

# MAINE STATE LEGISLATURE

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May 4, 1940

Mr. A. T. Wilkinson  
Ernst & Ernst  
State House  
Augusta, Maine

Dear Mr. Wilkinson:

In your letter of April 29, 1940, you ask my opinion as to the correct method of handling certain transactions, and as to methods of handling State finances which have been considered by you in connection with your examination of the financial affairs of the State for the two years ending June 30, 1939. I shall attempt to answer them in the same order in which they appear in your letter.

1. This question pertains to certain transfers between appropriations within a department. Under the provisions of Section 7, Article II, Chapter 216, Public Laws of 1931, the so-called "State Code", appropriation bills "shall be drawn in such form as to authorize only lump sum appropriations to meet the expenditure needs of the various departments and agencies of the State government for each fiscal year of the biennium. For the operation and maintenance expense of each department or agency there shall be a single appropriation which shall be allotted before becoming available for expenditure as provided for in a subsequent section of this act."

In the following section (Section 8), department heads are required to allot the appropriation made for their department by quarters for the fiscal year, which allotments must be approved by the Governor and Council. Responsibility for dividing such a lump sum of appropriation among the several functions of each department is on the head of that department. All of the departments are required to carry on various statutory activities, and the division of lump sum appropriations among these various activities is done by the head of the department within the limits of his total appropriation and of the quarterly allotments. The department head may rearrange such distribution among the various functions of his department without the necessity of obtaining the approval of the Governor and Council.

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The several specific instances cited by you under your first question, and numbered from (c) to (g), inclusive, would all seem to be covered by the above statement.

Referring specifically to your first sub paragraph, marked (a), further explanation may be helpful. As provided in sub paragraph (g) of Section 1, of the Act creating and allocating a General Highway Fund, passed by Chapter 229, Public Laws of 1937, towns may elect to use their portion of third class highway funds to construct or reconstruct bridges under the Bridge Act. It would seem that the Highway Commission may properly apportion part of the appropriation for third class highways for the purpose of providing a fund from which to pay such towns as elect to use their third class money for bridges, and I assume that this is the type of a transfer to which you refer.

Under the provisions of Section 2 of the same chapter, transfers from one account of the General Highway Fund to another account thereof, shall be made only with the approval of the Governor and Council, but the above case does not seem to be such a transfer from one account to another, but rather an elective apportionment of a fund for the one or more purposes for which the fund was created.

As to your sub paragraph (b), I understand that the Highway Loan Fund is an account set up to handle money derived from the sale of Highway and Bridge Bonds to be used in matching Federal allotments on Federal Aid highways and bridges. Because of limitations on the use of Federal funds placed by the Federal government, no part of these funds can be used for land damage or land acquisition, preliminary surveys or engineering.

Paragraph (h) of Section 1, Chapter 229, above referred to, provides a fund to match Federal funds to aid in the construction or improvement of Federal highways when, in the judgment of the Highway Commission and the Governor and Council, such use is necessary. It would seem proper to me for the Highway Commission, having set this fund up in an account called "Federal Highway Roads", to transfer it to the Highway Loan Fund when the Highway Commission and the Governor and Council find it necessary, and it would seem that no Council Order should be necessary for this purpose. However, if no Council Order is passed there should be a recorded vote of the Governor and Council approving the transfer, copy of which should be furnished to the Controller.

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2. The several transfers mentioned in this question would all seem to require approval of the Governor and Council under the provisions of Section 2 of Chapter 229, Public Laws of 1937, above referred to, which provides in part as follows:

"Transfer from one account of the general highway fund to another account thereof shall be made only with the approval of the governor and council,\*\*."

Incidentally, the bridges mentioned in your sub paragraph (b) were not constructed as planned.

3. Sub paragraph (a). Referring to the particular transaction mentioned in this sub paragraph, these funds were collected by the Secretary of State under a Rule and Regulation made by him in accordance with the provisions of Section 68 of Chapter 29, Revised Statutes, which Rule and Regulation provided for semi-annual inspection of all motor vehicles. The money was put in a special fund and later transferred to the State Highway Police fund to be used in connection with work for highway safety. This money, under the provisions of Section 1, Chapter 229, Public Laws 1937, belongs to the General Highway Fund.

Section 2 of said Chapter 229, provides for the transfer from one account to another in the General Highway Fund by Order of the Governor and Council. While, strictly speaking, the funds should have been first transferred by the Governor and Council into the General Highway Fund and then to the State Police Fund, the omission of this transfer would not, I believe, affect the validity of this transfer.

4. All of these transactions were either from or to construction accounts within a department and could properly be made by the head of the department without further authorization.

5. The lapsing into the Sinking Fund Reserve of all of these items, except the last, is authorized by the preamble of the Appropriation Act, Chapter 94, Private and Special Laws 1937. The last item was a transfer in repayment to General Funds made to cover initial administrative expenses in putting into effect Chapter 84, Public Laws 1937, providing for a tax on potatoes.

6. These transfers were made in accordance with the Preamble of Chapter 106, Private and Special Laws 1937 (Special Session) and would require an Order of the Governor and Council only.

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7. These charges for check writing and accounting by the Bureau of Accounts and Control to the Maine State Liquor Commission and the Highway Commission were authorized by Chapter 94, Private and Special Laws 1937, on Page 522.

8. The appropriation for the Bureau of Accounts and Control for the year 1938, was lapsed by Council Order No. 78, dated January 21, 1938, and authority therein given to that Bureau to charge each department and institution using the facilities of that Bureau its proportional part of the cost of performing the statutory functions and duties of said Bureau.

9. The authority for using the fines and licenses collected by the department of Sea and Shore Fisheries to cover departmental operations is found in Section 95 of Chapter 50 of the Revised Statutes.

10. The proceeds of the sale of any asset purchased out of the lump sum appropriation for any department, when sold by that department are properly credited to the appropriation account of the department.

11. (a) Section 2 of Chapter 173, Private and Special Laws of 1935, to which you refer, provides for the non lapsing of the appropriation mentioned.

(b) The Highway Commission have authority to consolidate these two accounts as stated earlier in this letter.

(c) In 1937-1939 no appropriation was made for the payment of the salaries of Mr. Stubbs and his assistants in the Inheritance Tax Division. The report of the Budget Committee provides for the payment of these salaries and expenses from the collections of the Division. Reference is made to Report of the Budget Committee 1937, Page 16, to the 1939 Budget Committee Report, Page 21, showing estimated receipts and expenditures for 1938 and 1939.

(d) The appropriation for the Bureau of Accounts and Control contained a direct appropriation of \$40,000 from General Funds which were lapsable; this sum to be supplemented by payments made from the State Highway Commission to pay for its accounting and check writing services as explained earlier in this letter. The balance of the account could be lapsed.

(e) This appropriation was not lapsed or repealed. It was for a definite and specific purpose, the carrying out of which was delayed because of conditions.

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(f) These funds belong to the institutions named. They were transferred to the Treasurer's appropriation for the purpose of actual transmittal to the institutions involved. The authority for such transfer goes back to the Deeds of Trust setting up these funds.

I am pleased to have been able to answer these questions within the time limited in your letter. I have endeavored to be specific in answering, and if you desire any further opinions or elaboration on any of these matters I should be very pleased to have you take them up with me.

Very truly yours,

Franz U. Burkett  
Attorney General

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