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February 20, 2008

RQ-0679-GA

Honorable Greg Abbott
Texas Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

RE: Subchapter E, Chapter 822, Health and Safety Code B Dangerous Wild Animals

Dear General Abbott:

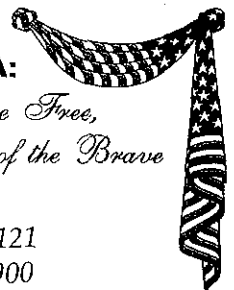
Please accept this request for an Attorney General Opinion as to whether a holder of a rehabilitation permit issued by Texas Parks and Wildlife Department (ATPWD@) pursuant to Subchapter C, Chapter 43, Parks and Wildlife Code, is exempt from the application of Subchapter E, Chapter 822, Health and Safety Code with respect to dangerous wild animals being kept by him which are not covered by the permit.

Rehabilitation permits issued under authority of Subchapter C, Chapter 43, Parks and Wildlife Code allow a qualified individual to temporarily possess an injured, orphaned or sick wild animal for purposes of rehabilitation and release back to the wild (although there are alternative dispositions for animals unlikely to survive in the wild). However, Subchapter C, Chapter 43 is clear that the rehabilitation permits are issued only for wild animals indigenous to Texas and which are protected by the Parks and Wildlife Code. Therefore, TPWD does not issue rehabilitation permits for non-indigenous animals.

Subchapter E, Chapter 822, Health and Safety Code which regulates the keeping of dangerous wild animals does not apply to an injured infirm, orphaned or abandoned dangerous wild animal while being rehabilitated, treated or cared for by a person who holds a rehabilitation permit issued by TPWD. See Section 822.102(a)(5). Only four of the animals (cougars, bobcats, bears and coyotes) defined in Subchapter E as Adangerous wild animals@ are indigenous to Texas and thus eligible for coverage by a TPWD rehabilitation permit. All others are not indigenous to Texas and are not eligible for coverage by a TPWD rehabilitation permit.

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Several instances have occurred recently where the holder of a TPWD rehabilitation permit has claimed an exemption under Section 822.102(a)(5) for a dangerous wild animal not indigenous to Texas and not covered by the rehabilitation permit. For example, one person holding a rehabilitation permit for indigenous birds is claiming an exemption under Section 822.102(a)(5) for leopards, African lions and chimpanzees in his possession

The intent of Subchapter E, Chapter 822 is to regulate the keeping of dangerous wild animals to protect the residents of the community in which they are kept and to ensure their humane treatment. See analysis prepared by the Office of House Bill Analysis, at www.hro.house.state.tx.us/PDF/ba77R/HB1362.PDF. To interpret Section 822.102(a)(5) as exempting the keeping of non-indigenous dangerous wild animals that are not regulated by TPWD permits from the regulatory requirements of Subchapter E would contravene the intent of the dangerous wild animal law. Clearly, it was not the legislature's intent to allow a person to keep tigers and gorillas and avoid the applicable registration requirements, caging standards, and liability insurance coverage set out in Subchapter E, Chapter 822 simply because the person has a TPWD rehabilitation permit for squirrels and raccoons. The intent of the legislature in passing Subchapter E, Chapter 822 was to exempt from its application a TPWD rehabilitation permit holder only if and while the holder is rehabilitating an injured, infirm, orphaned or abandoned dangerous wild animal specifically covered by the permit.

Thank you in advance for your assistance in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Tony Goolsby". The signature is stylized with a large initial "T" and a long horizontal stroke.

Tony Goolsby
State Representative
District 102