

MAINE STATE LEGISLATURE

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February 12, 1976

Honorable Bonnie D. Post
House Chamber
State House
Augusta, Maine

Dear Representative Post:

This letter answers several questions which you have presented orally to this office, concerning county budget matters. The questions and answers are set forth below in serial fashion, and factual assumptions will be given with the question where necessary.

1. Assuming that the legislatively approved 1975-76 budget for a county included salary increases for deputy sheriffs, but due to a misunderstanding of the minimum salary provisions of 30 M.R.S.A. § 958 these increases were not paid in 1975 - "What obligations do the County Commissioners have to affect the pay raise for deputy sheriffs, retroactively for 1975 and prospectively for 1976?"

This office has consistently taken the position that the county derives its powers solely from the Legislature and that Legislative approval of the county budget estimates pursuant to 30 M.R.S.A. §§ 253 and 253-A is a direction by the Legislature that funds obtained from the county tax and other sources are to be expended in accordance with that budget. Attorney General Opinion, August 14, 1975. It would follow logically that the County Commissioners must expend county funds as allocated in the budget, unless the Legislature has given the commissioner discretion in making expenditures in a specific area. The Legislature has given the County Commissioners such discretion with regard to deputy sheriffs. 30 M.R.S.A. § 958. After citing the minimum compensation for deputies with different training achievements, section 958 states, "Such compensation shall be established by the respective county commissioners and paid from the respective county treasuries. . . ."

The combined effect of the legislatively approved budget and section 958 would be to give the county commissioners certain discretion within maximum and minimum limits. The maximum expenditure for deputies' salaries would be the total allocation for this purpose

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in the budget, while the minimum for a given deputy is set by section 958. The county commissioners are required to establish the compensation to be paid, but their only obligation, as such, is to establish the compensation within the stated limits. This analysis would apply either prospectively or retrospectively.

2. "Can the county commissioners hire a person to fill a position which was not approved in the county line item budget?"

The answer to this question is generally negative. County line item budgets contain a "Salaries and Wages Detail" which lists the budgeted salaries and wages by position. These lists are usually quite detailed and would include every anticipated position. In keeping with the opinion of this office that legislative approval of the budget is a direction from the Legislature that county funds shall be spent in the approved manner, the county commissioners may not hire a person to fill a position which was not included in the budget.

It should be recognized, however, that unforeseen emergencies may arise which would require the commissioners to hire additional personnel on an interim basis. The commissioners do have the authority to use the contingent account to meet emergencies, so long as the account is not used to circumvent legislative intent. 30 M.R.S.A. § 252; Attorney General Opinion, January 29, 1975. Since it cannot be presumed that the Legislature would intend to hamstring county government in coping with emergency situations, in our opinion limited, interim hiring in such situation would not be prohibited even though the positions to be filled were not included in the budget.

3. "Can the county commissioners hire a person for a position at a pay rate which exceeds the rate authorized in the county line item budget?"

The answer to this question is generally negative, and for the same reasons as stated in answer to question number 2. In those cases where the county commissioners are given discretion in setting pay rates, such as deputy sheriffs [30 M.R.S.A. § 958] and clerks [30 M.R.S.A. § 801], the legislatively approved budget acts as a ceiling for the pay rate.

4. "Can the county commissioners, without further action by the Legislature, use monies available in the county contingent account to pay for expenses which were budgeted in 1975 but never expended, specifically the pay raise for deputy sheriffs?" [See question #1]

The county contingent account is established by 30 M.R.S.A. § 252, which reads, in pertinent part:

"There is established a contingent account in each county in an amount not to exceed \$50,000. Such funds as are available to each county may be used for this purpose. This fund shall be used for emergency purposes only at the discretion of the county commissioners. At the end of each fiscal year there shall be transferred from unencumbered county funds an amount sufficient to restore the established county contingent account." (emphasis provided)

The Legislature has established this account, stated it is to be used for "emergency purposes," and has vested determination of what constitutes an "emergency" in the sound judgment of the county commissioners. Attorney General Opinion, April 30, 1975. Therefore, no further legislative action would be necessary for use of the contingent account, if the county commissioners have determined there is an emergency. Since determination that an "emergency" exists is within the discretion of the commissioners and would depend on all surrounding circumstances, we cannot state whether the necessity for a retroactive pay-raise for deputies would be considered such emergency.

5. "Can the county commissioners transfer funds from the 1975 surplus to the county contingent account and use these funds to overspend a line item in the 1976 budget without further legislative action? Can the county commissioners use these funds for making non-budgeted expenditures, specifically continuing the salary of county employees whose federal funding has been terminated?"

Both 30 M.R.S.A. § 252 [quoted above] and 30 M.R.S.A. § 403, concerning "surplus funds," allow the county commissioners to use surplus funds (unexpended balances and actual revenue in excess of estimates) to restore the contingent account at the end of any fiscal year. However, again utilization of funds in the account would depend upon whether the county commissioners decide that there is an "emergency." Expenditures needed to meet an unforeseen emergency may exceed certain line item amounts in the county budget. However, the contingent account should not be used as a mechanism to circumvent legislative authorization.

6. "What official or officials on the county level have the responsibility for ensuring that county expenditures stay within the budget limits as approved by the Legislature?"

The answer to this question is that the county commissioners, as the chief administrative officers of county government, are responsible for ensuring that expenditures stay within budget limits. Title 30 M.R.S.A. § 251, concerning the commissioners' duties, provides in part:

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"They shall examine, allow and settle accounts of the receipts and expenditures of the moneys of the county; . . . have the care of its property and management of its business; . . . keep their books and accounts on such forms and in such manner as shall be approved by the State Department of Audit; and perform all other duties required by law."

The county commissioners have exclusive jurisdiction, with regard to other county officers, in matters of county property and fiscal management. Watts Detective Agency v. Inhabitants of Sagadahoc County, 18 A.2d 303 (1941). Therefore, it is the commissioners who must bear the responsibility of keeping expenditures within the budget.

I hope these answers to your questions will be helpful. Please continue to call on us whenever you feel we may be of assistance.

Sincerely,

S. KIRK STUDETUP
Assistant Attorney General

SKS:mfe