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Sardine Funds Expenditure Authority
Expenditure Control By Governor
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STATE OF MAINE

Inter-Departmental Memorandum Date May 19, 1977

To James L. Warren, Exec. Director

Dept. Maine Sardine Council

From Donald G. Alexander, Deputy

Dept. Attorney General

Subject Sardine Fund Expenditures

FACTS:

On August 27, 1975, the Maine Sardine Council submitted a travel expense request to the Governor and Council for two representatives to attend a United Nations meeting in Bergen, Norway, to discuss international quality standards for canned sardines. On September 10, 1975, one-half of the travel expenses requested by the Sardine Council was approved by the Governor and Council. On December 15, 1975, the Maine Sardine Council submitted a travel expense request to the Governor and Council for one representative to attend a meeting of the International Commission for North Atlantic Fisheries, (hereinafter ICNAF) to determine quotas for the conservation of herring in and adjacent to Maine waters. On January 14, 1976, one-half of the travel expenses requested by the Sardine Council was approved by the Governor and Council. From the opinion request it is clear that the travel expenses of a second Sardine Council representative were deferred by the federal government. Neither the Council Order nor the opinion request indicated the basis upon which the reduction in the travel authorization was made. From the Council Order itself, two explanations for the reduction appear plausible; first, that the Governor decided that expenses requested by the Sardine Council were twice the actual expenses required to send their representatives to Bergen and Rome, and, second, the Governor decided that the same benefit would be derived by the State for expenditure of one-half the amount requested from the Sardine Tax Fund. We have been unable to determine the actual basis for the Governor and Council's reduction in the Sardine Council's travel expense request.

QUESTIONS:

1. Whether the Governor can refuse to authorize expenditures for foreign travel properly approved by the Maine Sardine Council.
2. Whether the representatives of the Council who paid their own expenses are entitled to reimbursement.

ANSWER:

1. The Governor lacks authority to refuse authorization of expenditures which are properly approved by the Maine Sardine Council.

In a letter opinion to Governor Longley dated January 7, 1976, the Attorney General indicated that the Governor lacks constitutional authority to refuse disbursement of funds appropriated by the Legislature, except where the purpose of the legislative appropriation would be defeated by the expenditure of funds. Noting that Maine courts have not considered the question, the opinion relies heavily on federal decisions which limit the President's authority to refuse disbursement of congressionally appropriated funds. State Highway Commission of Missouri v. Volpe, 479 F.2d 1099 (1973); Souix Valley Empire Electric Assn. v. Butz, 504 F.2d 168 (1974); Local 2677, American Federal of Gov. Emp. v. Phillips, 358 F. Supp. 60 (D.C. D.Ct. 1973); Commonwealth of Pennsylvania v. Weinberger, 367 F. Supp. 1378 (C.C. D.Ct., 1973); Guadamuz v. Ash, 368 F. Supp. 1233 (D.C. D.Ct., 1973). These decisions establish that executive's discretion to refuse expenditures depends entirely upon the legislative provisions of the Act appropriating the funds in question. The opinion concludes that the only justification for an executive refusal to disburse appropriated funds is that the legislative program is no longer being conducted in accordance with the original legislative intent. Commonwealth of Pennsylvania v. Lynn, 501 F.2d 848 (DCD 1974).

The Legislature has established the scope of the executive's authority to limit state agency expenditures. 5 M.R.S.A. § 1541 authorizes the Commissioner of Finance and Administration to provide the following supervision:

1. To examine and approve all contracts, orders and other documents, the purpose of which is to incur financial obligations against the State Government, to ascertain that moneys have been duly appropriated and allotted to meet such obligations and will be available when such obligations will become due and payable. 5 M.R.S.A. § 1541, sub-§ 2.

2. To audit and approve all bills, invoices, accounts, payrolls and all other evidences of claims, demands or charges against the State Government; and to determine the regularity, legality and correctness of such claims, demands or charges. 5 M.R.S.A. § 1541, sub-§ 3. In fulfillment of these obligations, the Commissioner may seek approval of the Governor and Council under 5 M.R.S.A. § 282(2) which provides that the Commissioner shall have the duty and authority to coordinate financial planning and programming activities of the departments and agencies of the State Government for review and action of the Governor and Council. Pursuant to this statutory authority, the Commissioner submitted regulations governing official headquarters expense accounts for the approval of the Governor and Council. Regulations approved by the Governor and Council on January 16, 1975, remained in effect until July 7, 1976, and applied to travel expenses

of the Sardine Council submitted on August 27 and December 15, 1975. Regulation Number 8 provides that prior Governor and Council approval must be obtained if more than one individual from the same Department, Division, Bureau, Board, Commission or Agency is planning to attend the same meeting, convention, or conference when said meeting place is located more than 700 miles from Augusta. Regulation 9 provides that prior Governor and Council approval must be obtained for travel to Hawaii, Alaska and other areas outside the Continental limits of the United States. The scope of the Governor's review of travel expense requests under these regulations is the same as that provided for the Commissioner of Finance in 5 M.R.S.A. § 1541, sub-§ 2; sub-§ 3.

The Legislature has also established the Maine Sardine Council's authority to authorize foreign travel expenses. 36 M.R.S.A § 4699 provides that money received by the Treasurer of the State from the Sardine Tax shall be used in such amounts as shall be determined by the Maine Sardine Council for the following purposes:

1. Gathering, storing, classifying and distributing information and data concerning quality, grades, standards, methods of packing, and character of manufactured sardine products. 36 M.R.S.A. § 4699(2)(C).
2. Developing foreign markets. 36 M.R.S.A. § 4699(2)(A).
3. Conducting research and investigation of methods of propagating and conserving cluepeoid fish - with a view toward improving quality and quantity of the same in Maine waters and for the implementation of all feasible methods of improving propagation. 36 M.R.S.A. § 4699(2)(B).

This direct authorization to the Sardine Council is modified by the legislative directive to limit spending in out-of-state travel contained in the general fund appropriations provisions of the Private and Special Laws. Ch. 78, § 11, Ch. 90, § 12, Private and Special Laws of 1975 both provide:

It is the intent of the Legislature that out of state travel be limited. Any state employee who travels out-of-state on state business (such as law enforcement, collecting, bidding, industrial development, loans, etc.) may continue to do so. The Legislature directs that Department heads hold down the cost of all travel where it is not absolutely needed.

This provision was made applicable to the Sardine Council appropriations by §18 of Ch. 78 and §19 of Ch. 90 which provides:

It is intended that the language of the proceeding sections of this Act shall apply to all other appropriation measures enacted by the Legislature.

The Legislature has placed the authority to authorize expenditures from the Sardine Tax Fund in the Sardine Council. In the first instance, it is the Council's responsibility to decide what expenditures will further the enumerated purposes of the Fund. By its directive to the heads of agencies, the Legislature has both authorized the continuation of out of state travel and directed that expenses be limited to those which are absolutely necessary. While this directive clearly indicates the Legislature's intent to limit unnecessary out of state travel, it does not shift the authority for determining what travel is necessary to the Governor and Council. The authority of the Governor and Council to limit Sardine Tax Fund expenditures approved by the Sardine Council are based upon the authority conferred on the Commission of Finance and Administration to refuse or limit authorization for requests which can not be met by existing appropriations or which are illegal, incorrect, or excessive. 5 M.R.S.A. 1541. Justification for the reduction in Sardine Council approved expenditures must depend upon the application of these standards of review by the Governor and Council.


5 M.R.S.A. §1541(2) permits the Commissioner of Finance to base approval of expense requests upon the existence of sufficient funds. Upon inquiry to the Bureau of Budget we have determined that the Sardine Tax Fund was maintained at levels sufficient to meet the travel requests at all times that they were under consideration. 5 M.R.S.A. §1541(3) permits the Commissioner of Finance to condition approval of expense requests upon a determination that the requests were regular, legal and correct. The only legal expenditures from the Sardine Tax Fund are those which are properly approved by the Sardine Council to further the purposes for which the Fund is maintained. While we express no opinion concerning the procedures by which the Tax fund expenditures were approved by the Council, we conclude that the purposes for the travel to Bergen and Rome were consistent with the purposes for which Sardine Tax Fund expenditures are authorized. The Bergen meeting was designed to set international quality standards for sardine canning and 36 M.R.S.A. §4699(2)(C) authorizes the Sardine Council to expend money for that purpose. Moreover, 36 M.R.S.A. §4699(2)(A) anticipates that the Council will expend money to expand foreign markets for which international quality standards would be essential. The ICNAF meeting in Rome was held for the purpose of determining conservation quotas for herring in and adjacent to Maine waters. Expenditures for this purpose are specifically approved in 36 M.R.S.A. §4699(2)(B). Our conclusion is confirmed by the order of Governor and Council which reduced but did not deny the Sardine Council's travel request. We also conclude that the reduction in the authorized expenditure could not have been based on a review of correctness of the expense requested.

Expenses are not correct or incorrect until they are actually paid. Since the request review occurred prior to any actual expenditure, this standard of review did not apply. The only remaining standard upon which the reduction could be based is that it was excessive. As we have indicated in the statement of facts, the Council Order did not refuse travel authorization to any Council representative but limited the expenditures to one-half those expenses requested by the Sardine Council. While we believe it is unlikely that this action was based on a determination that the Sardine Council's request was twice as large as the amount required to permit its two representatives to travel to Bergen or Rome, we have been unable to establish otherwise.

It is more likely that the Governor and Council reduced the Sardine Council's authorized expenditures because it believed that the State would derive the same benefit if the Sardine Council was represented by only one person at each meeting. We conclude that the Governor and Council was without authority to reduce the expense authorization on that basis. The Legislature has indicated the Sardine Council has the responsibility for determining whether the Sardine Tax Fund expenditures are necessary for the fulfillment of the purposes for which the Fund was established. Neither the authority to review state expenditures granted to the Commissioner of Finance nor the directive to the Sardine Council to limit travel expenses to those which are absolutely necessary has shifted that responsibility. We conclude, therefore, that the Governor and Council were without authority to determine whether the purposes of the Sardine Tax Fund could be served as well by one as by two Sardine Council representatives to the U.N. Conference at Bergen and the ICNAF meeting in Rome.

ANSWER:

2. On the basis of facts presented to us at this time we believe that Sardine Council representatives are entitled to reimbursement. However, we should re-emphasize that we have been unable to ascertain facts which could justify the reduction ordered by the Governor and Council.


DONALD G. ALEXANDER
Deputy Attorney General

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