

MAINE STATE LEGISLATURE

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March 15, 1974

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SYLLABUS:

All state department or agency may not transfer funds to another department or agency. The Governor and Executive Council have no authority to make such a transfer. Only the Legislature has the authority.

FACTS:

A state department has entered into a contract for certain professional services. It seeks to have another state agency transfer to its funds to finance the contract. A request will be made to the Governor and Council to approve such a transfer.

QUESTION:

May a state department or agency transfer, by Council order, a part of its funds to another state department or agency.

ANSWER:

No.

REASON:

There are two sections in the Revised Statutes relating to transfer of funds. The first provision is 5 M.R.S.A. § 1585.

"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. (emphasis supplied)

A careful reading of this section reveals that it relates to the transfer of funds between accounts within the same department. Its language cannot be stretched to cover the present situation.

The second section is 5 M.R.S.A. § 1586:

"Whenever the Governor and Council shall find that the State or any of its departments, divisions or bureaus is incurring expense and using funds of the State in connection with the carrying on of the work of any board or commission which collects fees from the persons so supervised and licensed, including salaries, travel and the expense of office equipment and supplies, they are authorized and empowered to transfer from any funds now or hereafter held by any such board or commission, such sums of money as shall reimburse the State or any department or bureau thereof for such expense so incurred, including a reasonable charge for office space, light and heat. Such sums so transferred shall be added to and become a part of the funds of the department, bureau or division incurring such expense.

The section applies to the situation where a state department is expending funds to carry on the work of a board or commission which has its own dedicated revenue received from license fees. In that case the department may recover the money expended from the licensing board or commission. The Bureau of Public Improvement does collect rent for office space from some licensing boards or commissions under this statute.

The Legislature has not authorized the transfer of funds from one department to another. By its inaction it has indicated that it has retained to itself that power.

If the Activity of the contractor named in the contract is such that it could be a proper function of the agency with the funds that agency could contract with the contractor. The end result of the work of the contractor would be public property and available to the department lacking funds to pay the contractor.

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