



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**JOHN BEN SHEPPERD
ATTORNEY GENERAL**

September 30, 1955

Honorable Howard D. Dodgen
Executive Secretary
Game and Fish Commission
Austin, Texas

Letter Opinion No. MS-243

Re: Legality of hunting
deer with dogs during
the open season in
Nacogdoches and Sabine
Counties.

Dear Mr. Dodgen:

You have requested an opinion as to whether or not it is lawful to hunt deer with dogs during the open season in Nacogdoches and Sabine Counties.

Under the general law (Article 880, Vernon's Penal Code) it is unlawful to hunt deer with dogs. The answer to your question depends on whether special laws exempting Nacogdoches and Sabine Counties from this general prohibition are still in effect; more specifically, whether House Bill 860, Chapter 440, Acts of the 54th Legislature, 1955, was effective to repeal Chapter 384, Acts of the 51st Legislature, Regular Session, 1949, which made it lawful to hunt deer with dogs in Nacogdoches County, and the provision in Section 1 of Chapter 409, Acts of the 53rd Legislature, Regular Session, 1953, which made it lawful to hunt deer with dogs in Sabine County.

The caption of Chapter 440 reads as follows:

"An Act making it unlawful to hunt deer with dogs in San Augustine County; repealing Chapter 384, Acts of the Fifty-first Legislature, Regular Session, 1949, and amending Section 1 of Chapter 409, Acts of the Fifty-third Legislature, Regular Session, 1953; and declaring an emergency."

Section 1 of Chapter 440 declares that it shall be unlawful to hunt deer with dogs in San Augustine County; Section 2 purports to repeal Chapter 384; and Section 3 purports to amend Section 1 of Chapter 409 by omitting a provision which made it lawful to use dogs for hunting deer in San Augustine and Sabine Counties.

As House Bill 860 was originally introduced, Section 1 and the first clause of the caption included Nacogdoches and Sabine Counties as well as San Augustine County, and the changes in existing statutes as contained in Sections 2 and 3 of the bill were consistent with the purpose expressed in the caption. By a House floor amendment offered by the author, Nacogdoches and Sabine Counties were deleted from Section 1, and the caption was changed to omit an express reference to these two counties. It appears that the intent back of this amendment was to make the bill affect San Augustine County only. However, where the language is unambiguous, the meaning of the bill and its effect on existing law must be determined by the language and content of the bill itself without resort to its legislative history or other extrinsic aids. 39 Tex.Jur., Statutes, Sec. 120.

Section 35 of Article III of the Constitution of Texas provides:

"No bill . . . shall contain more than one subject, which shall be expressed in its title. But if any subject be embraced in an act, which shall not be expressed in the title, such act shall be void only as to so much thereof, as shall not be so expressed."

A statute is violative of this section of the Constitution if the title is misleading and imports a subject different from that to which the body of the bill relates. Gulf Production Co. v. Garrett, 119 Tex. 72, 24 S.W.2d 389 (1930); Gulf Ins. Co. v. James, 143 Tex. 424, 185 S.W.2d 966 (1945); Ward Cattle & Pasture Co. v. Carpenter, 168 S.W. 408 (Tex.Civ.App. 1914), affirmed 109 Tex. 103, 200 S.W. 521 (1918); 39 Tex.Jur., Statutes, Secs. 43, 47. In Sutherland v. Board of Trustees, 261 S.W. 489 (Tex.Civ.App. 1924, error ref.), the court said:

"The title of the act in question affirmatively purports to affect two existing districts, which are expressly designated for that purpose, and by clear and impressive implication negatives any purpose to legislate as to the two unnamed districts, and no one on reading the title could possibly understand or infer from its recitals that the provisions in the body of the act effectually deprive the Agua Dulce and No. 4 districts of substantial portions of their territory, population, and revenues. The true test to be applied in cases of this character is: Does the title

fairly give notice by its recitals, to all persons concerned, of the subject matter of the act? If by its title it appears to affect only the residents of particularly designated localities, while the provisions in the body of the bill affect other localities or territory, then the title is misleading and unconstitutional, in so far as it affects the unnamed places."

Ordinarily the caption of a bill which repeals or amends an existing law is sufficient if it refers to the statute being repealed or amended without detailing the subject matter of the statute or, in case of amendment, the manner in which the existing law is being changed. But if the caption undertakes to specify the manner in which the law is being changed, it is defective with respect to all changes not mentioned. Walker v. State, 134 Tex.Crim. 500, 116 S.W. 2d 1076 (1938); Quinn v. Home Owners' Loan Corporation, 125 S.W.2d 1063 (Tex.Civ.App. 1939); 39 Tex.Jur., Statutes, Sec. 48.

It is our opinion that the caption of Chapter 440 is deceptive as to any purpose to change the law affecting Nacogdoches and Sabine Counties. The recitation of the purpose to make it unlawful to hunt deer with dogs in San Augustine County leads the reader to believe that the bill affects that county alone. The implication is that the first clause of the caption states the full purpose of the bill and that the changes in existing statutes are merely incidental to the accomplishment of that purpose. Consequently, Chapter 440 is void in so far as it purports to change the law in Nacogdoches and Sabine Counties. You are therefore advised that, in our opinion, it is lawful to hunt deer with dogs during the open season in these two counties.

APPROVED:

Elbert M. Morrow
Reviewer

Davis Grant
Reviewer

John Ben Shepperd
Attorney General

Yours very truly,

JOHN BEN SHEPPERD
Attorney General

By *Mary K. Wall*
Mary K. Wall
Assistant