



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

July 28, 1998

The Honorable James W. Smith, Jr.  
Frio County Attorney  
500 East San Antonio Street, Box 1  
Pearsall, Texas 78061-3100

Letter Opinion No. 98-056

Re: Effective date of amendments to subchapter  
T, chapter 65, title 31, Texas Administrative Code  
(RQ-1097)

Dear Mr. Smith:

You have asked this office the effective date of certain amendments to the Texas Administrative Code ("TAC") adopted by the Parks and Wildlife Commission (the "commission") on January 21, 1998. In particular, you ask whether such amendments were effective on February 1, 1998. They were not.

The amendments with which you are concerned deal with title 31, chapter 65, subchapter T of the Administrative Code. In particular, you are interested in the effective date of the repeal of 31 TAC section 65.606, which dealt with inspection of the facilities of persons applying for or possessing a scientific breeder's permit.

As you explain the facts which lead to your request, a rancher in Frio County with such a permit attended a meeting of the Parks and Wildlife Commission on January 21, 1998, at which the commission adopted the relevant amendments, including the repeal of section 65.606, subsection (b) of which had provided that "Each new facility or addition to an existing facility must be inspected prior to the placement of deer in that facility or addition."

Apparently believing that the rules change was immediately effective, the rancher placed deer in a new facility without prior inspection on February 1, 1998, and received a citation for doing so from a Parks and Wildlife warden on February 9.

As you correctly point out, the general rule pursuant to Government Code section 2001.036(a) is that "A rule takes effect 20 days after the date on which it is filed in the office of the secretary of state . . . ." It follows, you argue, that "[e]ven if the rule change . . . was filed on January 21, 1998, twenty days did not elapse when [the rancher] placed deer in the unapproved additions to his facility on February 1, 1998," and that consequently section 65.606(b) was violated. We agree.

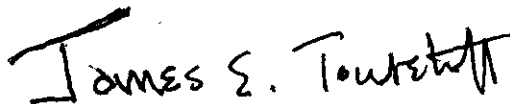
In point of fact, according to the March 6, 1998, Texas Register, page 2329, the relevant repeals and amendments were filed with the Secretary of State on February 18, 1998, and accordingly became effective March 10, 1998.<sup>1</sup> It follows that on February 1, 1998, the date on which the rancher placed the deer in the uninspected facility, and on February 9, 1998, the date on which the warden ticketed the rancher, what was then 31 TAC section 65.606(b) was in full force and effect.

You suggest that certain potentially extenuating circumstances, particularly concerning prior advice by the Parks and Wildlife staff to the rancher on an unrelated issue, may militate against a finding of culpability on the rancher's part. We cannot comment on such issues in the opinions process. However, we note that a court might be inclined to consider such matters, as may a prosecutor in the exercise of any applicable discretion.

S U M M A R Y

The repeal of title 31 of the Texas Administrative Code section 65.606 became effective on March 10, 1998, twenty days after its filing with the Secretary of State.

Yours very truly,



James E. Tourtelott  
Assistant Attorney General  
Opinion Committee

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<sup>1</sup>Tex. Parks & Wild. Dep't, 23 Tex. Reg. 2328, 2329 (1998) (codified at 31 T.A.C. §§ 65.601 - .603, 65.605, 65.607 - .611).