

**From:** Mishaan, Jessica <Jessica.Mishaan@vermont.gov>

**Sent:** Tuesday, April 23, 2024 7:52 AM

**To:** Trevor Lewis [REDACTED]

**Subject:** RE: Public records request for VT AG opinion on Selectboards/ Beavers

Dear Trevor Lewis,

Please find the requested opinion attached.

Thank you,

**Jessica Mishaan** | Paralegal (she/her)

Office of the Attorney General

General Counsel and Administrative Law Division, Appellate Unit

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No. 139

December 21, 1955

**Fish and Game Service**

Mr. C. J. Dowers, Chief Warden, Fish and Game Service,  
Montpelier:

We have your letter bearing date of December 8, 1955, which  
contains your request for our opinion as quoted below:

"We would appreciate your opinion as to the extent of the authority granted to the selectmen to protect highways and bridges including authorization to other persons to take and kill beaver and to whom the certificate for the possession of pelts is to be issued."

Section 6524, V. S. 47, contained the following prior to various amendments to be hereinafter discussed:

"The fur or skins of fur-bearing animals legally taken may be possessed at any time except:

\* \* \*

V. A person shall not take or possess beaver or fisher-cat or have in his possession the fur of such animals prior to November 1, 1952. \* \* \*

XII. A person shall not interfere in any manner with dams, dens or houses of beaver except upon special permit in writing from the director."

Section 6524, V. S. 47 (V) was amended by section 1 of No. 169 of the Acts of 1949 so that it thereafter read as follows:

"V. A person shall not take or possess fishercat or have in his possession the fur of such animal prior to November 1, 1952."

Note the elimination of "beaver" from the passage.

Sections 2, 3 and 4 of said No. 169 of the Acts of 1949 went on to prohibit the taking of beaver at any time except during certain localized open seasons to be designated by the director of fish and game. These sections were in turn amended by No. 60 of the Acts of 1955 to permit such localized open seasons to occur in January, February, March and April.

A study of the foregoing statutes indicates that section 6524 prohibits the disturbance of beaver dams except with written permission of the director of fish and game, but remains, by virtue of section 1 of No. 169 of the Acts of 1949, *supra*, completely silent as to beaver because sections 2, 3 and 4 of said No. 169 of the Acts of 1949 are not made a part of section 6524, V. S. 47, either by said No. 169 or by No. 60 of the Acts of 1955.

The taking of beaver today is regulated by No. 60 of the Acts of 1955.

Section 6525, V. S. 47, has been amended by No. 113 of the Acts of 1955 so that it now reads as follows:

"The provisions of the preceding section shall not apply to an owner or caretaker of property protecting the same from damage by fur-bearing animals, or to the *selectmen of a town protecting public highways or bridges*

*from such damage or submersion with the permission of the owners of lands affected, except that such an owner, caretaker or the selectmen who desire to possess during the close season the skins of any fur-bearing animals taken in defense of property, highways or bridges shall notify the fish and game director or his representative within eighty-four hours after taking such animal, and shall hold such pelts for inspection by such authorized representatives. Before disposing of such pelts, the property owner, caretaker or selectmen shall secure from the director a certificate describing the pelts, and showing that the pelts were legally taken during a close season and in defense of property, or highways or bridges. In the event of storage, sale or transfer, such certificate shall accompany the pelts described therein."* (Italics supplied.)

The language of section 6525, as amended by No. 113 of the Acts of 1955, given its ordinary meaning, plainly *exempts* selectmen acting in defense of highways and bridges from the *prohibition against disturbing* beaver dams contained in section 6524 (XII). We believe, and so hold, that such was intended by the legislature and is, therefore, the law.

*Lewis v. Holden*, 118 Vt. 59.

The authority of selectmen to *take* beaver in defense of such highways and bridges is not so readily apparent.

The time, manner and place in which beaver may be taken is set forth in said No. 60 of the Acts of 1955, which was approved on March 11, 1955, and by its provisions, became effective on that date.

Section 6525, as amended by No. 113 of the Acts of 1955, *supra*, does not expressly exempt selectmen acting in defense of highways and bridges from the provisions of said No. 60 of the Acts of 1955. If it does authorize the taking of beaver by such town officials in the defense of such town highway property, it must therefore necessarily imply such authority. In this connection, the provision of said section 6525, as amended by No. 113 of the Acts of 1955, to the effect that selectmen may possess the skins of *any* fur-bearing animals taken in defense of such highway properties seems very important. Beavers are fur-bearing animals whose activities can possibly damage highways by flooding and one cannot possess the pelts of either beaver or other fur-bearing animals without killing them.

We construe No. 113 of the Acts of 1955 to indicate that the legislature intended that selectmen be able to kill beaver, if necessary, to protect town highways and bridges. The intent of the legislature constitutes the law.

*Lewis v. Holden, supra.*

No. 113 of the Acts of 1955 was approved April 8, 1955, and became effective June 1, 1955. It was, therefore, by a brief span of time, a later expression of the legislative will and must prevail.

*Bennington v. Vail*, 117 Vt. 395.

To summarize thus far, we are of the opinion that selectmen acting in *necessary defense* of highways and bridges and with the permission of the owners of any lands affected may both take beaver and disturb their dams. We are further of the opinion that such selectmen are only authorized to so act when the activities of such beaver constitute an actual proximate threat to the safety of such highways and bridges.

As we noted before, in citing *Lewis v. Holden*, *supra*, when the language of an act is plain, it should be given its ordinary meaning. This rule, upon application to the terms of No. 113 of the Acts of 1955, requires the holding that the certificate provided for therein should go to the *selectmen* in question who are acting in an official capacity for their town.

It has been held that although selectmen are in one function legislative bodies, they also perform many administrative duties which concern the safety, convenience and health of their respective municipalities.

*Fair Haven v. Stannard*, 111 Vt. 53.

We believe the defense of highways and bridges in the instant matter to be of the latter nature. Accordingly, we do not believe it would be unlawful for the selectmen to delegate the actual taking of beaver, as contemplated in said No. 113 of the Acts of 1955, to peace officers of their community, if they were so advised. We would not recommend delegation beyond that point.

ROBERT T. STAFFORD, *Attorney General*