

# MAINE STATE LEGISLATURE

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DEPARTMENT OF THE ATTORNEY GENERAL  
AUGUSTA, MAINE 04333

November 26, 1975

Honorable Philip C. Jackson  
State Senator  
Main Street  
Harrison, Maine 04040

Re: Kennebec County Financial Situation

Dear Senator Jackson:

Your letter of November 13, 1975, described a financial situation in Kennebec County and requested our opinion on the legality of one possible solution. Briefly stated, the County has exhausted the authorized funding in the departmental allocation for the Jail, also known as "support of prisoners." The County must find some other source of funds for this purpose and to meet other obligations. There is an anticipated surplus of \$125,000 in the departmental allocation for the Superior Court, also known as the "court account," and you ask:

"May the surplus funds in the court account be legally used for support of prisoners and other related expenses?"

The answer to your question is negative. The situation you describe calls for overspending an individual line item in the legislatively approved county budget. There are only two ways the County Commissioners may take such action without legislative approval, as described in our opinion of April 30, 1975, addressed to you and Representative Dam. The Commissioners may use the contingent account for this purpose or they may, with certain limitations, make intra-departmental transfers of funds from one specific line item to another. 30 M.R.S.A. § 252. Neither alternative could be used at this time to make available funds from the Superior Court account for "support of prisoners" or other purposes which are not directly related in a budget sense to the court.

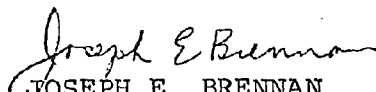
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You indicated that the contingent account for Kennebec County has been exhausted. Therefore, this option would be viable only if the account could be restored in some manner. The contingent account is restored at the end of each fiscal year from surplus funds, i.e. unencumbered funds, unexpended balances, and actual revenue in excess of estimates. 30 M.R.S.A. §§ 252 and 408. Since the forecast surplus in the Superior Court account will not become actual surplus until the end of the fiscal period, restoration of the contingent account with these funds is not possible at this time. However, Section 252 also provides that "Such funds as are available to each county may be used for [the contingent account]," and funds made available from another source, such as the State Contingent Account (5 M.R.S.A. § 1507), could be used to augment the contingent account. The latter suggestion is beyond the scope of your question, but is included for your information.

The other alternative, intradepartmental transfer of funds pursuant to 30 M.R.S.A. § 252, may not be used because such transfers are authorized only between specific line appropriations within the same department or agency. The Superior Court and the Jail (Support of Prisoners) are designated as separate and distinct departments for county budget purposes.

The forecast surplus in the Superior Court account cannot be used to restore the contingent account at this time, nor can it be used for direct transfer to the Jail account. Since these are the two mechanisms made available to the county commissioners by statute to overspend an individual line item, it follows that the forecast surplus may not be used for the Jail account.

Sincerely,

  
JOSEPH E. BRENNAN  
Attorney General

JEB:mfe

cc: Representative Theodore E. Lewin  
Representative Richard J. Carey  
Kennebec County Commissioners