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The State of South Carolina



Office of the Attorney General

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September 21, 1989

The Honorable L. Edward Bennett
Chairman, Agriculture and Natural Resources
Committee
Post Office Box 11867
Columbia, South Carolina 29211

Dear Representative Bennett:

In a letter to this Office you questioned the practice of the State Wildlife and Marine Resources Department of transferring wild turkeys from South Carolina to another state. You referenced that as a result of such transfer, funds are typically made available to the National Wild Turkey Federation's South Carolina chapter. You have questioned whether this constitutes "selling" of these turkeys so as to be illegal.

You forwarded to this Office various documents that you had received concerning the referenced program along with a legal opinion issued by Buford Mabry, Chief Counsel of the State Wildlife and Marine Resources Department. Based upon our review of these materials, it appears that the purpose behind the transfer of wild turkeys from this State to another state is sound game management. Also it was stated that all wild turkeys sent out of this State are taken from private lands with the landowners' consent.

As to whether the practice of transferring wild turkeys to another state is an appropriate policy is not a matter for review by this Office but instead is within the expertise of the Wildlife Department. Therefore, this letter should not be construed as commenting on the program itself.

As to the legality of such transfers, Mr. Mabry stated in his opinion that he did not consider the transfer program to be violative of Section 50-11-500(4) of the Code. Such provision states that "(i)t is unlawful for any person to buy, sell, offer for sale, barter, or have in possession for sale any wild turkeys." Mr. Mabry

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stated that there is no agreement as to consideration between the state which receives the wild turkeys and the Wildlife Department. He further indicated that the transfer of wild turkeys from the Wildlife Department to another state is not dependent upon receiving remuneration from the National Wild Turkey Federation or the receiving state's chapter of the Federation "and in fact there is no money given" to the Wildlife Department for such transfer. He states further "where there is no exchange of goods or services or currency for the birds, there is no 'sale'." Mr. Mabry added that if any state chapter of the Federation was to disavow its agreement with the Federation in association with the transfer, the Wildlife Department would not have any legal recourse because no contract exists.

This Office concurs in Mr. Mabry's conclusions and similarly is of the opinion that there is no violation of Section 50-11-400(4) in the referenced transfer of birds. Again, we are only construing the lawfulness of the transfer policy and are not commenting on the program itself.

With best wishes, I am

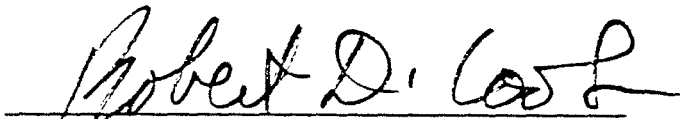
Very truly yours,



Charles H. Richardson
Assistant Attorney General

CHR/nnw

REVIEWED AND APPROVED BY:



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