

May 23, 1979

Honorable Harry Hughes
Governor of Maryland
State House
Annapolis, Maryland 21401

House Bills 1368 and 1385

Dear Governor Hughes:

We have reviewed for constitutionality House Bills 1368 and 1385, concerning trapping in Harford County. As these bills violate the prohibition against legislating for charter counties on matters covered by the Express Powers Act, we do not approve these bills for constitutionality.

House Bill 1368 amends the Natural Resources Article, Sec. 10-410, to provide that "in Harford County, a person may not use, set, place, maintain any snare trap." House Bill 1385 amends Sec. 10-408.1 of the same Article, which forbids the use of snares, body-gripping or leghold traps within 150 yards of a permanent human residence except for owners and lessees of privately owned land. The bill, in effect, provides that in Harford County this complete exemption for owners and lessees is qualified to provide that in that county owners and lessors l/may not use such traps within 150 yards of another's residence.

Although the theory that fish and game are originally the property of the State is no longer recognized, the State's special interest in protecting these creatures has never been doubted. Hughes v. State of Oklahoma, 47 LW 4447 (April 24, 1979). Thus, "[S]ubject to constitutional limitations and any applicable Federal statutes, the hunting of game, fishing and the conservation of game and fish may be regulated by the State." 11 Maryland Legal Encyclopedia, Fish and Game, Sec. 1, citing Corsa v. Tawes, 149 F. Supp. 771 (D. Md. 1957), aff'd 355 U.S. 37 (1957). However, while the State has broad powers concerning fish and game, it has by the Express Powers Act given charter counties the authority to "pass fish and game laws." Art. 25A, Sec. 5(M). The Charter Home Rule Amendment provides, of course, that "no public local law shall be enacted by the General Assembly for said City or County on any subject covered by the express powers granted as above provided." State Const., Art. XIA, Sec. 4.

In defining the limits on the General Assembly's authority with respect to Charter Counties, the Court of Appeals has said,