

# MAINE STATE LEGISLATURE

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# STATE OF MAINE

Inter-Departmental Memorandum Date March 19, 1976

*MCM*  
*32B*

To Maynard F. Marsh

Dept. Inland Fisheries & Wildlife

From Cabanne Howard, Assistant

Dept. Attorney General

Subject Local Ordinances Prohibiting the Use of Leg Hold Traps and the Hunting of Bear with Dogs

**SYLLABUS:** A municipal ordinance prohibiting the use of leg hold traps is not pre-empted by a state statute prohibiting the use of auxiliary teeth on leg hold traps. A municipal ordinance prohibiting the hunting of bear with dogs is not pre-empted by a state statute prohibiting the hunting of bear with more than four dogs.

**FACTS:** The town of Wells is currently considering enacting an ordinance prohibiting the use of leg hold traps to trap animals in the town. The only state legislation dealing with the subject of leg hold traps is 12 M.R.S. §2403, which provides:

"It shall be unlawful for any person to use auxiliary teeth on any leg hold trap set on land."

The town of Addison currently has an ordinance prohibiting the hunting of bear with dogs from June 1 through the first Monday after Thanksgiving. The only state legislation dealing with the hunting of bear with dogs in this period is 12 M.R.S. §2355-D, which provides:

"It shall be unlawful for any person or persons hunting together, to use more than four dogs at any one time for the purpose of hunting bear."

**QUESTIONS AND ANSWERS:** Do these two statutes pre-empt the respective fields of leg hold trapping and hunting of bear with dogs so as to render the two ordinances invalid? No.

**REASONING:** In Maine, as in all states where the "home rule" principle has been made part of the state's constitution or statutory law, 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. §1917; Burkett v. Youngs, 135 Me. 459 (1938); 5 McQuillin, Municipal Corporations, §15.20 (3d ed. 1969); 62 C.J.S. Municipal Corporations §§ 143-45; Opinion of the Attorney General, May 1, 1975 (copy attached). In particular, the statute cited specifies that:

"Any municipality may, by the adoption. . . of ordinances. . . exercise any power or function which the Legislature has power to confer upon it, which is not denied expressly or by clear implication."

The question then, since the Legislature clearly has the power to regulate the manner of trapping and hunting of animals, is whether it has "denied expressly or by clear implication" to the municipalities of the state the power to prohibit leg traps or hunting of bear with dogs.

In my opinion, the Legislature has not gone this far. The legislation in question merely prohibits the use of certain kinds of leg traps and the use of more than a certain number of dogs in hunting bear. It certainly does not expressly deny municipalities the power to prohibit leg traps and hunting bear with dogs altogether, nor does it so clearly authorize such activities as to amount to a denial by clear implication of the power of a town to prohibit them. These statutes would prohibit the town from authorizing the use of leg traps with auxiliary teeth or of more than four dogs in hunting bear, but it cannot be said that a town is prohibited from banning the use of such traps or dogs completely.



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