

# MAINE STATE LEGISLATURE

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# STATE OF MAINE

Inter-Departmental Memorandum Date October 16, 1975

To John E. Quinn, Administrator

Dept. Bureau of Consumer Protection

From Martin L. Wilk, Deputy

Dept. Attorney General

Subject \_\_\_\_\_

By memo dated September 4, 1975, you requested our opinion whether the Department of Business Regulation has the statutory authority to utilize dedicated revenue of the Bureau of Consumer Protection to fund a portion of the operations of the Department's Division of Special Services. Based upon information provided by Roberta Weil, who was Commissioner of the Department of Business Regulation at the time the Division of Special Services was created, the Division was established to provide personnel and services for the benefit of each of several bureaus within the Department of Business Regulation. Among the staff positions presently existing or contemplated in the Division of Special Services are: (a) Business Manager, (b) Account Clerk, and (c) attorney.\* We understand that the total budget of this Division was set at \$84,000 funded on the basis of a \$21,000 assessment to the dedicated revenues of the Bureaus of Banks and Banking, Consumer Protection, Insurance and Real Estate, respectively.

The Department of Business Regulation was created by the 106th Legislature, P.L. 1973, c. 584, 10 M.R.S.A. § 8001. The Department's chief administrative officer is the Commissioner, who has, among other responsibilities, the following duties and authority: (1) "prepare the budget for the department," Sec. 8002(1); (2) "transfer personnel within the department to insure the efficient utilization of department personnel;" Sec. 8002(2); (3) "coordinate the purchase and use of all department equipment;" Sec. 8002(3); and (4) "review the functions and operation of the department to insure that overlapping functions and operations are eliminated;" Sec. 8002(4). It is clear ✓ from the foregoing that the Commissioner of the Department of Business Regulation has express statutory authority to utilize personnel and equipment in a manner which will eliminate overlapping functions and operations of the respective bureaus within the Department. Accordingly, to the extent that the Division of Special Services was designed to effectuate these legitimate statutory purposes, the functions of such Division would be consistent with the statutory scheme and within the Department's statutory authority.

\* Attorney General Lund had informed Ms. Weil that he would not support her request for an in-house attorney within the Department of Business Regulation.

As noted above, the source of the funds for the Division of Special Services is the dedicated revenues of the Bureaus of Consumer Protection, Banks and Banking, Insurance, and Real Estate, respectively. As far as the Bureau of Consumer Protection is concerned, the purpose for which its dedicated revenues may be used is set forth in Title 9-A, § 6.203(5) as follows:

"The aggregate of fees provided for by this section is appropriated for the use of the administrator. Any balance of said funds shall not lapse but shall be carried forward to be expended for the same purposes in the following fiscal year."

There is no question that the dedicated revenues of the Bureau of Consumer Protection were intended by the Legislature to be used solely for the purposes of that Bureau, and that it would not be permissible to utilize such dedicated funds for purposes unrelated to the functions and responsibilities of the Bureau. However, to the extent that the Bureau of Consumer Protection incurs administrative overhead expenses or performs services that are duplicative of services performed or expenses incurred by other bureaus within the Department of Business Regulation, it would be proper for the Department of Business Regulation to consolidate such services or expenses on a departmental basis and defray the costs thereof on a broader base by an appropriate assessment to the respective bureaus which receive the benefits of such consolidated treatment.

In the case of the Bureau of Consumer Protection, if the \$21,000 assessed related in some reasonable fashion to \$21,000 worth of benefits received or to be received by the Bureau, such funding mechanism would be consistent with the statutory requirements of both the Department of Business Regulation and the Bureau of Consumer Protection. Prior to such assessment, the Bureau head should be consulted to insure that the assessment is for a legitimate purpose, and is not excessive.

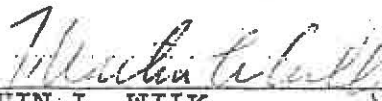
We note parenthetically in this connection that the Bureaus of Banks and Banking and Insurance are significantly larger in terms of personnel and budget than either the Bureau of Consumer Protection or the Real Estate Commission. The budgets for fiscal 1975-76 for each of these bureaus are as follows:

Banks and Banking	\$496,148.00
Insurance	417,188.00
Real Estate Commission	160,646.00
Consumer Protection	167,039.00

Because of the relative size of the Bureau of Consumer Protection, there may be some question whether it is appropriate for the Department of Business Regulation to assess it on an equal basis

with the Bureaus of Banks and Banking, and Insurance. If, for example, the Business Manager of the Division of Special Services were to spend 80% of his or her time in connection with Banking Bureau and Insurance matters, and only 20% on Consumer Protection and Real Estate matters, the costs of rendering such services may more appropriately be defrayed on a proportionate basis instead of pro rata. Moreover, it may well be that costs should be spread on a broader base than merely the Bureaus of Banks and Banking, Insurance, Real Estate and Consumer Protection, by also including the Boxing Commission, the Land Damage Board and perhaps others.

In conclusion, the Commissioner of the Department of Business Regulation has authority to establish a Division of Special Services to implement the statutory objectives set forth in 10 M.R.S.A. § 8002, and to fund such Division out of dedicated revenues of the respective bureaus. The formula for assessing such dedicated funds should reflect a reasonable relationship between the amount of monies assessed and the scope of benefits received. We express no opinion at this juncture whether the \$21,000 assessment of the Bureau of Consumer Protection is excessive.

  
MARTIN L. WILK  
Deputy Attorney General

MLW/ec

Ralph Gelder, Banks and Banking  
Frank Hogerty, Insurance  
Paul Sawyer, Real Estate  
Ronald Roy, Land Damage Board  
Robert Weil, Public Utilities Commission