

# MAINE STATE LEGISLATURE

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*Health & Welfare*

# Department of Health and Welfare

STATE HOUSE, AUGUSTA, MAINE

Date May 14, 1963

To Frank E. Hancock, Attorney General

From Frank W. Davis, Assistant Attorney General *F.W.D.*

Subject Request for Opinion

## HISTORY:

In the Fall of 1962, the Commissioner of the Department of Health and Welfare learned that there was a highly dangerous "rabies in foxes situation" on our Maine-New Hampshire-Quebec border. There were three known cases on our side of the border, and about forty-seven known cases on the New Hampshire-Canadian side. It was felt that an emergency existed and prompt action was necessary, since once the disease becomes firmly or widely established, elimination, or control, is an extremely expensive and prolonged effort.

A control plan was immediately formulated by the Department of Health and Welfare in conjunction with the Maine Department of Inland Fisheries and Game, the Maine Department of Forestry, the Maine Department of Agriculture, the U. S. Fish and Wildlife Service, the various towns, and all major timberland owners in the area, as well as warning posters in all areas. The area that was finally covered ran from Moosehead Lake to the Allagash and about fifty miles inside our Northwest border and covered approximately 4900 square miles. Special permission agreements were signed by most, if not all, timberland owners. All railroad tracks and woods roads were covered by placing the poison baits at each location and one-half mile apart. The baits were actually placed by digging a dirt hole in the edge of the road, with the toe of a boot and covering the bait with dirt, and each location was marked with an orange plastic flagging tape attached to trees, etc.

The program ran from September 17, 1962 to October 5, 1962 and the control program was about 90% successful. However, other foxes in this area have been found rabid since this control program, in what were termed a few "fox pockets" that could not be reached under this program - these should be cleaned out this Fall and additional similar programs done each year for the next two or three years. Therefore, another control program is under consideration now.

Free immunization was given to all Maine animal owners that desired it, and of the one or two dogs who lost their lives, their owners were reimbursed for same.

Canada, apparently, is doing little or nothing about their rabies problem, and New Hampshire is not doing a great deal better. Because of this our programs should continue yearly until New Hampshire and Canada do the same or it may get beyond our control here.

STATEMENT PROPOUNDED:

The Commissioner of Health and Welfare sets out poison pellets in certain areas, properly marked, to kill off foxes. The reason - to prevent them from becoming rabid. The pellets also can be harmful to other species of animals and some birds.

QUERY:

- (a) Under what authority does the Commissioner act?
- (b) How far can he go in its application?

OPINION:

(a) The Department of Health and Welfare (and/or the Commissioner) only has the authority to act in such situations under the following laws and by following the procedure specified therein:

CHAPTER 22, Section 3. Duties:

- A. "The department shall have the general supervision of the interests of health and life of the citizens of the state."
- B. "It shall investigate the causes of disease occurring among the stock and domestic animals in the state, and the methods of remedying the same."
- C. "it shall have general oversight and direction of the enforcement of the statutes respecting the preservation of health; and it may direct any officer or employee of the department to assist in the study, suppression or prevention of disease in any part of the state."

CHAPTER 22, Section 901. System of Inspection.

- A. "The more effectually to protect the public health, the department may establish such systems of inspection as in its judgment may be necessary to ascertain the actual or threatened presence of the infection of . . . (certain specific diseases) . . . or other dangerous, infectious, or contagious disease . . ."
- B. "The department may from time to time make, alter, modify or revoke rules and regulations for guarding against the introduction of any infectious or contagious diseases into the state, including rabies or hydrophobia in animals and men; for the control and suppression thereof if within the state; for the quarantine and disinfection of persons, localities and things infected or suspected of being infected by such diseases . . . The department may declare any and all

of its rules and regulations made in accordance with the provisions of this section to be in force within the whole state, or within any specified part thereof, and to apply to any person or persons, family, camp, building, vessel, railroad car, or public vehicle of any kind."

<sup>27</sup> CHAPTER 25, Section <sup>907</sup> 38. Rules & Regulations; publication; supersede all local rules.

"Such rules and regulations, if of general application, shall be published in the state paper; but whenever in the judgment of the department it shall be necessary to do so, special rules and regulations, or orders relating to said diseases may be made for any town, village, or city without such publication, and the service of copies of such rules, regulations, or orders upon such town, village, or city through the officers thereof shall be a sufficient notice thereto; . . ."

<sup>27</sup> CHAPTER 25, Section <sup>913</sup> 39. Penalty for refusing to obey rules.

"All health officers, municipal officers, sheriffs, constables, police officers, and marshals shall enforce the rules and regulations of the department made as provided in the 2 preceding sections in every particular affecting their respective localities and duties; . . ."

<sup>27</sup> CHAPTER 25, Section <sup>906</sup> 42. Powers in emergency or threatened epidemics.

"In case of emergency or threatened epidemic of disease which may affect more than one city, town, or plantation, the said department, if it shall appear to it necessary and proper for the protection of life and health, may make such further orders and regulations as in its opinion the public exigency may require and which shall become effective immediately on their promulgation."

This is the only procedure that can be legally followed by the Department of Health and Welfare (and/or the Commissioner). The evidence does not show that this procedure was followed.

(b) It is my opinion that once the Department of Health and Welfare (and/or the Commissioner) has established fair and reasonable orders, rules and regulations on health matters that he may then have broad discretionary powers thereunder.