

# 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 January 20, 1976

To William Garside, Legislative  
Administrative Director

Dept. Legislature

To Joseph E. Brennan, Attorney General

Dept. Attorney General

Subject \_\_\_\_\_

This will respond to your inquiry regarding available options to deal with the Department of Human Services nonimplementation of certain programs authorized by the 107th Legislature by passage of Chapter 90, P. & S.L. 1975. Your office has informed the Legislative Council that there are four programs that have not been initiated or which have been only partially implemented as follows:

	Appropriated	Authorized for Expenditure	"Frozen"
Priority Social Services	\$1,160,321	\$477,022	\$683,299
Office of Dental Health	20,000	-0-	20,000
Bureau of Rehabilitation	25,185	-0-	25,185
Maine Human Services Council	27,586	13,154	14,432

My office has contacted David Smith, Commissioner of the Department of Human Services, regarding each of these programs. Commissioner Smith acknowledges that these programs have not been fully implemented and that he will take no further steps until the Legislature clarifies the situation.

In the specific area of priority social services, Commissioner Smith has informed us that he has filled each of the five general fund positions authorized by Section C of Chapter 90 of the supplemental appropriation bill and that, in addition, the Department of Human Services has entered into contracts in the following areas:

- A. Homemaker Service
- B. Developmental Day Care
- C. Meals for Older People
- D. Coordinated Elderly Programs

No contracts have been entered into in the following areas:

- A. Services for the mentally retarded
- B. Mental health services, or
- C. Transportation services.

It is clear from the foregoing that Commissioner Smith has not implemented programs authorized by the Legislature to the maximum extent possible. Indeed Smith admits that he will not act further in the areas identified above until the Legislature has been given an opportunity to reassess these programs and make a fresh determination based upon changed circumstances to either go forward or to pull back on one or more of these programs.

Based upon the foregoing information, there appear to be four alternative approaches to deal with the problem.

1. The Legislature could immediately conduct hearings and investigations with respect to the cutbacks. This could include calling Commissioner Smith and others before an appropriate legislative group and requiring the Commissioner to fully explain precisely what he has done to date in each of the four areas identified above and his reasons for not proceeding further. Based upon information developed at such hearings, the Legislature should be in a position to make an informed decision upon a course for future action. An expression of the will of the Legislature could then be set forth in the form of a joint order, joint resolution or in some other appropriate fashion.

2. The Legislature could apply to the Justices of the Maine Supreme Judicial Court for an advisory opinion. This request could be made immediately or, perhaps more effectively, after the Legislature has completed any factfinding hearings or investigations into the matter as suggested in alternative #1. There is some question, however, whether this approach would yield concrete results for there may be some question whether a solemn occasion exists which would require the Justices to respond substantively.

3. The Attorney General could initiate action against Commissioner Smith and perhaps others in the Maine Superior Court seeking immediate mandatory injunctive relief compelling implementation of the programs authorized by the 107th Legislature. This alternative could be pursued prior to any hearings, but again, it may be desirable to await the outcome of any legislative hearings and expression of the present will of the Legislature prior to such court action. If, for example, the Legislature were to indicate that it has no intention of implementing the cutback scheme, and if Commissioner Smith persists in his refusal to take any further action to implement the programs, turning to the Court would appear to be in order. If, on the other hand, the Legislature is in agreement with Commissioner Smith or vice-versa, there may not be any occasion for Court action.

4. The Legislature could immediately address the problem without hearings or investigations and either

A. Accept Commissioner Smith's proposals;


B. Reject the proposals; or

C. Indicate its willingness to go along with the deferment of further implementation of the programs until such time as the Legislature decides what to do about future funding.

William Garside, Legislative  
Administrative Director  
Page 3  
January 20, 1976

Our recommendation would be for the Legislature to hold hearings with the view towards obtaining all relevant information. Upon the conclusion of these hearings, it would be my recommendation that the Legislature definitively address the problem raised by the cutbacks and either indicate its approval or disapproval in appropriate fashion.

I trust that the foregoing will be of some assistance to the Legislature in the matter. If there are any further questions, please let me know.

  
\_\_\_\_\_  
JOSEPH E. BRENNAN  
Attorney General

JEB:mfe