



**Toby Goodman**  
STATE REPRESENTATIVE  
DISTRICT 93

RECEIVED

MAR 20 2002

OPINION COMMITTEE

P.O. Box 2910  
Austin, Texas 78768-2910  
512/463-0562  
Fax: 512/475-1178

March 18, 2002

1600 E. Lamar Blvd.  
Suite 250  
Arlington, Texas 76011  
817/460-8290  
Fax: 817/861-2125

RQ-0525-JC

FILE # ML-42525-02  
I.D. # 42525

The Honorable John Cornyn  
Office of the Attorney General  
Attention: Opinion Committee  
209 W. 14th Street  
P.O. Box 12548  
Austin, TX 78711-2548

Dear General Cornyn:

This letter is to request an Attorney General Opinion as to the following:

1. Can a county exempt a person or organization from the registration and other requirements of Subchapter E, Chapter 822, Health and Safety Code, other than a person or organization specifically exempted therefrom in Section 822.102(a) of the Texas Health and Safety Code?
2. Must a county register and regulate (in accordance with the provisions of Subchapter E, Chapter 822, Health and Safety Code), all dangerous wild animals<sup>1</sup> kept within its county by anyone or under any circumstance other than those exempted in Section 822.102(a), Texas Health and Safety Code?
3. Does Section 6(c) of HB 1362 mandate all counties to adopt and enforce all commissioner's court orders necessary to implement and administer the registration program created by Subchapter E, Chapter 822, Health and Safety Code? If so, who has proper standing and what is (are) the appropriate action(s) to enforce that mandate?

**BACKGROUND INFORMATION**

---

<sup>1</sup>As used herein, a dangerous wild animal is an animal listed in Section 822.101(4), Health and Safety Code.

COMMITTEES:  
Chairman, Juvenile Justice and Family Issues  
Pensions and Investments

The 77th Texas Legislature enacted HB 1362 commonly known as the "Dangerous Wild Animal Bill" to deal with the keeping of dangerous wild animals in this state. That bill contemplated that the prohibition and/or regulation of the keeping dangerous wild animals be implemented and administered on a county by county basis; the idea being that those counties who do not want dangerous wild animals kept within their county can totally prohibit the keeping of them within their county pursuant to Section 240.002, Local Government Code, as amended by HB 1362, and those counties who want to allow the keeping of dangerous wild animals within their county can do so as long as those dangerous wild animals are registered with the county sheriff and kept in strict accordance with the provisions of Subchapter E, Chapter 822, Health and Safety Code, as added by HB 1362.

To accomplish this, Section 1 of HB 1362 amended Chapter 822, Health and Safety Code to add Subchapter E (Sections 822.101-822.116) which subchapter established a statewide program to regulate the keeping of dangerous wild animals. Subchapter E contemplates that the implementation and administration of the regulatory program be done at the county level and Section 6(c) of HB 1362 requires all counties to adopt the necessary orders to implement and administer the regulatory program established by Subchapter E.

The legislature anticipated that some counties might want to prohibit and/or further regulate the keeping of dangerous wild animals in their county and Section 822.116 was included in Subchapter E to allow this. In addition, to facilitate the counties' ability to prohibit and/or further regulate the keeping of these animals, Section 2 of HB 1362 amended Section 240.002 of the Local Government Code to eliminate the existing limitations on the counties' ability to prohibit and/or further regulate dangerous wild animals - thus giving the counties unlimited authority to prohibit and/or further regulate these dangerous wild animals in the unincorporated areas of their county.

Thus, by virtue of the passage of HB 1362, counties are empowered and required to either: (i) prohibit the keeping of all dangerous wild animals by anyone within their county or (ii) register and regulate (in accordance with the provisions of Subchapter E) those dangerous wild animals they choose to allow to be kept within their county. To ensure that the intent and purpose of HB 1362 was carried out by the counties, the legislature, in Section 6(c) of HB 1362, mandated that the counties decide whether to prohibit or regulate the keeping of these animals and to enact the necessary orders to codify that decision. This was to have been done by the counties by December 1, 2001.

A recent county-by-county survey of all 254 counties revealed that the counties' responses to HB 1362 varied greatly. Those county responses can be grouped into the following general categories:

- A. Those responses which comply with the requirements of HB 1362. Those included:
  - (1) registration and regulation in accordance with the provisions of HB 1362;
  - (2) prohibition of the keeping of dangerous wild animals by anyone (thus, rendering moot the need to register or regulate);

- (3) prohibition of the keeping of dangerous wild animals by anyone except those persons and organizations who are exempt from registration and regulation in Subchapter E, to wit: those persons and organizations specifically listed in Section 822.102(a), (again, rendering moot the need to register or regulate).
- B. Those responses which do not comply with the requirements of HB 1362. Those included:
- (1) prohibition of the keeping of dangerous wild animals by anyone except specific persons exempted in the particular commissioners court order (these exempted persons varied from county to county but generally consisted of persons who were keeping a dangerous wild animal on the effective date of the county's prohibition order and/or persons holding an animal dealer or exhibitor license issued by the United States Department of Agriculture under the federal Animal Welfare Act) none of which is exempt from registration or regulation under Subchapter E. In these instances, the order contained no provision to regulate the keeping of dangerous wild animals by those persons as required by HB 1362; and
  - (2) failure or refusal to enact any commissioners court order to prohibit, regulate or otherwise deal with the keeping of dangerous wild animals as mandated by Section 6(c) of HB 1362.

The net effect of these varied responses, and in particular the responses where a county did nothing or allowed persons (other than those exempt persons listed in Section 822.102(a)) to keep dangerous wild animals within their county without being required to comply with the registration and other requirements of Subchapter E, is that the state wide regulatory program contemplated HB 1362 is not being achieved and numerous keepers of dangerous wild animals in this state and their animals are going unregulated.

## **DISCUSSION**

Since the Texas Parks and Wildlife Department stopped regulating the keeping of dangerous wild animals in this state there has been no such regulation and, as a result, a flood of dangerous wild animals has entered the state creating a public safety issue. The 77th Legislature addressed that issue with the passage of HB 1362. In passing HB 1362, the legislature intended that the registration and regulatory program created by HB 1362 be implemented and administered uniformly throughout the state at the county level. For whatever reasons, numerous counties (approximately 20%) have failed to do what is required of them by HB 1362 in order to make the state wide regulatory program work as intended by the state legislature. In particular, these non-compliant counties have either failed or refused to do anything toward the establishment and administration of the regulatory program as mandated by HB 1362 or they have attempted to preempt state law by allowing persons who are not exempt under the state law to avoid registering their animals and otherwise complying with the provisions of HB 1362.

During the committee hearings and floor debates on HB 1362, numerous attempts were made by various special interest groups to exempt themselves from the registration and regulatory program established by HB 1362 - those attempted exemptions included "grandfather" provisions; exemptions for USDA license holders; exemptions for wildlife sanctuaries; etc. Each of those attempts, for good reason, was defeated. The state legislature clearly and specifically identified the persons, organizations and circumstances to which the registration and regulatory requirements of Subchapter E do not apply. Those are listed in Section 822.102(a)(1)-(11) and no county has the authority to expand that list or exempt persons not so listed.

Likewise, Section 6(c) of HB 1362 is a statutory mandate to all counties to implement and administer the registration program created by HB 1362 and the counties have no authority to ignore or vary from the requirements of that mandate or refuse to enforce the statutory provisions of HB 1362.

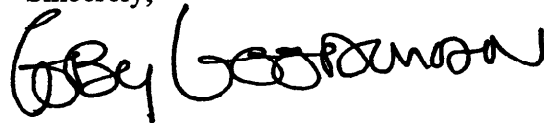
### CONCLUSION

All counties must participate in the state wide statutory program to deal with the keeping of dangerous wild animals in this state as established by HB 1362. They may do so either by prohibiting the keeping of dangerous wild animals within their county or by registering and regulating the keeping of those animals allowed to be kept within their county by anyone other than those persons and organizations expressly exempted from the regulatory program in the state statute. This request for an Attorney General Opinion is submitted to clarify the issues surrounding the counties' responsibilities and obligations under HB 1362 and to obtain guidance as to how best to accomplish full compliance of those responsibilities and obligations by all counties.

Although we understand that your office has 180 days in which to furnish your opinion, if possible, we would appreciate your consideration of an earlier date since the registration program becomes effective and all owners of dangerous wild animals are required to comply therewith by June 1, 2002.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink that reads "Toby Goodman". The signature is written in a cursive, somewhat stylized font.

Toby Goodman, Chair  
Committee on Juvenile Justice and Family  
Issues