

MAINE STATE LEGISLATURE

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STATE OF MAINE

Inter-Departmental Memorandum Date May 1, 1975

To Maynard F. Marsh

Dept. Fish and Game

From Joseph E. Brennan

Dept. Attorney General

Subject Local Ordinance Affecting Wildlife Sanctuary

SYLLABUS: A municipal ordinance prohibiting the discharge of firearms within a municipality is not invalid on the ground that it may frustrate the commissioner of Inland Fisheries and Game from regulating the population of deer in wildlife sanctuaries within the municipality through the establishment of an open hunting season in those sanctuaries.

FACTS: The town of Cape Elizabeth has a local ordinance prohibiting the discharge of firearms within the town. However, the Legislature has designated two areas of land within the town as wildlife sanctuaries (Richmond's Island and the Cape Elizabeth Sanctuary) in which the Commissioner of Inland Fisheries and Game, pursuant to 12 M.R.S.A. §2155, is authorized to permit, inter alia, hunting. Owing to an overpopulation of deer in the area, the Commissioner wishes to establish a hunting season for deer.


QUESTION AND ANSWER: Does the existence of the local ordinance bar the establishment of a hunting season on deer in the sanctuaries? Yes.

REASONING: In Maine, as elsewhere, the general rule is that if there is a direct conflict between a local ordinance and a state statute, the state will be deemed to have pre-empted the field and its statute will, therefore, prevail. Me. Const. Art VIII - A; 30 M.R.S.A. §1917; Burkett v. Youngs, 135 Me. 459, 465 (1938); 5 McQuillen, Municipal Corporations, §15.20 (3rd ed. 1969); 62 C.J.S. Municipal Corporations §§143-45. The only question in the instant case, therefore, is whether a conflict does exist between the Cape Elizabeth ordinance and section 2155.

It would appear that such a conflict does not exist in that the purposes of the two enactments are different and the means provided for their accomplishment are not identical. The laws establishing wildlife sanctuaries, like the state hunting laws generally, are designed to protect the existing stock of wildlife in the State. The ordinance prohibiting the discharge of firearms is designed to insure the safety of the citizens of Cape Elizabeth. Moreover, while it is true that the two enactments are in conflict to the extent that

a discharge of firearms might be permitted by one but prohibited by the other, the accomplishment of the goal of regulating the deer or other wildlife stock on the part of the Fish and Game Commissioner would not be totally frustrated by the Cape Elizabeth ordinance, since there are other means available to reduce the deer population,

It should also be noted that while there are no Maine cases on the point, the view that local firearm control ordinances are not pre-empted by state hunting laws has been endorsed by the only two State courts of last resort to have ruled on the point. Michigan United Conservation Clubs v. City of Cadillac, 214 N.W. 2d 736 (Mich. 1974); Township of Chester v. Panicucci, 299 A. 2d 386 (N.J. 1973). See generally 7 McQuillen, supra §24.492 (3rd ed. 1968).



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