

MAINE STATE LEGISLATURE

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STATE OF MAINE

Inter-Departmental Memorandum Date September 30, 1975

To John P. O'Sullivan, Commissioner

Dept. Finance and Administration

From Joseph E. Brennan, Attorney General

Dept. Attorney General

Subject Use of State Contingent Account for Emergency Finance of Superior Court

Syllabus:

The Governor, with the advice and consent of the Council, may use funds in the State Contingent Account for emergency finance of the Superior Court.

Facts:

Operating expenses for the Superior Court are provided by line category allocations in the respective county budgets. Expenditures for these operating expenses in one or more counties have been such that it is expected they will exceed the allocated amount before the end of the year, which is also the end of the current fiscal period. The problem is how to provide the necessary funding for continued operation of the Court in these counties until funds for the next fiscal period may be used for this purpose.

Question and Answer:

May the Governor and Council allocate funds from the State Contingent Account, pursuant to 5 M.R.S.A. § 1507, for emergency finance of the Superior Court in light of the facts stated? Yes.

Reasons:

Utilization of the State Contingent Account is governed by 5 M.R.S.A. § 1507, which reads, in pertinent part:

"§1507. Contingent Account

The Governor, with the advice and consent of the Council, may allocate from the State Contingent Account amounts not to exceed in total the sum of \$800,000 in any fiscal year. ... (at this point several amounts reserved for specific purposes are listed)...

Allocations from the balance may be made to meet any expense necessarily incurred under any requirement of law, or for the maintenance of government within the scope existing at the time of the previous session of the Legislature or contemplated by laws enacted thereat, or to pay bills arising out of some emergency requiring an expenditure of money not provided by the Legislature. The Governor and Council shall determine the necessity for such allocations..."
(Parenthesis supplied)

A review of the history of this statutory provision does not reveal any expression of Legislative intent which would require a special interpretation or construction. The first statutory authority for allocations of this sort by the Governor and Council was enacted in 1915. P.L. 1915, c. 317. The language quoted above concerning the circumstances in which allocations from the fund may be made, reached its present form after an amendment in 1943. P.L. 1943, c. 271; L.D. 546. However, there was no Statement of Fact, debate recorded in the Legislative Record, or other legislative history to indicate legislative intent for either enactment. Nor has the permissible use of the State Contingent Account been the subject of litigation or other judicial interpretation.

Section 1507 clearly states the discretionary authority of the Governor and Council to make allocations from the contingent account. The section also specifies broad circumstances in which such allocations may be made, and gives the Governor and Council the duty to determine when the allocations are necessary. Aside from the practical problems and disruption which lack of funds would create, the necessity for continued funding of the Superior Court is clearly defined when one considers that the court is an integral part of the State Judiciary, one of the three coordinate branches of government under the Maine Constitution. Section 1, Article III, Constitution of Maine. The Legislature approves the county budget, which includes the Superior Court, and if this court had to close its doors due to lack of funds, it would be as if the Legislature could thus close the courts at will. This result would be a direct challenge to the independence of the Judiciary and for this reason it is widely held that courts have an inherent power to order payment of reasonable amounts necessary to perform the judicial function. Anno: "Inherent Power of Court to Compel Appropriation or Expenditure of Funds for Judicial Purposes." 59 ALR 3d 569 - 628.

Not only does the foregoing analysis indicate the necessity for continued funding of the court, it also points out that such allocation would be to "meet any expense necessarily incurred under any requirement of law," would be "for the maintenance of government," and would "pay bills arising out of some emergency requiring an expenditure of money not provided by the Legislature," as those terms are used in section 1507. Therefore, it is the opinion of this office that the Governor and Council have the authority to allocate payments from the State Contingent Account for emergency funding of the Superior Court.

Assuming that the Governor and Executive Council exercise their authority to allocate emergency funding for the courts, there remains the question of the manner in which such funding should be made. One

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option would be payment of the funds to the commissioners of the particular counties for administration, with the proviso that the money be used only for maintenance of Superior Court operations. Payment in this manner would utilize the existing county mechanism for control of funds. Previous opinions of this office have concluded 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 and noted the limited authority the commissioners have to overspend a line category by other means. See Opinions of the Attorney General dated January 29 and September 24, 1975. However, these opinions would not apply to the present situation. The reason for this distinction lies in the unique nature of the Court as an integral part of the State Judiciary, previously discussed. Continued funding of the Court has constitutional ramifications extending beyond the statutory limitation placed upon the commissioners. Therefore, in our opinion the county commissioners may administer funds allocated by the State Executive for emergency funding of the State Judiciary, even though the total funds for the court would thus exceed the amount specified for this purpose in the County budget.

A second option for payment of such emergency funding of the Superior Court would be direct payment to the Judiciary. The payment could be made to the Clerk of Courts in the appropriate county, or to the appropriate judicial region, or to the newly created Administrative Office of the Courts (4 M.R.S.A. § 15; P.L. 1975, c. 408).

This office will gladly assist in drafting the necessary documents if the Governor and Executive Council decide to use the State Contingent Account for emergency funding.

JOSEPH E. BRENNAN
Attorney General

JEB:mfe

cc: Governor James B. Longley