



# THE ATTORNEY GENERAL OF TEXAS

AUSTIN, TEXAS 78711

JOHN L. HILL  
ATTORNEY GENERAL

July 6, 1973

Honorable Bryan Davis  
County Attorney, Nacogdoches County  
P. O. Box 736  
Nacogdoches, Texas 75961

Opinion No. H- 56

Re: Whether the shooting of  
live pigeons as targets only,  
and not for food, is unlawful.

Dear Mr. Davis:

You have requested our opinion as to whether the holding of a pigeon shoot, in which the birds are released as targets, after first having their tail feathers plucked out to effect an erratic mode of flight, violates 1374, Vernon's Texas Penal Code. You state in your request that the pigeons used in the "shoot" are not "wild pigeons" defined as game birds under Article 872, V. T. P. C.

Article 1374 reads:

"Whoever overdrives, willfully overloads, drives when overloaded, overworks, tortures, torments, deprives of necessary sustenance, unnecessarily or cruelly beats, or needlessly mutilates or kills any animal, or carries any animal in or upon any vehicle, or otherwise, in a cruel or inhumane manner, or causes or procures the same to be done, or who having the charge or custody of any animal unnecessarily fails to provide it with proper food, drink, or cruelly abandons it, shall be fined not exceeding two hundred dollars. As used in this article the word 'animal' includes every living dumb creature, and the word 'torture' and 'cruelly' includes every act, omission or neglect whereby unnecessary or unjustifiable pain or suffering is caused, permitted or allowed to continue when there is a reasonable remedy or relief."  
(Emphasis added)

There are no Texas cases in which Article 1374 has been applied to the shooting of animals for amusement. By far the greater number of cases involving the statute are those growing out of shooting of trespassing animals. Such, apparently, were the facts which led to the case of Cinadr v. State, 300 S. W. 64 (Tex. 1927) where the defendant was charged with an information which read: "did needlessly kill one hog." The Court of Criminal Appeals recognizing that there were statutes expressly sanctioning the killing of wild animals and fowls for sport and further recognizing that the exercise of judgment by the owner of a domestic animal in determining to slaughter the animal was not the proper subject of legislative restriction, held that the language "needlessly . . . kills any animal" was too vague to be enforceable and violated Article 1, Section 10 of the Texas Constitution.

The Cinadr opinion however is important in that (1) it apparently recognized that birds are animals within the definition of the statute and (2) it expresses, by way of dictum, that other offenses defined by the statute are not subject to the same criticism.

The Court said:

"It is within the power of the State to protect animals from brutality or wanton abuse or destruction, and to protect the owner of animals against mistreatment as a principle of law thoroughly established through the decisions of this and other jurisdictions. . . ."  
(300 S. W. at 65)

Eliminating prohibited acts of Article 1374 which obviously do not apply to the facts at hand, the basic question remaining is whether it is a violation of the Article to remove some of the tail feathers from a pigeon and then shoot it in a manner which may or may not result in its immediate death. Does this constitute "torturing," "tormenting," or to "needlessly mutilate?" The Act defines the term torture to include ". . . every act . . . whereby unnecessary or unjustifiable pain or suffering is caused, permitted or allowed to continue when there is a reasonable remedy or relief." In common parlance "torture" and "torment" have virtually the same meaning, i. e., to cause intense suffering. To muti-

late means to cut off or permanently destroy a limb or essential part of a body or to cut up or alter radically a body so as to make it imperfect.

We have found no other Texas decision which would help in deciding the question presented. The only decisions from other states which we have found, such as State v. Bogardus, 4 Mo. App. 215 (1877); Commonwealth v. Lewis, 21 A 396 (Pa. 1891) and Waters v. People, 46 P. 112 (Col. 1896), are of little assistance.

It is our opinion that a Texas court if directly faced with the question would hold that Article 1374, V. T. P. C., is sufficiently specific and is constitutional insofar as it outlaws the torturing, tormenting and needlessly mutilating of animals.

As difficult as it may be to determine the meaning of "torture," "torment," and "needlessly mutilate," it is even more difficult to determine specifically whether a pigeon shoot is prohibited by the statute. Certainly, however, the statute does not authorize mutilation of pigeons before killing them.

Whether or not people participating in a particular pigeon shoot violate the law ultimately will be a question for jury determination. It would be improper for us to pass judgment and to declare them guilty or not guilty of a criminal charge without a trial on the merits.

It is our opinion, however, that the facts as described by you in your letter would be held sufficient to uphold a conviction of violation of Article 1374, V. T. P. C. .

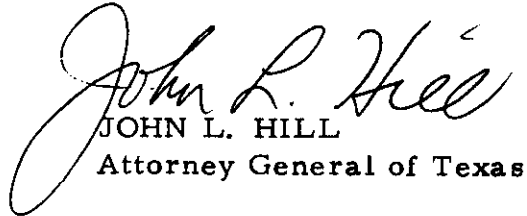
#### SUMMARY

Although each case must be determined upon its own facts, where the tail feathers of pigeons are plucked to cause their flight to be erratic, they are thrown in the air, shot and left to die, the facts are sufficient to support a conviction for torturing, tor-

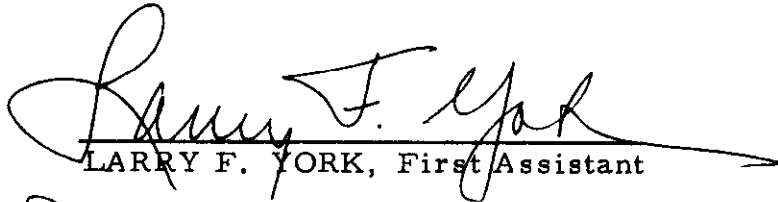
The Honorable Bryan Davis, page 4 (H-56)

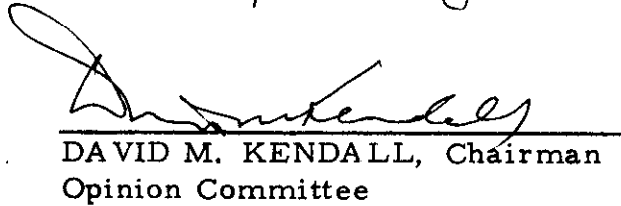
menting and or needlessly mutilating an animal  
in violation of Article 1374, Vernon's Texas Penal  
Code.

Very truly yours,

  
JOHN L. HILL  
Attorney General of Texas

APPROVED:

  
LARRY F. YORK, First Assistant

  
DAVID M. KENDALL, Chairman  
Opinion Committee