

MAINE STATE LEGISLATURE

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

December 5, 1979

John Smiley, Director.
Division of Animal Industry
Department of Agriculture
State House
Augusta, Maine 04333

Re: Payments Pursuant to Title 7 M.R.S.A. § 3652.

Dear Mr. Smiley:

This memo is in response to your request for advice as to whether the Department of Agriculture (hereinafter "the Department") is obligated to pay damages to the owners of certain animals killed or injured by dogs or wild animals within the State of Maine where the loss has already been compensated by private insurance. The Department is not obligated to pay for damage where compensation has already been paid.

There are several State statutes which deal with the issue of liability for certain damage done by dogs and/or wild animals. For example, Title 7 M.R.S.A. § 3451 provides, in pertinent part, that the State shall have an animal husbandry specialist who is charged with the responsibility for "the adjustment of claims for damages to livestock and poultry by dogs and wild animals. . . ." Title 7 M.R.S.A. § 3651 provides generally for reimbursement for damage done by a dog to any person or property. This section provides that reimbursement for such damage may be recovered by the owner in a civil action.

Title 7 M.R.S.A. § 3652 specifically addresses the obligation of the Department where damage is done by a dog or wild animal. This section establishes a detailed complaint procedure to be followed. Whenever any livestock, poultry or domestic rabbit, properly enclosed, owned by a resident of this State is killed or injured by dogs or wild animals, the municipal officers are obligated to investigate the complaint and

"if satisfied such damage was committed by dogs or wild animals. . . after viewing the evidence, estimate the actual value of such animals or poultry according to the purposes for which they were kept, whether as breeders or other purposes, together with the damage to any other animals or poultry being bitten, torn or chased or exhausted, and make returns on blanks furnished by the Department of Agriculture." (Emphasis supplied)

The report is to be returned to the Commissioner of Agriculture with a description of the evidence and the recommendation of the number of animals or poultry and their value.

Upon receipt of the report from the municipal officers, the Commissioner "shall approve the bill or, if it seems advisable, investigate and adjust the claim." (Emphasis supplied) The statute then provides that "when the claim is approved by the Commissioner or his duly authorized agent, the State shall accept liability and adjust the damage, and the same shall be paid by the State to the persons sustaining such damage."

The statutes concerning payment for damage done by dogs have no explicit provisions concerning the State's payment where prior payment has been made by a private insurer. However, a review of the various statutes on the subject indicates that the Legislature contemplated that there were to be other means of recovery of damages where harm had been done to poultry or animals by dogs. See, e.g., 7 M.R.S.A. § 3652, § 3653, as to owner liability; see also Andrews v. Hartford, 125 Me. 67 at 72. Presumably, the State would pay for damage where no owner could be found. The statutes also seem to contemplate that the Commissioner of Agriculture not be obligated to pay automatically the full amount indicated by the municipal officers. He is specifically authorized in each case to "adjust the damage." In this regard, to the extent that payment has been made from other sources, whether insurance companies or owners of the dogs in question, it would appear reasonable for the Commissioner to adjust his payment to reflect this. It may be that in order for this procedure to be generally known, the Commissioner may wish to adopt this policy of adjustment reflecting prior insurance payments as a regulation for the implementation of Title 7 M.R.S.A. § 3652.

Sincerely,

Sarah Redfield

SARAH REDFIELD
Assistant Attorney General

R/ec

cc: Stewart Smith
Jim Worthly