARMS, KNIVES, AND EXPLOSIVES

Sec. 229.001. FIREARMS; AIR GUNS; KNIVES; EXPLOSIVES. (a) Notwithstanding any other law, including Section 43.002 of this code and Chapter 251, Agriculture Code, a municipality may not adopt regulations relating to:
(1) 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;
(2) commerce in firearms, air guns, knives, ammunition, or firearm or air gun supplies or accessories; or
(3) the discharge of a firearm or air gun at a sport shooting range.
(a-1) An ordinance, resolution, rule, or policy adopted or enforced by a municipality, or an official action, including in any legislative, police power, or proprietary capacity, taken by an employee or agent of a municipality in violation of this section is void.
(b) Subsection (a) does not affect the authority a municipality has under another law to:
(1) require residents or public employees to be armed for personal or national defense, law enforcement, or another lawful purpose;
(2) regulate the discharge of firearms or air guns within the limits of the municipality, other than at a sport shooting range;
(3) except as provided by Subsection (b-1), adopt or enforce a generally applicable zoning ordinance, land use regulation, fire code, or business ordinance;
(4) regulate the use of firearms, air guns, or knives in the case of an insurrection, riot, or natural disaster if the municipality finds the regulations necessary to protect public health and safety;

Thank you for your opinion on this matter. I look forward to your response.

Sincerely,



Dustin R. Burrows
Chair, Ways and Means Committee