

# MAINE STATE LEGISLATURE

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STATE OF MAINE  
DEPARTMENT OF THE ATTORNEY GENERAL  
AUGUSTA, MAINE 04333

August 14, 1975

Honorable Peter Truman  
Box 532  
Biddeford, Maine 04005

Re: Request for Opinion - County Expenditures.

Dear Representative Truman:

You recently requested an opinion from this office on the following question:

"Are the County Commissioners required to expend appropriations for social services, which appropriations have been authorized by the State Legislature contrary to the recommendation by said County Commissioners that no appropriation be made for social services?"

I assume, from your question, that the appropriations to which you refer would be funds added as a separate line item to the county estimates, which item was not in the estimates when they were submitted to the Secretary of State pursuant to 30 M.R.S.A. § 253.

Normally this office would not involve itself in legal questions concerning the counties, since the District Attorney represents the counties in his district in civil matters. 30 M.R.S.A. § 501. However, since your question also concerns action by the Legislature and is a question of state-wide importance and interest, we have decided to make our opinion on this subject known, with the hope that it will help eliminate any existing misunderstandings as to the law in this area.

Hon. Peter Truman  
Page 2  
August 14, 1975

The answer to your question is affirmative. The counties are not a coordinate branch of government with the Legislature, and the County Commissioners have no power to impound funds which have been authorized for specific purposes with which they disagree. This office has previously taken the position that the Legislature may direct a county to expend county monies for a specific purpose if that purpose is public and of special benefit to the county. Attorney General Report 1963-64, p. 19. We reaffirm that position.

The clearest statement of the law on this issue was made by the Supreme Judicial Court in Sawyer v. Gilmore, 109 Me. 169 (1912), when it cited with approval cases from several other states, including State v. Board of County Commissioners of Shawnee Co., 28 Kansas 431, wherein it was stated:

"And finally we remark that counties are purely the creation of State authority. They are political organizations, whose powers and duties are within the control of the Legislature. That body defines the limits of their power, and prescribes what they must and what they must not do. It may prescribe the amount of taxes which each shall levy and to what public purpose each shall devote the monies thus obtained.

"In short, as a general proposition, all the powers and duties of a county are subject to legislative control; and provided the purpose be a public one and a special benefit to the county it may direct the appropriation of the county funds therefor in such manner and to such amount as it shall deem best."

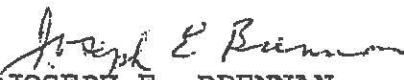
The county estimates which are prepared by the county commissioners pursuant to 30 M.R.S.A. § 252 and sent to the Secretary of State pursuant to 30 M.R.S.A. § 253 constitute a request for legislative authorization of appropriations. (Attorney General Opinion of February 27, 1975). The estimates are "laid before the Legislature" by the Secretary of State. 30 M.R.S.A. § 253. Hopefully, any difference of opinion as to the appropriations would be resolved during the meeting between the county commissioners and the respective county legislative delegation prior to convening of the Legislature, as provided in 30 M.R.S.A. § 252. Nevertheless, such agreement is not binding on the Legislature, which at all times retains its constitutional power to act for the benefit of the people of Maine. Section 1, Part Third, Article IV Constitution of Maine.

Hon. Peter Truman  
Page 3  
August 14, 1975

The Legislature has seen fit to make clear that it may change or alter specific line categories in the estimates. 30 M.R.S.A. § 253-A. There is also statutory indication that the Legislature envisioned changes to the estimates beyond alterations to a specific line item. Title 30 M.R.S.A. § 253 reads, in pertinent part, "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 . . ." (emphasis provided). Therefore, the action taken by the Legislature in adding an appropriation for social services which was not in the original county estimates would be correct within the statutory mechanism established for collecting and expending tax money at the county level. However, even if the Legislature's action was not within that statutory mechanism, it would still be a legal act without conflict with such mechanism, in light of the Legislature's overriding constitutional power to act for the public benefit and the fact that the Legislature may take such specific action by orders and resolutions without any purpose to abrogate, annul or repeal any existing general law. Bangor v. Inhabitants of Etna, 140 Me. 85 (1943).

Assuming that the "social services" you mentioned in your question are a public purpose of special benefit to the county, which it appears they would be, it is clear that the Legislature may direct the county to expend specified funds for those services, by means of adding the funds to the county estimates submitted for legislative approval. It is equally clear that once the Legislature has acted in this manner, the County Commissioners are required to collect taxes necessary to provide those funds and expend the funds for the purposes specified.

Sincerely,

  
JOSEPH E. BRENNAN  
Attorney General

JEB/ec

cc: Representative Robert M. Farley  
Paul Reny, Member, York County Commissioners  
Clement Auger, York County Commissioner, Chairman  
Donald Cote, York County Commissioner, Member