

MAINE STATE LEGISLATURE

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

February 17, 1978

Honorable Donald H. Burns
House of Representatives
State House
Augusta, Maine 04333

Dear Representative Burns:

I am responding to your oral request for an opinion of this office concerning the authority of the county commissioners to use excise tax revenues collected in unorganized territory within the county. Specifically, you ask whether the county commissioners may use these funds to match funding available from the Bureau of Parks and Recreation to establish snowmobile trails in the unorganized territory. Our answer to this question is negative for the reasons stated below.

The excise tax to which you refer is the tax collected for the privilege of operating aircraft, house trailers and motor vehicle within the state, as set forth in 36 M.R.S.A. c. 111. This tax is collected in unorganized places by agents appointed by the county commissioners. 36 M.R.S.A. § 1487, sub-§ 2. The statute which provides for crediting and apportionment of this tax states simply:

"Excise taxes collected in unorganized places shall be credited by the county treasurer as undedicated funds for the unorganized place in which the tax was payable." 36 M.R.S.A. § 1489, sub-§ 2.

Our research has not disclosed any other statutory provision concerning the manner in which these funds are to be expended, though it is our understanding that they are accounted for outside the general county budget and traditionally have been used for the maintenance of roads in the unorganized territory.

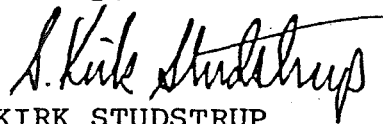
While 36 M.R.S.A. § 1489, sub-§ 2 does not limit the purposes for which these excise tax revenues may be utilized, it also does not contain any additional grant of authority to the county commissioners. We interpret the term "undedicated funds" as used

in § 1489, sub-§ 2 to mean that the funds need not be used for a special purpose. Nevertheless, these funds remain subject to the county allocation or appropriation process. The expenditure of these funds must still be made pursuant to a written order of the county commissioners, and such order or warrant can be given only if the commissioners have statutory authority to order the expenditure.

In light of the foregoing, and in the absence of any express or implied legislatively granted authorization to the county commissioners to expend county funds for recreational projects, we conclude that the commissioners may not use excise tax funds for this purpose. Legislative action would be necessary to provide such authorization.

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

Sincerely,



S. KIRK STUDSTRUP
Assistant Attorney General

SKS:mfe