

MAINE STATE LEGISLATURE

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STATE OF MAINE

R E P O R T

OF THE

ATTORNEY GENERAL

for the calendar years

1949 - 1950

March 30, 1949

To Harrison C. Greenleaf, Commissioner of Institutional Service

I have your memo referring to a conversation we had in the middle of March concerning transfers from the State Hospitals to the Pownal State School and from Pownal to a State Hospital under the provisions of Section 13 of Chapter 23, R. S. 1944.

I feel that the phrase, "Any person who is committed to a state charitable or correctional institution, and is under the control of the department," should be interpreted broadly to include State Hospitals and the Pownal State School, as that is what the legislature was dealing with when this law was enacted and it had nothing to do with private charitable hospitals.

RALPH W. FARRIS
Attorney General

March 30, 1949

To Col. Francis J. McCabe, Chief, Maine State Police

I have your memo of March 21st, asking for a ruling on the following questions which were based on an attached hypothetical case presented in a memorandum from Lt. Earle S. Chase, Commanding Officer of the Scarborough Barracks.

"1. Is a member of the Maine State Police expected to enforce the Game Laws in extenuated (sic) circumstances?"

My answer to Question 1 is in the negative, except in cases where he personally observed the game laws of the State being violated.

"2. Does the 'any officer' in the section of the Game Laws relative to shooting dogs chasing deer apply to State Troopers?"

My answer to Question 2 is in the affirmative; but the State trooper has no legal authority to delegate the killing of any dog to a private person when he finds the dog in the act of hunting, chasing or killing deer.

"3. Has a member of the State Police the legal right to act under the Game Laws?"

My answer to Question 3 is in the affirmative. Section 19 of Chapter 33, the Inland Fish and Game Laws, Revision of 1947, provides:

"Sheriffs, deputy sheriffs, police officers and constables are vested with the powers of inland fish and game wardens, . . ."

"4. May a State Trooper or a Game Warden command aid in the performance of his duties to protect the life and property of the State, especially deer?"

In answer to Question 4 I will state that there is no statutory authority for a State Trooper or game warden to command aid in enforcing the fish and game laws of the State; nor can an officer delegate his authority to a private person, the reason being that the game laws are *mala prohibita*, and the persons violating the game laws are not in the commission of a felony. It is a very serious responsibility for an officer to delegate his constituted authority to a private individual.

In the case of dogs chasing and killing deer, Section 86 of Chapter 33 of the Revision of 1947 provides that any person having evidence of any such hunting, chasing or killing of deer by dogs must present that evidence to the Commissioner, who shall give notice in writing to the owner or keeper of said dog, stating the acts committed by the dog. The owner of the dog so notified shall not permit any dog mentioned in said notice to leave the immediate control of said owner or keeper under the penalty provided in Section 119. After the owner of the dog has received written notice that his dog has committed any act prohibited by Section 86, it shall be lawful for anyone to kill the dog when found committing any of the acts prohibited. Therefore it has been the practice of all game wardens to give notice to the owner or keeper of the dog before authorizing any person not an officer of the law to kill the dog found committing the act.

"5. Is a citizen justified in carrying out the instructions of such an officer under these circumstances?"

My answer to Question 5 is in the negative. If a citizen carries out the instruction of an officer which that officer has no statutory authority to give, he lays himself liable to a civil action for damages.

"6. What legal action, if any, should the officer carry out against the owners of dogs chasing deer?"

In answering this question I refer you again to Section 86 of Chapter 33, Revision of 1947, which provides for notice to the owner or keeper of the dog before the act of killing the dog.

I trust that these answers to your six questions give you the desired information relating to the handling of cases where dogs are chasing, hunting and killing deer.

RALPH W. FARRIS
Attorney General

March 31, 1949

To Charles P. Bradford, Director, Park Commission
Re: Power line right of way—Sebago Lake

I have your memo of March 18th, stating that the Park Commission has had a request from the Central Maine Power Company to grant a right of way for a power line to serve a cabin constructed and used by the Department of Inland Fisheries and Game in Sebago Lake Park. You further state that it is your interpretation of Chapter 32, Section 23, that the Commission cannot enter into an agreement with the Central Maine Power Company for a right of way for a period of more than one year.

I wish to confirm your interpretation of this statute.

You further state that the interest of the Department of Inland Fisheries and Game indicates the need of 1273 feet of right of way.

It seems to me that I advised you on this matter on May 12, 1948, and I offer the same suggestion as I did on that particular matter, that the privilege be limited to one year, to be extended at the end of each year, with the consent of the Governor and Council, by the Commission for a period of five years.

RALPH W. FARRIS
Attorney General