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OPINION NUMBER 91-69

Honorable Gerry E. Hinton
State Senator
2549 Carey St.
Slidell, LA 70458

Dear Mr. Hinton:

You have requested an opinion of the Attorney General regarding the use of a firearm by a senior citizen to prevent trespass upon his property by a group of unruly young people.

The sheriff's department has been unable to prevent further trespass because the names and addresses of the young boys are unknown, and they are no longer on your constituent's property when deputies have responded to his complaints.

The answer to whether the property owner can fire a warning shot to intimidate the trespassers is an emphatic no.

One means for the commission of the crime of assault, even where there is no attempt to commit a battery, is the intentional placing of another in the reasonable apprehension of receiving a battery. Clearly this last definition of assault encompasses the discharge of a firearm for the purpose of inducing fear and intimidation. La. Crim. Code Art. 36. The use of a dangerous weapon such as a firearm to commit an assault constitutes the more serious crime of aggravated assault. La. Crim. Code Art. 37.

Force, which would constitute an assault, may nonetheless be justified and, therefore, lawful if used to protect against trespass upon private property and if the force or violence is reasonable and apparently necessary to prevent such offense. Further, if the force or violence used results in a homicide, the legal justification for the use of force is nullified. La. Crim. Code Art. 19.

Honorable Gerry E. Hinton
State Senator, District 11
OPINION NUMBER 91-69
Page -2-

In our opinion, the use of the force inherent in the discharge of a

firearm is neither reasonable nor necessary in the circumstances described. I truly appreciate the frustration and aggravation of the homeowner, and that is a significant component in the danger of sanctioning the use of firearms in this type of situation. Firearms are inherently dangerous because they are inherently lethal. Bullets kill whether they are fired accidentally or intentionally. Of further cause for reflection, people who believe themselves to have been shot at often arm themselves and shoot back.

In our opinion, the firing of warning shots from a firearm at simple trespassers, not attempting to enter the dwelling house, but rather simply traversing the lawn, is an aggravated assault not reasonably effected in the lawful defense of property.

It is the duty of the sheriff to apprehend these offenders. The homeowner should not take the law into his own hands.

Trusting this to be of sufficient information, I am,

Sincerely,

WILLIAM J. GUSTE, JR.
Attorney General

BY:

CHARLES J. YEAGER
Assistant Attorney General

CJY:jv