

MAINE STATE LEGISLATURE

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

September 25, 1975

Honorable Leighton Cooney
Box 246
Sabattus, Maine 04280

Dear Representative Cooney:

This is a reply to your recent letter posing several questions concerning the Androscoggin County budget as approved by the 107th Legislature.

First you ask whether: (1) the contingency account, and (2) the 2% tax overlay assessed against municipalities in Androscoggin County, could be used in the event the Superior Court account runs short of funds. The answer to your question is in the affirmative, subject to certain conditions. According to the provisions of 30 M.R.S.A. Sec. 252, the contingent account may be used only for emergency purposes. What constitutes an emergency purpose lies within the sound discretion of the county commissioners. The county commissioners would be validly exercising their statutory discretion if they were to decide that the continued funding of the courts constituted an emergency for which the contingent account should be used.

As for the 2% tax overlay, the county commissioners are authorized to add such an overlay to the tax required to be raised to fund the expenses approved by the Legislature.

"* * * They may add such sum above the sum so authorized, not exceeding 2% of said sum. As a fractional division renders convenient and certify that fact in the record of said apportionment, and issue their warrant to the assessors requiring them forthwith to assess the sum apportioned to their town or place * * *." 30 M.R.S.A. § 254.

There is little statutory direction as to how these overlay funds are to be expended. However, if 100% of the county tax were eventually collected, the overlay revenue would be revenue in excess of estimates and could be used in the following year as surplus funds for the purposes set forth in 30 M.R.S.A. Sec. 403, which include restoration of the contingent account. In that way, the overlay funds could be used indirectly to provide additional funding for the courts.

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Your next question asks whether there are other statutory provisions that would allow the county commissioners to remedy a legitimate budget emergency, short of calling a special legislative session. The same sort of inquiry has been made of this office by others, and we are presently giving the matter our attention. As soon as the question is resolved, we will advise you of our conclusion.

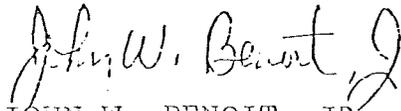
Your third question involves the Legislature's transfer of \$115,000 from the "Building Construction Fund" in the Androscoggin County Budget to an available credit status, to be utilized by the county commissioners to meet county expenses for calendar year 1975. You ask: "Was the Legislature within its power in so directing the Commissioners, or do they (the Commissioners) have the sole power to accumulate and spend such an amount independent of all other authorities?" (Parenthesis mine) We are mindful of the fact that the District Attorney has given legal advice to the county commissioners on that question. We also realize that Maine statutes authorize the District Attorney to appear for each county within his district, under the direction of the County Commissioners in all actions and civil proceedings in which any county is a party or is interested, or in which the official acts and doings of said Commissioners are in question. 30 M.R.S.A. Sec. 501. However, the nature of your question warrants response by this office because it calls for review of specific legislative action. The Legislature has the constitutional power to direct the County Commissioners to apply funds in a capital reserve account against the general budget as occurred concerning Androscoggin County's budget, i.e., transfer of the building fund balance to the "available credits" portion of the budget. 30 M.R.S.A. Sec. 5201, subsecs. 1 and 2, read in conjunction with 30 M.R.S.A. § 403, authorize a county to establish reserve accounts for capital improvements. The language of 30 M.R.S.A. Sec. 5202 makes provision for the administration of the capital improvement account. While it is true that sec. 5202 specifies that an expenditure from any reserve account may only be made for the specific purpose for which the account was established, the Legislature retains at all times its constitutional authority to act for the benefit of the people of the State. Constitution of Maine, Art. IV, Part Third, Sec. 1. It is also well established that the Legislature may direct appropriation of county funds in such manner and amount as it deems best, so long as the purpose is a public one and of special benefit to the county. Sawyer v. Gilmore (1912) 109 Me. 169. In the matter at hand, the Legislature was acting within its constitutional and statutory authority when it directed that the capital reserve account be utilized as a credit against current service expenses of the county. Resolves 1975, c. 15 and Androscoggin County budget as approved by the Legislature.

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Next you ask whether: "Is it within the powers of the County Commissioners on their own motion, to declare the purposes of the 'Building Construction Funds' satisfied and therefor apply those funds to the 1975-76 current services budget?" The nature of the question is such that we feel, respectfully, the answer to the previous question renders moot the need to answer this question.

In conclusion, you request what recourse is available to the citizenry of Androscoggin County if the County Commissioners fail to act within the mandate of the statutes concerning the legislatively approved budget. "Recourse" depends upon the nature of the facts in a specific case; and we respectfully reserve comment on that until particular facts are known.

Very truly yours,



JOHN W. BENOIT, JR.
Deputy Attorney General

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