

MAINE STATE LEGISLATURE

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June 21, 2004

Representative Linda Rogers McKee
Walton Road
RR 1 Box 280
Wayne, Maine 04284

Dear Representative McKee:

This is in response to your request for an opinion on the question of whether the Department of Inland Fisheries and Wildlife has a legal obligation to carry out a particular coyote snaring program. In my previous opinion to you, I advised that any such program must comply with applicable federal laws, including the Endangered Species Act. In response to that opinion, I understand that the Department has suspended this program while applying for a permit from the U.S. Fish and Wildlife Service. In response to your most recent question, for the reasons that follow, we do not believe that Maine law requires the Department to undertake a particular coyote snaring program.

The statute that is directly applicable to this program currently¹ reads as follows:

3. Coyote control program. Pursuant to section 10053, subsection 8, the commissioner shall maintain a coyote control program as follows:

A. The commissioner may employ qualified persons to serve as agents of the department for purposes of coyote control. These agents must be trained by the department in animal damage control techniques and must be utilized by the department to perform coyote control duties in areas where predation by coyotes is posing a threat to deer or other wildlife. Each agent shall execute a cooperative agreement with the department specifying the conditions and limitations of the agent's responsibilities as an agent, including any terms for reimbursement of expenses or payment of wages.

¹ This statute replaced similar language in repealed 12 M.R.S.A. § 7053(3) (A) and (B-1), effective 90 days after the adjournment of the Second Regular Session of the 121st Legislature, which means as of April 30, 2004. P.L. 2003, c. 414 § D-7.

B. Agents must be trained in the use of snares and must be deployed in the unorganized townships to control coyotes during the winter months. All snaring must be carried out under the direction of department officials and with the knowledge of the local game warden. All areas of snaring activity must be adequately posted.

C. Agents may be utilized for the benefit of agricultural interests as long as the department is reimbursed annually for the cost of those efforts by the Department of Agriculture, Food and Rural Resources from funds specifically appropriated or otherwise made available to the Department of Agriculture, Food and Rural Resources for that purpose.

The question is whether this statutory language mandates a particular program or allows discretion for the Department to fashion a coyote snaring or other coyote control program as it deems appropriate. It is important to note that in the above quoted statute, while the Legislature states that "the commissioner *shall* maintain a coyote control program as follows," what then follows is that the "commissioner *may* employ qualified persons to serve as agents of the department for purposes of coyote control." The statute further grants to the commissioner decision-making authority regarding the determination of "where predation by coyotes is posing a threat to deer or other wildlife." § 10105(3)(A). The statute further provides that any agent that the commissioner may employ must execute a cooperative agreement the terms of which are to be determined by the Department subject to applicable law. *Id.*

Generally speaking, the law affords deference to an agency head's interpretation of statutes that her or his department is charged with enforcing. In this case, that broad decision-making authority is further reflected in the particular statute governing this program, and the state law must also be sufficiently flexible to accommodate compliance with applicable federal law. The Legislature enacted the state law and, of course, all of the Department's programs remain subject to legislative appropriation and oversight. For all of the foregoing reasons, we believe that the law does not legally compel the Department to carry out a particular coyote snaring program.

I hope that this answers your question. If you have any further questions, please let me know.

Sincerely,



G. Steven Rowe
Attorney General

GSR/djp