

MAINE STATE LEGISLATURE

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STATE OF MAINE

Inter-Departmental Memorandum Date August 12, 1975

To Peter M. Damborg, Executive Secretary Dept. Manpower Planning & Coordinatic

From Joseph E. Brennan, Attorney General Dept. Attorney General

Subject County Delegation of Authority - CETA Funds

The following is in response to a memorandum dated July 2, 1975, from then Acting Director William R. Malloy concerning the above subject. A copy of that memorandum is attached.

Mr. Malloy began his memorandum with certain assumptions concerning counties as units of general local government and CETA funds as "Federal Government grants." These assumptions are correct, as noted in the memorandum opinions of March 17, 1975, and August 1, 1975, concerning "County CETA Eligibility."

Mr. Malloy's first question was whether Maine statutes give the counties authority to delegate the responsibility for administering federal funds to another organization or non-governmental body. It is assumed that Mr. Malloy was posing a situation where a county would completely transfer all authority, administration, and accountability for the funds to another body, and disassociate itself from responsibility for them. The counties are creatures of the State and the powers and duties of the County Commissioners are derived entirely from the statutes. State v. Vallee, 136 Me. 432, 446 (1940); Atty. Gen. Rep. 1941-42, p. 91. The counties have been given authority to ". . . apply for and accept and expend Federal Government grants. . . ." 30 M.R.S.A. § 255, sub-§ 1. However, there is no express authority to delegate responsibility for such grants to non-governmental bodies specifically given to the counties by this or any other Maine statute.

As to other governmental bodies, 30 M.R.S.A. § 1953 authorizes the counties, which are "public agencies" as defined by 30 M.R.S.A. § 1952, to jointly exercise their powers, privileges or authority with other "public agencies." Administration of Federal funds is within the counties' statutory power and authority (30 M.R.S.A. § 255), and could be jointly administered in the absence of Federal law to the contrary. It should be noted, however, that such agreement for joint exercise of powers would not relieve the "public agencies" from any responsibility imposed by law, except as it is actually performed by a joint authority established by agreement of the "agencies" (30 M.R.S.A. § 1953, 4). If only CETA funds are involved, there may also be a question of whether such joint exercise of powers relative to those funds by two or more counties or other units of general local government would, in effect, be a "consortia" as envisioned by 29 C.F.R. § 95.3(a).

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Expanding the answer somewhat, there is at least an implied authority for the counties, through the County Commissioners, to delegate certain duties and powers to its employees and agents. The County Commissioners have the duty to exercise the corporate powers of the county and manage and control its property and financial interests. 30 M.R.S.A. § 251; Watts Detective Agency, Inc. v. Inhabitants of County of Sagadahoc, 137 Me. 233 (1941). To assist in the performance of these duties there are statutory county officers, such as the Clerk and Treasurer, and clerical staff. There is also a statutory implication that agents may be used for this purpose - 30 M.R.S.A. § 59 states "Any agent or officer who shall. . . ." (emphasis provided). Therefore, it is clear that the counties may use employees and agents to help administer Federal grants, although in the latter case principles of agency law would apply and responsibility for administration would remain with the County Commissioners.

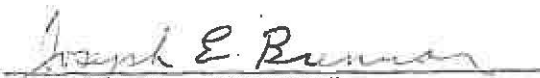
If the first question is limited to administration of CETA funds, then Federal rules and regulations concerning the administration of those funds, must also be considered. In addition to 29 C.F.R. § 95.41 previously cited, note 29 C.F.R. § 95.41 for the authorization for a prime sponsor to enter into contracts and subgrants. However, even if contracts and subgrants are utilized, the prime sponsor (county) is still responsible for their development, approval and operation. Further questions concerning the use of contracts and subgrants, as well as "consortia" arrangements mentioned above, would be more properly answered by the Federal officials administering the CETA program.

Mr. Malloy's second question was whether a delegation of authority, as previously described, could be construed as "prima facie" evidence that the delegating county lacks the administrative capabilities to operate a program like the CETA program. Black's Law Dictionary defines "prima facie evidence" as "evidence good and sufficient on its face" or "Evidence which, standing alone and unexplained, would maintain the proposition and warrant the conclusion to support which it is introduced" (Gilmore v. Modern Brotherhood of America, 171 S.W. 629, 632 [Mo.]). Since there may well be reasons for delegation of authority other than lack of administrative capability, a delegation standing alone and unexplained would not compel the conclusion that the delegating party lacked administrative capability, i.e., it would not be "prima facie evidence" of that fact.

Mr. Malloy's third question was whether a non-governmental organization possesses the legal authority to receive and expend Federal funds applied for and accepted by a Maine county and to transact business in a county's behalf as a legal representative

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of that county. The answer would depend upon the specific organization involved. The organization could legally receive and expend funds of this type and act as a county's agent only if such action was within the specific organization's charter powers or was authorized by statute. For example, the Maine Municipal Association is recognized as a "municipal advisory organization" and has authority to receive Federal grants or contributions for its activities with respect to the solution of local problems. (30 M.R.S.A. § 5102, 8). Therefore, the Association has the authority to receive and expend Federal funds for that purpose. The answer as to other organizations would depend upon their particular powers and authority.


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