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

June 22, 1977

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

Dear Representative Hughes:

We are responding to your request that this office provide legal analysis and advice with regard to certain budget and financial matters pertaining to Androscoggin County. These matters are detailed in a report of the Department of Audit, dated March 30, 1977, following an examination of county fiscal records for the period December 1, 1976, to January 31, 1977. We have been requested by the Joint Standing Committee on Performance Audit to keep that body informed of our analysis and report to you, and we are sending the Committee a copy of this response pursuant to its request.

We will discuss the various points made in the report of the Department of Audit using the numbering system that was used therein. A copy of the report is attached for your convenience. We are also attaching copies of correspondence which was received from Mr. Norman N. Labbe, Androscoggin County Treasurer, which states his position and that of the Register of Deeds and the Director of the Androscoggin Bureau of Civil Emergency Preparedness on certain specific points made in the audit report. These additional materials have been reviewed and will be noted in the appropriate place below.

(1 and 2) The first two items in the audit report concern disbursements of federal revenue sharing funds. The report concludes that there was no approved budget for disbursement of any of these funds for fiscal periods dating back to 1974, and points out that this is contrary to state law and federal revenue sharing regulations. This analysis is correct, as discussed in more detail in our opinion of September 9, 1975, a copy of which is attached. Generally speaking, the counties are to treat federal revenue sharing funds in the same manner as the county's own general revenue funds, which

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would include submission of a budget covering expenditure of these funds to the Legislature for approval. While the failure to submit a budget for these funds is a technical violation of 30 M.R.S.A. § 253, the audit report does indicate some mitigating circumstances for this failure to submit a budget.

A more specific question with regard to federal revenue sharing funds relates to payment of dues by the county to the Maine County Commissioners Association from these funds, after payment of the dues had been expressly deleted from the county's general fund budget for the years 1975 and 1976. The audit report cites our opinion of March 18, 1977, addressed to you, on the specific question of the propriety of these expenditures. A copy of that opinion is attached for your convenience. We noted in the opinion that these payments were probably in violation of federal revenue sharing regulations and guidelines. However, we also noted that it is a question which would have to be decided by the appropriate federal officials in the event that a definitive determination is necessary. We find nothing in Mr. Labbe's letter of May 10 which would change this opinion.

(3, 4 and 5) The next three items in the audit report concern the internal procedures used in fiscal matters within the county. The comments are based on generally accepted accounting principles and standard audit procedures. The comments do not appear to present questions for legal analysis at the present time.

(6) The sixth item noted in the report related to expenditure of county funds to purchase a portable defibrillator and a used automobile by the Bureau of Civil Emergency Preparedness, and payments for indexing services and equipment in the Registry of Deeds, all without the procedure of competitive bidding. We agree with the notation in the report that 30 M.R.S.A. § 304 requires that all purchases over \$250 must be made by competitive bidding. That section concludes by stating "Title 5, section 1816, shall govern such purchases as far as applicable." The cited section concerns bids, awards and contracts by the State, and contains comprehensive instructions concerning competitive bidding for such purchases. Although the section contains provisions for waiver of the competitive bidding requirements in certain circumstances, these waiver provisions do not appear to apply to the counties, since 30 M.R.S.A. § 304 clearly provides that competitive bidding shall apply "to all purchases" above the \$250 limit. Even if these waiver provisions arguably did apply to county expenditures, the procedures for effecting such waiver were not followed in these cases.

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Much of the material submitted by Mr. Labbe concerns the purchases made without competitive bidding, and is in the form of explanations by the Register of Deeds and the Director of the Bureau of Civil Emergency Preparedness. While the explanation of the purchases by these officials makes their actions more understandable from a practical standpoint, the explanations do not provide a legal reason why the competitive bidding procedure was not followed.

(7) The final item discussed in the report concerns general fund disbursements for the sheriff's department and support of prisoners. The question resolves itself to one of accounting procedure and whether warrants for payment of 1976 invoices in 1977 should be segregated from the current budget of the new Androscoggin County Sheriff. As pointed out in the report, there is no legislative provision for such segregation into a "miscellaneous" category. If such segregation is necessary, the conclusion of the report that special legislation would be required is undoubtedly correct.

The remaining portion of this report will examine possible alternative action which might result from the matters noted above. This listing is not intended as a statement as to the advisability of any one of these alternatives. However, we will note any weaknesses we see with these approaches from a legal standpoint. It should also be noted that the listing of alternatives may not be all inclusive, though we have attempted to suggest as many as possible.

One general category of alternatives would involve legal action. Some of these actions are listed in our opinion of April 30, 1975, a copy of which is attached.

The other general category of alternatives contains action which could be taken by the Legislature. The Legislature could conduct an in-depth investigation of Androscoggin County finances either through the Committee on Performance Audit or through an ad hoc committee established especially for this purpose. The investigation could be informational, leading to any necessary legislation. Further legislative action could include amendments to Title 30 in order to tighten the county fiscal procedures, legislation to retroactively ratify the actions which have been taken by the Androscoggin County officials, either in whole or in part, or a general statement of the sense of the Legislature with regard to the findings of the investigation.

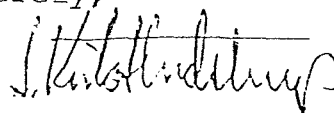
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I hope that the foregoing analysis and presentation of alternatives will be helpful to you. Please let me know if I may be of further assistance.

Sincerely,



S. KIRK STUDSTRUP
Assistant Attorney General

SKS:mfe

cc: Joint Standing Committee on
Performance Audit