

MAINE STATE LEGISLATURE

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January 13, 1971

Honorable R. Lafayette Ervin

Executive Council

Jon R. Doyle, Deputy

Attorney General

SYLLABUS:

The Governor and Council do not have the authority to transfer funds from a bond issue account to a surplus fund account.

FACTS:

The 103rd Legislature by Private and Special Law, Chapter 167, proposed a bond issue in an amount not exceeding \$4,000,000 for the acquisition of certain interests in land and water and the construction of improvements upon such lands. A portion of the proceeds of the bond issue have been utilized for the purchase of an historic site known as the "Ancient Pemaquid Restoration". The purchase price of \$263,235 included funds for seller to make certain improvements and repairs. The repairs were all made with the exception of a sewage disposal system for which \$4,650 was allocated. These funds were found not adequate to accomplish the job according to requirements of the Environmental Improvement Commission. The seller refunded \$4,650, which was deposited by the State Park and Recreation Commission into the bond issue account.

The State Park and Recreation Commission now desires to transfer the funds from the bond issue account to a surplus account where the funds will be used together with other funds in the surplus account to construct a sanitary facility according to requirements of the Environmental Improvement Commission.

QUESTION:

May the Governor and Council transfer funds from a bond issue account to a surplus account?

ANSWER:

No.

REASONS:

The Council Order referred to in the Facts presumably is based upon the provisions of Title 5 M.R.S.A. § 1585. This section reads as follows:

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"Any balance of any appropriation or subdivision of an appropriation made by the Legislature for any state department or agency, which at any time may not be required for the purposes named in such appropriation or subdivision may, upon the recommendation of the department or agency head concerned and the State Budget Officer, be transferred by the Governor and Council, at any time prior to the closing of the books, to any other appropriation or subdivision of an appropriation made by the Legislature for the use of the same department or agency for the same fiscal year."

This section is the only pertinent authority relative to Governor and Council transfer of funds between accounts. 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 a surplus account. The bond issue account results from an enactment of the Legislature, ratified by the people. It is our opinion that an account of this nature is not an appropriation account. An appropriation account or appropriation is credit advanced to a department or agency out of funds under the control of the Legislature and by legislative act which does not need the approval of the people.

The two accounts are of a different nature. The Governor and Council have not been given authority to transfer funds from one to the other. It therefore follows that the proposed transfer is not within the jurisdiction of the Governor and Council. This opinion is consistent with the tenor and holdings of our opinions of November 17, 1969 and March 17, 1970.

I would raise the question, parenthetically, as to whether such a transfer is necessary. It does appear that section 5 of the reference chapter 167 would allow monies to be expended for improvements which could be facilities of the type contemplated. I would raise the question as to whether it would not be possible to utilize the balance of \$4,650 now remaining in the bond issue account for the purposes intended and for the expenditure to be made in effect from two accounts without any transfer. It may well be that the Council Order should be drafted so as to authorize the expenditure of the \$4,650 for the construction of adequate sanitary facilities and sewage treatment works. We see nothing to prohibit this.

Thank you for your attention.

JRD:mfa