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JUSTICE BUILDING, LITTLE ROCK 72201

(501) 371-2007

February 21, 1985

OPINION NO. 85-56

Honorable Bob McGinnis  
State Representative  
Route 3, Box 197  
Marianna, Arkansas 72360

Dear Representative McGinnis:

This is in response to your request for an opinion on the following:

Can the Arkansas Game and Fish Commission impose different treatment on landowners located within a wildlife management zone?

Amendment 35 to the Arkansas Constitution grants broad powers to the Game and Fish Commission to create and manage wildlife management zones as

. . . . The Commission shall have the exclusive power and authority to issue licenses and permits, to regulate bag limits and the manner of taking game and fish and furbearing animals, and shall have the authority to divide the State into zones, and regulate seasons and manner of taking game, and fish and furbearing animals therein, and fix penalties for violations. No rule or regulations shall apply to less than a complete zone, except temporarily in case of extreme emergency.

Although Amendment 35 is extensive, it has been held not to be without limit in Arkansas courts. See Shellnut v. Arkansas State Game and Fish Commission, 222 Ark. 25, 258 S.W.2d 570 (1953). In Shellnut, *supra*, the court recognized Amendment 35's subservience to the common law principles of private property as follows:

Even though Constitutional Amendment No. 35 gives broad powers to the Commission, nevertheless, the Commission is subservient to, and bound by Art. 2, §22 of the Constitution, which reads:

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"...private property shall not be taken, appropriated or damaged for public use, without just compensation therefor."

In Shellnut, a group of landowners refused to renew voluntary leases of their land to a Game Refuge, whereupon the Game and Fish Commission adopted a special regulation closing their land to hunting. The Court held that such an interference was an interruption of the common and necessary use of the property. The court recognized that the State has the power to regulate the taking of game, but in doing so it cannot arbitrarily discriminate among its landowners. Accordingly, it would appear that landowners within a wild life management area may have certain constitutionally protected property rights which may warrant different treatment from non-landowners within a wildlife management zone.

Attached to your request for an opinion were letters from the Game and Fish Commission to landowners within the St. Francis WMA. The letters appear to inform the landowners that, while season regulations for their land are the same as the SFWMA, they must obtain a permit for them or others to hunt on the land. Unlike non-landowners, there is no limit on landowner permits. The landowner permits are good only for the landowners holdings and, should the landowner wish to hunt on other WMA lands he must participate in a permit drawing along with all other members of the public. Such a distinction would seem, on their face, to be in accord with Shellnut, supra, Amendment 35 and Art. 2 §22 of the Arkansas Constitution.

The foregoing opinion, which I hereby approve, was prepared by Assistant Attorney General Jerry E. Rose.

Sincerely,

  
STEVE CLARK  
Attorney General

SC:JR:jh

cc: Doug Mays