



Lynn Fitch
ATTORNEY GENERAL
OPINIONS AND POLICY

October 21, 2022

Mr. William Mounger
Chairman, Commission on Wildlife, Fisheries, and Parks
1505 Eastover Drive
Jackson, Mississippi 39211-6374

Re: Authority of Commission to Promulgate a Regulation Regarding
Commercial Trade of White-Tailed Deer within High-Fenced Enclosures

Dear Mr. Mounger:

The Office of the Attorney General has received your request for an official opinion.

Background

According to your request, the Commission on Wildlife, Fisheries, and Parks (the “Commission”) believes that the plenary authority granted to it in Mississippi Code Annotated Section 49-7-58(3) in matters relating to white-tailed deer in enclosures, provides the authority to promulgate a regulation allowing for the commercial trade of white-tailed deer held within high-fenced enclosures between registered white-tailed deer captive breeders.

Questions Presented

1. Given Section 49-7-51’s reference to a regulation authorizing the sale of game animals and the Commission’s plenary authority to regulate white-tailed deer in enclosures, is there any legal prohibition on the Commission promulgating an administrative rule allowing the commercial trade of white-tailed deer between properly registered white-tailed deer captive breeders, as authorized by 40 Miss. Admin. Code Pt. 2, R. 8.2(C)?
2. Would your response to the above question be different when applied to white-tailed deer (or descendant thereof) supplied by a state university and transported into a registered enclosure from another part of the state or United States?

Brief Response

1. While the law in our state generally forbids the buying, selling, or exchange for consideration any game animals by an individual, that same law includes an exception

where such trade is specifically permitted by regulation. The Commission has “plenary authority in matters related to . . . white-tailed deer in enclosures. . . .” Miss. Code Ann. § 49-7-58(3). Therefore, the Commission could craft a regulation allowing for the commercial trade of white-tailed deer held within high-fenced enclosures between registered captive breeders without specifically contravening an express legislative act.

2. No. See the response to Question One.

Applicable Law and Discussion

Generally, the Commission and the Department of Wildlife, Fisheries, and Parks (the “Department”) have the authority to regulate both commercial and non-commercial enclosures of wild animals “in order to conserve and protect native wildlife for all citizens to enjoy and to protect our recreational economy dependent on native wildlife resources.” Miss. Code Ann. § 49-7-58.4. The law also authorizes the ownership of high-fenced enclosures by private landowners, and such high-fenced enclosures of white-tailed deer are highly regulated, requiring permits, fees, and Department monitoring and oversight. Miss. Code Ann. § 49-7-58.1.

Section 49-7-58(3) gives the Commission “plenary authority in matters related to the importation of white-tailed deer, white-tailed deer in enclosures, and prevention of the introduction of chronic wasting disease into the native wildlife population.” However, the Commission’s authority to promulgate rules and regulations pertaining to white-tailed deer in enclosures cannot conflict with existing statutes. *See Strong v. Bostick*, 420 So. 2d 1356, 1362 (Miss. 1982) (“ . . . the Commission has the authority, and, under certain situations, the duty, to promulgate rules and regulations concerning the taking of deer, *where they do not conflict with existing statutes.*”) (emphasis added); *Drane v. State*, 493 So. 2d 294, 297 (Miss. 1986) (“*Strong* made it clear that the rule-making authority of the commission must be exercised subject to any statute.”)

State law expressly prohibits the buying and selling of white-tailed deer. Section 49-7-51(1)(a) states:

It is unlawful . . . to buy or sell or to offer for sale, exchange for merchandise, or other consideration, within this state, any game birds, game animals,¹ or game fish, or parts thereof, named in this chapter, whether taken within or coming from without the state, *except as specifically permitted by law or regulation.*

(emphasis added).

Section 49-7-51(1)(b) continues, listing statutory exceptions to this prohibition for the buying and selling of wild game parts, including skins and sinew of deer and parts of a wild turkey or any nuisance animal. However, nothing in this language precludes additional exceptions by regulation of the Commission since they have “plenary authority in matters related to . . . white-tailed deer in enclosures. . . .” Miss. Code Ann. § 49-7-58(3). If the language, “except as specifically permitted by law *or regulation*,” is to have meaning, it must be that exceptions may be promulgated by the

¹ Game animals include “bear, white-tailed deer, rabbits, and squirrels.” Miss. Code Ann. § 49-7-1(a).

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Legislature or by the regulatory agency, which here, is the Commission. Miss. Code Ann. § 49-7-51(1)(a) (emphasis added). Therefore, the Commission may promulgate a regulation allowing the commercial trade of white-tailed deer held within high-fenced enclosures between white-tailed deer captive breeders.

In response to your second question, Section 49-7-54 authorizes university research facilities to “import live white-tailed deer upon prior approval of the commission.” However, this has no bearing on our answer to your first question.

If this office may be of any further assistance to you, please do not hesitate to contact us.

Sincerely,

LYNN FITCH, ATTORNEY GENERAL

By: */s/ Misty Monroe*

Misty Monroe
Assistant Attorney General

OFFICIAL OPINION