

# MAINE STATE LEGISLATURE

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JOSEPH E. BRENNAN  
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DEPUTY ATTORNEYS GENERAL

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

November 16, 1976

Arthur Chapman, Jr., Chairman  
Board of Cumberland County Commissioners  
142 Federal Street  
Portland, Maine 04111

Re: Cumberland County Jail Budget.

Dear Mr. Chapman:

This letter responds to your correspondence of October 27, 1976, concerning an anticipated overdraft in the Cumberland County Jail Budget for the year 1976. You have asked whether the County Commissioners may transfer other uncommitted county funds to the jail account in order to operate the county jail for the remainder of 1976 and prevent the anticipated overdraft.

This office has previously taken the position that since the District Attorney for each prosecutorial district is required by statute to represent counties within his district (30 M.R.S.A. § 501), questions such as those which you have posed should be initially addressed to the appropriate district attorney. However, the question which you have raised is one which has been raised in the past by members of the Legislature with regard to other counties, and our previous answers may be helpful to you. Therefore, I am enclosing herewith copies of a letter dated November 26, 1975, addressed to Senator Philip C. Jackson and a letter dated September 25, 1975, addressed to Representative Leighton Cooney. The opinions of this office expressed in those letters appear to answer your question.

Please feel free to contact Deputy Attorney General Donald G. Alexander or Assistant Attorney General Kirk Studstrup, both of whom are aware of your situation, if you have questions concerning the enclosed opinions. However, I suggest that you contact District Attorney Henry Berry for legal advice concerning your particular situation.

Sincerely,

JOSEPH E. BRENNAN  
Attorney General

JEB/ec  
cc: Henry Berry, D.A.  
Robert Redmand, Audit

XXXXXXXXXXXX

November 26, 1975

Honorable Philip C. Jackson  
State Senator  
Main Street  
Harrison, Maine 04040

Re: Kennebec County Financial Situation

Dear Senator Jackson:

Your letter of November 13, 1975, described a financial situation in Kennebec County and requested our opinion on the legality of one possible solution. Briefly stated, the County has exhausted the authorized funding in the departmental allocation for the Jail, also known as "support of prisoners." The County must find some other source of funds for this purpose and to meet other obligations. There is an anticipated surplus of \$125,000 in the departmental allocation for the Superior Court, also known as the "court account," and you ask:

"May the surplus funds in the court account be legally used for support of prisoners and other related expenses?"

The answer to your question is negative. The situation you describe calls for overspending an individual line item in the legislatively approved county budget. There are only two ways the County Commissioners may take such action without legislative approval, as described in our opinion of April 30, 1975, addressed to you and Representative Dam. The Commissioners may use the contingent account for this purpose or they may, with certain limitations, make intra-departmental transfers of funds from one specific line item to another. 30 M.R.S.A. § 252. Neither alternative could be used at this time to make available funds from the Superior Court account for "support of prisoners" or other purposes which are not directly related in a budget sense to the court.

Honorable Philip C. Jackson  
November 26, 1975  
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You indicated that the contingent account for Kennebec County has been exhausted. Therefore, this option would be viable only if the account could be restored in some manner. The contingent account is restored at the end of each fiscal year from surplus funds, i.e. unencumbered funds, unexpended balances, and actual revenue in excess of estimates. 30 M.R.S.A. §§ 252 and 408. Since the forecast surplus in the Superior Court account will not become actual surplus until the end of the fiscal period, restoration of the contingent account with these funds is not possible at this time. However, Section 252 also provides that "Such funds as are available to each county may be used for [the contingent account]," and funds made available from another source, such as the State Contingent Account (5 M.R.S.A. § 1507), could be used to augment the contingent account. The latter suggestion is beyond the scope of your question, but is included for your information.

The other alternative, intradepartmental transfer of funds pursuant to 30 M.R.S.A. § 252, may not be used because such transfers are authorized only between specific line appropriations within the same department or agency. The Superior Court and the Jail (Support of Prisoners) are designated as separate and distinct departments for county budget purposes.

The forecast surplus in the Superior Court account cannot be used to restore the contingent account at this time, nor can it be used for direct transfer to the Jail account. Since these are the two mechanisms made available to the county commissioners by statute to overspend an individual line item, it follows that the forecast surplus may not be used for the Jail account.

Sincerely,

JOSEPH E. BRENNAN  
Attorney General

ES  
JEB:mfe

cc: Representative Theodore E. Lewin  
Representative Richard J. Carey  
Kennebec County Commissioners

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

September 25, 1975

Honorable Leighton Cooney  
Box 246  
Sabattus, Maine 04280

Dear Representative Cooney:

This is a reply to your recent letter posing several questions concerning the Androscoggin County budget as approved by the 107th Legislature.

First you ask whether: (1) the contingency account, and (2) the 2% tax overlay assessed against municipalities in Androscoggin County, could be used in the event the Superior Court account runs short of funds. The answer to your question is in the affirmative, subject to certain conditions. According to the provisions of 30 M.R.S.A. Sec. 252, the contingent account may be used only for emergency purposes. What constitutes an emergency purpose lies within the sound discretion of the county commissioners. The county commissioners would be validly exercising their statutory discretion if they were to decide that the continued funding of the courts constituted an emergency for which the contingent account should be used.

As for the 2% tax overlay, the county commissioners are authorized to add such an overlay to the tax required to be raised to fund the expenses approved by the Legislature.

"\* \* \* They may add such sum above the sum so authorized, not exceeding 2% of said sum. As a fractional division renders convenient and certify that fact in the record of said apportionment, and issue their warrant to the assessors requiring them forthwith to assess the sum apportioned to their town or place \* \* \*." 30 M.R.S.A. § 254.

There is little statutory direction as to how these overlay funds are to be expended. However, if 100% of the county tax were eventually collected, the overlay revenue would be revenue in excess of estimates and could be used in the following year as surplus funds for the purposes set forth in 30 M.R.S.A. Sec. 403, which include restoration of the contingent account. In that way, the overlay funds could be used indirectly to provide additional funding for the courts.

Honorable Leighton Cooney

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Your next question asks whether there are other statutory provisions that would allow the county commissioners to remedy a legitimate budget emergency, short of calling a special legislative session. The same sort of inquiry has been made of this office by others, and we are presently giving the matter our attention. As soon as the question is resolved, we will advise you of our conclusion.

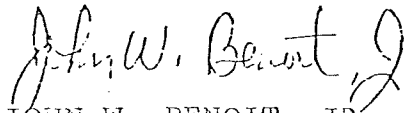
Your third question involves the Legislature's transfer of \$115,000 from the "Building Construction Fund" in the Androscoggin County Budget to an available credit status, to be utilized by the county commissioners to meet county expenses for calendar year 1975. You ask: "Was the Legislature within its power in so directing the Commissioners, or do they (the Commissioners) have the sole power to accumulate and spend such an amount independent of all other authorities?" (Parenthesis mine) We are mindful of the fact that the District Attorney has given legal advice to the county commissioners on that question. We also realize that Maine statutes authorize the District Attorney to appear for each county within his district, under the direction of the County Commissioners in all actions and civil proceedings in which any county is a party or is interested, or in which the official acts and doings of said Commissioners are in question. 30 M.R.S.A. Sec. 501. However, the nature of your question warrants response by this office because it calls for review of specific legislative action. The Legislature has the constitutional power to direct the County Commissioners to apply funds in a capital reserve account against the general budget as occurred concerning Androscoggin County's budget, i.e., transfer of the building fund balance to the "available credits" portion of the budget. 30 M.R.S.A. Sec. 5201, subsecs. 1 and 2, read in conjunction with 30 M.R.S.A. § 403, authorize a county to establish reserve accounts for capital improvements. The language of 30 M.R.S.A. Sec. 5202 makes provision for the administration of the capital improvement account. While it is true that sec. 5202 specifies that an expenditure from any reserve account may only be made for the specific purpose for which the account was established, the Legislature retains at all times its constitutional authority to act for the benefit of the people of the State. Constitution of Maine, Art. IV, Part Third, Sec. 1. It is also well established that the Legislature may direct appropriation of county funds in such manner and amount as it deems best, so long as the purpose is a public one and of special benefit to the county. Sawyer v. Gilmore (1912) 109 Me. 169. In the matter at hand, the Legislature was acting within its constitutional and statutory authority when it directed that the capital reserve account be utilized as a credit against current service expenses of the county. Resolves 1975, c. 15 and Androscoggin County budget as approved by the Legislature.

Honorable Leighton Cooney  
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September 25, 1975

Next you ask whether: "Is it within the powers of the County Commissioners on their own motion, to declare the purposes of the 'Building Construction Funds' satisfied and therefor apply those funds to the 1975-76 current services budget?" The nature of the question is such that we feel, respectfully, the answer to the previous question renders moot the need to answer this question.

In conclusion, you request what recourse is available to the citizenry of Androscoggin County if the County Commissioners fail to act within the mandate of the statutes concerning the legislatively approved budget. "Recourse" depends upon the nature of the facts in a specific case; and we respectfully reserve comment on that until particular facts are known.

Very truly yours,



JOHN W. BENOIT, JR.  
Deputy Attorney General

JWBJr:mfe