

# MAINE STATE LEGISLATURE

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# STATE OF MAINE

Inter-Departmental Memorandum Date June 30, 1967 ✓

To K.B. Burns, Director, Business Management Dept. Mental Health and Corrections  
From Courtland D. Perry, Assistant Atty. Gen'l. Dept. " "  
Subject Lapsing of Funds at End of Biennium

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## FACTS:

At the end of the fiscal year closing the biennium certain funds as provided by the Legislature lapse, unless conditions prescribed in the Appropriations Act are met.

## QUESTION: #1.

Does the remaining balance of the \$20,000 appropriated for the acquisition of land for a group therapy building at the Maine State Prison lapse as of June 30, 1967, said sum having been appropriated by the 101st Legislature?

## ANSWER: # 1

No

## OPINION: #1

P & S L 1963, c. 205 with respect to certain appropriations including the appropriation for the acquisition of land for a group therapy building at the Maine State Prison provides in pertinent part as follows:

".....Any unencumbered balances in Section A at June 30, 1965 shall lapse unless sufficient evidence in the form of encumbrances is filed with the State Controller prior to June 30, 1965, showing that the project is in process, in which case all moneys appropriated to the project shall be carried to the following years to be expended for the same purpose until such project is completed, unless otherwise directed by the Legislature."

The State Controller having been furnished with evidence of encumbrance prior to June 30, 1965 showing that the project "acquisition of land for group therapy building" was in process as required by the above quoted language, in order to prevent the lapsing of such funds, and said requirement being thus satisfied, the funds in question did not lapse but were allowed to carry to the following years, until the project is completed.

The remaining balance of this appropriation does not lapse, in our opinion, as of June 30, 1967, since the quoted requirement of the act was satisfied in accordance with its provisions prior to June 30, 1965. No further evidence of encumbrance is required to be furnished the State Controller; however, it might be noted that the project has not been abandoned, negotiations having been pursued, proposals and counter-proposals being submitted by the State and by the owner of the property desired to be acquired by the State, which negotiations, although, abortive to date are proposed to be continued.

QUESTION: #2.

Should the sum of \$70,000 appropriated by Part B of P & S L 1965, c. 161 for "Sewage Disposal Unit" at the Maine State Prison lapse as of June 30, 1967?

ANSWER: #2.

No.

OPINION : #2.

Although no contract has been executed formally encumbering part or all of the \$70,000 appropriation for the sewage disposal unit at the Maine State Prison, it is the opinion of this office, based upon the following information and attachments to this opinion that the Department of Mental Health and Corrections has the project in process and can evidence the same by its commitment to the Town of Thomaston to participate in the construction of a sewage disposal plant, servicing the Maine State Prison, which commitment satisfies the intent of the Legislature in requiring evidence of encumbrance in order to prevent funds from lapsing.

By Council Order dated April 20, 1966, which order falls within the exception contained in Title 2, M.R.S.A., 1964, §52, and is still in full force and effect, the Department of Mental Health and Corrections was authorized to participate with the Town of Thomaston in, and to contract for, the construction of a sewage treatment plant utilizing funds appropriated by P & S L 1965, c. 161.

The Department of Mental Health and Corrections has negotiated with appropriate officials of the Town of Thomaston with respect to participation in the construction of a sewage treatment plant. The town on the basis of the commitment of the Department's participation has dealt with the Federal Government and relying thereon has put the project out to bid. The amount of the accepted bid to be disclosed at any time.

QUESTION: #3


In general what constitutes an encumbrance for the purpose of showing that a project is "in process?"

"...Any unencumbered balances in Sections B and C at June 30, 1967 shall lapse unless sufficient evidence in the form of encumbrances is filed with the State Controller prior to June 30, 1967 showing that the project is in process, in which case all moneys appropriated to the project shall carry forward to be expended for the same purpose until such project is completed, unless otherwise directed by the Legislature." Ref: P & S L 1965, c. 161

OPINION: #3

With respect to Question #3 the attached opinion of the Attorney General Alexander A. LaFleur, addressed to Commissioner Raymond C. Mudge, dated July 10, 1953

sufficiently discusses the nature of encumbrance as contemplated by the Appropriations Act in question and serves as a general guide in a determination of whether an encumbrance in any given case exists and satisfies the requirement of the act.

  
Courtland D. Perry  
Assistant Attorney General