

MAINE STATE LEGISLATURE

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STATE OF MAINE

Inter-Departmental Memorandum Date December 4, 1975

To John P. O'Sullivan, Commissioner Dept. Finance and Administration
From Joseph E. Brennan, Attorney General Dept. Attorney General
Subject Cash Accounts

This will respond to your memorandum dated November 13, 1975, inquiring whether it is permissible for the State to draw checks against the General Fund cash account in amounts exceeding the total debit balance in such account at any given time. Although there are no specific facts set forth in your memorandum, we understand that the State maintains common bank accounts for all funds, including general and special revenue accounts. "Thus, if the cash receipts of the General Fund are exceeded by that fund's cash disbursements over a particular period of time, the State's records would show a credit balance in the General Fund cash account even though the check written upon the common account would clear because of sufficient cash in the several special revenue accounts to make up the balance." In your memo you state:

"This situation gives the appearance that the fund which shows the credit balance in its cash account is 'borrowing' from the other funds until the cash flow of the 'borrowing' fund brings its cash account into a debit balance."

Because there are more than 900 separate funds, each of which may be utilized only for the specific statutory purposes for which they were established, it is not possible to give a definitive response to your general question except upon a fund-by-fund basis. Borrowing temporarily from one fund for use in another has been upheld by the courts in some cases and declared unlawful in others. See generally, 63 Am. Jur.2d "Public Funds" § 5. Generally speaking, however, in our opinion, absent express statutory authority, it is not permissible to write checks drawn against the General Fund cash account where there is insufficient cash on hand in that fund to cover these checks. (Even though the special revenue accounts may provide sufficient funds to cover checks being written against the General Fund, special or dedicated revenue accounts usually may not be utilized for general fund purposes but are, in each case, limited by the specific statutory provisions which set forth their respective purposes.) For example, the Department of Banking operating fund may only be used for the limited purposes set forth in Title 9-B M.R.S.A. § 214(3), and monies in the Marine Worm Fund may only be used for the purposes set forth in 12 M.R.S.A. § 4301-C. Monies in these special accounts could not be used, for example, to pay the salaries of employees in

other State departments or to pay vendors for goods or services unrelated to the regulation of banking in the case of the banking operating fund or for any purpose other than "research related to worms or the marine worm industry. . . [etc.]" in the case of the Marine Worm Fund. Writing checks in excess of the amount of available cash in the General Fund cash account would, in the examples given, result in a use of these special revenue accounts, at least on a temporary basis, beyond the limited purposes permitted by the statutes, and such a practice should therefore be avoided.

On the other hand, it is noteworthy that the statutes defining the uses of the Highway Fund (23 M.R.S.A. § 1653) provide as follows:

"Neither the General Highway Fund nor any fund derived from direct taxation imposed for highway construction, bridge construction or the improvement and maintenance thereof, shall be diverted or expended, permanently, for any other purpose than set forth in this section, except that funds so segregated may be used for other appropriations but only those for which anticipated income has not been received and for which financial provision has been made by the Legislature and is forthcoming. The Treasurer of State is directed and authorized to reimburse the General Highway Fund by a deposit of the funds received from such aforesaid appropriations, the receipt of which has been anticipated, to the extent of the amounts temporarily diverted therefrom. Such deposits shall be made as soon as such revenues are collected." (Emphasis added) But see Maine Const. Art. IX, § 19.

The Legislature has provided a means for raising funds on a temporary basis where there is insufficient income on hand to defray general costs of government in 5 M.R.S.A. § 150. Such temporary borrowing may only be occasioned upon Governor and Council approval:

"The Treasurer of State, with the approval of the Governor and Council, may negotiate a temporary loan or loans in anticipation of taxes levied for that fiscal year but not exceeding a total of \$10,000,000. . . ."

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In our opinion, the foregoing provision refers to borrowing from outside institutions. Accordingly, even if Governor and Council approval were secured, this provision could not be relied upon as authority to divert the proceeds of special state funds for general fund purposes.

If we may be of any further assistance, please let us know.


JOSEPH E. BRENNAN
Attorney General

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