

STATE OF TENNESSEE
OFFICE OF THE
ATTORNEY GENERAL
425 FIFTH AVENUE NORTH
NASHVILLE, TENNESSEE 37243

March 19, 2004

Opinion No. 04-047

Regulation of Fishing Activities on Interstate Waters Bordering Tennessee

QUESTION

Does the Tennessee Wildlife Resources Agency have authority to regulate the possession of fish caught in interstate waters bordering Tennessee by persons with a valid license from an adjacent state, when Tennessee has entered into a reciprocal license agreement with that adjacent state?

OPINION

No. It is the opinion of this Office that, if the Tennessee Wildlife Resources Agency, or its predecessor, has entered into a reciprocal license agreement with another state to recognize each other's respective fishing and hunting licenses on a shared body of water, TWRA cannot enforce its statutes and proclamations regulating the supply of fish in those waters against Tennessee residents using valid nonresident licenses from the adjacent state in question.

ANALYSIS

This Office has been asked to reconsider an earlier opinion concluding that the Tennessee Wildlife Resources Agency has authority to regulate the possession and quantity of fish caught in interstate waters when the fish are caught by Tennessee residents using valid nonresident licenses from the adjacent state and transported back to Tennessee. *See* Op. Tenn. Att'y Gen. 04-003 (January 7, 2004). That opinion specifically focused on Tennessee's wildlife proclamations limiting the size and quantity of catfish caught in the Mississippi River, and it noted that Arkansas had no such restrictions relative to the Mississippi River. This inquiry seeks a reconsideration of the opinion based on a Reciprocal License Agreement entered into between the States of Tennessee and Arkansas in 1970 that is still in effect.¹

¹ With respect to our previous opinion issued January 7, 2004, we would note that the original requestor did not make this Office aware of the existence of the Reciprocal License Agreement executed by the Arkansas Game and Fish Commission and the Tennessee Game and Fish Commission in 1970.

In our previous opinion we stated that the wildlife agency had the authority to enforce its laws relating to the taking and possession of fish in interstate waters against Tennessee residents holding valid nonresident fishing licenses from an adjacent state, as long as Tennessee had a compact providing for concurrent criminal jurisdiction over those waters with the adjacent state. *Id.* While we still adhere to that opinion per se, the existence of a reciprocal license agreement between Tennessee and an adjacent state recognizing each other's respective hunting and fishing licenses on a shared body of water significantly alters the analysis, such that neither state would then be able to enforce its wildlife laws against persons holding valid licenses from the other state and either hunting or fishing on the adjacent waters.

Therefore, we amend our previous opinion, No. 04-003, to reflect that if the Tennessee Wildlife Resources Agency has entered into a reciprocal license agreement with another state to recognize each other's respective fishing and hunting licenses on a shared body of water, then TWRA cannot enforce its statutes and proclamations regulating the supply of fish in those waters against Tennessee residents using valid nonresident licenses from the adjacent state in question.

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