

MAINE STATE LEGISLATURE

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Amund Department of Health and Welfare *Cep*

STATE HOUSE, AUGUSTA, MAINE

Date October 17, 1963

To Dean Fisher, M.D., Commissioner, Department of Health & Welfare.

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

Subject Request for Additional Information to Opinion Rendered May 14, 1963 on Rabies Control of Foxes

FACTS:

The former opinion dealt with the question of the source, if any, of the Commissioner of the Department of Health and Welfare's authority to control a fox population as a means of controlling the spread or introduction of rabies into the State of Maine. The conclusion reached was that such actions could be carried out only on the basis of rules and regulations developed by the Department of Health and Welfare in relationship to Section 37, Chapter 25.

2457 Under the Department of Inland Fisheries and Game Laws, we find Chapter 37, Section 72 which specifically prohibits the poisoning of wild animals, and in the 1961 Cumulative Supplement under Chapter 37, Section 72 we find the following: "The Commissioner or his duly appointed agents may, however, in an emergency use such devices or methods as are necessary for control of wild dogs or other wild animals when approved by the Advisory Council." *961 22*

QUESTION:

Can a rule designed for the protection of people and domestic animals supercede a Statute relating only to wild animals?

ANSWER:

No, a rule or regulation may be written, but it would have absolutely no force and effect, as it is a well known legal maxim that a rule or regulation cannot, in and of itself, supercede a Statute.

INFORMATION:

I thoroughly checked with two officials in the Inland Fisheries Department and they informed me that the above chapters and sections were put on the books to stop the wholesale poisoning of foxes by lazy trappers for their skins.

Under Department of Health and Welfare Laws, Chapter 25, Section 37, definitely gives our department "the right from time to time to make, modify, or revoke rules and regulations for guarding against the introduction of any infectious or contagious diseases within the state, including rabies or hydrophobia of animals and men." Chapter 25, Section 42 allows the department, "in case of emergency or threatened epidemic of disease, to make such further orders and regulations as in its opinion the public exigency may require and which will become effective immediately on their promulgation." These give our department extremely broad powers. *22 901*

I think that all that our Commissioner of Health and Welfare need do in a case like the Rabies Control Program on foxes recently held is to get in touch with the Commissioner of the Inland Fisheries and Game Department under Chapter 37, Section 72, and the 1961 Cumulative Supplement of same and I am positive that the Inland Fisheries Commissioner and/or its Advisory Council will co-operate in any way necessary to control wild dogs or other wild animals.

However, if an impasse should arise between the Inland Fisheries and Game Department and the Department of Health & Welfare, for instance, by the Inland Fisheries and Game Department and/or its Advisory Council absolutely refusing to co-operate, then I think this matter would have to be decided by the Governor and Council and/or the Legislature in regular or special session because of the criticism and clamor that would arise from the general population. As we all know, cases of general health or emergency health matters of citizens would certainly have to, in the final analysis, come ahead of or take precedence over wild or domesticated animals or any diseases spread by them.

FWD/ad