

72
STATE OF MAINE

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Executive

Dept. Municipal Coordinator

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

Subject General Revenue Service (Federal Revenue Sharing Funds)

Your memorandum of June 25, 1975, concerning the above-stated topic, contained the following two questions:

1. "Is the county required to have State Legislature approval of their general revenue sharing funds?"
2. "If so, does the Legislature have the right to change proposed allocated budgetary items, which are in accordance to General Revenue Sharing Categorical Expenditures, and reallocate them directly against the county budget?"

The answers to both questions are affirmative, although with qualification as to that part of the second question which concerns reallocation of revenue sharing funds against the general county budget.

In letters dated February 9 and April 6, 1973, then Attorney General Jon A. Lund expressed the opinion that county entitlements under the State and Local Fiscal Assistance Act of 1972, P.L. 92-512, 86 Stat. 919, 31 U.S.C. § 1221 *et seq.*, need not be made part of county estimates submitted pursuant to 30 M.R.S.A. § 253, and that the Legislature does not have the responsibility of determining how the counties will spend these funds. These opinions were given on the basis of legislative history for the Federal statute, and in the absence of State legislation to the contrary. Shortly after these opinions, the Legislature spoke to this question by enacting, on an emergency basis, P.L. 1973, Ch. 386 (L.D. 1895, as amended by Senate Amendment S-120). This Act amended 30 M.R.S.A. § 253 by adding, in pertinent part, the following:

"Any county which is the recipient of federal revenue sharing funds shall provide for the expenditure of such funds in accordance with the laws and procedures applicable to the expenditure of its own revenue and shall record estimates of the same as provided in this section. . . ."

Both the legislation itself and its history indicate that the Legislature intended that legislative approval of expenditure of these funds would be necessary. Section 253, as a whole, concerns the procedure to be followed with the county estimates, and requires that the estimates be "laid before the Legislature." Although the estimates

are to be used primarily for the purpose of assessing the county tax (30 M.R.S.A. § 252), the amendment would subject revenue sharing funds to the same procedures. The Statement of Fact for L.D. 1895 indicates the purpose of the bill was to provide a uniform reporting system at the State level for federal revenue sharing entitlements of the counties. However, the Emergency Preamble states, "Whereas, an orderly system of reporting such entitlements [federal revenue sharing funds] for 1973 is needed by the State for approval of such expenditures under county line budgets;" (emphasis provided). Furthermore, the sponsor of the bill, Representative Harrington, stated:

"We have found in making inquiries that it is necessary for our counties to report their expenditures of revenue sharing funds to the legislature and have legislative approval. Therefore, this is the reason for this order, and hopefully it will pass without any trouble." Legislative Record - 1973, p. 1563; House, April 11, 1973 (emphasis provided)

In light of the foregoing, it is clear that the Legislature has answered your first question in the affirmative and legislative approval of these funds is necessary.

The answer to your second question is a corollary of the first. Since proposed expenditures of federal revenue sharing funds are to be included in the line budget estimates, the Legislature's expression of their power to change or alter specific line categories, as set forth in 30 M.R.S.A. § 253-A, would also apply to those funds. Therefore, the Legislature does have the "right" to change proposed allocated budgetary items which would utilize revenue sharing funds. (See generally Section 1, Part Third, Article IV Constitution of Maine, and Sawyer v. Gilmore, 109 Me. 169 (1912) for the powers of the Legislature in this area).

The Legislature also has the "right" to reallocate revenue sharing funds directly against the general county budget without allocation to specific items, for the reasons just stated. However, a reallocation of this nature could have two negative results. First, since applying the funds directly to the general budget would have the effect of giving tax relief, and since the entitlement formula for revenue sharing funds depends in part on local tax effort (31 U.S.C. § 1225(b)), the result could be a decrease in future entitlements.

Second, and more important, direct application of revenue sharing funds to the general county budget in an unallocated fashion could result in forfeiture of the funds plus a 10% penalty if it is determined

that they were not used for "priority expenditures," as defined in 31 U.S.C. § 1222(a). 31 U.S.C. § 1243(a)(3). Although the county must expend the funds "only in accordance with the laws and procedures applicable to the expenditure of its own revenues . . ." (31 U.S.C. § 1243(4)), such expenditures must still be within one of the priority categories listed in 31 U.S.C. § 1222(a), or, with qualifications, used for debt retirement (31 C.F.R. § 51.31(b)). Mackey v. McDonald, 504 S.W.2d 726 (Ark., 1974). Direct, unallocated use of revenue sharing funds for the general county budget--in other words to reduce the local tax burden--is not a "priority expenditure" as defined. These funds can be used to give tax relief to the extent that they legitimately free municipal funds which can be used for this purpose. However, the funds cannot be used for a direct rebate, nor can a simple transfer of accounts be used to achieve this result. Mathews v. Massell, 356 F.Supp. 291 (N.D. Ga., 1973).

In summary, since the Legislature has provided that expenditures of county revenue sharing funds shall be treated in the same manner as expenditures of the counties' own tax revenues, legislative approval of such expenditures is necessary. While the Legislature has the power to change or alter proposed allocations of these funds, such changes or alterations should be made with consideration of the requirements that the funds are to be used only for "priority expenditures." Use of the revenue sharing funds directly against the county budget in an unallocated manner would risk a decrease in future funding under the federal program and could cause forfeiture of the funds.

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