



COMMONWEALTH of VIRGINIA

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February 21, 2014

The Honorable Scott A. Surovell
Member, House of Delegates
Post Office Box 289
Mount Vernon, Virginia 22121

Dear Delegate Surovell:

I am responding to your request for an official advisory Opinion in accordance with § 2.2-505 of the *Code of Virginia*.

Issue Presented

You inquire whether a Virginia hunter with a valid hunting license from the Virginia Department of Game and Inland Fisheries (“DGIF”) can transfer his hunting “tags” to another Virginia-licensed hunter, who may then use those transferred tags to harvest animals on behalf of the transferor.

Response

It is my opinion that a Virginia hunter with a valid hunting license from DGIF cannot transfer his hunting tags to another Virginia-licensed hunter to be used to harvest animals on behalf of the transferor.

Background

You relate that one of your constituents is an 80-year-old, retired military officer who is an avid hunter. You indicate that, due to mobility issues, your constituent no longer can field dress an animal once he has killed it, but he would like to continue harvesting fresh venison meat. You further relate that this constituent has informed you that some other states have a proxy program that allows a hunter to request hunting tags on behalf of a disabled hunter. After reviewing the *Code of Virginia*, you are unsure whether Virginia has such a program allowing the transfer of hunting tags. You therefore would like to know whether Virginia law allows Virginia hunters, disabled or not, to transfer their hunting tags.

Applicable Law and Discussion

The Virginia Constitution provides that “[t]he people have a right to hunt, fish, and harvest game, subject to such regulations and restrictions as the General Assembly may prescribe by general law.”¹ The Board of Game and Inland Fisheries (“BGIF”) administers hunting licenses in the Commonwealth pursuant to its authority to “[e]xercise powers it may deem advisable for conserving, protecting, replenishing, propagating and increasing the supply of game birds, game animals, fish and other wildlife

¹ VA. CONST. art. XI, § 4.

of the Commonwealth”² and its power to promulgate regulations establishing the fees charged for hunting licenses.³ In addition, § 29.1-300 provides that it is “unlawful to hunt, trap or fish in or on the lands or inland waters” of the Commonwealth without a license, subject to exceptions set forth in § 29.1-301.

As part of a license to hunt bear, deer, or turkey in the Commonwealth,⁴ a hunter receives “tags” attached to the license, one for each animal the hunter is permitted to harvest per license year.⁵ Upon killing an animal, a licensed hunter is required to remove the notch area from one of the tags on his license.⁶ There is no statutory or regulatory provision, or DGIF policy, allowing the transfer of hunting tags from one licensed hunter to another for any purpose. Furthermore, there is nothing in Title 29.1 of the *Code of Virginia* or in current BGIF regulations that would permit a hunter to transfer his license to another hunter. Section 29.1-328 establishes the general terms for hunting licenses, and it does not contain any provision allowing for the transfer of a hunting license for any purpose. There are, in fact, a few statutory provisions that provide specifically for the nontransferability of special types of hunting licenses,⁷ but there are no statutes or regulations permitting the transfer of a hunting license from one hunter to another.⁸

Please note that, pursuant to the authority set forth in § 29.1-305.1, BGIF has established bonus deer permits that allow the killing of antlerless deer⁹ in addition to the license year bag limit.¹⁰ These

² VA. CODE ANN. § 29.1-103(11) (2011).

³ Section 29.1-303 (2011); *and see* § 29.1-103(16).

⁴ DGIF issues a license authorizing the hunting of small game, in addition to which hunters who wish to hunt for bear, deer and turkey must purchase a separate big game license. *See* § 29.1-305 (2011); 4 VA. ADMIN. CODE § 15-20-65.

⁵ For example, licensed hunters in Virginia currently are permitted to kill six deer per license year east of the Blue Ridge Mountains and five deer per license year west of the Blue Ridge Mountains. *See* 4 VA. ADMIN. CODE § 15-90-90. Therefore, current hunting licenses include six tags, with one marked to indicate that it is valid for use east of the Blue Ridge Mountains only.

⁶ *See* 4 VA. ADMIN. CODE § 15-90-231(A): “Any person killing a deer shall, before removing the carcass from the place of kill, validate an appropriate tag on his special license for hunting bear, deer, and turkey, bonus deer permit, or special permit by completely removing the designated notch area from the tag.” This tag validation requirement is echoed for elk in 4 VA. ADMIN. CODE § 15-90-85 (elk are treated as deer for harvest purposes, as they are of the same *Cervidae* family as deer); for bear in 4 VA. ADMIN. CODE § 15-50-81; and for turkey in 4 VA. ADMIN. CODE § 15-240-81.

⁷ *See, e.g.*, § 29.1-302.1 (2011), which authorizes lifetime hunting licenses and includes a specific prohibition against transfer; § 29.1-301(E) (2011), which provides that Virginia residents 65 years of age or older may, upon providing satisfactory proof of age and paying a \$1 fee, apply for and receive a nontransferable annual license permitting them to hunt or trap in all cities and counties of the Commonwealth; and § 29.1-302 (Supp. 2013), which provides for a nontransferable lifetime hunting license for certain resident disabled veterans who are totally and permanently disabled due to a service-connected disability.

⁸ In fact, § 29.1-337.1 (2011) provides that it shall be unlawful for any person to, among other things, borrow or lend or attempt to use, borrow or lend a license.

⁹ The term “antlerless deer” refers to does, button bucks (male fawns approximately six months old), and deer that have shed their antlers. VA. DEP’T OF GAME AND INLAND FISHERIES, HUNTING & TRAPPING IN VIRGINIA 33 (July 2013 - June 2014), *available at* <http://www.dgif.virginia.gov/hunting/regulations/2013-2014-virginia-hunting-and-trapping-regulations-digest.pdf>.

¹⁰ Section 29.1-305.1 (2011) (“The Board shall establish by regulation a procedure for selling bonus deer permits. Each bonus deer permit purchased shall entitle the holder thereof to take additional deer under conditions

permits do not allow the daily bag limit to be exceeded, but there is no restriction on the number of bonus permits that a hunter may purchase and use per license year.¹¹ Thus, for example, a hunter such as your constituent who finds it difficult to field dress animals could ask a licensed hunter in the Commonwealth to purchase bonus permits to harvest an unlimited number of antlerless deer, subject to other applicable hunting laws, and share the venison meat with him.

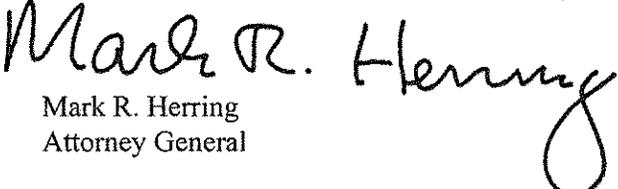
Additionally, there are some situations where individuals are permitted to assist other hunters with certain tasks. For example, § 29.1-521(A)(3) allows any properly licensed person, or a person exempt from having to obtain a license, who has obtained the daily bag or season limit to assist others who are hunting game by calling game, retrieving game, handling dogs, or conducting drives in certain situations; and § 29.1-301(N) provides that no hunting license shall be required of any person who is not hunting but is aiding a disabled person to hunt when such disabled person possesses a valid Virginia hunting license. Consequently, your constituent could receive assistance from other persons in those statutorily-established circumstances. Furthermore, § 29.1-521.3 provides that any person otherwise properly licensed to hunt, upon application to a conservation police officer and the presentation of a medical doctor's written statement based on a physical examination that such person is permanently unable to walk due to impaired mobility, may be issued a lifetime, nontransferable permit to shoot wild birds and wild animals from a stationary vehicle during established open hunting seasons and in accordance with other laws and regulations.

Conclusion

Accordingly, it is my opinion that a Virginia hunter with a valid hunting license from DGIF cannot transfer his hunting tags to another Virginia licensed hunter to be used to harvest animals on behalf of the transferor.

With kindest regards, I am

Very truly yours,


Mark R. Herring
Attorney General

prescribed by the Board.”). *See also* VA. ADMIN. CODE §§ 15-20-65, 15-90-90 (establishing the fees for bonus deer permits and setting forth conditions for taking deer under such bonus permits).

¹¹ *See* 4 VA. ADMIN. CODE § 15-90-90(D) (“Bonus deer permits shall be valid for antlerless deer only. Deer taken on bonus permits shall count against the daily bag limit but are in addition to the seasonal bag limit.”).