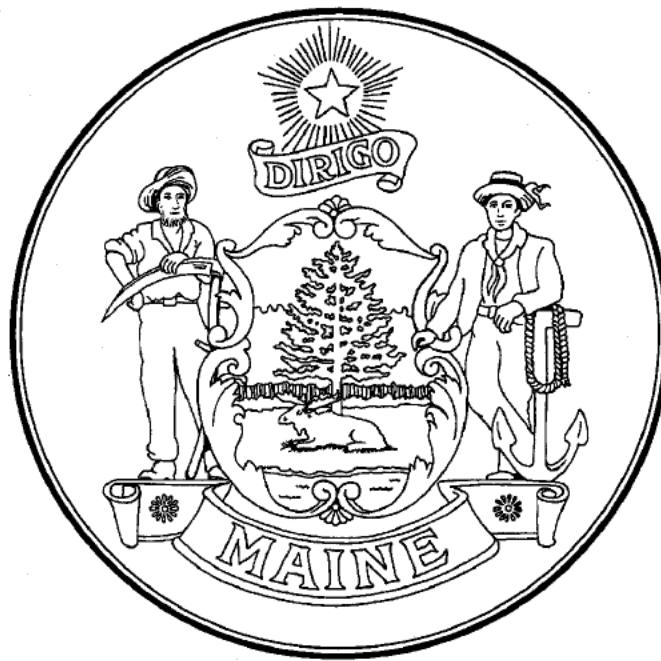


MAINE STATE LEGISLATURE

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Cousl. Art IX sec. 14
5 M.R.S.A. § 150

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STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04333

May 21, 1976

Honorable Louis Jalbert
29 Orestis Way
Lewiston, Maine 04240

Dear Representative Jalbert:

This letter responds to your recent oral request for an opinion of this Office on a question concerning State finances. The background for the question is as follows. Various factors have created an educational funding deficit for FY 1976. During the recent Special Session, the Legislature indirectly expressed its intent to provide funds to meet this deficit, but did not actually appropriate funds for the purpose. Legislation which would have allowed, among other things, the use of FY 1977 appropriations for the FY 1976 deficit, was not enacted. L.D. 2355, Part B, § 4. At the same time, the State has financed part of its operating expenses during the last half of FY 1976, through a \$10 million loan from a New York financial institution. This loan is in the form of a tax anticipation note, which became effective on December 20, 1975, and which must be repaid by June 16, 1976.

The question you have posed in light of the background information just stated, is whether the State could renegotiate its present loan or negotiate a new one in the amount of \$7-8 million for a six to eight month period, and use the proceeds to pay the FY 1976 educational funding deficit. The answer is negative.

The Maine Constitution limits the State debt to \$2 million at any one time, with certain exceptions. Article IX, § 14, Constitution of Maine. One of these exceptions is ". . . temporary loans to be paid out of money raised by taxation. . . ." This exception is statutorily recognized in 5 M.R.S.A. § 150. Therefore, there is clearly authority for negotiating a loan such as the one proposed. The problem, however, is whether the proceeds could be used for the suggested purpose of funding the FY 1976 deficit.


Hon. Louis Jalbert
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"Tax anticipation notes" are, as the name implies, a device to help solve liquidity problems in State finance. During any fiscal period there will be a certain amount of revenue from the various legislatively imposed taxes and certain expenditures authorized in the form of legislative appropriations. A tax anticipation note is simply an advance of funds which will be collected as taxes later in the fiscal year, in order to have the funds on hand to meet necessary current payments from appropriated funds. It in no way increases or otherwise affects the appropriations themselves.

In an opinion for the Commissioner of Educational and Cultural Services dated May 14, 1976, a copy of which is enclosed, we advised that expenditures may not be made from the Treasury except in accordance with appropriations or in accordance with a special exception, such as provided in L.D. 2355, Part B, § 4. Since there is presently no such appropriation or exception with regard to the FY 1976 education fund deficit, expenditures may not be made from the State Treasury for this purpose unless and until the Legislature has affirmatively provided therefor. The fact that the actual funds in the Treasury at any given time may have come from the proceeds of a tax anticipation note rather than tax revenues themselves, would have no bearing on the question of the authority for expenditures.

You also asked whether the Commissioner of Educational and Cultural Services could request early payment of education funds allocated for July and August, 1976, and use these funds to pay FY 1976 deficits in June, 1976. The answer to this question is negative, for the same reasons stated in answer to your first question and as set forth in the May 14 opinion to the Commissioner.

Sincerely,


JOSEPH E. BRENNAN
Attorney General

JEB/ec
Enclosure

STATE OF MAINE

Inter-Departmental Memorandum . Date May 14, 1976To E. 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?"

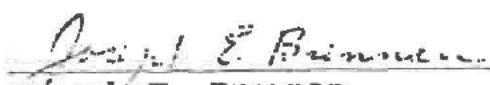
The answer is negative.

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 appropriate 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 appropriation, despite the fact that this same authority was contained in a

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 1975 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