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ATTORNEY GENERAL OF TEXAS

September 26, 2018

The Honorable Lyle Larson
Chair, Committee on Natural Resources
Texas House of Representatives
Post Office Box 2910
Austin, Texas 78768-2910

Opinion No. KP-0218

Re: Whether chapter 75 of the Civil Practice and Remedies Code applies to limit the liability of a private property owner on whose property private aircraft lands for purposes of agritourism (RQ-0219-KP)

Dear Representative Larson:

You ask whether “Chapter 75, Title 4 of the Civil Practice and Remedies Code appl[ies] to private property owners on whose property agro-tourism related private aircraft lands.”¹ Chapter 75, often referred to as the recreational use statute, “recognizes that landowners or occupiers, who open their property to the public for recreational purposes, provide a public benefit.” *Stephen F. Austin State Univ. v. Flynn*, 228 S.W.3d 653, 658 (Tex. 2007); see TEX. CIV. PRAC. & REM. CODE §§ 75.001–.007. To encourage this use, chapter 75 limits landowner liability for certain individuals, including “an owner, lessee, or occupant of agricultural land” in specific instances. See TEX. CIV. PRAC. & REM. CODE § 75.002(a), (b). The Legislature defined “agricultural land” under chapter 75 as

land that is located in this state and that is suitable for:

- (A) use in production of plants and fruits grown for human or animal consumption, or plants grown for the production of fibers, floriculture, viticulture, horticulture, or planting seed;
- (B) forestry and the growing of trees for the purpose of rendering those trees into lumber, fiber, or other items used for industrial, commercial, or personal consumption; or
- (C) domestic or native farm or ranch animals kept for use or profit.

Id. § 75.001(1).

¹See Letter from Honorable Lyle Larson, Chair, House Comm. on Nat. Res., to Honorable Ken Paxton, Tex. Att’y Gen. at 1 (Apr. 5, 2018), <https://www.texasattorneygeneral.gov/opinion/requests-for-opinions-rqs> (“Request Letter”).

Chapter 75 applies only to individuals who collect below a certain amount for entry onto their premises or who have liability insurance coverage above a specified amount. *See id.* § 75.003(c).² When those circumstances exist, the owner, lessee, or occupant of agricultural land “(1) does not owe a duty of care to a trespasser on the land; and (2) is not liable for any injury to a trespasser on the land, except for willful or wanton acts of gross negligence by the owner, lessee, or other occupant of agricultural land.” *Id.* § 75.002(a). In addition, chapter 75 significantly limits liability to invitees and licensees when the invitation or permission is extended for recreation:

If an owner, lessee, or occupant of agricultural land gives permission to another or invites another to enter the premises for recreation, the owner, lessee, or occupant, by giving the permission, does not:

- (1) assure that the premises are safe for that purpose;
- (2) owe to the person to whom permission is granted or to whom the invitation is extended a greater degree of care than is owed to a trespasser on the premises; or
- (3) assume responsibility or incur liability for any injury to any individual or property caused by any act of the person to whom permission is granted or to whom the invitation is extended.

Id. § 75.002(b). Thus, an owner, lessee, or occupant of agricultural land who gives permission to another or invites another to enter the premises for recreation, owes no duty of care to the person to whom permission is granted or to whom the invitation is extended. *Id.* § 75.002(a), (b)(2). These provisions do not limit the liability of an owner, lessee, or occupant of real property who acted with gross negligence, malicious intent, or in bad faith. *Id.* § 75.002(d).

You ask specifically about the application of chapter 75 to property owners who host or allow agritourism on their property. Request Letter at 1. Chapter 75 does not define “agritourism,” but another chapter within Title 4 of the Civil Practice and Remedies Code defines the term as “an activity on agricultural land for recreational or educational purposes of participants, without regard to compensation.” *Id.* § 75A.001(2).³ Thus, agritourism activities occur on agricultural land. *Id.*

²“[Chapter 75] applies only to an owner, lessee, or occupant of real property who:

- (1) does not charge for entry to the premises;
- (2) charges for entry to the premises, but whose total charges collected in the previous calendar year for all recreational use of the entire premises of the owner, lessee, or occupant are not more than 20 times the total amount of ad valorem taxes imposed on the premises for the previous calendar year; or
- (3) has liability insurance coverage in effect on an act or omission described by Section 75.004(a) and in the amounts equal to or greater than those provided by that section.

TEX. CIV. PRAC. & REM. CODE § 75.003(c). These restrictions on applicability do not apply to a governmental unit. *See id.* § 75.003(c), (e).

³Chapter 75A, enacted by the Legislature in 2015, provides express limited liability for agritourism activities in addition to the limitations of liability otherwise provided by chapter 75. *See generally id.* §§ 75A.001–.004. The

As discussed above, all owners, lessees, or occupants of such land, including agritourism entities, qualify for the limitations on liability therein, assuming all other conditions of that chapter are met. Thus, agricultural landowners conducting agritourism on their property qualify for the same limitations on liability found in chapter 75 as any other agricultural landowner. *See id.* § 75A.002(c) (“A limitation on liability provided by this section to an agritourism entity is in addition to other limitations of liability.”).

You question whether those limitations on liability extend to property on which an agritourism-related private aircraft lands. Request Letter at 1. The limitations on liability in chapter 75 apply “on the premises” of agricultural land, and the Legislature defined “premises” to include “roads” and “private ways,” among other areas. TEX. CIV. PRAC. & REM. CODE §§ 75.001(2) (defining “premises”), 75.002(b) (limiting liability on the premises). Property where an aircraft lands would qualify under one or both of these terms, and the protections of chapter 75 therefore extend to such areas.⁴ But whether a particular aircraft landing is subject to chapter 75 will depend, in part, on the status of the individuals landing on the property and their purpose in traveling to the property. As discussed above, a property owner generally owes no duty of care to a trespasser on agricultural land. *Id.* § 75.002(a). The limitations on liability for licensees or invitees under section 75.002(b) apply when the property owner invited or granted permission to enter the premises for recreation. *Id.* § 75.002(b).⁵ The Legislature defined “recreation” for purposes of this section to encompass a wide variety of activities, including any “activity associated with enjoying nature or the outdoors.” *Id.* § 75.001(3).⁶ Thus, if a property owner conducting agritourism on his or her agricultural property invites or grants permission to individuals to enter the premises for recreation, chapter 75 applies to limit the property owner’s liability for injuries or property damage occurring to those invited or given permission to enter, including any injuries or damage resulting from the landing of private aircraft.

limitations on liability established in chapter 75A are different from the limitations in chapter 75. *See id.* § 75A.002(b)(1)(A) (“This section does not limit liability for an injury . . . proximately caused by . . . the agritourism entity’s negligence . . .”), (c). While some of the limitations on liability in chapter 75A are not as broad as those in chapter 75, chapter 75A applies “without regard to compensation” received from invitees on the property. *Id.* § 75A.001(2). You do not ask about the separate limitations on liability provided in chapter 75A, and we therefore limit our analysis to Chapter 75 only. *See* Request Letter.

⁴You ask only about private aircraft lands on the agritourism property. *Id.* at 1. The limitations in chapter 75 apply to the premises of the agricultural land, and this opinion does not address injuries or damages to property occurring outside the premises of this land. *See* TEX. CIV. PRAC. & REM. CODE § 75.002(b).

⁵The limitation on liability applies regardless of whether an injury or property damage occurred due directly to the recreational activity. The relevant question is whether the invitation or permission was extended for purposes of recreation. *See Dubois v. Harris Cty.*, 866 S.W.2d 787, 789 (Tex. App.—Houston [14th Dist.] 1993, no writ) (concluding that section 75.002 limited liability when an individual tripped and fell due to a pot hole in the parking lot of a county park).

⁶“Recreation” also expressly includes hunting, fishing, swimming, boating, camping, picnicking, hiking, pleasure driving, including off-road motorcycling and off-road automobile driving and the use of all-terrain vehicles and recreational off-highway vehicles, nature study, cave exploration, waterskiing and other water sports, bicycling and mountain biking, disc golf, dog walking, and radio control flying. TEX. CIV. PRAC. & REM. CODE § 75.001(3).

S U M M A R Y

Chapter 75 of the Civil Practice and Remedies Code limits liability in certain circumstances for the owner, lessee, or occupant of agricultural land. By statutory definition, agritourism occurs only on agricultural land. Thus, chapter 75 applies to property owners conducting agritourism on their agricultural property if they otherwise meet the conditions in chapter 75.

Assuming those conditions are met, if a property owner conducting agritourism on his or her agricultural property invites or grants permission to individuals to enter the premises of the property for recreation, chapter 75 limits the property owner's liability for injuries or property damage occurring on the premises to those invited or given permission to enter, including injuries or damages due to the landing of private aircraft. Chapter 75 does not, however, limit the liability of a property owner who acts with gross negligence, malicious intent, or in bad faith.

Very truly yours,



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