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Maine Potato Council Funding
36 M.R.S.A. 4571-1-A

JOSEPH E. BRENNAN
ATTORNEY GENERAL



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

July 10, 1978

To: Marilyn B. Proulx, Executive Secretary, Maine Potato Commission
From: Sarah Redfield, Assistant Attorney General

This is in response to your request of June 7, 1978, for an opinion as to the proper allocation of funds to the Maine Potato Council. You indicated in your request that on January 23, 1978, the Maine Potato Commission voted to allocate \$54,810 to the Maine Potato Council for the period from September 1, 1977, through August 31, 1978. Pursuant to Title 36 M.R.S.A. § 4571.1-A which was effective July 6, 1978, the Maine Potato Council is to receive quarterly 20% of the total monies received in any given year by the Maine Potato Commission. You suggest that there would be overlapping payments by virtue of this statutory enactment and the vote of the Maine Potato Commission on January 23, 1978, and inquire whether the Commission is still obligated to pay the entire \$54,810 allocated, and if not, what action may be necessary to rescind the vote of January 23.

Title 36 M.R.S.A. § 4571, prior to its amendment in the second regular session of the 108th Legislature, provided in pertinent part that money received by virtue of the potato tax by the Maine Potato Commission shall be appropriated and used by the Commission for the following purposes:

1. Collection and enforcement....
2. Better methods. A sum which shall equal at least \$50,000 shall be used and applied for the purpose of investigating and determining better methods of production, shipment and merchandising of potatoes and for the manufacture and merchandising of potato byproducts;
3. Advertising....
4. Administration. For expenses in connection with administering this chapter, including employment of necessary staff and contracting for the performance of required services; participation jointly with any organization of growers, shippers

and processors in this State in financing such projects, programs and activities as are complimentary to the purposes of this chapter; provided that the annual sum appropriated and expended pursuant to this subsection shall not exceed an amount equal to 20% of the total monies received in any given year, . . .

Chapter 653 of the Public Laws of 1977 amended the above section by enacting a new subsection, 1-A, which sub-section declared that the activities of the Maine Potato Council were in the public interest and that use of a portion of potato tax proceeds to support the Maine Potato Council was likewise an expenditure in the public interest. This section further provided that:

"B. Subject to the provisions of this section, 20% of the total monies received in any given year under section 4565 shall be paid quarterly to the Maine Potato Council which shall use those funds for improvements in the coordination of efforts to improve the potato industry, promotion of Maine potatoes and the Maine potato industry, assistance to potato farmers in improving potato farming practices and necessary administrative support to the Maine Potato Council. The Council shall pay from funds dues to the National Potato Council and any successor organization. The balance of these tax funds remaining shall be used on research and programs to improve the quality of potatoes."

It appears that prior to the enactment of P.L. 1977, c. 653, the Maine Potato Commission had itself found that the activities of the Maine Potato Council were within the purview of 36 M.R.S.A. § 4571 as then enacted. (This view had been supported in its broad context by opinion of the Attorney General dated December 30, 1975, to the Honorable Peter W. Johnston, a copy of which opinion is attached hereto for your information.)

Acting under the former section, the Maine Potato Commission appropriated \$54,810 to the Maine Potato Council for the year from August until September. This amount of approximately \$4,500 per month was paid quarterly by the Commission through April, leaving at the time of your request for advice from this office, the months of May, June, July and August for further payment. Pursuant to the Commission vote indicated in your memo, approximately \$16,000 would be due the Maine Potato Council.


There is apparently no question of the amounts due the Potato Council by virtue of your vote of January 23, 1978, for the month of May and June. The question remaining is whether for the months of July and August of 1978 payment should be made pursuant to the \$54,810 vote and/or pursuant to the formula provided in P.L. 1977, c. 651-3. As to the latter, it is my understanding from oral conversation with you that the estimated tax revenue to the Commission for the ensuing fiscal year will be \$464,833 and the statutory twenty percent of this amount would, accordingly, be approximately \$93,000. This amounts, per quarter, to some

\$21,000 or approximately \$7,000 to be paid per month from the Maine Potato Commission revenues to the Maine Potato Council.

Inasmuch as the amount contemplated by the Legislature is greater than the amount allocated by the Potato Commission previously, it appears that both actions can be read in harmony and accomplish the legislative intent. It was apparently the intent of the Legislature to assure certain minimum amount of financing guaranteed to the Maine Potato Council in recognition of the work accomplished by the Potato Council, which work the Legislature deemed to be in the public's interest. The Legislature set this amount at 20% of the revenues of the Potato Commission. In so doing, the Legislature is presumed to have been aware of the current practices of the Maine Potato Commission and to have known that prior to enactment of this bill the Commission had itself allocated certain funds to the Council. In establishing a 20% per year, the Legislature must also have presumed to have known that this would be in excess of the amount previously allocated by the Commission. It accordingly seems appropriate for the Maine Potato Commission to pay to the Maine Potato Council the amount of \$4,500 per month for the months of May and June and for the months of July and August an amount which will be equal to 20% of the total monies to be received by the Commission for that year.

The Legislation is not specific as to when the first of the quarterly payments is to be made. If the Commission does not have adequate revenues to pay the full amount in July, I would suggest that it at least pay the amounts allotted by its prior vote for the months of July and August in order to provide for as smooth a transition period as possible. As to your question as to rescission of the January vote of the Commission, it is generally held that an agency may rescind prior actions voted, provided no vested rights are violated. (See generally, 4 McQuillan on Municipal Corporations § 13.49 concerning the analogous situation of votes of municipal bodies or agencies). With this principle in mind it may be appropriate for the Commission to clarify the existing situation by voting to rescind its January vote, and then voting to pay the Council the amount of \$16,000 (or whatever exact figure would be) for May, June, July and August and to supplement the July and August payment by amount required by 20% formula enacted by P.L. 1977, c. 653.

I hope this has been of help to you. If I can be of further assistance, please feel free to let me know.


SARAH REDFIELD
Assistant Attorney General

SR:jg
Enc.

cc: Maine Potato Council
Joseph Williams

December 30, 1975

The Honorable Peter W. Johnston
State Senator
West Limestone Road
Fort Fairfield, Maine 04742

Dear Senator Johnston:

I have been asked to respond to your letter of November 25, 1975, addressed to Attorney General Joseph E. Brennan. You have posed a number of questions concerning the potato tax, the Maine Potato Commission [hereinafter the Commission] and the Maine Potato Council [hereinafter the Council].

Questions A(1) and A(2) are very broad. The answers would depend upon the specific purpose of the appropriation of funds (raised pursuant to the potato tax, 36 M.R.S.A. § 4565) by the Commission to the Council. The purposes for which appropriations may be made by the Commission are statutorily set forth in 36 M.R.S.A. § 4571. The Maine Constitution requires, furthermore, that the power of taxation be used only for a public purpose, Article 1, Section 21 and Article IV, Part Third, Section 1 of the Constitution of the State of Maine; see Maine State Housing Authority v. Depositors Trust Company, 278 A.2d 699 (Me., 1971); Opinion of the Justices, 131 A.2d 904 (Me., 1957).

You ask in Question A(3) whether the Commission may contract with or appropriate funds to an "organization" for purposes other than "research, advertising or promotion." The answer to this question is affirmative. For example, the Commission could contract with an organization to furnish it (the Commission) with necessary supplies. See 36 M.R.S.A. § 4563-A(5). The purposes for which contracts or appropriations may be made are enumerated in the statute, 36 M.R.S.A. §§ 4561-4572, and are limited thereby.

In Questions A(4) and A(5) you ask whether the Commission may appropriate funds to the Council to (a) "finance the legal claims of potato growers against shippers and processors", (b) "finance lobbying expenses to promote legislation exclusively designed to protect potato growers," and (c) "to pay the salaries of the officers of the Maine Potato Council." As you describe these expenditures they are not

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within any category authorized by statute and are therefore unlawful. Additionally, it appears that public funds are being expended for private purposes, in violation of the Maine Constitution. See State v. F. H. Vahlsing, Inc., 88 A.2d 144 (Me., 1952). We could not, of course, conclude that any particular appropriation or expenditure was unauthorized or for a private purpose without examining all relevant facts.

The answer to question B(1) is affirmative. The Legislature may increase the potato tax without the "approval" of those upon whom the tax is imposed. See Article I, Section 22 and Article IX, Section 9 of the Constitution of the State of Maine; Greaves v. Houlton Water Co., 59 A.2d 217 (Me., 1948).

You ask in question B(2) whether the potato tax is a personal property tax on inventories. "The potato tax is not a tax assessed on an ad valorem basis on the value of potatoes owned, but like the gasoline tax, the use fuel tax, the cigarette tax, and the oleomargarine tax, on the amount of business done in the particular commodity within the state. It is an excise tax and not a property tax and is clearly imposed as an excise tax." State v. F. H. Vahlsing, Inc., supra, 88 A.2d at 146.

Very truly yours,

DAVID ROSEMAN
Assistant Attorney General

DR:mfe