

# MAINE STATE LEGISLATURE

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April 8, 1966

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Education

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**Grants to State Departments Acting as Local Agencies**

**FACTS:**

Title I of the Elementary and Secondary Education Act of 1965 provides funds to the State Department of Education for grants to local school boards (by whatever designation they may be called) for certain designated types of education programs. Such programs are submitted to the State Department of Education for approval. When approved, the department authorizes a payment direct to the local board.

The federal government has ruled that a state department having responsibility for certain local schools is eligible for grants from the Department of Education the same as local boards.

At least three state departments are eligible for such grants, namely, the Department of Health and Welfare, the Department of Mental Health and Corrections, and the Department of Education, itself.

It may be possible that other types of federal legislation will provide for similar grants to state departments which perform functions normally handled by local or municipal agencies.

These questions and opinions herewith submitted are intended to be broad enough to cover any future situation that may arise.

**QUESTION:**

May the Department of Education grant federal funds to another state department, acting in the capacity of a local or municipal agency, without the approval of the Governor and Council?

**ANSWER:**

Yes.

**OPINION:**

As between two state departments, when acting as state departments, there cannot be a transfer of funds except by act of the legislature. The Governor and Council has no authority to transfer appropriations made by the legislature from one department to another.

The legislature has granted to the Governor and Council authority to approve certain transfers of funds within a department. See 5 M.R.S.A., § 1585.

In the instant case, and there may be similar situations arise as federal programs spring up from time to time, there is no legislation specifically covering the procedure. Certainly, the facts do not come within the purview of 5 M.R.S.A., § 1585.

When the Department of Education approves a local or municipal program it has a check prepared which is forwarded to the local school board. No authorization by the Governor and Council is necessary.

In the instant case, a state department is performing, by virtue of state statutes, the function of a local school board in relation to certain schools. See 22 M.R.S.A., § 4774 and 4836 concerning schools on Indian Reservations; 20 M.R.S.A., § 1451 et seq. concerning schools in unorganized territories; 34 M.R.S.A., § 251 et seq. concerning Governor Baxter State School for the Deaf. There may be others as we have not attempted to list all such situations. The federal government has said that the state departments acting as local school boards are entitled to federal funds upon approval of programs by the Department of Education.

Hence, it follows that the state departments acting as local school boards would receive grants in the same manner as local school boards. (Obviously, it is not necessary to actually send a check to a state department. The Controller can advise the departments involved the proper method of making the required payments.) The Governor and Council do not become involved in the payments to the local school board so that group does not become involved in payments to departments performing local school board functions.

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Lest there be misunderstanding concerning the extent of the application of this opinion, there are set forth the following criteria which must be met to qualify for receiving federal funds without approval of the Governor and Council:

1. Federal funds, and
2. Federal recognition that the state department is eligible as a local agency, and
3. State statutes give the department supervision or control rather than a local agency, and
4. The state department is performing such a function.

Each of the above four criteria must exist. If any one criteria is lacking, this opinion does not apply.

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