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OPINION COMMITTEE

August 24, 2004

RQ-0264-GA

The Honorable Greg Abbott  
Attorney General of Texas  
Price Daniel Bldg.  
209 West 14<sup>th</sup> Street  
Austin, Texas 78701

FILE# # ML-43898-07

DD# # 043898

Dear General Abbott:

I respectfully request your opinion as to whether certain activities are considered agricultural operations under Chapter 251, Texas Agriculture Code, otherwise known as the "Agriculture Protection Act" or the "Right to Farm Act" (herein referred to as the "Act").

Two questions have arisen with regard to the Act:

- 1) Whether wildlife management, including hunting, is an agricultural operation under the Act; and,
- 2) Whether displaying an agriculture related sign such as "Hay For Sale" or denoting membership in an agricultural association (i.e., Texas Cowboy Rodeo Association) is protected under the Act.

Regarding the first question, Section 251.001 of the Act states that the policy of the State of Texas is:

To conserve, protect, and encourage the development and improvement of its agricultural lands for the production of food and other agricultural products. It is the purpose of this chapter to reduce the loss to the state of its agricultural resources by limiting the circumstances under which agricultural operations may be regulated or considered a nuisance.

Section 251.002 states that "agricultural operation **includes but is not limited to** the following activities: cultivating the soil; producing crops for human food, animal feed, planting seed, or fiber; floriculture; viticulture; horticulture, raising or keeping livestock or poultry; and planting cover crops or leaving land idle for the purpose of participating in any governmental program or normal crop or livestock rotation procedure" (*emphasis added*).

While wildlife management and hunting are not specifically included or excluded from the definition of "agricultural operation" contained in Section 251.002 of the Act, it is arguably included within the policy statement outlined above and the intent of the Act as a whole.

Wildlife management and hunting have become an invaluable tool in most agricultural operations across Texas and have enabled farmers and ranchers to maintain the viability of their operations and "conserve, protect and encourage the development and improvement of its agricultural lands for the production of food and agricultural products" pursuant to Section 251.001 of the Act.

Also, the Act mentions the discharge of firearms in Section 251.005, which would lead one to believe that the Legislature does in fact consider hunting to be a part of the agricultural operations protected under the statute, so long as it does not pose an immediate threat to nearby persons or property.

In addition to the Act, the Texas Legislature has on numerous occasions provided guidance as to the meaning of agricultural operations. For instance, Section 58.002 of the Agriculture Code includes hunting in its definition of "agricultural business." Section 23.51 of the Tax Code defines "agricultural use" to include wildlife management. Section 162.001 of the Tax Code defines "agricultural purpose" to include wildlife management. Section 11.002 of the Water Code includes wildlife management in the definition of "agriculture."

Section 23.51(7) of the Tax Code states that "wildlife management" means: "actively using land that at the time the wildlife-management use began was appraised as qualified open-space land under this subchapter in at least three of the following ways to propagate a sustaining breeding, migrating, or wintering population of indigenous wild animals for human use, including food, medicine, or recreation:

- (A) habitat control;
- (B) erosion control;
- (C) predator control;
- (D) providing supplemental supplies of water;
- (E) providing supplemental supplies of food;
- (F) providing shelters; and,
- (G) making of census counts to determine population."

Based on a broad array of statutes passed at various times by the Legislature, the Department believes that wildlife management, and therefore hunting, are considered by the Legislature to be an integral part of agricultural operations, and as such, should be provided the protections set forth in Chapter 251 of the Agriculture Code.

The Honorable Gregg Abbott

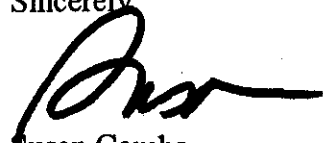
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Regarding whether displaying an agriculture related sign such as "Hay For Sale" or denoting membership in an agricultural association (i.e., Texas Cowboy Rodeo Association) is protected under the Act, the Department is of the opinion that such signage is a normal part of most agricultural operations and should also be protected from unnecessary regulations that might be imposed contrary to the protections of the Act.

We appreciate your time and attention to this request, and if we can provide any additional information, please do not hesitate to contact my office.

Sincerely,



Susan Combs  
Commissioner

SC/KAR/DAH/tsl