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*Various Participation in Cash Pool
State Funds' Cash Pool with Municipal Funds*

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October 7, 1977

To: Leighton Cooney, Treasurer of State
From: Joseph E. Brennan, Attorney General

This is in response to your letter of September 21, 1977, in which you asked for an opinion concerning various aspects of the State's potential involvement in providing cash pool services to municipalities. Specifically, you have inquired whether under existing law the State Treasurer is authorized to enter into an agreement with an organization such as the Maine Municipal Association to provide cash pool investment management services for municipalities; whether the State could offer such services upon the agreement of necessary State agencies and municipal units; and, if not, what legal changes would be necessary to facilitate such services.

As discussed herein, under current constitutional and statutory provisions, the State Treasurer is not authorized to contract with an organization such as the Maine Municipal Association to provide service as a cash pool investment manager, nor is any other state agency so empowered. Your third question presents a more complicated issue. The Legislature could provide statutory authorization for a State Treasurer or another State agency to offer such a service to municipalities but this may raise conflicts with other statutory obligations which would need to be considered.

It is my understanding that the "cash pool" to which you refer now involves the merging of cash accounts of State agencies into a separate account or pool to maximize investment potential and that you propose to develop a method whereby municipal cash funds could be merged and handled in the same way.

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The general authority of the State Treasurer is provided by Constitution and statute, see generally M.R.S.A., Cont. Art. V., Pt. 4, 5 M.R.S.A. §§ 121-151A. Both the Constitution and the applicable statutory provisions refer consistently to "state" funds, see e.g. 5 M.R.S.A. §§ 125, 131, 134, 139. Furthermore, the statutory provisions are specific in relation to the kind of contracts which the State Treasurer may enter regarding such funds, see e.g. 5 M.R.S.A. §§ 138, 139, 139-A, 142. Although powers necessary to the accomplishment of the legislatively mandated objective may be implied, the authority to directly manage municipal investments or to contract with an organization such as the Maine Municipal Association for this purpose does not appear to be sufficiently close to the defined powers and objectives of the State Treasurer to be deemed to exist by implication, compare e.g. State v. Fin & Feather Club, 316 A.2d 351 (1974). This conclusion is supported by the fact that certain local offices are specifically created for such purposes, see e.g. 30 M.R.S.A. § 5051 et seq. as to municipal treasurers and 30 M.R.S.A. § 601, et seq. as to county treasurers; see generally, Beckett v. Roderick, 251 A.2d 427 (1969), discussing the precedence of specific legislation over general.

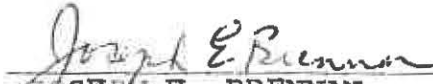
Similarly, in regard to your second question, it does not appear that another State agency currently has the authority to provide such service to municipalities, see e.g. Title 5 M.R.S.A. § 241 as to the Department of Audit; § 281 as to the Department of Finance and Administration; § 1541 as to the Bureau of Accounts and Control, all of which speak to State funds and/or State agencies.

In regard to your third question, it appears that municipalities could, if consistent with State law, their charters, and home rule powers, join together, pursuant to the provisions of Title 30 M.R.S.A. § 1951, et seq. concerning interlocal agreements, to create a cash pool program. If the State Treasurer wishes to provide the services of his office as investment manager to such municipalities, this could be authorized by legislative enactment; compare, e.g. 5 M.R.S.A. § 1856 concerning intergovernmental and intragovernmental provision of data processing services. If this is to be done, I would suggest that careful consideration be given to existing statutory provisions which may present conflicting obligations for the Treasurer or other State financial agencies or which may require certain language changes to encompass municipalities; see e.g. 5 M.R.S.A. § 133 regarding withholding of funds from municipalities; 30 M.R.S.A. § 5301 concerning the Municipal Finance Board consisting of the Commissioner of Finance and Administration, the State Treasurer and the State Director of

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Property Taxation; 5 M.R.S.A. § 122 concerning bonding of the Treasurer; 5 M.R.S.A. § 123 concerning payment by the State of premiums for such bond; 5 M.R.S.A. § 131, specifically excluding towns and counties.

If I can be of further assistance, please feel free to contact me.


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JEB:mfe