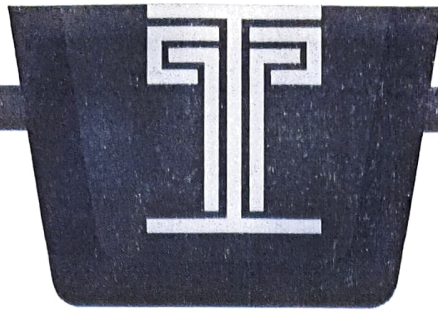




CUTHBERTSON & PALMEIRA
ATTORNEYS INC.

LEGAL OPINION

TO: ALFRED HENRY MARKRAM
FROM: CUTHBERTSON & PALMEIRA ATTORNEYS INC
DATE: 11 March 2021

1. INTRODUCTION:

Alfred Henry Markram ("Client") instructed our office to provide an opinion as to whether an airgun may be discharged in a residential/built up area in rendering his services authorised by the Nature Conservation Ordinance Act 19 of 1974.

2. RELEVANT FACTUAL MATRIX:

- 2.1. Mr Markram when rendering his services (using an airgun to eliminate the presence of birds) was advised that it is illegal in terms of South African Law to discharge an airgun in a residential/built up area and constitutes a criminal offence.
- 2.2. A licence for the hunting of birds which are ordinary game during an open season has been obtained by the client in terms of the Nature Conservation Ordinance Act 19 of 1974.

DIRECTORS: NUNO PALMEIRA LLB (UJ)
CLINTON CUTHBERTSON LLB (UJ)

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3. APPLICABLE LAW:

3.1. THE FIREARMS CONTROL ACT 60 OF 2000:

3.1.1. Section 1 of the Act defines an airgun as “any device manufactured to discharge a bullet or any other projectile –

(a) Of a calibre of less than 5.6 mm (.22 calibre); or

(b) At a muzzle energy of less than 8 joules (6ft-lbs),

by means of compressed gas and not by means of burning propellant.

3.1.2. Section 1 of the Act defines a firearm (amongst other things) as any device manufactured to discharge a bullet or any other projectile of a calibre of 5.6 mm (.22 calibre) or higher at a muzzle energy of more than 8 joules (6ft-lbs), by means of compressed gas and not by means of burning propellant.

3.1.3. Section 120, subsection (7) of the Act states that it is an offence to discharge a firearm, an antique firearm or an airgun in a built-up area or any public place, without good reason to do so.

3.2. NATURE CONSERVATION ORDINANCE ACT 19 OF 1974

3.2.1. In terms of Section 18 (1) (d) & (e) of the Act, if the board is of the opinion that any wild animal or any species of wild animal found on any land is causing damage to crops or other property, whether movable or immovable of any person or should be hunted in the interests of nature and environmental conservation, it may cause for such animal to be hunted on such land or any land to which such animal flees while being hunted.

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4. APPLICATION OF LAW:

4.1. THE FIREARMS CONTROL ACT 60 OF 2000:

4.1.1. Taking cognisance of Section 1 of the Firearms Control Act, by using a calibre smaller than 5.6 mm or reducing the muzzle energy, the airgun will still be classified as such rendering it's discharge in a built-up/public place illegal in terms of Section 120, subsection (7) of the Act.

4.1.2. By using a bigger calibre or increasing the muzzle energy, an airgun will then fall within the scope of a firearm and as such render it's discharge in a built-up/public place illegal in terms of Section 120, subsection (7) of the Act.

4.2. NATURE CONSERVATION ORDINANCE ACT 19 OF 1974

4.2.1. Taking cognisance of the fact that a licence was obtained in terms of the Act, the board found that the birds had to be hunted for the purposes of eliminating damage to property, therefore, rendering your services authorised in terms of legislation.

5. OPINION:

5.1. Considering the above, no modification to the airgun will render its discharge in a built-up / public area legal.

5.2. Having said that, it is uncertain whether the phrase "without good reason to do so" contained in Section 120 of the Firearms Control Act would include the rendering of your services. Due to its wide scope, should the matter ever take the legal route, it will be in the Court's discretion on whether the rendering of your services constitutes "good reason".

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5.3. However, further to the above, the fact that a licence was obtained for the execution of your services and that the basis of this licence is in terms of the Nature Conservation Ordinance Act, it could be argued that your services fall within the scope of "good reason" to fire an airgun in a built-up/public place, subject to the consent of the land owner and fair warning to persons possibly affected thereby, having due regard for the safety of the public.

Yours faithfully

Per:

Cuthbertson & Palmeira Attorneys Inc.

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