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Revolving Accounts / 12 M.R.S.A. § 531 +
STATE OF MAINE

Inter-Departmental Memorandum Date May 21, 1976

To Robert Doyle,
Robert LaRoche
From David T. Flanagan, Assistant

Dept. State Geologist
Audit
Dept. Attorney General

Subject Bureau of Geology Revolving Publications Account

The Director of the Bureau of Geology has asked for an opinion of this Department with respect to the legality of retention by that Bureau of monies received from the sale of publications acquired prior to the establishment of the Sciences, Technical, and Mineral Resources Fund pursuant to P. & S.L. 1971, c. 117.

The Department of Audit, acting pursuant to 5 M.R.S.A.: § 243, has conducted a post-audit of the account of the Bureau of Geology. For the third successive year, the audit read in part,

"It is again strongly recommended that the cost value of publications purchased with revolving fund monies be included as an asset on the Funds' balance sheet, and monies received from sales of publications acquired by the Bureau prior (*italics in original*) to the establishment of the Fund be deposited to a General Fund undedicated revenue account." p. 5.

The basis for the Auditor's recommendation is that in 1971, when the predecessor entity to the present Bureau of Geology was transferred from the Department of Economic Development to the Bureau of Forestry, P. & S.L. 1971, c. 91, the Legislature deemed it expedient to establish a revolving account with a capitalization of \$15,000 to provide for the publication of, and receive the proceeds of, books and manuals dealing with geology in Maine. The authority of the Bureau to print, distribute, fix prices, and receive income from publications is now embodied in 12 M.R.S.A. § 531.

Prior to 1971, while Geology was a part of DED, it shared in the annual appropriations to that Department and used a part of the proceeds to publish similar books. It has retained its earnings from sales made prior to 1971, and continues to sell pre-1971 publications, retaining proceeds.

It is our understanding that earnings attributable to pre-1971 publications have been credited to the revolving account and used to pay for research leading to the publication of post-1971 manuals. In this manner, the Bureau has been enabled to sell post-1971 publications at below their true cost, since earnings attributable to pre-1971 manuals are used to subsidize them.

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The Auditor takes the position that since a dedicated revenue account was established, all earnings attributable to publications funded with general fund monies should be credited to the general fund.

The Bureau of Geology takes the position that since the Legislature did not order the general fund reimbursed when it established a new account, the prior practice had been ratified.

QUESTION:

Must the Bureau of Geology transfer to the General Fund all earnings attributable to publications issued prior to the enactment of P. & S.L. 1971, c. 117?

ANSWER:

No.

REASONING:

P. & S.L. 1971, c. 117, under the caption "Forestry Department," provides:

"Science Technology and Mineral Resources, All Other, Provides funds cut out in Part I in error. \$15,000 in the first year shall go into a revolving fund as a one time appropriation and income from publications will return to this special account to be spent for the same purposes."

This section is silent with respect to the disposition of funds accrued from Geology publications produced prior to its enactment.

In order to determine legislative intent with respect to such funds, it is necessary to examine prior enactments.

P. & S.L. 1971, c. 91, § D.1 established within the Bureau of Forestry a revolving fund for geological and related

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technical literature. No appropriation was attached to this section,* it merely provided a vehicle for handling money generated and authorized Forestry to enter into this field of activity.

This section, in turn, if taken verbatim from P.L. 1969, c. 442, § 12, with the sole exception that under that Act, the Fund was the responsibility of the Department of Economic Development.

That fund, in turn, derived from the provisions of P.L. 1965, c. 204, which provided,

"There is established within the division [of Geological Survey of the Department of Economic Development] a revolving fund for use of the division to cover printing and distribution costs for geological and related technical literature. * * *

"Income from the sale of publications shall be credited to the revolving fund to be used as a continuing carrying account to carry out the purpose of the publication fund."

* It is important to note, however, that the Legislature intended the Division of Science, Technology and Mineral Resources (now the Bureau of Geology) to retain any funds it had accrued while a part of DED. P. & S.L. 1971, c. 91, § 4, provides in part "Transitional provisions. It is the intent of the Legislature to transfer existing personnel and budget of the Division. . . as a division without reclassification to the Forestry Department." Given a reasonable construction, "budget," as used here, must mean the funds available to Geology while a part of DED, including dedicated revenue accounts. Therefore, the funds in the revolving account continued to be carried forward, as they had been since 1963, intact, through the 1971 transfer. The \$15,000 appropriated by P. & S.L. 1971, c. 117, had the status of a supplementary investment in a continuing account, even though the Legislature was apparently under the impression it had inadvertently wiped out the previous account by its failure to make any provision for it in the Forestry appropriation in P. & S.L. 1971, c. 91.

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This section in turn found its origin in P.L. 1963,
c. 417, § 6.

It may be seen, then, that while the Bureau of Geology has gone through repeated mutations since 1963, one consistent power has been retained throughout -- the authority to print, distribute, sell, and retain the earnings of technical publications. At the juncture when Geology was transferred from the Department of Economic Development to the Department of Conservation, the Legislature specifically provided that it could retain its funds generated in prior years.

Moreover, while each relevant appropriations act prior to the transfer, P. & S.L. 1965, c. 78, P. & S.L. 1967, c. 154, and P. & S.L. 1969, c. 121, provided funds only generally to DED, with no special mention of Geology, each such act also provided that only unencumbered appropriations balances not carried forward by law were to lapse.

Since each succeeding Geology statute makes it clear the funds in the revolving printing account are to be carried forward, it falls within the exception provided in the foregoing appropriations acts.

Consequently, the funds have been carried forward and Geology is entitled to retain the earnings attributable to its publications since 1963.

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