

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT
OF THE
ATTORNEY GENERAL

For the Years
1967 through 1972

Committee.)

The general rule articulated by legal encyclopedias is that a legislator's right to compensation arises as an incident of his office and is controlled by constitutional and statutory provisions. It has also been held that members of a legislative committee are not entitled to a per diem amount for services rendered after adjournment even when they may be so entitled during the session. The basis of the rule is that the Legislature may properly fix, if it deems it necessary, the amount of any compensation. See 81 C.J.S., *States*, Sec. 36.

In the absence of a legislative declaration of payment of per diem, it is our opinion that members of the committee may receive only their expenses.

We are of the opinion that they may not vote themselves a per diem amount of compensation. Cf. *Opinion of the Justices*, (1953) 148 Me. 528, 96 A.2d 749; *Opinion of the Justices*, (1957) 152 Me. 302; 140 A.2d 762 and *Opinion of the Justices* (1963) 159 Me. 77, 190 A.2d 910.

JON R. DOYLE
Assistant Attorney General

March 17, 1970

Charles F. Trumbull, Member of the
Executive Council

Jurisdiction of Governor and Council to Authorize Transfer of Funds from Bond Issue Account to General Fund Appropriation Account.

SYLLABUS:

The Governor and Council are without jurisdiction to authorize the transfer of funds from a Bond Issue Account to a General Fund Appropriation Account.

FACTS:

There is pending before the Governor and Council a Council Order proposed to authorize the transfer of funds from a Bond Issue Account of the Department of Mental Health and Corrections, viz., General Fire Prevention and Safety Projects \$100,000, enacted by the 104th Legislature by P&SL 1969, Chapter 194, ratified by the electorate, to a General Fund Appropriation Account of the Augusta State Hospital, viz., Fire Prevention and Safety Projects \$42,000, enacted by the 103rd Legislature in Special Session, P&SL 1967, Chapter 191, Part B.

QUESTION:

May the Governor and Council properly and legally transfer funds from a Bond Issue Account to a General Fund Appropriation Account?

ANSWER:

No.

REASON:

This office by Opinion dated November 17, 1969 addressed itself to a similar issue, wherein a converse transfer was in question, i.e., a transfer from a General Fund Appropriation Account to a Bond Issue Account. The statute relied upon in that Opinion, resulting in a negative ruling, was 5 M.R.S.A. §1585, the same statute is applicable here and is controlling. This section is the only pertinent legislative authority relative to Governor and Council transfer of funds between accounts. We reach the same result in this instance for the same reason. The statute in question permits transfer between appropriation accounts. The transfer requested to be authorized, in this instance, is from a Bond Issue Account to an Appropriation Account. A Bond Issue Account results from an enactment of the Legislature, ratified by the people. An account of this nature is neither mentioned nor contemplated in section 1585, and is, in our opinion, not an Appropriation Account, which arises from an enactment of the Legislature, and relates to General Fund Surplus over which the Legislature has authority. We conclude that the Governor and Council can not authorize transfer of funds from a Bond Issue Account to an Appropriation Account.

COURTLAND D. PERRY
Assistant Attorney General

March 27, 1970
Mental Health & Corrections

K. B. Burns, Director
Bureau of Business Management

Transfer of Funds Between General Fire Prevention and Safety Projects Item and Institutional Fire Prevention and Safety Projects Items Contained in Bond Issue P&SL 1969, Chapter 194

SYLLABUS:

The Governor and Executive Council have authority to transfer funds from item designated "General Fire Prevention and Safety Projects" to Fire Prevention and Safety Projects designated by institutional name, unrestricted by 5% individual project restriction pursuant to P&SL 1969, Chapter 194.

FACTS:

The Department of Mental Health and Corrections has requested passage of a Council Order permitting the sum of \$10,600 to be transferred from item designated "General Fire Prevention and Safety Projects \$100,000" to item designated "Augusta State Hospital Fire Prevention and Safety Project \$63,000." One of the members of the Executive Council has requested that the Director of the Bureau of Business Management of the Department of Mental Health and Corrections, obtain the opinion of this office as to the legality of such transfer.

QUESTION:

Under P&SL 1969, Chapter 194, have the Governor and Council authority to transfer