

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

JOSEPH E. BRENNAN
ATTORNEY GENERAL



RICHARD S. COHEN
JOHN M. R. PATERSON
DONALD G. ALEXANDER
DEPUTY ATTORNEYS GENERAL

12 MRSAY 2354
30 MRSAY 1911
ME CONST ART 8 PT 2

STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04333

TO: Maynard F. Marsh, Commissioner
Department of Inland Fisheries and Wildlife

FROM: Cabanne Howard, Assistant Attorney General

DATE: September 13, 1978

SUBJECT: Shooting of Animals Destroying Crops

You have asked whether a municipal ordinance prohibiting the discharge of firearms would prevent a person from exercising the right granted to him by 12 M.R.S.A. §2354 to kill protected wild animals when such animals are damaging the person's orchard or growing crop. Our answer is that such a municipal ordinance would not prevail in this situation.

A municipal ordinance prohibiting the discharge of firearms is presumably enacted pursuant to the "home rule" powers granted to the municipalities of the State by Article VIII, pt. 2 of the Maine Constitution and Section 1917 of the Maine Home Rule Act, 30 M.R.S.A. §1911 et seq. Section 1917 provides:

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

There would appear to be no question that a discharge of firearms ordinance would generally be authorized by this section. The question presented here is the narrow one of whether 12 M.R.S.A. §2354 constitutes a prohibition, either expressly or by clear implication, of the effectiveness of such an ordinance in the limited circumstances described therein.

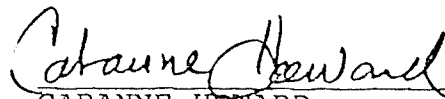
Section 2354 provides in pertinent part:

"The cultivator, owner, mortgagee or keeper of any orchard or growing crop, except grass, clover and grain fields or the owner or occupier of land whereon said crops or orchard are located, may take or kill deer or other protected wild animals,

except beaver or birds, night or day, on said land where substantial damage is being done by said deer or other protected wild animals to said orchard or crop."

The section then goes on to prescribe the procedures whereby a person covered by it may take or kill the offending deer or other protected wild animal. We think that this detailed statute constitutes a clear expression of legislative intent that persons whose crops are threatened by protected wild animals be permitted to take and kill such animals regardless of any general prohibition against the discharge of firearms which may exist in the municipality involved. If this were not so, a municipality would have the power to completely frustrate the state statute's purpose of insuring that persons with the enumerated crops be able to protect them from such animals. The detailed procedures for the taking and killing of such animals only serve to strengthen this conclusion, since it shows a legislative intent that such killing be done in a carefully controlled way.

It should further be noted that this conclusion is not inconsistent with that of an opinion issued by this office on May 1, 1975, that such municipal ordinances would prevail over a state statute generally authorizing the regulation of hunting in a wildlife management area. The difference in the two situations is that in the one case the ordinance would not completely frustrate the legislative purpose (regulating the population of deer in the state generally) while in the other, the statute's objective (permitting a citizen to defend his crops against otherwise protected wild animals) would be entirely defeated if the ordinance were allowed to prevail. Thus, a citizen may, by following the procedures set forth in Section 2354, take and kill such animals without regard to any local firearm discharge ordinance.



CABANNE HOWARD

Assistant Attorney General

CH/bls