



**THE ATTORNEY GENERAL
OF TEXAS**

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October 2, 1975

The Honorable Bennie Bock II
Chairman, Liquor Regulation Committee
House of Representatives
P. O. Box 2910, Capitol Station
Austin, Texas

Opinion No. H- 705

Re: Whether alligators may
be sold in Texas.

Dear Representative Bock:

As Chairman of the Liquor Regulation Committee, you have requested our opinion concerning whether a person who has raised alligators for twenty-five years may lawfully sell them. You have indicated that the request is within the jurisdiction of the Committee and is asked on its behalf. You note that article 978j-3, Penal Auxiliary Laws, which prohibited the sale of alligators after January 1, 1970, was repealed by Senate Bill 179 of the 64th Legislature. Acts 1975, 64th Leg., ch. 219, p. 561. However, alligators have been designated by the Parks and Wildlife Department as an endangered species and are therefore protected by sections 43.021, et seq. and 68.001, et seq., Parks and Wildlife Code. (All references to sections are to the Parks and Wildlife Code unless otherwise noted.)

Section 68.015(a) provides:

No person may possess, sell, distribute, or offer or advertise for sale endangered fish or wildlife unless the fish or wildlife have been lawfully born and raised in captivity for commercial purposes under the provisions of this chapter or federal law.

Section 68.007 provides:

No person may possess endangered fish or wildlife for the purpose of propagating them for sale unless he has first acquired a commercial propagation permit issued by the department under this chapter.

Thus, as a general matter, a person may sell only those alligators which have been lawfully born and raised in captivity. Additionally, a person may not lawfully propagate an endangered species for commercial purposes unless he obtains a commercial propagation permit.

However, section 68.020 provides in part:

(a) This chapter does not apply to:

. . . .

(6) animals, fish, or fowl that are privately owned or to the management or taking of privately owned animals, fish, or fowl by the private owners.

In our view this exemption is ambiguous. We do not believe that the Legislature intended to exempt all privately owned animals from the provisions of chapter 68 without regard to when they became privately owned. Were section 68.020(a)(6) construed so broadly, once a person lawfully obtains an animal of an endangered species under section 68.006 and the animal thus becomes privately owned, no permit would be necessary for commercial propagation. Such a construction would render the permit provisions of section 68.007 almost entirely fruitless, for a permit would be required for only the propagation of publicly owned animals. The courts will not construe a statute so as to render it "fruitless, futile, meaningless, purposeless, or useless, if the language can be otherwise construed." 53 Tex. Jur. 2d, Statutes, §165 and authorities cited therein.

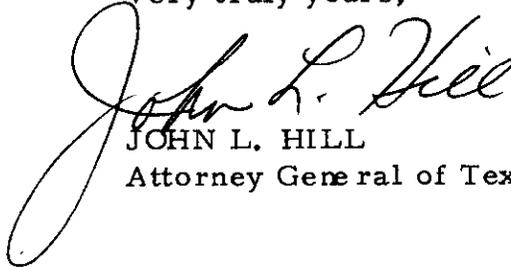
Accordingly, in our opinion the Legislature intended section 68.020(a)(6) to constitute a grandfather clause which exempts only those animals which were privately owned when that section originally took effect, or August 27, 1973. See, Acts 1973, 63rd Leg., ch. 126, p. 268, formerly codified as article 913a, Penal Auxiliary Laws. In addition, we believe the exemption is personal and relates only to the owner at that time. Prior to August 27, 1973, these exempted animals could have been sold, managed, or taken by their owner without a permit and without regard to whether they were born and raised in captivity. However, these privately owned animals may not be utilized for commercial propagation subsequent to August 27, 1973, without a commercial propagation permit. In addition, protected animals taken from the wild after August 27, 1973, may not be sold. Sec. 68.015(a); see, sec. 43.021, et seq., regarding the legal capture of protected animals; see also sec. 61.021.

In our opinion a person may lawfully sell alligators which he privately owned prior to August 27, 1973. Alligators which were not privately owned prior to August 27, 1973, may not be sold unless they were born and raised pursuant to a commercial propagation permit or under authority of federal law. We do not consider the effect of federal legislation prohibiting the interstate sale of endangered species. See, 16 U.S.C. §1538; but see, proposed Dept. of Int. Reg. 40 Fed. Reg., no. 131, p. 28712 (1975).

S U M M A R Y

A person may lawfully sell alligators which he privately owned prior to August 27, 1973. Alligators which were not privately owned prior to August 27, 1973, may not be sold unless they were born and raised in captivity pursuant to a commercial propagation permit or under authority of federal law.

Very truly yours,



JOHN L. HILL

Attorney General of Texas

APPROVED:



DAVID M. KENDALL, First Assistant



C. ROBERT HEATH, Chairman
Opinion Committee