

STATE OF TENNESSEE
OFFICE OF THE
ATTORNEY GENERAL
PO BOX 20207
NASHVILLE, TENNESSEE 37202

October 1, 2010

Opinion No. 10-102

Hunting on Private Property

QUESTION

Do the distance and permission requirements of Tenn. Code Ann. § 70-4-108(b) apply to individuals hunting on private property?

OPINION

No. The plain language of the statute omits any reference to hunting on private property and instead specifies only that it is unlawful to hunt on public lands and waters within 100 yards of a visible dwelling house without the owner's permission.

ANALYSIS

The question posed focuses upon the language of Tennessee Code Annotated section 70-4-108(b), which reads as follows:

It is unlawful to hunt, shoot at, chase, or kill, with or without dogs any wild animal, wild bird or wild fowl on public lands and waters within one hundred yards (100 yds.) of a visible dwelling house, whether or not such dwelling house is on public or private lands, without the owner's permission.

Tenn. Code Ann. § 70-4-108(b). A violation of this provision is a class C misdemeanor. Tenn. Code Ann. § 70-4-108(c).

The opinion request supplies facts related to this statutory provision. More specifically, the opinion request explains that law enforcement officers have answered calls relating to the discharge of firearms within certain city limits near homes or business locations. The calls stem from instances of individuals being engaged in hunting on private property. The opinion request indicates that law enforcement officers have therefore explained to complainants that state law generally permits hunting on private property. The opinion request does, however, make reference to instances of individuals being showered with projectiles from birdshot, indicating that law enforcement officers have in the past stopped hunters in such instances.

As an initial matter, it bears noting that the Tennessee Constitution grants the General Assembly broad power to enact wildlife laws. Tenn. Const. art XI, § 13. In the exercise of that

power, the Legislature has provided the Tennessee Wildlife Resources Commission (TWRC) the exclusive authority to establish when and in what manner wildlife may be hunted or taken in any area of the state. *See* Tenn. Code Ann. § 70-4-107. The TWRC is also authorized to promulgate rules and regulations necessary to implement the wildlife statutes. Tenn. Code Ann. § 70-1-206(3). In light of these provisions, this Office has opined that the TWRC “is authorized to regulate all hunting and fishing in Tennessee, whether such activities occur on State-owned land or on privately-owned property.” *Op. Tenn. Att’y Gen. No. 90-100* (Nov. 5, 1990).

Turning to the statutory provision at issue in this opinion request, we first note that the plain language omits any reference to hunting on private property. Instead, the statute refers only to hunting activities that occur on public lands and waters. It is well established that the primary purpose in construing statutes is to ascertain and give effect to the intent of the Legislature. When possible, legislative intent is to be determined from the natural and ordinary meaning of the language used in the statute. *See, e.g., Boarman v. Jaynes*, 109 S.W.3d 286, 290-91 (Tenn. 2003). The natural and ordinary meaning of the language of section 70-4-108(b) leads this Office to conclude that the distance and permission requirements of the provision do not apply to hunting activities that occur on private property. We further note that we can locate no other statutory provision or regulation that would alter this conclusion.

As indicated above, the opinion request makes reference to instances of individuals being showered with projectiles from birdshot. Although it is the opinion of this Office that the distance and permission requirements of section 70-4-108(b) do not apply to hunting activities that occur on private property, we reiterate that anyone discharging a firearm, even when doing so while lawfully hunting, must not do so in a reckless manner that places or may place another person in imminent danger of death or serious bodily injury. *See* Tenn. Code Ann. § 39-13-103; *see also* *Op. Tenn. Att’y Gen. 98-038* (Feb. 9, 1998). Thus, officers may enforce statutes prohibiting unlawful conduct such as assault, aggravated assault, and reckless endangerment, even when the conduct arises from otherwise lawful hunting activities. *See* Tenn. Code Ann. §§ 39-13-101 – 103.

ROBERT E. COOPER, JR.
Attorney General and Reporter

JOSEPH F. WHALEN
Associate Solicitor General

R. STEPHEN JOBE
Senior Counsel

Requested by:

Honorable Bill Ketron
Senator, 13th Senatorial District
13 Legislative Plaza
301 Sixth Avenue North
Nashville, TN 37243

Honorable Jim Tracy
Senator, 16th Senatorial District
2 Legislative Plaza
301 Sixth Avenue North
Nashville, TN 37243