

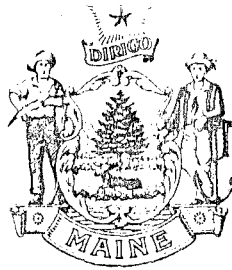
MAINE STATE LEGISLATURE

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RICHARD S. COHEN
ATTORNEY GENERAL



79-13
STEPHEN L. DIAMOND
JOHN S. GLEASON
JOHN M. R. PATERSON
ROBERT J. STOLT
DEPUTY ATTORNEYS GENERAL

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

February 2 , 1979

Honorable Frank Wood
House of Representatives
State House
Augusta, Maine 04333

Dear Representative Wood:

This letter will respond to your oral request for an opinion regarding the Legislature's authority to regulate the salaries paid to certain county employees. In particular, you have inquired regarding the extent to which the Legislature, by means of the county budget review process, can regulate the salary of a county clerk.

30 M.R.S.A. §201 (1978) provides that "[t]he county commissioners in each county may appoint some suitable person to serve as clerk to the county commissioners...." Section 801 of Title 30 also provides that "[t]he salary of all clerks shall be determined by the county commissioners after receiving a recommendation from the county officer under whom such clerk is employed." In view of the foregoing statutory provisions, it is apparent that the county commissioners have both the authority and the duty to control county expenditures, including setting the compensation of those employees whose salaries are not fixed by statute. See, e.g., Sheltra v. Auger, Me., 376 A.2d 463, 464 (1977); Watts Detective Agency, Inc. v. Inhabitants of County of Sagadahoc, 137 Me. 233, 237-38 (1941).

However, the county commissioners are created by statute and the authority of the county commissioners to control county expenditures is subject to the ultimate control of the Legislature. See State v. Vallee, 136 Me. 432, 446 (1940). It is the responsibility of the county commissioners to assess a county tax each year and in doing so they are required to prepare estimates of the anticipated expenditures for the year. 30 M.R.S.A. §252 (1978). It is provided by statute that these estimates

"...shall be drawn so as to authorize the appropriations to be made to each department or agency of the county government for the year. Such estimates shall provide specific amounts for personal services, contractual services, commodities, debt service and capital

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expenditures." 30 M.R.S.A. §252 (1978).

The county estimates are submitted to the Legislature for review and approval. 30 M.R.S.A. §253 (1978). The county estimates, as amended and adopted by the Legislature, constitute the county budget. Id.

As part of the county budget review process, the Legislature has "the power to change or alter specific line categories within the county estimates." 30 M.R.S.A. §253-A (1978). The salaries for all county officers and employees within a department or agency appear in the county estimates for that department or agency under the category of "Personal Services."¹ In view of its statutory authority to make changes or alterations in "specific line categories within the county estimates," the Legislature may increase or decrease the appropriation available for personal services within a county department or agency. Consequently, the county commissioners have statutory discretion to set the salary for a county clerk, but the Legislature, via the county budget review process, can set a ceiling on the funds available for salaries and wages within a department or agency of county government. See Op. Atty. Gen., February 12, 1976; Op. Atty. Gen., February 1, 1977.

You have also inquired whether the county commissioners can increase the legislatively approved appropriation for personal services within a department or agency, by means of intra-departmental transfers or use of the contingency fund. 30 M.R.S.A. §252 (1978) provides in relevant part:

"Whenever any specific appropriation of a department or agency of county government shall prove insufficient to pay the required expenditures for the statutory purposes for which such appropriation was made, the county commissioners may, upon written request of such department or agency, transfer from any other specific line appropriation of the same department or agency an amount as required to meet such expenditures, provided that such request shall bear the written approval of the majority of the county commissioners.

There is established a contingent account in each county in an amount not to exceed \$50,000. Such funds as are available to each county may be used for this purpose. This

1. Each department or agency of county government also submits a "Salaries and Wages Detail Sheet" which lists the estimated salaries and wages by position.

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

By permitting the county commissioners to make intra-departmental transfers and to use the contingent account, the Legislature obviously recognized that unforeseen circumstances may necessitate a deviation from the legislatively approved county budget. See Op. Atty. Gen., February 1, 1977; Op. Atty. Gen., June 22, 1977. The ability to utilize the contingent account and to make intra-departmental transfers affords the county commissioners some degree of flexibility in administering the fiscal affairs of the county. See 30 M.R.S.A. §251(1978 Supp.)²

With respect to intra-departmental transfers, it is apparent that such transfers are permissible only where a specific appropriation proves insufficient for the statutory purposes for which it was made. Where the Legislature has approved a specific appropriation for personal services for a county department or agency, it would seem that such appropriation would never prove insufficient for the statutory purposes for which it was made.

Use of the contingent account is allowable only for "emergency purposes." What constitutes an emergency within the meaning of 30 M.R.S.A. §252 (1978 Supp.) is for the county commissioners, acting within the range of their statutory discretion, to decide. I would point out, however, that we have indicated on several occasions that intra-department transfers and transfers from the contingent account should not be used as devices to frustrate legislative intent. Op. Atty. Gen., June 22, 1977; Op. Atty. Gen., February 1, 1977; Op. Atty. Gen., February 12, 1976.

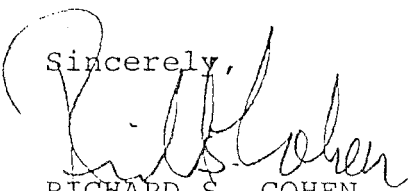
2. 30 M.R.S.A. §251 (1978 Supp.) provides in pertinent part:

"They [the county commissioners] shall examine, allow and settle accounts of the receipts and expenditures of the moneys of the county; represent it; have the care of its property and management of its business;...keep their books and accounts on such forms and in such manner as shall be approved by the State Department of Audit; and perform all other duties required by law."

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I have taken the liberty of attaching copies of four opinions from this office which deal with matters similar to those you have raised.³ I hope this information is helpful. Please feel free to call upon me again if I can be of further assistance.

Sincerely,



RICHARD S. COHEN
Attorney General

Enclosures

3. The opinions are dated April 30, 1975, February 12, 1976, February 1, 1977, June 22, 1977.