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STATE OF MAINE

Inter-Departmental Memorandum Date June 24, 1975 ✓

To John A. Smiley, Director

Dept. Agriculture - Division of
Animal Industry

From Phillip M. Kilmister, Assistant

Dept. Attorney General

Subject Tort Liability of Departmental Employees

In answer to your memorandum of May 29, 1975 addressed to this office, please be advised that the Department of Agriculture cannot be sued for damages sustained by private citizens caused by acts of Departmental agents and employees. It should be emphasized, however, that individual departmental officers and employees possess no sovereign immunity which protects them from personal liability for their wrongful acts.

All of the hypothetical cases cited in your memorandum represent reasonably foreseeable factual situations germane to the issue of the applicability of liability which may result from the acts, or omissions of action, of departmental officers and employees. Unfortunately, even well established legal principles cannot offer clear cut guidelines to predetermine whether or not liability will attach in any given factual situation.

Speaking, of necessity, in general terms, the law is fairly well summarized in a leading legal treatise, as follows:


"A public officer proceeding to perform his statutory duties of inspection, treatment, or destruction of animals may find himself the defendant in a lawsuit alleging that his performance was not in accordance with statute, or was negligent or otherwise wrongful. The ordinary rules apply: that a public official performing duties in a judicial capacity (those requiring the exercise of discretion) will not be held liable for injuries resulting from his performance of duty within the scope of his authority, in the absence of malice, fraud, or corruption; whereas an officer performing ministerial duties may be held to answer in damages for injuries resulting from the negligent

performance of his duties. The distinction is not always clearly drawn in the cases, however, for the courts seem first to look at the facts and the kind of culpability involved to determine what the official should, or should not, have done under the circumstances, and then his duties may, or may not, be labeled judicial or ministerial to support that conclusion." 2 A.L.R. 3d (Public Offices-Injury to Animals) p. 828.

Niceties in distinction between the categorization of acts as ministerial or judicial are not always helpful in determining the existence of compensable liability of public officers and employees. In either event, a recent decision of the Kentucky Court of Appeals illustrates the need for a complainant to prove negligence or other wrongdoing on behalf of a government officer or employee, as a condition precedent to recovery for damages allegedly caused by the conduct of said officer or employee. The case, among other things, also stresses the modern trend of the law that liability should not be imposed upon public officers and employees "simply because the government cannot be made to pay."

"Officers and agents of the state department of agriculture cannot be held personally liable to the owners for killing a cow believed to be diseased, even if it is eventually proved that the cow was not diseased, where the officers and agents acted in good faith in carrying out their duties under a statutory system for the control and eradication of communicable diseases of animals, and where they were not chargeable with any knowledge that would have lead a reasonable man to question the correctness of a diagnosis by the department's veterinarian that the animal was diseased; personal liability can be imposed on such officers and agents if they killed the cow in wilful and malicious defiance of a judgment determining that the department had no authority to kill the cow and finding that the cow was not in fact diseased." Spillman v. Beauchamp, 362 S.W.2d 33, 2 A.L.R. 3d 814 (1962)

In summary, I trust that the above-information will be of some assistance to you. Regretfully, I cannot improve upon the over-used cliqu e regarding tort liability, that each case must be largely determined within its own factual context.


Phillip M. Kilmister
Assistant Attorney General