

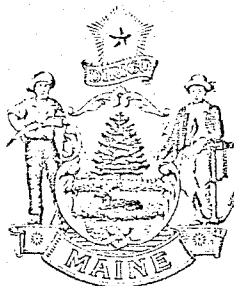
MAINE STATE LEGISLATURE

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February 27, 1979

Honorable Jerome Emerson
Maine State Senator
State House
Augusta, Maine 04333

Dear Senator Emerson:

You have requested an opinion regarding whether, in the circumstances described below, a board of county commissioners may amend their county estimates after they have been approved by the county legislative delegation and after having been submitted to the Local and County Government Committee. It is my understanding that the Penobscot County Commissioners prepared the county estimates and finalized them with the county legislative delegation. Subsequently, the estimates were referred to the Local and County Government Committee. You have inquired whether, assuming that a majority of both the county delegation and the Local and County Government Committee approve, the estimates may be returned to the county commissioners for further amendment. For the reasons stated below, I answer your question in the affirmative.

It is the responsibility of the county commissioners to assess a county tax each year. 30 M.R.S.A. §251(1978). In order to make a proper assessment, the "county commissioners, prior to November 7th in each year, shall prepare estimates of the sums to defray the expenses which have accrued or may probably accrue for the coming year...." 30 M.R.S.A. §252(1978). The county commissioners are required to hold a public hearing on the estimates prior to December 1 of each year and are mandated to meet with the county legislative delegation prior to the convening of the Legislature. 30 M.R.S.A. §252(1978). Following their finalization by the county delegation and the county commissioners, the estimates are transmitted to the Secretary of State "on or before the 1st day of each January, together with the county reports for the 2 preceding years, to be by him laid before the Legislature." 30 M.R.S.A. §253(1978).¹

1. The county commissioners are also required to record the estimates "in a book." 30 M.R.S.A. §253(1978).

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The estimates for each county are submitted to the Local and County Government Committee prior to presentation to the full Legislature.

It is well-established that the county commissioners have the responsibility to control county expenditures. In particular, the Supreme Judicial Court of Maine has stated that

"...it is the duty of the County Commissioners to determine in advance, so far as practicable, the financial requirements of the various departments of the county, to provide the necessary funds and to control expenditures."

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, 18 A.2d 308 (1941). Thus, the county commissioners are obligated to estimate, as best they can, the financial requirements of county government.

It must be observed, however, that the county commissioners derive their powers, duties and existence from the Legislature. See, e.g., Prince v. Skillin, 71 Me. 351, 373 (1880); Inhabitants of Belfast, Appellants, 52 Me. 529, 530 (1864); Selectmen of Ripley, Appellants, 39 Me. 350, 352 (1855). Accordingly, the county commissioners prepare annual estimates but only the Legislature can approve and adopt the county budget. 30 M.R.S.A. §§253 and 253-A (1978). It is the Legislature's ultimate responsibility to determine what a county's budget will be.

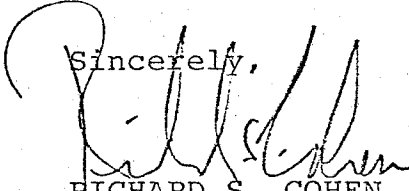
In fulfilling its responsibility to review and approve county budgets, it is certainly permissible for the Legislature to seek further guidance from those most intimately involved in county government, namely, the county commissioners. Until such time as the Legislature adopts a county budget, it has the prerogative of requesting the county commissioners to refine or reconsider their estimates. The time frames specified in 30 M.R.S.A. §§252 and 253 (1978) are limitations on the county commissioners, not the Legislature.

In conclusion, then, it is my opinion that there is nothing in the Maine Constitution or statutes which would prevent the county legislative delegation together with the Local and County

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Government Committee from requesting that the county commissioners reconsider and amend their estimates.² I hope this information is helpful. If I can be of any further assistance, please feel free to call upon me again.

Sincerely,



RICHARD S. COHEN
Attorney General

RSC:sm

2. I express no opinion as to whether the county commissioners are required to amend their estimates if those estimates are returned to them under the circumstances described in this letter.