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ARIZONA ATTORNEY GENERAL

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PHOENIX, ARIZONA

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DEPARTMENT OF LAW LETTER OPINION NO. 73-43-L (R-60)

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REQUESTED BY: THE HONORABLE DENNIS W. DeCONCINI  
Pima County Attorney

- QUESTIONS:
1. What is meant by the words "shall post such lands" in A.R.S. § 17-304.A?
  2. What are the posting requirements on private lands under A.R.S. § 17-304.A for a person to be guilty of trespass?

ANSWERS: See body of opinion.

1. The Arizona Legislature revised the state fish and game laws in 1958. To clarify the intent of the Legislature, the wording of certain statutes was changed. The new statute, however, contains ambiguities that must be explained so that the landowners and various law enforcement agencies may know and enforce the law. The present question deals with the problem of the private landowner who wishes to prohibit "hunting or shooting" on his lands, but is uncertain as to the proper notice required by law.

The Arizona Legislature, in an effort to facilitate the interpretation of statutes, decreed that "[w]ords and phrases shall be construed according to the common and approved use of the language. . . ." A.R.S. § 1-213. The statute in question provides:

A. Landowners or lessees of private land desiring to prohibit hunting or shooting on their lands shall post such lands, using a notice or signboard not less than eight inches by eleven inches with the wording plainly legible. (Emphasis added.) A.R.S. § 17-304.A.

Reading the statute as a whole and applying the above quoted rules of statutory construction, it is apparent that "shall post such lands" refers to posting the lands on which "hunting or shooting" is to be prohibited.

By "post", the Legislature means a notice or signboard of prescribed minimum size (not less than eight inches by eleven inches) stating in "wording plainly legible" the particular conduct that is prohibited. Taken as a whole, the statute (A.R.S. § 17-304.A, *supra*) requires that landowners or lessees post proper notice that hunting or shooting on this particular land is prohibited.

2. The statute in question provides the means by which landowners or lessees of private lands may prohibit "hunting or shooting" on their property. The statute, however, is silent as to the proper intervals at which such notice must be placed before a person can be successfully prosecuted for trespass. The question presented here is aimed towards eliminating this uncertainty by providing the exact notice requirements of the statute.

One court approved method of construing statutes is to look at the legislative history of the statute in question. *City of Mesa v. Killingsworth*, 96 Ariz. 290, 394 P.2d 410 (1964). The original form of this statute was not subdivided into paragraphs A and B, but was written as one single paragraph. *Journal of the Senate, Second Regular Session, 23rd Arizona Legislature, at 224 (1958)*. That was the form utilized by the Committee on Fish and Game when that Committee reported to the Senate. The reasonable interpretation of the above is that the originators of the statute intended to apply a uniform standard of posting to all lands, whether private, state or federal. The posting location standard required by the statute (A.R.S. § 17-304.B) for posting state lands is that "notices or signboards shall be located where they will be most conspicuous and at intervals of not more than one-quarter mile" along the entire boundary of the land.

It is the opinion of this office that, when "hunting or shooting" prohibition notices are placed on private land under authority of A.R.S. § 17-304.A, the location of such notices must meet the same minimum standards set forth in A.R.S. § 17-304.B for public lands in order for a person to be guilty of a trespass.

Respectfully submitted,

*Gary K. Nelson*  
*by F.S.*

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The Attorney General