



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN, TEXAS 78711

**JOHN L. HILL
ATTORNEY GENERAL**

February 14, 1975

The Honorable Clayton T. Garrison
Executive Director
Texas Parks & Wildlife Department
John H. Reagan Bldg.
Austin, Texas 78701

Opinion No. H- 528

Re: May the Parks and Wildlife
Department lease land to pro-
vide feed for white-winged
doves under article 879a-6,
Penal Auxiliary Laws.

Dear Mr. Garrison:

You have asked our opinion on two questions concerning the Department's authority to expend funds under a program designed to protect the white-winged dove. One question asks whether certain expenditures are proper "for acquisition of white-winged dove habitat" and the other asks whether similar expenditures may legally be made "for research and management for the protection of white-winged doves."

Article 879a-6, Penal Auxiliary Laws, authorizes the Parks and Wildlife Department to sell white-winged dove stamps and prohibits hunting the doves without a stamp. Section 4(c) of that article states that:

The Commission shall deposit the proceeds from the sale of stamps in the state treasury in Special Game and Fish Fund No. 9. One-half of these proceeds may be expended only for research and management for the protection of white-winged dove and the other one-half of these proceeds may only be expended for the acquisition of white-winged dove habitat in the state.

In an earlier opinion, Attorney General Opinion M-1084 (1972), this office concluded that despite article 879a-6, the Parks and Wildlife Department could not expend any funds for the acquisition of white-winged

dove habitat because the Legislature had failed to appropriate any funds for that purpose. The problem was partially solved with the passage of the General Appropriation Bill for the biennium beginning Sept. 1, 1973. It contains an appropriation of \$37,500 for 1974 and a like amount for 1975 "to be expended for the acquisition of white-winged dove habitat." Acts 1973, 63rd Leg., ch. 659, p. 2005. But no appropriation has been made for "research and management for the protection of white wing dove."

It is apparent that the Legislature which enacted article 879a-6, section 4(c) had two distinct activities in mind because it earmarked portions of stamp-sale income which could be used for one of the purposes, but not for the other.

Since the Legislature has seen fit to appropriate funds for only one of the two authorized programs, the Department is not permitted to expend funds for the other. Thus, there are no appropriated funds for research and management for the protection of the white-winged dove, and it is unnecessary to consider your specific questions about expenditures for that purpose.

Your other question asks:

1. Is the Department authorized to expend a portion of the one-half proceeds dedicated by article 879a-6 Penal Auxiliary Laws, "for acquisition of white-winged dove habitat" to

a) lease land for the purpose of growing grain crops or to lease land with standing grain crops to provide feed for white-winged doves?

b) purchase farmland for the express purpose of growing grain crops to provide feed for white-winged doves?

c) purchase farmland for the express purpose of growing brush (re-forestation) to provide nesting and roosting habitat for white-winged doves?

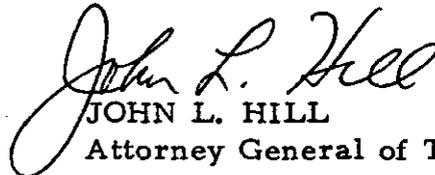
d) buy equipment and pay salaries and operating expenses for the purposes of growing brush (reforestation) to provide nesting and roosting habitat and to grow crops to provide feed for white-winged doves?

The four general types of activities you mention appear to be related to the acquisition of habitat for the white-winged dove, and to the extent that they, in fact, constitute such acquisition, you are authorized by article 879a-6 and by the Appropriations Act to expend funds for those purposes. We do not believe that the fact that land may be leased rather than purchased will prevent its being acquired for the purposes of the statute. Whether any specific activity qualifies as a part of a program for the acquisition of habitat involves fact questions which we are not authorized to answer.

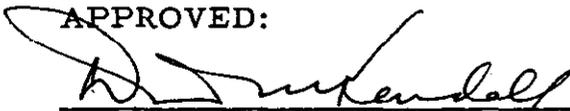
SUMMARY

The Legislature has appropriated no funds for research and management for the protection of the white-winged dove. Funds are appropriated and may be spent for acquisition of habitat for the white-winged dove.

Very truly yours,


JOHN L. HILL
Attorney General of Texas

APPROVED:



DAVID M. KENDALL, First Assistant



C. ROBERT HEATH, Chairman
Opinion Committee

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