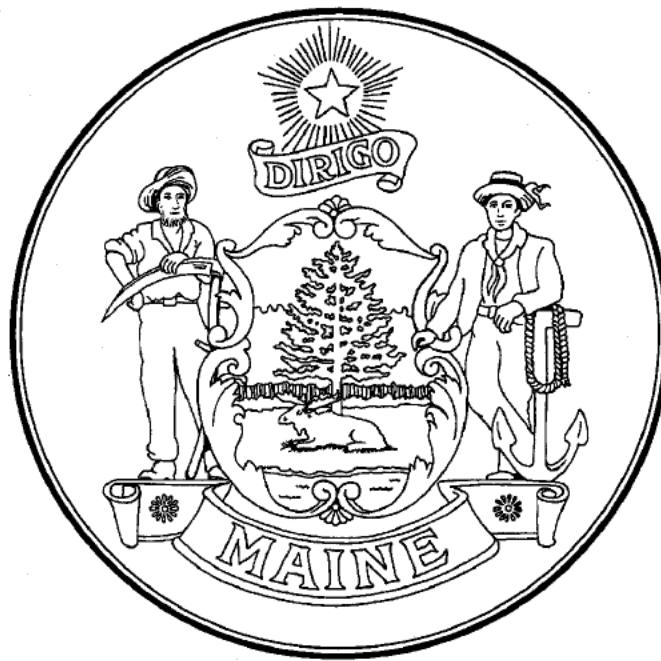


MAINE STATE LEGISLATURE

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Inter-Departmental Memorandum . Date May 14, 1976To H. Sawin Millett, Jr., Commissioner Dept. Educational & Cultural ServicesFrom Joseph E. Brennan Dept. Attorney GeneralSubject 1975-76 Education Funding Deficit

Your memorandum of May 11, 1976, requested our opinion concerning the availability of funding to pay the FY 1976 education funding deficit. The memorandum notes that a bill was considered during the recent Special Session of the 107th Legislature which would have addressed this problem by allowing the Department to expend up to a total of \$7,540,000 from appropriations and allocations for FY 1977, and bond proceeds, in order to pay the FY 1976 deficit. S.P. 813, L.D. 2355, Part B, § 4. However, this bill was not passed by both Houses of the Legislature. The memorandum also makes reference to two legislative papers, S-407 and H-920, which were amendments to L.D. 2196, which in turn was enacted as the School Finance Act of 1976 [P.L. 1975, c. 660]. The Statements of Fact for these two amendments contain an expression of intent that sufficient revenues be provided to ". . . face the current deficit. . . ." In light of these facts you ask:

"Could the references contained within various statements of fact be interpreted to provide evidence of legislative intent that would be sufficiently clear to authorize the Department to draw upon FY 1977 appropriations to meet the FY 1976 education funding deficit?"

The answer is negative.

The general statutes provide that expenditures may not be made from the Treasury except in accordance with appropriations and that appropriations may not be exceeded. 5 M.R.S.A. §§ 1543 and 1583. There is no general authority which would allow a Department to expend funds appropriated for one fiscal period before that period begins. It would require special legislation, such as that found in L.D. 2355, Part B § 4, in order to create an exception. The opening phrase of L.D. 2355, Part B § 4 - "Notwithstanding any other statute to the contrary. . ." - is itself a recognition of the special nature of the authorization which follows thereafter. However, the simple fact is that L.D. 2355 did not pass and there is no specific, existing legislative authority to allow expenditure of present FY 1977 appropriations to meet FY 1976 deficits.

The question which has been raised essentially asks whether it is possible to use expressions of legislative intent contained in the Statement of Fact associated with one enactment to create authority for another proposition, despite the fact that this same authority was contained in a


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bill which failed passage. The answer is clearly no. The primary voice for expression of legislative intent is the legislative enactment itself. In the present case there is no such enactment, whatever the reason for its failure to pass the Legislature. Preambles or Statements of Fact accompanying legislation may be useful tools to indicate legislative intent if that intent is not clearly expressed by the enacted portions themselves. 2A Sutherland Statutory Construction § 47.04. They are intrinsic aids to construction. However, these aids may be used only when the legislation to which they relate has been enacted and there exists some ambiguity of meaning which cannot be resolved by reading the terms of the legislation itself. Inhabitants of City of Lewiston v. Inhabitants of County of Androscoggin, 151 Me. 457 (1956). To attempt to manufacture authority for a particular action by reference to legislative intent expressed on other matters would be to attempt to perform the legislative function itself, and this function is reserved to the Legislature. Art. III, §§ 1 and 2, Constitution of Maine.

In light of the foregoing, it is our opinion that expressions contained in the Statements of Fact for other legislation concerning educational finance may not be used to "create" authority for the Department to use FY 1977 appropriations to meet FY 1976 deficits. Such authority must be specifically conferred by the Legislature as an exception to general appropriations statutes.



Joseph E. Brennan
Attorney General

JEB:KS:JG