

MAINE STATE LEGISLATURE

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STATE OF MAINE

Inter-Departmental Memorandum Date April 11, 1967

F. F. Dorrance

Dept. Agriculture

From Emery O. Beane, Jr., Assistant

Dept. Attorney General

Subject 7 M.R.S.A. 1964, § 3652, as amended by P. L. 1965, C.
Meaning of Livestock.

FACTS:

Claim has been filed, in reliance on the provisions of the above statute, in the form of a bill for damages, accompanied by statement of investigation by one of the town selectmen, and state claim form signed by all of the selectmen, for damage consisting of death of a basset hound and injuries to two weimaraner dogs necessitating veterinary treatment allegedly caused by a fisher, a wild animal, gaining entrance to an allegedly enclosed kennel where such dogs are raised supposedly for profit, presumably for show or breeding.

QUESTION:

Are dogs raised for profit within the inclusion of the word "livestock" as used in said statute, so as to authorize payment to the dog owner under the statute?

ANSWER:

No.

OPINION:

The referenced statute amounts to a limited waiver of sovereign immunity by the state, to allow compensation to individuals for damages suffered due to the actions of wild animals. Pursuant to certain condition precedent procedure, the state accepts liability without suit or direct recourse to the Legislature to allow the individual to sue the State.

Statutes which are in derogation of sovereignty are generally narrowly construed in favor of a state against the individual, especially where the state is named in the statute. See Sutherland, Statutory Construction, § 6301 et seq. This means, it would seem, that the benefits authorized by such a statute as the instant one should not be extended beyond their reasonably obvious import.

It is acknowledged that Webster's Dictionary has been cited by the investigating selectman as holding that "livestock" covers all domestic animals raised for profit. However, examination of many definitions of the word in legal dictionaries and in "Words and Phrases," a volume of legal definitions based on court decisions, indicates that it does not always have such a broad connotation in statutes of various sorts. Though definitions based on some of the many types of statutes construed are broad enough to cover most domestic animals, many court and legal treatise definitions on negligence statutes and others have treated the word "livestock" as narrower than "domestic animals" and similar phrases.

For instance the Restatement of Torts, § 504 has stated the general meaning as follows: "The word is used to denote those kinds of domestic animals and fowls which are normally susceptible of confinement within boundaries without seriously impairing their utility and intrusion of which upon the land of others normally causes harm to the land or to crops thereon." (Emphasis mine) This I do not believe would include dogs. Bird dogs were held not "stock" or "livestock" so that a statute placing the burden of proving want of negligence on a railroad to escape liability for injury or killing stock did not apply in a suit for killing dogs, 2 La. App. 680, 683. Dogs were not to be listed or assessed for personal property taxation under a classification listed as "livestock and domestic animals", 182 Va. 560. Not to enumerate all the cases found along this line, and some including fur-bearing animals (normally this would not include dogs.), I believe that the general tenor of the cases may be summed up as suggesting that primarily the meaning of the word "livestock" is confined to heavy, hooped, or foraging

animals, largely docile, of the equine, bovine, ovine, swine and goat families, with the possible exception of certain domesticated animals of normally wild fur-bearing species; i.e., grazing animals which may, ordinarily be kept in bounds, for their own or others' protection, by ordinary fencing not of tight construction.

Decision on ^{the} construed statutes most nearly resembling the instant one, both authorizing killing of dogs worrying, chasing, or injuring, was as follows:

" . . . livestock means domestic animals or beasts generally collected, used or raised on a farm or ranch such as cattle, sheep, swine, goats, horses, mules, donkeys, etc., . . ." 122 Mont. 327.

"means domestic animals used or raised on farm, especially those kept for profit." Laner v. State, Okl. Cr.

Note that these say "raised on a farm". I do not decide whether a kennel might be construed as a farm or ranch.


It is true that a former attorney in this office allowed payment of a claim under former provisions of this statute for domesticated mink being raised for pelts. However, there was available to him in that case another statute specifically defining the domestication qualification for such animals. Bear in mind too that pelt-raising has been declared "agricultural" in some instances.

I note that the Maine Legislature in enacting other statutes (See M.R.S.A. Title 7, §§ 3602, 3605, 3653) regulating dangerous dogs, where the owner and not the State is made liable, has used the protective coverage phrase "domestic animals" and not "livestock". It must be assumed that the Legislature has deliberately thus used the broader phrase with knowledge of the instant act's provisions. I note further, incidentally, that your own department may be considered to have given a practical construction to the act by use of a check-list on your official claim form which enumerates several species of protected domestic animals, but does not include dogs nor provide blocks for checking "other" or miscellaneous species.

Our Legislature has defined livestock for purposes of licensing livestock dealers in M.R.S.A., Title 7, § 1302 (3) as follows:

"3. Livestock. 'Livestock' shall include all cattle, dairy, feeding, beef or breeding animals, sheep, goats, swine and horses."

Note that dogs are not mentioned as such. It might be suggested that the kennel dogs involved here are "breeding animals" under this definition, but definitions in this section ^{are} expressly limited to "as used in this chapter" (licensing only), and kennels (as well as dogs) are themselves licensed under other provisions of law. It is interesting to note that the Legislature in § 1751 for purposes of disease control has included more animals in its definition of "domestic animals" than it has in the § 1302 "livestock" definition.



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