

# MAINE STATE LEGISLATURE

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RICHARD S. COHEN  
ATTORNEY GENERAL



79-131

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

June 29, 1979

Honorable James A. McBreairty  
Route #1  
Caribou, Maine 04736

Dear Senator McBreairty:

You have orally requested an opinion regarding the authority of a board of county commissioners to make expenditures in excess of the legislatively approved county budget. Stated in a slightly different manner, you have inquired as to the extent to which the county commissioners may overspend the appropriations, as approved by the Legislature, in the individual line items of a county budget.

The commissioners for each county are statutorily obligated to "prepare estimates of the sums necessary to defray the expenses which have accrued or may probably accrue for the coming year" within their respective counties. 30 M.R.S.A. §252 (1978). See also 30 M.R.S.A. §251 (1978). In fulfilling their responsibility to prepare the annual county estimates, the commissioners must draw the estimates

"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 expenditures."

30 M.R.S.A. §252 (1978) (emphasis added).

The estimates as drafted by the county commissioners are then submitted to the Legislature for its review, amendment and ultimate approval. 30 M.R.S.A. §§253, 253-A (1978). See

also Op. Atty. Gen., February 27, 1979; Op. Atty. Gen., February 2, 1979. Since the county commissioners derive their powers, duties and existence from the Legislature,<sup>1</sup> only that body can approve and adopt the county budget. While the county commissioners are required to prepare the annual estimates, it is the Legislature's responsibility to determine what the county's budget will be.

Once the county budget has received legislative approval, it is the responsibility of the county commissioners to control county expenditures. 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, 18 A.2d 308 (1941). See also 30 M.R.S.A. §251 (1978).<sup>2</sup> The question you have asked is, to what extent may the commissioners expend county funds in excess of the budget as approved by the Legislature.

This Office has consistently taken the position that legislative approval of a county's budget acts as a direction to the county commissioners that county funds be expended in accordance with that budget. Op. Atty. Gen., August 14, 1975. However, the Legislature also recognized that unforeseen circumstances may necessitate a deviation from the legislatively approved county budget. Accordingly, the Legislature granted the county commissioners the authority to expend funds from the contingent account and to make intra-departmental transfers pursuant to 30 M.R.S.A. §252 (1978).

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.

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1. Prince v. Skillin, 71 Me. 351, 373 (1888); Inhabitants of Belfast, Appellants, 52 Me. 529, 530 (1864); Selectmen of Ripley, Appellants, 39 Me. 350, 352 (1855).

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

"They [the county commissioners] shall examine, allow and settle accounts of the receipts and expenditures of the moneys of the county...."

Senator James A. McBreairty

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

The establishment of the contingent account and the ability to make intra-departmental transfers are the two mechanisms which the Legislature created to afford the county commissioners some degree of flexibility in administering the fiscal affairs of the county.

An examination of the provisions of Title 30 governing the county budget review process reveals no statutory device, other than the two described above, whereby the county commissioners may overspend the specific appropriations approved by the Legislature. It is my conclusion that the authority of a board of county commissioners to deviate from the legislatively approved county budget, without further legislative action, is limited to use of the funds in the contingent account and transferring funds within a department of county government pursuant to 30 M.R.S.A. §252 (1978). This conclusion is consistent with prior opinions of this Office. In an opinion dated November 26, 1975, this Office stated:

"The situation you describe calls for overspending an individual line item in the legislatively approved county budget. There are only two ways the County Commissioners may take such action without legislative approval... The Commissioners may use the contingent account for this purpose or they may, with certain limitations, make intra-departmental transfers of funds from one specific line item to another."

Op. Atty. Gen., November 26, 1975. See also Op. Atty. Gen., February 1, 1977; Op. Atty. Gen., February 12, 1976; Op. Atty. Gen., April 30, 1975. Copies of the four opinions cited above are enclosed for your consideration.

In summary, then, it is my conclusion that a board of county commissioners is authorized to overspend the appropriations reflected in the county budget, without further legislative action,<sup>3</sup> in two instances only. Those instances are intra-departmental transfers and use of the funds in the contingent account.

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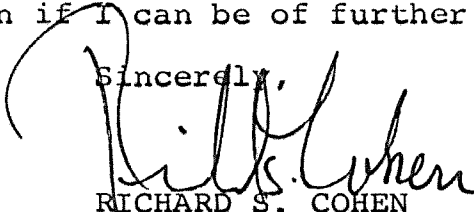
3. It should be observed that the First Regular Session of the 109th Legislature has enacted L.D. 1038 (H.P. 831) which

Senator James A. McBrearity

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I hope this information is helpful to you. Please feel free to call upon me again if I can be of further assistance.

Sincerely,



RICHARD S. COHEN  
Attorney General

RSC/sbh

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would give counties adopting a charter form of government the option of formulating a budget without legislative approval. L.D. 1038 was enacted by both Houses of the Legislature and is presently awaiting action by the Governor. Section 22 of L.D. 1038 would amend 30 M.R.S.A. §1601(2) by providing that

"[a] county adopting a charter pursuant to this subchapter may provide for a method of appropriating money for county expenditures other than the present statutory method. Such alternative method shall vest in the county legislative body the authority to appropriate money provided that within 45 days of final adoption of the county budget the legislative bodies of a majority of the municipalities within the county may cause the budget to be recalled. If the budget is recalled, the county shall, until a budget is finally adopted, operate on 80% of the previous year's budget."

JOSEPH E. BRENNAN  
ATTORNEY GENERAL



JOHN W. BENNETT, JR.  
RICHARD S. COHEN  
MARTIN L. WILK  
DEPUTY ATTORNEYS GENERAL

STATE OF MAINE  
DEPARTMENT OF THE ATTORNEY GENERAL  
AUGUSTA, MAINE 04330

April 30, 1975

Honorable Philip C. Jackson  
Senate Chambers  
State House  
Augusta, Maine

Honorable C. Everett Dam  
House of Representatives  
State House  
Augusta, Maine

Gentlemen:

This replies to your letter to the Attorney General dated April 18, 1975, concerning county commissioners.

Your first question reads:

"What course of action may be taken by the Attorney General, the Legislature, the Legislative Delegation or a joint standing committee of the Legislature against counties that have overspent individual line items of the budgets for the last biennium?"

It must be noted first that the Legislature has expressly provided that the County Commissioners can overspend an individual line item in two circumstances. First, when the specific appropriation proves:

"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 expenditure, provided, that such request shall bear the written approval of the majority of the county commissioners." 30 M.R.S.A. § 252.

Honorable Philip C. Jackson  
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Second, the Legislature has:

"established a contingent account in each county in an amount not to exceed \$50,000. . . . This fund shall be used for emergency purposes only at the discretion of the county commissioners."  
30 M.R.S.A. § 252.

Determination of what constitutes an "emergency" within the meaning of this term as used in § 253 has been vested by the Legislature in the sound judgment of the County Commissioners.

If we assume that a set of facts has been developed which demonstrates that the county commissioners have overspent an individual line item without compliance with either the first or second above-described exceptions permitting such action, your first question would then ask what action can be taken against the county commissioners for violating § 252? 30 M.R.S.A. § 59 provides a partial answer to that question:

"Any agent or officer who shall willfully violate sections 252, 401, 403 or 408 shall be punished by a fine of not more than \$500 or by imprisonment for not more than 6 months, or by both."

It should be noted that this criminal sanction is imposable only if it appears beyond a reasonable doubt that the county commissioners willfully violated § 252.

If we assume that the facts do not warrant a finding beyond a reasonable doubt of a willful violation of § 252, but that, instead, the violation was the result of either negligence or incompetence, two remedial actions are available. First, the matter can be presented to the electorate as a basis for non-reelection. Second, the Legislature can take action towards removal of such county commissioners by impeachment or address pursuant to Article IX, Section 5, Constitution of Maine.

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Your second question reads:

"What course of action may be taken by the above person or groups against counties that have overspent the total authorized expenditures, including authorized contingency funds, of the budgets of the last biennium?"

The answer to that question is similar to the first and threefold: First, prosecution under 30 M.R.S.A. § 59, if the overexpenditure is willful; second, present the matter to the electorate for their judgment at reelection; and third, impeachment or address.

Your third question asks:

"Do present limitations on county indebtedness prevent a county from raising revenues in this manner to overspend their authorized budgets?"

We construe the word "prevent" to mean "prohibit," and as thus construed the question is answered in the affirmative.

The corporate powers of a county are derived entirely from legislative enactments. State of Maine v. Vallee, 136 Me. 432, 446. The county commissioners cannot appropriate funds, levy taxes, spend or make any financial commitments without the approval and consent of the Legislature. See Maine v. Vallee. Also see Opinion of the Attorney General to Governor Longley, dated February 27, 1975, and opinion of the Attorney General to Senator Clifford, dated January 29, 1975, a copy of each of which opinion is attached hereto.

Your fourth question asks:

"May the counties assess municipalities at a higher rate than that required to fund the authorized budget?"

The answer to that question is negative. 30 M.R.S.A. § 252 provides that:

"In order to assess a county tax, county commissioners shall prepare estimates of the sums necessary to defray the expenses which have accrued or may probably accrue for the coming year . . . ."

"Such estimates shall be drawn so as to authorize the appropriations to be made to each



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department or agency of the county government for each year of the biennium. . . ."

30 M.R.S.A. § 253 provides:

"A copy of said estimates, with any amendments attached thereto adopted by the Legislature, including any changes in specific line categories, for the assessment of the county taxes, shall be filed by the Legislature with the State Auditor who shall retain the same for a period of 3 years, and shall be a public record at the office of the clerk of courts in all counties."

30 M.R.S.A. § 254 provides:

"When a county tax is authorized, the county commissioners shall, in April in the year for which such tax is granted, apportion it upon the towns and other places according to the last state valuation and fix the time for the payment of the same, which shall not be earlier than the first day of the following September."

It is clear from the foregoing statutory provisions that the county commissioners can only raise such county tax as has been authorized by the Legislature's budgetary approval.

Your fifth question asks:

"May the county commissioners of any county authorize pay raises to county employees or county civil officers during the present fiscal year prior to Legislative approval of the budget for the present fiscal year?"

The answer to that question is negative. The county commission derive their authority entirely from the statutes (Maine v. Vallee) and there is no statute which authorizes them to grant pay raises or to make any other financial commitment or expenditure which has not been approved by the Legislature, with the sole exception of an

Honorable Philip C. Jackson  
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"emergency." It does not seem likely that a pay raise granted prior to Legislative approval of the estimates could ever constitute an "emergency" within the meaning of that phrase as used in 30 M.R.S.A. § 252.

If I can be of any further aid to you in this matter, please advise me.

Very truly yours,

  
CHARLES R. LAROUCHE  
Assistant Attorney General

CRL:mfe

February 12, 1976

Honorable Bonnie D. Post  
House Chamber  
State House  
Augusta, Maine

Dear Representative Post:

This letter answers several questions which you have presented orally to this office, concerning county budget matters. The questions and answers are set forth below in serial fashion, and factual assumptions will be given with the question where necessary.

1. Assuming that the legislatively approved 1975-76 budget for a county included salary increases for deputy sheriffs, but due to a misunderstanding of the minimum salary provisions of 30 M.R.S.A. § 958 these increases were not paid in 1975 - "What obligations do the County Commissioners have to affect the pay raise for deputy sheriffs, retroactively for 1975 and prospectively for 1976?"

This office has consistently taken the position that the county derives its powers solely from the Legislature and that Legislative approval of the county budget estimates pursuant to 30 M.R.S.A. §§ 253 and 253-A is a direction by the Legislature that funds obtained from the county tax and other sources are to be expended in accordance with that budget. Attorney General Opinion, August 14, 1975. It would follow logically that the County Commissioners must expend county funds as allocated in the budget, unless the Legislature has given the commissioner discretion in making expenditures in a specific area. The Legislature has given the County Commissioners such discretion with regard to deputy sheriffs. 30 M.R.S.A. § 958. After citing the minimum compensation for deputies with different training achievements, section 958 states, "Such compensation shall be established by the respective county commissioners and paid from the respective county treasuries. . . ."

The combined effect of the legislatively approved budget and section 958 would be to give the county commissioners certain discretion within maximum and minimum limits. The maximum expenditure for deputies' salaries would be the total allocation for this purpose

Honorable Bonnie D. Post  
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in the budget, while the minimum for a given deputy is set by section 958. The county commissioners are required to establish the compensation to be paid, but their only obligation, as such, is to establish the compensation within the stated limits. This analysis would apply either prospectively or retrospectively.

2. "Can the county commissioners hire a person to fill a position which was not approved in the county line item budget?"

The answer to this question is generally negative. County line item budgets contain a "Salaries and Wages Detail" which lists the budgeted salaries and wages by position. These lists are usually quite detailed and would include every anticipated position. In keeping with the opinion of this office that legislative approval of the budget is a direction from the Legislature that county funds shall be spent in the approved manner, the county commissioners may not hire a person to fill a position which was not included in the budget.

It should be recognized, however, that unforeseen emergencies may arise which would require the commissioners to hire additional personnel on an interim basis. The commissioners do have the authority to use the contingent account to meet emergencies, so long as the account is not used to circumvent legislative intent. 30 M.R.S.A. § 252; Attorney General Opinion, January 29, 1975. Since it cannot be presumed that the Legislature would intend to hamstring county government in coping with emergency situations, in our opinion limited, interim hiring in such situation would not be prohibited even though the positions to be filled were not included in the budget.

3. "Can the county commissioners hire a person for a position at a pay rate which exceeds the rate authorized in the county line item budget?"

The answer to this question is generally negative, and for the same reasons as stated in answer to question number 2. In those cases where the county commissioners are given discretion in setting pay rates, such as deputy sheriffs [30 M.R.S.A. § 958] and clerks [30 M.R.S.A. § 801], the legislatively approved budget acts as a ceiling for the pay rate.

4. "Can the county commissioners, without further action by the Legislature, use monies available in the county contingent account to pay for expenses which were budgeted in 1975 but never expended, specifically the pay raise for deputy sheriffs?" [See question #1]

The county contingent account is established by 30 M.R.S.A. § 252, which reads, in pertinent part:

"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 fund shall be used for emergency purposes only at the discretion of the county commissioners. At the end of each fiscal year there shall be transferred from unencumbered county funds an amount sufficient to restore the established county contingent account." (emphasis provided)

The Legislature has established this account, stated it is to be used for "emergency purposes," and has vested determination of what constitutes an "emergency" in the sound judgment of the county commissioners. Attorney General Opinion, April 30, 1975. Therefore, no further legislative action would be necessary for use of the contingent account, if the county commissioners have determined there is an emergency. Since determination that an "emergency" exists is within the discretion of the commissioners and would depend on all surrounding circumstances, we cannot state whether the necessity for a retroactive pay-raise for deputies would be considered such emergency.

5. "Can the county commissioners transfer funds from the 1975 surplus to the county contingent account and use these funds to overspend a line item in the 1976 budget without further legislative action? Can the county commissioners use these funds for making non-budgeted expenditures, specifically continuing the salary of county employees whose federal funding has been terminated?"

Both 30 M.R.S.A. § 252 [quoted above] and 30 M.R.S.A. § 403, concerning "surplus funds," allow the county commissioners to use surplus funds (unexpended balances and actual revenue in excess of estimates) to restore the contingent account at the end of any fiscal year. However, again utilization of funds in the account would depend upon whether the county commissioners decide that there is an "emergency." Expenditures needed to meet an unforeseen emergency may exceed certain line item amounts in the county budget. However, the contingent account should not be used as a mechanism to circumvent legislative authorization.

6. "What official or officials on the county level have the responsibility for ensuring that county expenditures stay within the budget limits as approved by the Legislature?"

The answer to this question is that the county commissioners, as the chief administrative officers of county government, are responsible for ensuring that expenditures stay within budget limits. Title 30 M.R.S.A. § 251, concerning the commissioners' duties, provides in part:

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"They shall examine, allow and settle accounts of the receipts and expenditures of the moneys of the county; . . . 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."

The county commissioners have exclusive jurisdiction, with regard to other county officers, in matters of county property and fiscal management. Watts Detective Agency v. Inhabitants of Sagadahoc County, 18 A.2d 303 (1941). Therefore, it is the commissioners who must bear the responsibility of keeping expenditures within the budget.

I hope these answers to your questions will be helpful. Please continue to call on us whenever you feel we may be of assistance.

Sincerely,

S. KIRK STUDETROP  
Assistant Attorney General

SKS:mfe

County Budgets  
Register of Probate Fees  
30 M.R.S.A. 2  
30 M.R.S.A. 252

JOSEPH E. BRENNAN  
ATTORNEY GENERAL



RICHARD S. COHEN  
JOHN M. R. PATERSON  
DONALD G. ALEXANDER  
DEPUTY ATTORNEYS GENERAL

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

February 1, 1977

Honorable Stephen T. Hughes  
House of Representatives  
State House  
Augusta, Maine

Dear Representative Hughes:

This letter responds to your oral request for an opinion of January 17, 1977, and your letter of January 18, 1977. The four questions you have asked as Chairman of the Androscoggin County Legislative Delegation, all concern county budget matters. These questions and our answers and rationale are set forth individually below. We are also enclosing with this letter copies of six previous opinions of this office on related county budget questions. The copies are provided for your added information and for reference purposes throughout this opinion.

Question 1. "To what extent may the Legislature, through the county budget review process, establish the salaries to be paid to county staff employees, i.e., those employees whose salary is not established by statute?"

The answer to this question depends upon the particular position being considered.

As indicated in your question, there are certain county positions for which the salary is specifically designated by statute. These officers and the respective salary amounts are set forth in 30 M.R.S.A. § 2. However, the majority of county employees do not have their salaries set in this manner. The salaries for all county officers and employees, whether set by statute or not, appear in the county budget estimates both under the general category of "Personnel Services" and in the "Salaries and Wages Detail Sheets." This office has consistently stated its opinion that the counties derive their powers solely from the Legislature and that Legislative approval of the county budgets

Honorable Stephen T. Hughes  
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obligates the county commissioners to expend funds obtained from the county tax and other sources in accordance with that budget. See Opinion of February 12, 1976. Therefore, the Legislature may establish the salaries to be paid to county staff employees through the budget approval process unless the Legislature has otherwise provided for discretionary approval of such salaries by the county commissioners or other county officers. Examples of such discretionary authority is found in sections relating to compensation of deputy sheriffs (30 M.R.S.A. § 958) and clerical staff (30 M.R.S.A. § 801). In these latter cases the legislatively approved budget acts as a ceiling upon the county commissioners' authority to set the salaries. This question is discussed in more detail in our opinion of February 12, 1976.

Question 2. "To what extent may the county commissioners deviate from the legislatively approved budget in their expenditures?"

The answer to this question is that, with certain exceptions, the county commissioners have very little authority to deviate from the budget.

County budgets, like most budgets, are established on a prospective basis, and it is always possible that unforeseen circumstances may compel some minor deviation from the budget estimate. The statutes recognize this problem and allow for such deviation through the mechanisms of intra-departmental transfers and the contingent account (30 M.R.S.A. § 252). See our opinions of April 30, 1975, and November 26, 1975. However, with these two exceptions, the county commissioners are required to carry out the legislatively approved budget and any major deviations which are necessary would require legislative approval. In addition, the two mechanisms for flexibility should not be used to frustrate legislative intent.

Question 3. "By what authority may a Register of Probate keep to his own use certain fees charged by his office? What action, if any would be required to alter this situation?"

The answer to this question is that a Register of Probate is very limited in the use of fees charged by his office.

We assume that your question does not contemplate personal use of any fees by the Register of Probate, since the salary for the Registers established by statute is in full compensation for the performance of all official duties. 30 M.R.S.A. § 2; 18 M.R.S.A. § 251. Therefore, the question is really whether fees collected by the Register must be paid into the county treasury or whether they



Honorable Stephen T. Hughes

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may be used for purposes within the Registry. The general statutory provision on this question is found in 30 M.R.S.A. § 2, which reads, in pertinent part:

"All fees and charges of whatever nature, except charges for the publication of notices required by law, which may be payable to any county officer, except clerks of court, shall be payable by them to the county treasurer for the use and benefit of the county, . . ."

The exception stated in this section for charges for publication of notices required by law is not authorization to retain any excess fees. Such charges should be limited to the actual expense of publication and Registers may not retain as additional compensation any excess received from overestimating the amount required for publication. Opinion of the Attorney General, May 18, 1966.

Specific statutory provisions relating to Registers of Probate are found in Title 18, Chapter 7 (§ 251, et seq.). Section 251 authorizes the Registers to charge a "reasonable fee" for making copies of wills, accounts, inventories, petitions and decrees. That section also specifies that fees paid for certain specified records required to be recorded in the Registry of Deeds ". . . shall be deemed to be official fees for the use of the county." Section 261 provides that fees charged by the register for approved blanks, forms or schedule paper ". . . shall be payable by the register to the county treasurer for the use and benefit of the county." Section 552 establishes other fees which may be charged by the Register. Finally, section 553 states:

"Registers of Probate shall account for each calendar quarter under oath to the county treasurers for all fees received by them or payable to them by virtue of the office, specifying the items, and shall pay the whole amount for each calendar quarter to the treasurers of their respective counties not later than the 15th day of the following month." (emphasis provided)

The foregoing recitation of statutory provisions concerning the fees chargeable by Registers of Probate does not indicate statutory authority for retention of any fees by these officers. The second

Honorable Stephen T. Hughes

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portion of this question asked what action would be required to alter this situation. It would require statutory amendment to authorize Registers of Probate to retain certain fees for use in their offices, if this is the result you intended.

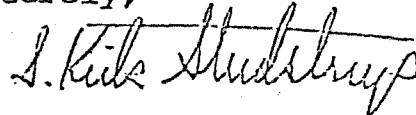
Question 4. "May the Legislature provide through a county budget for appropriation to social services to which no appropriation was proposed by the County Commissioners?"

The answer to this question is affirmative.

The rationale for our question is set forth in detail in our opinion of August 14, 1975, a copy of which is enclosed with this letter.

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

Sincerely,



S. KIRK STUDSTRUP  
Assistant Attorney General

SKS:mfe

Enclosures

XXXXXXXXXXXX

November 26, 1975

Honorable Philip C. Jackson  
State Senator  
Main Street  
Harrison, Maine 04040

Re: Kennebec County Financial Situation

Dear Senator Jackson:

Your letter of November 13, 1975, described a financial situation in Kennebec County and requested our opinion on the legality of one possible solution. Briefly stated, the County has exhausted the authorized funding in the departmental allocation for the Jail, also known as "support of prisoners." The County must find some other source of funds for this purpose and to meet other obligations. There is an anticipated surplus of \$125,000 in the departmental allocation for the Superior Court, also known as the "court account," and you ask:

"May the surplus funds in the court account be legally used for support of prisoners and other related expenses?"

The answer to your question is negative. The situation you describe calls for overspending an individual line item in the legislatively approved county budget. There are only two ways the County Commissioners may take such action without legislative approval, as described in our opinion of April 30, 1975, addressed to you and Representative Dam. The Commissioners may use the contingent account for this purpose or they may, with certain limitations, make intra-departmental transfers of funds from one specific line item to another. 30 M.R.S.A. § 252. Neither alternative could be used at this time to make available funds from the Superior Court account for "support of prisoners" or other purposes which are not directly related in a budget sense to the court.

Honorable Philip C. Jackson  
November 26, 1975  
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You indicated that the contingent account for Kennebec County has been exhausted. Therefore, this option would be viable only if the account could be restored in some manner. The contingent account is restored at the end of each fiscal year from surplus funds, i.e. unencumbered funds, unexpended balances, and actual revenue in excess of estimates. 30 M.R.S.A. §§ 252 and 408. Since the forecast surplus in the Superior Court account will not become actual surplus until the end of the fiscal period, restoration of the contingent account with these funds is not possible at this time. However, Section 252 also provides that "Such funds as are available to each county may be used for [the contingent account]," and funds made available from another source, such as the State Contingent Account (5 M.R.S.A. § 1507), could be used to augment the contingent account. The latter suggestion is beyond the scope of your question, but is included for your information.

The other alternative, intradepartmental transfer of funds pursuant to 30 M.R.S.A. § 252, may not be used because such transfers are authorized only between specific line appropriations within the same department or agency. The Superior Court and the Jail (Support of Prisoners) are designated as separate and distinct departments for county budget purposes.

The forecast surplus in the Superior Court account cannot be used to restore the contingent account at this time, nor can it be used for direct transfer to the Jail account. Since these are the two mechanisms made available to the county commissioners by statute to overspend an individual line item, it follows that the forecast surplus may not be used for the Jail account.

Sincerely,

JOSEPH E. BRENNAN  
Attorney General

JEB:mfe

cc: Representative Theodore E. Lewin  
Representative Richard J. Carey  
Kennebec County Commissioners