



**THE ATTORNEY GENERAL
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**CRAWFORD C. MARTIN
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November 20, 1972

Honorable Clayton T. Garrison
Executive Director
Texas Parks & Wildlife Department
John H. Reagan Building
Austin, Texas 78701

Opinion No. M-1265

RE: Authority of the Texas
Parks & Wildlife Dept.
or other state agency
to issue licenses pur-
suant to 16 U.S.C.A.
§742j-1(b) (1).

Dear Mr. Garrison:

You have submitted the following question:

"Is the Texas Parks and Wildlife Department or any other State agency authorized to issue permits or licenses pursuant to Public Law 92-159, Section (b) (1) (85 Stat. 480, 16 U.S.C.A. 742j-1) and for the purposes contemplated by the named statute."

The federal statute, 16 U.S.C. §742j-1 reads as follows:

(a) Any person who--
(1) while airborne in an aircraft shoots or attempts to shoot for the purpose of capturing or killing any bird, fish, or other animal; or
(2) uses an aircraft to harass any bird, fish or other animal; or
(3) knowingly participates in using an aircraft for any purpose referred to in paragraph (1) or (2); shall be fined not more than \$5,000 or imprisoned not more than one year, or both.

(b) (1) This section shall not apply to any person if such person is employed by, or is an authorized agent of or is operating under a license or permit of, any State or the United States to administer or protect or aid in the administration, or protection of land, water,

wildlife, livestock, domesticated animals, human life, or crops, and each such person so operating under a license or permit shall report to the applicable issuing authority each calendar quarter the number and type of animals so taken.

(2) In any case in which a State, or any agency thereof, issues a permit referred to in paragraph (1) of this subsection, it shall file with the Secretary of the Interior an annual report containing such information as the Secretary shall prescribe, including but not limited to--

- (A) the name and address of each person to whom a permit was issued;
- (B) a description of the animals authorized to be taken thereunder, the number of animals authorized to be taken, and a description of the area from which the animals are authorized to be taken;
- (C) the number and type of animals taken by such person to whom a permit was issued; and
- (D) the reason for issuing the permit."

The above quoted federal statute does not authorize the Parks and Wildlife Commission or any other State agency to issue permits or licenses pursuant thereto. The statute does provide an exception whereby it ". . . shall not apply to any person if such person . . . is operating under a license or permit of, any State . . . to administer or protect or aid in the administration, or protection of land, water, wildlife, livestock, domesticated animals, human life, or crops . . ." However, there is no authority vested in any State agency to issue permits or licenses under this exception. Such authority must come from the Legislature.

While Article 192b, Vernon's Civil Statutes, does authorize cooperation with the United States Department of the Interior by the State acting through the Agricultural and Mechanical College System of Texas in the control of certain predatory animals, it does not create a licensing procedure as contemplated by the federal Act.

Article 901, Vernon's Penal Code, prohibits the use of aircraft

". . . to hunt, take, capture, or kill, or attempt to hunt, take, capture, or kill any of the wild game birds, wild game fowl, or wild game animals protected by the laws of this State. . ."

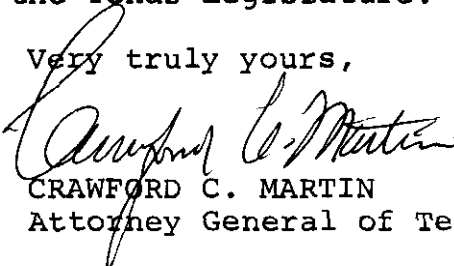
However, this statute applies only to game species.

Because there is presently no state apparatus for licensing individuals by a state agency as contemplated by 16 U.S.C. 742 j-1, the federal act does not become applicable in Texas until thirty days after the end of the next regular session of the Texas Legislature. Pub.L. 92-159, §3, 85 Stat. 480.

S U M M A R Y

Neither the Parks and Wildlife Commission nor any other State agency is authorized to issue licenses which would come within the exception provided in 16 U.S.C. §742j-1(b) (1). This federal Act is not applicable to Texas until 30 days after the end of the next regular session of the Texas Legislature.

Very truly yours,



CRAWFORD C. MARTIN
Attorney General of Texas

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