

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT
OF THE
ATTORNEY GENERAL

For the Years
1967 through 1972

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

the sum of \$10,600 from item designated "General Fire Prevention and Safety Projects \$100,000" to item designated "Augusta State Hospital Fire Prevention and Safety Project \$63,000"?

ANSWER:

Yes.

REASON:

Pertinent language of P&SL 1969, Chapter 194, bearing upon our Opinion in this matter is as follows:

"The amounts listed after each project are to be construed as guides and any one or more amounts may be exceeded with the approval of the Governor and Council as long as the total expenditures of state money do not exceed the total amount of the bond issue allocated for all projects. The amount transferred from one project to another shall not exceed 5% of the amount listed and no one project shall be reduced by more than 5%."

We construe the above quoted language to authorize the Governor and Council to transfer funds between project items designated in the Bond Issue Act. The issue here is whether the 5% restriction set forth is applicable to the General Fire Prevention and Safety item. We find a legislative intent by enactment of the general item, to make available an amount sufficient to supplement possible cost changes arising in the course of carrying out individual institutional fire prevention and safety projects designated in the Bond Issue Act, e.g., Augusta State Hospital.

It is clear that the Governor and Council are subject to the 5% restriction set forth in the above quoted language with respect to transfers between individual institutional projects, since the word "project" is contained within the restrictive language. However, if the general item for fire prevention and safety projects, carrying a fund of \$100,000 is to be effectively available for what appears to be its clearly intended purpose, and since this item encompasses multiple "projects", it is our Opinion that the 5% restriction above cited is only on individual fire prevention and safety projects. If we were to find otherwise, and thus construe the 5% restriction to be applicable to the general \$100,000 item, the transfer of the sum of \$5,000 would be the limit of authorized fund transfer, leaving the sum of \$95,000 unreachable and unusable. Even if we were to say that 5% of the \$100,000 could be transferred to individual projects, and there are eight individual institutional fire prevention and safety project items, the total authorized would be only \$40,000, leaving \$60,000 unreachable and unusable. We cannot attach this meaning to the above quoted language. The legislature cannot be said to have intended this absurd result.

It is, therefore, our Opinion that the Governor and Council are vested with transfer authority with respect to items funded within the Bond Issue Act in question, that the \$100,000 general item is clearly intended as a supplementary fund, and that the only reasonable construction consistent with legislative intent is that the \$100,000 general item is not subject to transfers limited to 5% of the fund; the sum of \$10,600 may be transferred with the approval of the Governor and Council from the \$100,000 General Fire Prevention and Safety Projects item to the Augusta State Hospital Fire Prevention and Safety Project item.

COURTLAND D. PERRY
Assistant Attorney General