

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

**This document is from the files of the Office of
the Maine Attorney General as transferred to
the Maine State Law and Legislative Reference
Library on January 19, 2022**

STATE OF MAINE

Inter-Departmental Memorandum Date October 31, 1975

To R. N. Sawyer, Jr.

Dept. Conservation

From David T. Flanagan, Assistant

Dept. Attorney General

Subject Informal opinion re disposition of funds

The Director, Administrative Services, Department of Conservation has requested opinions with respect to certain funds appropriated to the Department.

First, funds appropriated under P.L. 1975, c. 162; and, second, funds appropriated under P.L. 1973, c. 628. These questions will be treated separately.

First, P.L. 1975, c. 162 was enacted as an emergency measure to provide funds for the suppression of the 1975 spruce budworm insect infestation. There was appropriated from the General Fund \$3,850,000 as the State's contribution, by §2 of the Act, conditional upon receipt from the U.S. Government of a commitment to contribute \$3,750,000 to match the State funds by §1-2706 of the Act. Those funds were committed and have been received by the State of Maine. Funds were collected largely by a one-time only tax imposed on forest land owners by §1 of the Act, even though the budworm infestation is well known to be a persistent problem that has seriously affected Maine forests since 1970 or earlier and will likely continue to affect them for more than another decade. The Act does, however, provide that "Any unexpended balances of this appropriation and funds appropriated by P&S 1973, c. 194 shall not lapse, but shall remain a continuing carrying account for these purposes." (§2).

In light of these facts, Conservation asks if the funds may be used for suppression project preparation, research and field surveys, even if no future Federal funds are forthcoming.

It is the opinion of this Department that P.L. 1975, c 162 §2 permits such use of the funds appropriated by this Act, whether or not Federal matching monies become available in the future.

Section 2 specifically provides that the funds are to be spent "for spruce budworm control and related research." This section further provides "any unexpended funds" may be used "for these purposes", without any conditional statements or references to possible future Federal action, or any other condition precedent.

It is understandable that the Legislature should leave this discretionary authority to expend funds in the Department, since it is well known that there is a long lead time in preparing for specific Spring suppression projects, and a considerable amount of interim research is necessary to ascertain the dimensions and severity of the infestation that may be expected in the succeeding Spring.

Second, you ask for an opinion as to the status of approximately \$2,500 remaining in a fund originally established by P.L. 1973, c. 628.

§20 of that Act appropriated "to the State Planning Office, or, in the event a Bureau of Public Lands is established within a Department of Conservation, then to said bureau, from the General Fund the sum of \$30,000 to carry out the purposes of this Act."

The purposes of this Act, i.e. c. 628, which in its original draft had been L.D. 1812, the so-called "Grand Plantations bill" were to provide a comprehensive legislative plan for the management of the State's public reserved lands. As §14 of c. 628 expressed it,

"The Legislature. . . finds it is in the public interest that the public reserved lands be managed under the principles of multiple use and to produce a sustained yield of products and services and that such management should be effected by the use of both prudent business practices and the principles of sound planning."

P.L. 1973, c. 460, §16 had already created a Bureau of Public Lands. See 12 M.R.S.A. 5013(4). Consequently, the funds which could have gone either to SPO or BPL in fact went to BPL.

Subsequently, P.L. 1973, c. 628, §20, was amended by P&S 1973, c. 220 §2 which provides, "Any balance remaining June 30, 1974 shall not lapse, but shall be carried forward to be expended for the same purposes."

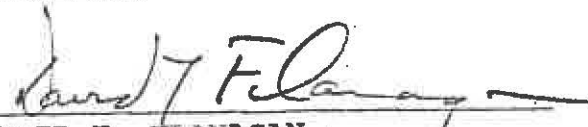
Apparently, there has been some question as to whether P&S 1973, c. 220, §2, was effective just for the duration of the biennium ending June 30, 1975, or whether it continues indefinitely.

It is the opinion of this Department that the fund established by c. 628 continues until the Legislature reverses its decision or the funds are exhausted.

The provisions of c. 220 §2 places no time limit governing the time within which these funds must be spent.

On the contrary in c. 220 the Legislature indicated they were to be available "for the same purposes" as they had been under c. 628. It must be presumed that the Legislature fully knew that the responsibilities for the prudent management of the public reserved lands would continue beyond June 30, 1975. And, in fact, the Bureau of Public Lands does have a continuing need for these funds for the management of reserved lands pursuant to its mandate under c. 628.

In the absence of any expression of Legislative intent to terminate the fund in 1975, and in light of the long term obligations imposed by the Legislature in P.L. 1973, c. 628, it must be concluded the funds are to remain in an account available for the use of the Bureau of Public Lands until a new Act terminating the fund is effected or the funds are exhausted.


DAVID T. FLANAGAN
Assistant Attorney General

DTF:jg