



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 3, 2020

The Honorable Vince Ryan
Harris County Attorney
1019 Congress, 15th Floor
Houston, Texas 77002

Opinion No. KP-0322

Re: County authority to require facial coverings in courtrooms, courthouses, and county buildings (RQ-0356-KP)

Dear Mr. Ryan:

You request an opinion regarding facial covering mandates in courtrooms, courthouses, and other county buildings during the COVID-19 disaster.¹ As background, the Governor declared a state of disaster in Texas due to the spread of the communicable disease COVID-19 on March 13, 2020, and that disaster declaration continues today.² *See* TEX. GOV'T CODE § 418.014(a) (authorizing the Governor to declare a state of disaster). According to the Centers for Disease Control and Prevention (“CDC”), “COVID-19 spreads mainly from person to person through respiratory droplets produced when an infected person coughs, sneezes, talks, or raises their voice (e.g., while shouting, chanting, or singing).”³ The CDC therefore “recommends that people wear cloth face coverings in public settings when around people outside of their household.” CDC Guidance at 1.

Under a declared disaster, the Governor “may issue executive orders, proclamations, and regulations and amend or rescind them.” TEX. GOV'T CODE § 418.012. The Governor’s executive orders, proclamations, and regulations “have the force and effect of law.” *Id.* Pursuant to that authority, the Governor has issued multiple executive orders, proclamations, and other statements, relating to the COVID-19 disaster declaration. Consistent with CDC Guidance, Executive Order

¹*See* Letter from Honorable Vince Ryan, Harris Cty. Att’y, to Honorable Ken Paxton, Tex. Att’y Gen. at 1–2 (June 12, 2020), <https://www2.texasattorneygeneral.gov/opinions/opinions/51paxton/rq/2020/pdf/RQ0356KP.pdf> (“Request Letter”).

²*See* OFFICE OF THE TEXAS GOVERNOR, DISASTER PROCLAMATION (Mar. 13, 2020), <https://gov.texas.gov/news/post/governor-abbott-declares-state-of-disaster-in-texas-due-to-covid-19>. On July 10, 2020, the Governor renewed the disaster declaration. *See* https://gov.texas.gov/uploads/files/press/DISASTER_renewing_covid19_disaster_proclamation_IMAGE_07-10-2020.pdf.

³CENTERS FOR DISEASE CONTROL AND PREVENTION, ABOUT CLOTH FACE COVERINGS, <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/about-face-coverings.html> (“CDC Guidance”).

GA-29 requires every person in Texas to “wear a face covering over the nose and mouth when inside a commercial entity or other building or space open to the public,” with some exceptions.⁴ Those exceptions include individuals in counties with minimal cases of COVID-19 whose county judge has opted out of the face covering requirement by following specific procedures. Exec. Order GA-29 at 2–3. Thus, while GA-29 currently requires the majority of individuals in Texas to wear facial coverings when entering a public building, including a courthouse or other county-owned building, it does not require all individuals entering such buildings across the State to wear a facial covering if a listed exception is met. Separate from GA-29, you ask about the independent authority of various local public officials to implement facial covering requirements in county courthouses, offices, and buildings. Request Letter at 1–2.

We first address the authority of a commissioners court to require any person entering a courthouse or other county-owned or controlled building in the county to wear a facial covering in those buildings during the COVID-19 disaster. *Id.* at 1. The commissioners court derives its authority from article V, section 18 of the Texas Constitution, which provides that the court “shall exercise such powers and jurisdiction over all county business, as is conferred by this Constitution and the laws of the State” TEX. CONST. art. V, § 18(b). Local Government Code section 291.001 prescribes the powers and duties of the commissioners court with regard to public buildings, which include maintaining a courthouse, offices, and other public buildings. TEX. LOC. GOV’T CODE § 291.001(3). Construing this authority, one Texas court concluded that a duty to provide a courthouse implicitly authorizes the commissioners court “to regulate the use thereof within reasonable bounds.” *Dodson v. Marshall*, 118 S.W.2d 621, 623 (Tex. App.—Waco 1938, writ dismissed). Consistent with its authority to regulate use of its public buildings, a commissioners court may require any person entering a courthouse or other county-owned or controlled building to wear a facial covering in an effort to reduce the spread of COVID-19.

We next address the authority of a “court presiding over a courtroom in a county owned or controlled courthouse” to require any person who enters the courthouse to wear a facial covering while in the courthouse. Request Letter at 2. Among its inherent powers, a court possesses “broad discretion over the conduct of its proceedings” in the courtroom. *State ex rel. Rosenthal v. Poe*, 98 S.W.3d 194, 199 (Tex. Crim. App. 2003). “A court has all powers necessary for the exercise of its jurisdiction and the enforcement of its lawful orders, including authority to issue the writs and orders necessary or proper in aid of its jurisdiction.” TEX. GOV’T CODE § 21.001(a); *see Lantrip v. State*, 336 S.W.3d 343, 351–52 (Tex. App.—Texarkana 2011, no pet.) (recognizing that a court’s inherent power to control the courtroom includes reasonable attire restrictions).

Furthermore, during a disaster as declared by the Governor, the Texas Supreme Court “may modify or suspend procedures for the conduct of any court proceeding affected by a disaster.” TEX. GOV’T CODE § 22.0035(b). Pursuant to this authority, the Court has issued multiple emergency orders, including an order requiring courts to comply with guidance issued by the Office of Court Administration (“OCA”):

⁴See OFFICE OF THE TEXAS GOVERNOR, EXEC. ORDER GA-29 at 2 (July 2, 2020), <https://open.texas.gov/uploads/files/organization/opentexas/EO-GA-29-use-of-face-coverings-during-COVID-19-IMAGE-07-02-2020.pdf>. We note the Governor issued this order after you submitted your request.

Courts must not conduct in-person proceedings contrary to the Guidance for All Court Proceedings During COVID-19 Pandemic (“Guidance”) issued by the Office of Court Administration, which may be updated from time to time, regarding social distancing, maximum group size, and other restrictions and precautions. Prior to holding any in-person proceedings, a court must submit an operating plan that is consistent with the requirements set forth in the Guidance. Courts must continue to use all reasonable efforts to conduct proceedings remotely.⁵

Under OCA Guidance, the local administrative judge for a county must submit an operating plan for all courts in the county to the regional presiding judge.⁶ Among other requirements imposed by OCA, the operating plan advises that all individuals should wear cloth facial coverings while in the courthouse: “Cloth face coverings, at a minimum, should be required of individuals while in the courthouse.” OCA Guidance at 4. Pursuant to this authority, courts may require any person entering the courthouse in which they preside to wear a facial covering while in the courthouse.

You also ask whether a county judge may require “any person entering a courthouse or other county-owned or controlled building in the county to wear a facial covering in those county buildings during the COVID-19 disaster.” Request Letter at 1. Section 418.108 of the Government Code authorizes the presiding officer of the governing body of a political subdivision, which includes a county judge, to declare a local state of disaster. TEX. GOV’T CODE § 418.108(a). Upon the presiding officer’s disaster declaration, chapter 418 vests the presiding officer with certain emergency powers, including authority to “control the movement of persons and the occupancy of premises in that area.” *Id.* § 418.108(g).⁷ Pursuant to this emergency authority, a county judge operating under a local disaster order may require a person to wear a facial covering when occupying a courthouse or other county-owned or controlled building.

To the extent public officials possess authority to require facial coverings in courtrooms, courthouses, and other county buildings during the COVID-19 disaster, you also ask how public officials may enforce a facial covering requirement. *See* Request Letter at 1–2. Executive Order GA-29 expressly authorizes local law enforcement and other local officials to enforce GA-29 and allows a fine not to exceed \$250 for an individual’s second violation of a facial covering requirement. Exec. Order GA-29 at 3. Under that order, local officials may not “detain, arrest, or

⁵TEX. SUP. COURT, EIGHTEENTH EMERGENCY ORDER REGARDING THE COVID-19 STATE OF DISASTER, MISC. DOCKET NO. 20-9080 at 2, ¶ 4 (June 29, 2020), <https://www.txcourts.gov/media/1448109/209080.pdf>.

⁶OFFICE OF COURT ADMIN., GUIDANCE FOR ALL COURT PROCEEDINGS DURING COVID-19 PANDEMIC at 1–4 (For Proceedings on or after June 1, 2020), <https://www.txcourts.gov/media/1446503/covid-19-june-1-guidance.pdf>. (“OCA Guidance”).

⁷Although section 418.108 grants county judges certain emergency powers, in Executive Order GA-28, the Governor suspended that statute “to the extent necessary to ensure that local officials do not impose restrictions in response to the COVID-19 disaster that are inconsistent” with that order. OFFICE OF THE TEXAS GOVERNOR, EXEC. ORDER GA-28 at 4 (June 26, 2020), https://gov.texas.gov/uploads/files/press/EO-GA-28_targeted_response_to_reopening_COVID-19.pdf. While Executive Order GA-28 does not prohibit a county judge from requiring facial coverings before entry into county buildings, it limits the methods for enforcing such a requirement, discussed in more detail herein.

confine in jail any person” for a violation of a facial covering requirement. *Id.* However, it also states that local officials may “enforce trespassing laws and remove violators at the request of a business establishment or other property owner.” *Id.* Thus, local officials may impose a fine, consistent with Executive Order GA-29, and may remove or deny entry to individuals refusing to wear a facial covering inside those premises.

In your final question, you ask about conflicting orders issued by various local officials within the same county and which order would prevail. Request Letter at 2. To the extent GA-29 or a similar executive order requires facial coverings, that executive order will prevail over any order issued by a county commissioners court or county judge. If an executive order does not require facial coverings in a specific building, to the extent that multiple public officials operate in and possess control over county space simultaneously, they should coordinate with one another to establish rules for that space. *See* OCA Guidance at 1 (requiring the local administrative district judge to “attempt to confer with judges of all courts with courtrooms in county buildings, including . . . county judges”). Which official’s order will prevail in any particular circumstance can only be determined after reviewing the specific orders at issue and the corresponding authority of the public officials to issue those orders.⁸

⁸Conflicting orders could raise separation of powers questions that would need to be decided on a case-by-case basis. *See* TEX. CONST. art. II, § 1.

S U M M A R Y

Local Government Code subsection 291.001(3) provides that the commissioners court shall maintain and regulate a county courthouse and other county offices and buildings. Pursuant to this authority, a commissioners court may require any person entering a courthouse or other county-owned or controlled building to wear a facial covering.

Judges possess broad inherent authority to control orderly proceedings in their courtrooms, and pursuant to that authority they could require individuals in the courtroom to wear facial coverings if necessary to maintain order and safety. In addition, the Texas Supreme Court has issued an emergency order requiring all judges to comply with guidance promulgated by the Office of Court Administration, which requires facial coverings by all individuals while in the courthouse. Thus, courts may require any person entering the courthouse in which they preside to wear a facial covering while in the courthouse.

Government Code section 418.108 authorizes a county judge to declare a local state of disaster and upon such declaration, vests the county judge with authority to control the occupancy of premises in the disaster area. Pursuant to this emergency authority, a county judge operating under a local disaster order could require a person to wear a facial covering when occupying a courthouse or other county-owned or controlled building.

Executive Order GA-29 allows local law enforcement and local officials to impose a fine not to exceed \$250 for an individual's second violation of a mask requirement. In addition, public officials may require facial coverings for those entering the courthouse or other county buildings and may deny entry to those individuals refusing to wear a facial covering inside those premises.

Very truly yours,

A handwritten signature in black ink that reads "Ken Paxton". The signature is written in a cursive, flowing style.

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