

# MAINE STATE LEGISLATURE

The following document is provided by the  
**LAW AND LEGISLATIVE DIGITAL LIBRARY**  
at the Maine State Law and Legislative Reference Library  
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied  
(searchable text may contain some errors and/or omissions)

**This document is from the files of the Office of  
the Maine Attorney General as transferred to  
the Maine State Law and Legislative Reference  
Library on January 19, 2022**

September 20, 1918

To Joseph W. Simpson, State Treasurer  
Re: Refusal to Pay on Improper Warrant

We have your letter of September 19th, asking whether you have authority to pay a claim where a warrant has been drawn by the Governor and Council, but the claim itself has been rejected by the State Auditor because not itemized.

Article V, Section 4, of the Constitution of Maine, provides:

"No money shall be drawn from the treasury, but by warrant from the Governor and Council, and in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published at the commencement of the annual session of the legislature."

These are clearly two Constitutional provisions that must be fulfilled before any money can be paid from the State Treasury. First, there must be a warrant of the Governor and Council. Second, there must be an appropriation made by law.

In 1907, there was created by the Legislature the office of State Auditor upon which many and important duties were conferred. The State Auditor is compelled by law to examine every account against the State of Maine requiring the payment of money. The Statutes peremptorily declare that, "All accounts filed with the auditor shall be fully itemized." R. S. Chap. 2, Sec. 82. He must audit the books of the Treasurer of State. R. S. Chap. 2, Sec. 89. To all these duties there is no exception.

These provisions, however, do not abrogate the original power of the Governor and Council. The approval by the Auditor of any account is of no force, and no money can be paid from the treasury of the State, upon that approval alone. The Governor and Council must still issue their warrant, before the Treasurer of State can pay any money. The true interpretation of the powers conferred upon the Auditor is, in our opinion, this:- Every appropriation by the Legislature is made upon condition that no money shall be paid in consequence of it until the State Auditor has performed his duties in relation to it. The State Auditor is, in fact, charged with the duty of enforcing the constitutional provision that no money shall be paid from the treasury, except "in consequence of appropriation made by law". Art. V, Part Four, Section 4, of the Constitution of Maine. The requirements that the State Auditor must insist upon are a condition upon the fulfilling of which each and every appropriation is made. The duties of the State Auditor are not in our opinion a limitation upon the authority of the Governor and Council. On the other hand, the State Auditor is not an assistant performing clerical duties for the Governor and Council, in checking bills. He is an official specially created by the Legislature to see that no claim is paid by the State, except "in consequence of appropriation made by law."

Under the law, the State Auditor has no option. He must insist that "all accounts filed with the auditor be fully itemized". From this provision there is no exception and no appeal. If the Governor and Council issue a warrant to pay a claim that the State Auditor has refused to approve because it is not itemized, it is not "in consequence of appropriation made by law", and, hence, is not constitutional, and need not be paid.

There are two classes of cases where there is an appeal from the decision of the State Auditor. These are fully and clearly described in the Revised Statutes:

"When the legislature, by express statute, authorizes a board of trustees, commission, or public officer to approve demands against the state, and an appropriation therefor has been made, the auditor shall, when such accounts or demands are properly approved, promptly audit and certify as aforesaid such accounts as he may deem correct, not exceeding the appropriation for that purpose; and if, upon such audit any account or claim is rejected or reduced in amount, and the person presenting such account or claim is dissatisfied therewith, the auditor shall report the same to the governor and council, with a separate certificate therefor. . . ."

R.S. Chap.2, Sec. 82.

"The auditor. . . shall investigate all accounts, demands, bills, vouchers or claims against the state, including those made by any state officer, department, commission or trustee. And if, after said investigation, the amount demanded seems to be excessive or improper, he may reject the account or claim, in whole or in part, and if the person presenting such account or claim is dissatisfied therewith, the auditor shall report the same to the governor and council, with a separate certificate therefor." R. S. Chap. 2, Sec. 84.

It will be noticed, however, that neither of these waives the duty to itemize accounts. We are of the opinion that all accounts against the State of Maine must be itemized before they can be said to be "in accordance with appropriation made by law".

We accordingly advise you that if the account in question is not itemized, it is not a legal claim which you have authority to pay.

Franklin Fisher  
Assistant Attorney General

F/S