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Beehive Damage
STATE OF MAINE 7 m R S A 3652-4

Inter-Departmental Memorandum Date January 3, 1978

To A. Dwight Black

Dept. State Horticulturist

From Sarah Redfield, Assistant

Dept. Attorney General

Subject Damage to Beehives by Wild Animals

This is in response to your memorandum of December 16, 1977, and your oral request for an opinion as to whether or not the provisions of the first paragraph of Title 7 M.R.S.A. § 3652 as to proper enclosure of animals are applicable to beehives in relation to payment for damage to such hives pursuant to Title 7 M.R.S.A. § 3654. As discussed further herein, the provisions of the first paragraph of § 3652 are not so applicable though the claims portions of § 3652 would allow the Commissioner to disapprove a claim in certain circumstances within his discretion.

Title 7 M.R.S.A. § 3654 provides in pertinent part:

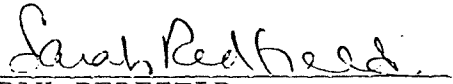
"§ 3654. Damage to beehives by wild animals

"Whenever any beehives, bee colonies or honey, owned and properly licensed by a resident of this State, are damaged or destroyed by wild animals, the owner may present evidence of such damage or destruction and may make complaint thereof to the mayor of a city or to one of the municipal officers of the town or plantation where such damage was done within 24 hours after he has knowledge of same. Thereafter, such claims shall be investigated, reported and adjusted or approved in the same manner as claims under section 3652." (emphasis supplied)

Title 7 M.R.S.A. § 3652 speaks to recovery for damage to "livestock, poultry or domestic rabbits, properly enclosed," see § 3652, 1st and 3rd paragraphs. Section 3654 speaks to "beehives, bee colonies or honey owned and properly licensed . . .".^{1/} The modifying language "properly enclosed" is applicable only to the animals mentioned, i.e. livestock, poultry or domestic rabbits. The reference in § 3654 to the provisions of § 3652 incorporates only the provisions regarding the manner in which claims are to be reviewed.

^{1/} Pursuant to the general regulatory authority of Title 7 M.R.S.A. 12 it would appear that the Commissioner of Agriculture could promulgate regulations for the enclosure of hives as a condition to licensing if he were to find that such regulations were necessary and appropriate.

In this regard, § 3652 sets out a procedure for investigation and requires approval by the Commissioner or his duly authorized agent prior to the State's accepting liability. By providing that the report and recommendation of the investigator is not sufficient basis for payment without such approval, the Legislature indicated that it intended the Commissioner to maintain discretion to disapprove and/or adjust the bill. (See generally State v. Fin & Feather Club, 316 A.2d 351 (Me., 1974) as to the implied powers of an agency.)


SARAH REDFIELD
Assistant Attorney General

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