

# MAINE STATE LEGISLATURE

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County view of Contingency Account  
30 M.R.S.A. § 252

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DEPARTMENT OF THE ATTORNEY GENERAL  
AUGUSTA, MAINE 04333  
May 8, 1978

Honorable John W. Jensen  
Box 943  
Portland, Maine 04104

Dear Representative Jensen:

I am responding to your oral request for advice from this office on a question concerning expenditures from the Cumberland County contingency account. The present situation, as you have described it to us, is as follows. The Cumberland County Commissioners included within their budget estimates for the current biennium an amount for payment of dues to the County Commissioners Association. This budget line item was expressly deleted from the budget by the Legislature, and the payment of dues was not made. Among the services provided by the Association is a plan of health insurance coverage for the employees of member counties. Up to this point, the Association has allowed Cumberland County to continue its subscription to this plan even though the County has not paid its membership dues. However, the Association has now informed the Cumberland County Commissioners that if the membership dues are not paid, the county will be excluded from the health insurance plan. It is our understanding that the County Commissioners propose to pay the Association dues from the contingency account pursuant to 30 M.R.S.A. § 252 in order to avoid this exclusion. It is also our understanding that other health insurance group plan coverage may be available to the county, but apparently at a greater cost for that coverage than would have been the case under the Association plan.

On the basis of the foregoing, you have asked our advice on whether the proposed payments from the contingency fund would be legal. We must advise you that while we cannot give a categorical answer to this question, the legality of this proposed expenditure appears very uncertain because of the deletion of funds for that purpose from the county budget by the Legislature.

In previous opinions of this office we have noted that the County Commissioners have little authority to make expenditures outside of the legislatively approved budget. Certain flexibility to meet unexpected circumstances is provided in 30 M.R.S.A. § 252 in the form of intra-departmental transfers and the contingency account. The specific provision with regard to the contingency account reads, in pertinent part:

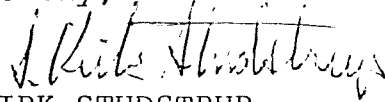
"This fund shall be used for emergency purposes only at the discretion of the county commissioners."

We have previously taken the position that this section leaves the determination of an emergency purpose within the sole discretion of the county commissioners. However, at the same time, we have indicated that neither the contingency account nor intra departmental transfers should be used to subvert or circumvent legislative intent as expressed in the approval of the county budgets.\*

Loss of health insurance coverage for county employees could be legitimately viewed as an emergency in light of its possible impact on employee moral, turnover, etc. If the county commissioners decided that this loss constituted an emergency, a payment from the contingency account for the purpose of continuing adequate medical insurance coverage would clearly be within their discretion. However, where the vehicle for such continued coverage - payment of dues to the County Commissioners Association - has been expressly excluded from the county budget by the Legislature and where there appear to be other options available for health insurance coverage, such a payment appears questionable. Therefore, we advise that payment of dues to the County Commissioners Association, even though indirectly used to solve what may be a legitimate emergency, would appear inconsistent with the clear intent of the Legislature.

The foregoing advice is given solely on the basis of the facts of the situation as they were described to us. Because we were aware of the time element involved, we have not attempted to confirm these facts and our advice must be correspondingly conditioned by this limitation.

Sincerely,



S. KIRK STUDSTRUP  
Assistant Attorney General

SKS:jg  
cc: Cumberland County Commissioners

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\* See generally: Opinions of the Attorney General of June 22, 1977; March 18, 1977; February 1, 1977; February 12, 1976; April 30, 1975; January 29, 1975.