

# MAINE STATE LEGISLATURE

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September 24, 1975

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**Borrowing in Anticipation of Tax Revenue - Counties**

SYLLABUS:

A county may not borrow funds in a current year in anticipation of tax revenue to be received in the following year. Even if such borrowing was permissible, funds obtained in this manner could not be used to overspend a line category in the legislatively approved budget for the current year without further legislative approval.

FACTS:

It is assumed for purposes of this opinion that the operating expenses for a governmental entity, which performs a vital public function and which is funded from county revenues, have accrued at an unexpected rate, and that the accrued expenses are such that they will exceed the line category amount authorized by the Legislature for that entity in the county budget for the current year before the end of the year. The problem presented is how to provide operating funds for this governmental entity until the beginning of the following year, at which time the authorized funding for that year may be used for this purpose. It is further assumed that it is impossible in the particular situation to solve the problem by intradepartmental transfer of funds from other specific line appropriations or by utilizing funds in the "contingent account," as those options are authorized in 30 M.R.S.A. Sec. 252.

QUESTION AND ANSWER:

May a county borrow funds in a current year in anticipation of revenue from the county tax to be collected in the following year? No.

REASONS:

The counties are creatures of the State and the county commissioners derive their powers and duties entirely from the statutes. State v. Vallee, 136 Me. 432 (1940). Therefore, it is necessary to look to the statutes for the answers to both questions raised.

There are presently two statutes which directly or by implication give county commissioners the power to borrow funds in anticipation of tax revenue. Title 30 M.R.S.A. Sec. 407 reads:

"The county commissioners of each and every county may without obtaining the consent of their county raise by temporary loans to be

paid within one year from the time when the same is contracted out of money raised during the current year by taxes 1/5 of 1% of the assessed valuation of their respective counties. (emphasis supplied)

Although this statute implies the power to borrow in anticipation of tax revenue, there is also a clear statement that the tax revenue to be anticipated is only that revenue to be collected in the current year. The underlined words, which state this limitation, were added to the statute by P.L. 1935, c. 59 (S.P. 458, L.D. 657 as amended by House Amendment "A"). There is no legislative history to indicate the purpose of this amendment, however the added language is analogous to that found in one of the exceptions to the constitutional municipal debt limitation. Article IX, section 15, Constitution of Maine (added by Amendment XXII as proposed in Resolve 292 of 1877). Whatever the reason for this amendment, the result is that borrowing in anticipation of tax revenue under this statute may not be used if the revenue anticipated is other than for the current year.

The second statute concerning anticipatory borrowing is 30 M.R.S.A. Sec. 401-A (P.L. 1975, c. 5; L.D. 586) which specifically authorizes such borrowing. The statute reads in pertinent part:

"The county commissioners of all counties may borrow in anticipation of taxes and to the extent that the county budget has not been approved by the Legislature, the county commissioners of each county may borrow an amount not exceeding 80% of the previous year's budget."

The new Section 401-A directly grants the county commissioners the power to borrow in anticipation of taxes. However, it is apparent from the language in the section that the Legislature was addressing itself to a specific, limited problem, as seen in the provision that a percent of the previous year's budget will act as a limitation on such borrowing power. A cardinal rule of statutory construction is to give effect to the legislative intent and the objective of the legislation, in the sense of the problem to be remedied. Hanbro, Inc. v. Johnson, 158 Me. 160 (1962). An examination of L.D. 586 and its legislative history confirms that the Legislature did not intend to grant the commissioners the power to borrow in anticipation of a future year's taxes to meet current year obligations. The intent was to make certain that the

commissioners could borrow in anticipation of current year taxes to meet current obligations, during those few months at the beginning of each biennium when there is no approved current budget.

L.D. 586 was an emergency measure and the emergency preamble contained the statement, "Whereas, the several counties of the State anticipate a shortage of funds to meet current obligations unless legislative authorization to borrow in anticipation of taxes is provided;". This situation existed because of an independent legal opinion which cast doubt on the borrowing power which existed.

"What this does, it primarily clarifies the issue that is now before Ropes and Gray. Ropes and Gray is the bonding council [sic] for your school districts, municipalities and your counties. Under the present law, the commissioners could have a right, possibly, to borrow money in anticipation of taxes on an anticipated budget. But Ropes and Gray has ruled that they do not entertain this. So this bill allows the counties to borrow in anticipation of taxes up to 80 percent of their last year's budget, not this new budget being presented but last year's budget which has been approved." (emphasis provided) Legislative Record - House, February 12, 1975.

During this same discussion it was noted that the problem existed for several counties, which made it preferable to enact an emergency measure assisting all counties rather than to treat each county separately. Therefore, it is clear from the legislative history that L.D. 586 was not intended to allow anticipatory borrowing on the basis of a future year's taxes for current expenditures.

In light of the foregoing, the answer to the question is negative since neither 30 M.R.S.A. § 407 nor § 401-A would allow borrowing in this manner. Moreover, even if arguendo such anticipatory borrowing was permissible, funds obtained in this manner could only be used for very limited purposes without further legislative approval.

In an opinion dated January 29, 1975, this office stated that the county commissioners may not borrow money for the purpose of overspending a line category in the legislatively approved county budget in any year. After reviewing 30 M.R.S.A. Sections 251, 252, 253, 253-A and Resolves, 1973, c. 13, it was concluded that once the Legislature has approved a county budget, only the Legislature may change specific line

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categories thereafter. The only manner in which county commissioners may change a line category by overspending it is through intra-departmental transfer of funds from another line category or use of the contingent account. 30 M.R.S.A. Sec. 252. Finally, the limited grant of authority to the county commissioners to borrow money, found in 30 M.R.S.A. Sec. 407, does not include a grant of authority to the county commissioners to expend such borrowed funds for purposes not approved by the Legislature. The authority was merely to allow borrowing in anticipation of tax revenues, for expenditure on legislatively approved line categories. We reaffirm this opinion and note that the rationale also applies to the expenditure of funds borrowed under the new Section 401-A. In either case it would require further legislative approval before borrowed funds could be used to pay current operating expenses for a line category funded government entity which has already expended the previously authorized budget amount.

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