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**RQ-948**

TEXAS  
PARKS AND WILDLIFE DEPARTMENT  
4200 SMITH SCHOOL ROAD • AUSTIN, TEXAS 78744 • 512-389-4800

June 30, 1997

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ANDREW SANSOM  
EXECUTIVE DIRECTOR

JUL 03 1997

Opinion Committee

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Honorable Dan Morales  
Attorney General of Texas  
209 West 14th Street  
Austin, Texas 78701

Subject: Request for Opinion: Applicability of Water Safety Act to Lake Cherokee

Dear General Morales:

I am writing to ask your opinion on whether the Texas Water Safety Act applies to Lake Cherokee. Lake Cherokee was created several decades ago by the damming of the waters of Cherokee Bayou and other creeks in Rusk and Gregg Counties. The lake surface area consists of over 4,000 acres. The lake is operated as a private enterprise for recreational, water supply, and other purposes by Cherokee Water Company, which controls most access to the lake and claims the authority to restrict boating traffic to those boats and boaters approved by the company. However, it is possible for the public to access the lake via a state highway bridge right-of-way.

The Water Safety Act (Parks and Wildlife Code Chapter 31) contains the state boat titling and registration laws and sets out operational and equipment requirements for boaters. The Act only applies to "public water." Parks and Wildlife Code Sec. 31.004. My question is: Is Lake Cherokee "public water" within the meaning of the Texas Water Safety Act? An answer to this question would provide much needed guidance in our law enforcement efforts in that area.

I have enclosed a memorandum from my legal staff, correspondence from the General Land Office, and background information relating to this question. Please contact Staff Attorney Boyd Kennedy at 389-4584 if you need further information relating to this request. Investigator Wayne Roberson of the Attorney General's Natural Resource Division also has a file on this matter that may contain helpful information. Thank you for your assistance.

Sincerely,

Andrew Sansom  
Executive Director

AS:BK:wb

Enclosures

cc: Wayne Roberson, Attorney General's Office  
Joe Riddell, Attorney General's Office

