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January 7, 1976

Honorable Louis Jalbert
Chairman
Appropriations subcommittee to study
the funding of State agencies
c/o Legislative Finance Office
State House
Augusta, Maine 04333

Dear Louis:

In your letter of January 6, 1976, you asked for our legal opinion on four questions in view of the Governor's proposed reduction of State expenditures for the second-half of this fiscal year. The questions and our answers and reasons are set forth below.

- "1. In view of the language in section 3 of the Preamble of Chapter 78, P & S Law, 1975, can the Governor reduce expenditures and/or allotments unproportionately in appropriation accounts at any time during the fiscal year if it is felt that general fund revenues are going to fall short of the amount estimated?"

You ask whether the Governor has the authority by virtue of P. & S.L., 1975, c. 78, § 3, to reduce allocations by his own act. The answer is negative. Section 3 reads:

"Sec. 3. Temporary curtailment of allotments. Whenever it appears to the Commissioner of Finance and Administration that the anticipated income and other available funds of the State will not be sufficient to meet the expenditures authorized by the Legislature, he shall so report to the Governor and Council and they may temporarily curtail allotments equitably so that expenditures will not exceed the anticipated income and other available funds."

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This section confers upon the Governor statutory authority to temporarily curtail allotments of appropriated funds. However, this authority can be exercised only in conjunction with the Executive Council and only after the Commissioner of Finance and Administration has reported that State revenues and other funds will not be sufficient to meet appropriated expenditures. Therefore, the answer to your question is that the Governor cannot curtail allotments pursuant to § 3 without concurring action by the Executive Council, or at any time other than upon receipt of the necessary report from the Commissioner.

To carry this discussion a step further, once the Governor and Council have received the Commissioner's report, they would have flexibility in determining how to "equitably" curtail allotments. So long as the curtailment plan is just and fair, considering the circumstances under which the plan must operate, it would not contravene the meaning of the statute. For example, the Governor and Council could make across-the-board cuts which would affect each agency and program equally. Alternatively, each Department head might be asked to determine what programs or governmental functions could most fairly stand curtailments, consistent with the legislative intent, and the amounts concerned. These examples are not exhaustive, but do show the types of plans which might be considered in conformance with Section 3. Nevertheless, the Governor would have to follow the procedures set forth in that section and may not implement such program on his own.

"2. If the answer to the above question is in the negative, can the Governor ask the department heads to do this [reduce allotments to deal with an estimated 'short-fall' of anticipated revenues] on a voluntary basis?"

Section 3 of P. & S.L., 1975, c. 78 and c. 90 constitutes the only statutory authority for executive reductions of appropriated expenditures in a situation where actual State revenues fall short of estimated revenues. Therefore, the procedures and conditions of this section, as discussed in the answer to question 1, would have to be met before such reductions could be made. The Governor may wish to consult with his department heads to determine how curtailment of allocations pursuant to § 3 may be most fairly and equitably made. However, actual reductions could not be made until the conditions of § 3 have been met - with coordinate action by the Executive Council and after receipt of the report of the Commissioner of Finance and Administration.

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- "3. Can the Governor Request a reduction in expenditures below the amount authorized by the Legislature for any other reason than an anticipated shortfall in revenues?"

Within constitutional limits the Governor has authority to institute authentic cost-saving programs. The Governor has the constitutional duty to take care that the laws, which includes appropriation acts, are faithfully executed. Art. V, Pt. 1, § 12, Constitution of Maine. This means that he must promote the legislative intent in all cases. If the Legislature has instituted a particular program, it is clear that it intends the purpose of the program to be carried forward. However, it is also assumed that that Legislature would intend that the program be run as economically as possible. Therefore, the Governor may seek cost-savings in any program, so long as these economies do not detract from performance of the program's original purpose as intended by the Legislature.

- "4. Can the work programs be changed anytime during the fiscal year for the purpose of setting up a reserve or can this be done only when original allotments are requested?"

After reading this question in conjunction with the first three, it appears to us that you are essentially asking whether the Governor, either with the Council or through his Department heads, could use the provisions of 5 M.R.S.A. § 1667, concerning work programs, allotments and reserves, to deal with a revenue "short-fall" situation.

Section 1667 would allow the State Budget Officer, with the approval of the Governor and Council, to require the head of a department or agency to set aside a reserve from the total amount appropriated to that department or agency. This authority may be exercised only at the time that the original allotments for the fiscal year are requested. The statute would not allow the State Budget Officer to require such reserves at any other time during the fiscal year.

There is also provision in § 1667 for department or agency heads to revise the work program for their departments or agencies if a change in conditions indicates that such revision is necessary.

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Such changes may be made at the beginning of any quarter during the fiscal year. However, it is our opinion that the "changed conditions" referred to in the statute means conditions which are program-related or of an intradepartmental nature. For example, fluctuations in personnel level and other program expenses throughout the year might require a larger or smaller allotment in any given quarter than was originally anticipated. In addition, § 1667 is directed toward actions on the part of individual department or agency heads, not the Executive Branch as a whole. It should also be noted parenthetically that such revisions in the individual work programs and allotments are reviewed by the State Budget Officer and ultimately by the Governor and Council.

The language of § 1667 deals exclusively with the procedures which are to be used for planning and executing an orderly and timely expenditure of appropriated funds. There is no mention in this section of state revenues. It follows that this section was not designed to be used in the specific situation where actual state revenues fall short of anticipated revenues or actual expenditures. This latter situation is provided for in § 3 of P. & S.L. 1975, Chapters 78 and 90. It is therefore our opinion that the procedures set forth in § 3, as explained in answer to question number 1 above, are the procedures which should be used exclusively in the revenue short-fall situation.

We hope the foregoing has answered your questions. If we may be of any further assistance, please let me know.

Very truly yours,

JOSEPH E. BRENNAN
Attorney General

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