

# MAINE STATE LEGISLATURE

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RICHARD S. COHEN  
ATTORNEY GENERAL



79-190  
STEPHEN L. DIAMOND  
JOHN S. GLEASON  
JOHN M. R. PATERSON  
ROBERT J. STOLT  
DEPUTY ATTORNEYS GENERAL

STATE OF MAINE  
DEPARTMENT OF THE ATTORNEY GENERAL

AUGUSTA, MAINE 04333

October 30, 1979

The Honorable Bonnie Post  
House of Representatives  
State House  
Augusta, Maine 04333

Dear Representative Post:

Recently you informed this Department that several sheep were killed by a dog or a wild animal. The owner realizes that he may obtain a maximum of \$50 per sheep from the State if he submits a satisfactory claim under 7 M.R.S.A. § 3652. He maintains, however, that his actual loss exceeds \$50 per sheep and he wishes to obtain additional compensation.

You have asked whether the State Claims Board, if it finds the owner's losses exceed \$50 per sheep, has authority to award the owner a greater sum of money. You have also asked whether the Legislature has lawful power to enact special legislation authorizing payments, exceeding the \$50 per sheep limit, in order to reimburse fully the owner's losses.

The underlying purpose of 7 M.R.S.A. § 3652 is to provide some reimbursement to owners whose animals have been injured or killed by unknown dogs or wild animals. The existence of this reimbursement program is a matter of legislative grace since the State owes no independent legal duty to persons whose animals have been injured or killed.

Your first question is whether the State Claims Board can award payments exceeding the \$50 limit contained in 7 M.R.S.A. § 3652. Assuming that the Board has jurisdiction to hear such claims, a matter which is not entirely clear to us, it is our opinion that the Board cannot award reimbursement which exceeds \$50 per sheep. As we said earlier, the State has created for itself a limited liability under 7 M.R.S.A. § 3652 and clearly stated that: "Payment shall not exceed \$50 for grade sheep . . ." The Board, a state agency with limited powers, cannot disregard such clear statutory language.

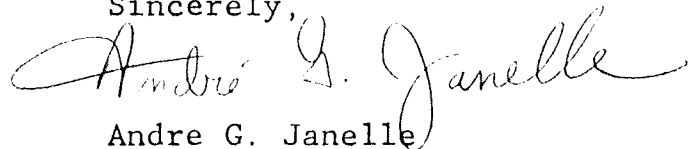
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Your next question deals with special legislation. The Maine Supreme Court has stated that all special legislation must be reviewed under the special legislation clause, Art. I, part 3, section 13, and the equal protection clause, Art. I, section 6-A, of the Maine Constitution. See, Opinion of the Justices, 402 A.2d 601 (1979); Nadeau v. State, 395 A.2d 107 (1978).

Applying the equal protection and special legislation analysis required by the Court, it is our opinion that the special legislation you describe would be unconstitutional unless the Legislature, after diligent inquiry, concludes that: (a) it is extremely unlikely that there exist any other claimants whose sheep or livestock losses are not fully compensated within the reimbursement limits set out in 7 M.R.S.A. § 3652, and (2) the Legislature cannot practicably accomplish the objective of providing additional reimbursement except by the enactment of special legislation.

The Legislature, and not this Office, must determine these issues. We do believe, however, that the Legislature will have difficulty making the determination that the necessary facts exist to support the constitutionality of the described special legislation.

Sincerely,



Andre G. Janelle  
Assistant Attorney General

AGJ:gr