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County Budgets
Register or Probate Fees
30 M.R.S.A. 2
30 M.R.S.A. 252

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February 1, 1977

Honorable Stephen T. Hughes
House of Representatives
State House
Augusta, Maine

Dear Representative Hughes:

This letter responds to your oral request for an opinion of January 17, 1977, and your letter of January 18, 1977. The four questions you have asked as Chairman of the Androscoggin County Legislative Delegation, all concern county budget matters. These questions and our answers and rationale are set forth individually below. We are also enclosing with this letter copies of six previous opinions of this office on related county budget questions. The copies are provided for your added information and for reference purposes throughout this opinion.

Question 1. "To what extent may the Legislature, through the county budget review process, establish the salaries to be paid to county staff employees, i.e., those employees whose salary is not established by statute?"

The answer to this question depends upon the particular position being considered.

As indicated in your question, there are certain county positions for which the salary is specifically designated by statute. These officers and the respective salary amounts are set forth in 30 M.R.S.A. § 2. However, the majority of county employees do not have their salaries set in this manner. The salaries for all county officers and employees, whether set by statute or not, appear in the county budget estimates both under the general category of "Personnel Services" and in the "Salaries and Wages Detail Sheets." This office has consistently stated its opinion that the counties derive their powers solely from the Legislature and that Legislative approval of the county budgets

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obligates the county commissioners to expend funds obtained from the county tax and other sources in accordance with that budget. See Opinion of February 12, 1976. Therefore, the Legislature may establish the salaries to be paid to county staff employees through the budget approval process unless the Legislature has otherwise provided for discretionary approval of such salaries by the county commissioners or other county officers. Examples of such discretionary authority is found in sections relating to compensation of deputy sheriffs (30 M.R.S.A. § 958) and clerical staff (30 M.R.S.A. § 801). In these latter cases the legislatively approved budget acts as a ceiling upon the county commissioners' authority to set the salaries. This question is discussed in more detail in our opinion of February 12, 1976.

Question 2. "To what extent may the county commissioners deviate from the legislatively approved budget in their expenditures?"

The answer to this question is that, with certain exceptions, the county commissioners have very little authority to deviate from the budget.

County budgets, like most budgets, are established on a prospective basis, and it is always possible that unforeseen circumstances may compel some minor deviation from the budget estimate. The statutes recognize this problem and allow for such deviation through the mechanisms of intra-departmental transfers and the contingent account (30 M.R.S.A. § 252). See our opinions of April 30, 1975, and November 26, 1975. However, with these two exceptions, the county commissioners are required to carry out the legislatively approved budget and any major deviations which are necessary would require legislative approval. In addition, the two mechanisms for flexibility should not be used to frustrate legislative intent.

Question 3. "By what authority may a Register of Probate keep to his own use certain fees charged by his office? What action, if any would be required to alter this situation?"

The answer to this question is that a Register of Probate is very limited in the use of fees charged by his office.

We assume that your question does not contemplate personal use of any fees by the Register of Probate, since the salary for the Registers established by statute is in full compensation for the performance of all official duties. 30 M.R.S.A. § 2; 18 M.R.S.A. § 251. Therefore, the question is really whether fees collected by the Register must be paid into the county treasury or whether they

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may be used for purposes within the Registry. The general statutory provision on this question is found in 30 M.R.S.A. § 2, which reads, in pertinent part:

"All fees and charges of whatever nature, except charges for the publication of notices required by law, which may be payable to any county officer, except clerks of court, shall be payable by them to the county treasurer for the use and benefit of the county, . . ."

The exception stated in this section for charges for publication of notices required by law is not authorization to retain any excess fees. Such charges should be limited to the actual expense of publication and Registers may not retain as additional compensation any excess received from overestimating the amount required for publication. Opinion of the Attorney General, May 18, 1966.

Specific statutory provisions relating to Registers of Probate are found in Title 18, Chapter 7 (§ 251, et seq.). Section 251 authorizes the Registers to charge a "reasonable fee" for making copies of wills, accounts, inventories, petitions and decrees. That section also specifies that fees paid for certain specified records required to be recorded in the Registry of Deeds ". . . shall be deemed to be official fees for the use of the county." Section 261 provides that fees charged by the register for approved blanks, forms or schedule paper ". . . shall be payable by the register to the county treasurer for the use and benefit of the county." Section 552 establishes other fees which may be charged by the Register. Finally, section 553 states:

"Registers of Probate shall account for each calendar quarter under oath to the county treasurers for all fees received by them or payable to them by virtue of the office, specifying the items, and shall pay the whole amount for each calendar quarter to the treasurers of their respective counties not later than the 15th day of the following month." (emphasis provided)

The foregoing recitation of statutory provisions concerning the fees chargeable by Registers of Probate does not indicate statutory authority for retention of any fees by these officers. The second

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portion of this question asked what action would be required to alter this situation. It would require statutory amendment to authorize Registers of Probate to retain certain fees for use in their offices, if this is the result you intended.

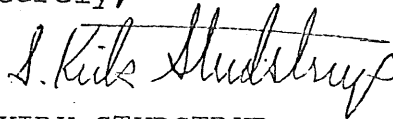
Question 4. "May the Legislature provide through a county budget for appropriation to social services to which no appropriation was proposed by the County Commissioners?"

The answer to this question is affirmative.

The rationale for our question is set forth in detail in our opinion of August 14, 1975, a copy of which is enclosed with this letter.

Please continue to call on us whenever you believe we may be of assistance.

Sincerely,



S. KIRK STUDSTRUP
Assistant Attorney General

SKS:mfe

Enclosures