



THE ATTORNEY GENERAL  
OF TEXAS

AUSTIN, TEXAS 78711

JOHN L. HILL  
ATTORNEY GENERAL

April 16, 1973

The Honorable Clayton T. Garrison  
Executive Director of the Texas  
Parks and Wildlife Department  
John H. Reagan Building  
Austin, Texas 78701

Opinion No. H- 30

Re: Is the multi-colored  
feral pigeon a variety  
of wild pigeon within  
the meaning of Article  
872 of the Texas Penal  
Code?

Dear Mr. Garrison:

In your recent letter to this office you requested a formal opinion on the following question: Is the multi-colored feral pigeon a variety of wild pigeon within the meaning of Article 872 of the Texas Penal Code?

Article 872, Vernon's Texas Penal Code, as amended in 1961 provides as follows:

"Wild turkey, wild ducks of all varieties, wild geese of all varieties, wild brant, wild grouse, wild prairie chickens or pinnated grouse, wild pheasants of all varieties, wild partirdge and wild quail of all varieties, wild pigeons of all varieties, wild mourning doves and wild white-winged doves, wild snipe of all varieties, wild shore birds of all varieties, wild Mexican pheasants or chachalacas, wild plover of all varieties, and wild sand-hill cranes, are hereby declared to be game birds within the meaning of this Act."

Clearly all varieties of wild pigeon are within the language of Article 872, and if the multi-colored feral pigeon is a wild pigeon, then it is within that statute.

Webster's Third New International Dictionary (1961) defines "feral" as "having escaped from domestication and become wild". It would therefore appear that the multi-colored feral pigeon is a wild creature within the scope of Article 872.

There are no Texas cases on this question. In the Missouri case of State v. Willers, 130 S. W. 2d 256 (Mo. App. 1939) the defendant was convicted of having killed pigeons without a permit. The birds shot were the "common everyday pigeon", and the question was whether they were within the protected class of "the columbae, commonly known as doves and pigeons". The Court concluded that they were within the order Columbae, and that "it at once becomes manifest that the pigeons of this region in the feral state fall within the protection of the statute".

Although the Texas statute does not use the biological name, it does, as does the Missouri statute, protect only wild birds, and includes within that protection wild pigeons of all varieties. It is therefore our opinion that feral pigeons are within the scope of Article 872, V. T. P. C.

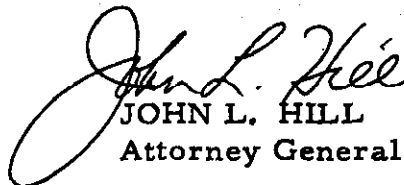
Since, by definition, feral pigeons are wild pigeons, the statute does not protect domesticated pigeons, such are bred and raised by farmers, for table consumption, sometimes classified as poultry. State v. Willers, supra.

"Feral" refers to a state rather than a breed. Therefore, multi-colored feral pigeons are within the scope of the statute.

#### S U M M A R Y

The multi-colored feral pigeon is a variety of wild pigeon within the meaning of Article 872, Vernon's Texas Penal Code.

Very truly yours,

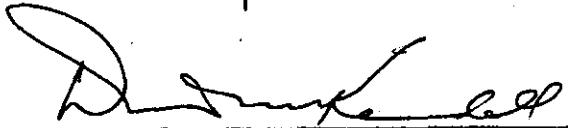
  
JOHN L. HILL  
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APPROVED:



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LARRY F. YORK, First Assistant



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DAVID M. KENDALL, Chairman  
Opinion Committee