

MAINE STATE LEGISLATURE

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 Attorney General
1976-77 Appropriation - Total Education Costs

QUESTION #1:

If the Legislature fails to amend its "lump sum" appropriation for 1976-77 education subsidies and further fails (under 20 M.R.S.A. § 3713, sub-§ 3(F)) to spell out how the allocation payments to administrative units shall be adjusted--to stay within the available appropriation--how should this Department proceed in adjusting such allocation payments "pro rata"?

ANSWER #1:

The amount of money appropriated by the 107th Legislature to the Department of Educational and Cultural Services for 1976-77 during the regular session (c. 40, P. & S.L. of 1975 and Sections 47 and 48 of c. 272, P.L. of 1975) is not necessarily the same amount which it will certify in 1976 to the State Director of Property Taxation pursuant to 36 M.R.S.A. § 451. Rather, the amount certified covers only the "total education costs," a term of art defined by 20 M.R.S.A. § 3712, sub-§ 13, 50% of which is to be borne by the property tax. The difference between the appropriated amount and the certified amount represents the level of funding available to cover expenses not included in "total education costs," such as Local Leeway, Private School Transportation, etc. The amount certified to the State Director of Property Taxation by the Legislature is the figure which 20 M.R.S.A. § 3713, sub-§ 3(F) deals with.

If, pursuant to 36 M.R.S.A. § 451, the Legislature certifies a different amount for total education costs to the State Director of Property Taxation than the amount certified by the Commissioner of the Department of Educational and Cultural Services, then 20 M.R.S.A. § 3713, sub-§ 3(F) requires that "all allocations shall be adjusted pro rata" unless otherwise directed by the Legislature. If the Legislature doesn't direct how the allocations are to be adjusted, then the Commissioner must make a pro rata adjustment of each allocation which he computed pursuant to 20 M.R.S.A. § 3713, sub-§ 1. The formula which the Commissioner must use in arriving at the pro rata adjustment of each allocation is to multiply each allocation, which he has computed pursuant to sub-§§ 1 and 2, times the ratio of the amount the Legislature certified to the State Director of Property Taxation over the amount the Commissioner had certified as being necessary to cover "total education costs."

QUESTION #3:

Could the Legislature spell out its intent as to the adjustment of allocation payments through the vehicle of a joint order?

ANSWER #3:

If the amount certified to the State Director of Property Taxation differs from the amount certified by the Commissioner, then, pursuant to

20 M.R.S.A. § 3713, sub-§ 3(F), "all allocations shall be adjusted as directed by the Legislature." The direction provided by the Legislature to the Commissioner as to how the allocations should be adjusted should be done through an Act or Resolve of the Legislature. A joint order may well suffice, but it is a weaker instrument and may be subject to a constitutional challenge. The Maine Constitution requires that every bill or resolution having the force of law must be presented to the Governor for approval. M.R.S.A. Const. Art. IV, Pt. 3, § 2. Since it appears the direction that should be provided by the Legislature would have the force of law, it is our opinion that to avoid any possible challenge to the manner of legislative expression the direction should be contained in an Act or Resolve of the Legislature.

The Justices of the Maine Supreme Judicial Court have defined a joint order as being one which "is not subject to review by the court" and which does not "require the assent of the government" since it is "purely a matter for determination by the Legislature with respect to its own functioning as a legislature." The Justices further stated that when a matter becomes "one of public concern," it is "one which can be effected only by an act or resolve of the Legislature passed as a law by both branches thereof and submitted to the Executive for his executive approval in accordance with the Constitution." Opinion of the Justices, 148 Me. 528, 531 (1953)*. Since the adjustment of the allocation of funds for the payment of education subsidies in 1976-77 is "one of public concern," and not one dealing exclusively with the functions of the Legislature, the adjustment should be defined in an Act or Resolve rather than in a joint order.**

* See also Opinion of the Justices, 152 Me. 302, 304 (1957); Opinion of the Justices, 159 Me. 77 (1963); Opinion of the Attorney General in a letter addressed to the Honorable Frank S. Rand dated January 16, 1964.

** It should be noted that this opinion is not intended to cast any doubt on the use of the joint order pursuant to 36 M.R.S.A. § 451 whereby the Legislature certifies to the State Director of Property Taxation the amount it deems necessary for the support of public education. Use of a joint order for this purpose is specifically set forth in the statute, and, therefore, was subject to gubernatorial review during the enactment process of the public law in which it was contained.

QUESTION #2:

Can the detailed breakdown of estimates which was provided to the Legislature in the Spring of 1975 be used in any way to govern any pro-ration which might become necessary?

ANSWER #2:

Since the detailed breakdown of estimates provided to the Legislature in the Spring of 1975 have not been adopted by the Legislature in an Act or Resolve as its recommended adjustment of the allocation of funds for the payment of education subsidies in 1976-77, it may not be used "to govern any pro-ration which might become necessary." (See Answer #3 for further explanation.)

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WB/jg