

MAINE STATE LEGISLATURE

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79-204

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

December 3, 1979

Glenn H. Manuel
Commissioner, Inland Fisheries
and Wildlife
State House
Augusta, Maine 04333

Dear Commissioner Manuel:

You have asked for further elaboration of that portion of our opinion of August 14, 1979, relating to whether a person seeking to participate in the 1980 experimental moose season may make more than one application for a moose hunting permit. In that opinion, we indicated that since the Moose Act, 12 M.R.S.A. §7463 et seq., and its legislative history were silent on the question, we could not say that the Commissioner of Inland Fisheries and Wildlife was prohibited from permitting a person to make more than one application. You now ask whether the Commissioner might, conversely, limit each applicant to one application. Our answer to this is that he may; since the statute is silent, the Legislature must be deemed to have left this question to the Commissioner's discretion, and we would think that either approach to the problem would be reasonable and within the scope of the Act.

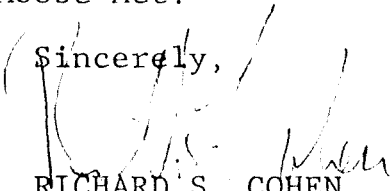
In addition, you have asked whether in resolving this question you are obliged to do so by means of the promulgation of a regulation, using the procedures of the Maine Administrative Procedure Act, 5 M.R.S.A. §8001, et seq. The answer to this is that the passage of a regulation is not required. The Moose Act merely authorizes the Commissioner to adopt implementing regulations, 12 M.R.S.A. §7463(9); it does not mandate them. Nor, of course, does the Administrative Procedure Act itself require the adoption of any particular regulation. As its name implies, it is concerned only with the procedure by which a regulation becomes law, once the agency has determined to follow such a course. You should be aware, however, that should you proceed to implement the statute by policy rather than by regulation, you might be in a slightly weaker position should litigation

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result over the legality of your position since the courts are generally more inclined to give deference to an agency's interpretation of a statute if it is cast in the form of a regulation. This observation, however, is not meant to deter you from resolving the question at hand simply by adopting a policy. As we have indicated, we believe either of the two options available to you would be defensible, whether you implemented one of them by regulation or not.

Please let me know if I can be of any further assistance as you continue to implement the Moose Act.

Sincerely,



RICHARD S. COHEN
Attorney General

RSC:ks

cc: Senator Andrew J. Redmond
Representative Charles G. Dow
Senator James McBreairty