

MAINE STATE LEGISLATURE

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June 22, 1954

To Raymond C. Mudge, Commissioner of Finance
Re: Effect of Legislative Order on a Legislative Act

We have your memo of June 17, 1954, in which you ask, in relation to the Joint Order of the 96th Legislature on May 8, 1953,

"Specifically, does the Joint Order, as it affects the Appropriation Act, legally authorize the encumbrance, to effect the purposes of the joint Order, of 1953-1954 funds which would otherwise lapse to the unappropriated surplus?"

The Joint Order considers the pay of State employees, and, after recognizing that appropriations for such pay had already been enacted, reads as follows:

"The legislature does recognize that wage and salary levels for some classes, particularly of the nursing service in institutions, may require special consideration over and above the one step wage measure provided for all classified employees.

"In view of these conditions the legislature does approve the general proposition that if possible within the appropriations to all the affected departments, the wage schedules of these classes of employees may receive special consideration, but the cost incident to such liberalization shall be limited to the economies that may be effected by the several departments involved."

In considering the question posed it would first be proper to determine the nature of the "Joint Order".

Our Constitution considers orders, along with acts and resolutions, in Section 16 of Article IV, Part Third. Bills and resolutions are also considered in Section 2, Article IV, Part Third, of our Constitution.

There are, apparently, two types of resolutions contemplated by our laws and by parliamentary rules of order:-- those resolutions, or resolves, which ultimately have the effect, or force, of law, and resolutions which do not have such effect or force, but which are passed in order to facilitate the performance of the business of the Legislature, or to determine the rule of the proceeding of the Legislature. As has been stated, when the Legislature gives its expression to a fact, a principle, its own opinions and purposes, it is expressed in the form of a resolution. Moulton v. Scully, 111 Me. at 450. When the Legislature commands, it is by an order.

More, properly, then, the Joint Order in question should have been a resolution, as, by its words, it is expressing what is obviously its opinion, purpose, or intent with respect to the use of funds appropriated by it at its 96th session.

Considering the Order, in the sense in which it was passed, we find it not to be an act, or law, but an expressed intent, in which it is said, in effect, that the Legislature approved of increases to personnel in departments which had effected economies.

How, then, does this Order affect the appropriation of the Legislature?

We are of the opinion that the Order has a clear and decisive effect upon the appropriation, by showing the intent of the Legislature with respect to the use of a portion of such funds. The appropriation passed by the Legislature consisted of funds deemed to be sufficient for a department, bureau, or commission to carry on its normal functions for a two-year period. We can find no express statutory provision relating to the expenditure of such funds that tends to indicate that any savings effected by a department may not be expended for salaries of employees as intended by the Legislature.

It is obvious that only upon the approach of the end of a fiscal year could a department determine that savings had been made, and thus the logical conclusion is that the Legislature intended such funds to be used for the salary increases in the next succeeding fiscal year.

It is, therefore, our opinion that such funds may be properly encumbered and used for salary purposes, consistent with the intent of the Legislature.

(Signed) Alexander A. LaFleur
Attorney General

jgf/c