

MAINE STATE LEGISLATURE

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JOSEPH E. BRENNAN
ATTORNEY GENERAL



JOHN W. BENNETT, JR.
RICHARD S. COHEN
MARTIN L. WILK
DEPUTY ATTORNEYS GENERAL

STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04330

April 30, 1975

Honorable Philip C. Jackson
Senate Chambers
State House
Augusta, Maine

Honorable C. Everett Dam
House of Representatives
State House
Augusta, Maine

Gentlemen:

This replies to your letter to the Attorney General dated April 18, 1975, concerning county commissioners.

Your first question reads:

"What course of action may be taken by the Attorney General, the Legislature, the Legislative Delegation or a joint standing committee of the Legislature against counties that have overspent individual line items of the budgets for the last biennium?"

It must be noted first that the Legislature has expressly provided that the County Commissioners can overspend an individual line item in two circumstances. First, when the specific appropriation proves:

"insufficient to pay the required expenditures for the statutory purposes for which such appropriation was made, the county commissioners may, upon written request of such department or agency, transfer from any other specific line appropriation of the same department or agency, an amount as required to meet such expenditure, provided, that such request shall bear the written approval of the majority of the county commissioners." 30 M.R.S.A. § 252.

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Second, the Legislature has:

"established a contingent account in each county in an amount not to exceed \$50,000. . . . This fund shall be used for emergency purposes only at the discretion of the county commissioners."
30 M.R.S.A. § 252.

Determination of what constitutes an "emergency" within the meaning of this term as used in § 253 has been vested by the Legislature in the sound judgment of the County Commissioners.

If we assume that a set of facts has been developed which demonstrates that the county commissioners have overspent an individual line item without compliance with either the first or second above-described exceptions permitting such action, your first question would then ask what action can be taken against the county commissioners for violating § 252? 30 M.R.S.A. § 59 provides a partial answer to that question:

"Any agent or officer who shall willfully violate sections 252, 401, 403 or 408 shall be punished by a fine of not more than \$500 or by imprisonment for not more than 6 months, or by both."

It should be noted that this criminal sanction is imposable only if it appears beyond a reasonable doubt that the county commissioners willfully violated § 252.

If we assume that the facts do not warrant a finding beyond a reasonable doubt of a willful violation of § 252, but that, instead, the violation was the result of either negligence or incompetence, two remedial actions are available. First, the matter can be presented to the electorate as a basis for non-reelection. Second, the Legislature can take action towards removal of such county commissioners by impeachment or address pursuant to Article IX, Section 5, Constitution of Maine.

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Your second question reads:

"What course of action may be taken by the above person or groups against counties that have overspent the total authorized expenditures, including authorized contingency funds, of the budgets of the last biennium?"

The answer to that question is similar to the first and threefold: First, prosecution under 30 M.R.S.A. § 59, if the overexpenditure is willful; second, present the matter to the electorate for their judgment at reelection; and third, impeachment or address.

Your third question asks:

"Do present limitations on county indebtedness prevent a county from raising revenues in this manner to overspend their authorized budgets?"

We construe the word "prevent" to mean "prohibit," and as thus construed the question is answered in the affirmative.

The corporate powers of a county are derived entirely from legislative enactments. State of Maine v. Vallee, 136 Me. 432, 446. The county commissioners cannot appropriate funds, levy taxes, spend or make any financial commitments without the approval and consent of the Legislature. See Maine v. Vallee. Also see Opinion of the Attorney General to Governor Longley, dated February 27, 1975, and opinion of the Attorney General to Senator Clifford, dated January 29, 1975, a copy of each of which opinion is attached hereto.

Your fourth question asks:

"May the counties assess municipalities at a higher rate than that required to fund the authorized budget?"

The answer to that question is negative. 30 M.R.S.A. § 252 provides that:

"In order to assess a county tax, county commissioners shall prepare estimates of the sums necessary to defray the expenses which have accrued or may probably accrue for the coming year"

"Such estimates shall be drawn so as to authorize the appropriations to be made to each

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department or agency of the county government for each year of the biennium. . . ."

30 M.R.S.A. § 253 provides:

"A copy of said estimates, with any amendments attached thereto adopted by the Legislature, including any changes in specific line categories, for the assessment of the county taxes, shall be filed by the Legislature with the State Auditor who shall retain the same for a period of 3 years, and shall be a public record at the office of the clerk of courts in all counties."

30 M.R.S.A. § 254 provides:

"When a county tax is authorized, the county commissioners shall, in April in the year for which such tax is granted, apportion it upon the towns and other places according to the last state valuation and fix the time for the payment of the same, which shall not be earlier than the first day of the following September."

It is clear from the foregoing statutory provisions that the county commissioners can only raise such county tax as has been authorized by the Legislature's budgetary approval.

Your fifth question asks:

"May the county commissioners of any county authorize pay raises to county employees or county civil officers during the present fiscal year prior to Legislative approval of the budget for the present fiscal year?"

The answer to that question is negative. The county commission derive their authority entirely from the statutes (Maine v. Vallee) and there is no statute which authorizes them to grant pay raises or to make any other financial commitment or expenditure which has not been approved by the Legislature, with the sole exception of an

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"emergency." It does not seem likely that a pay raise granted prior to Legislative approval of the estimates could ever constitute an "emergency" within the meaning of that phrase as used in 30 M.R.S.A. § 252.

If I can be of any further aid to you in this matter, please advise me.

Very truly yours,


CHARLES R. LAROUCHE
Assistant Attorney General

CRL:mfe