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DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04333

February 4, 1980

Honorable Linwood M. Higgins
Maine House of Representatives
State House
Augusta, Maine 04333

Dear Representative Higgins:

This will respond to your opinion request of January 17, 1980 in which you raise the following questions:

1. Which county officials have the responsibility for ensuring that county expenditures stay within the budget limits as approved by the Legislature?
2. What procedures are available to the county commissioners or the legislative delegation if overdrawn accounts are done improperly and without the appropriate authority?

-I-

30 M.R.S.A. §252 (1978) requires the county commissioners to "prepare estimates of the sums necessary to defray the expenses which have accrued or may possibly accrue for the coming year." Section 252 also provides specific guidance to the county commissioners regarding how the estimates are to be prepared.

"Such 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 expenditures."

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

A copy of the county estimates, as prepared by the commissioners, is required to be sent to each member of the

county legislative delegation at least ten days prior to a public hearing on the estimates. 30 M.R.S.A. §252. Following the public hearing, but prior to the convening of the Legislature, the commissioners are required to meet with the legislative delegation to finalize the estimates for the year. Id.

The county estimates are then submitted to the Legislature for its review, amendment and ultimate approval. See 30 M.R.S.A. §253 (1979-80 Supp.). See also 30 M.R.S.A. §253-A (1978). It is a well-established principle of law in this State that the county commissioners derive their powers, duties and existence from the Legislature and only that body can approve and adopt the county budget. See, e.g. 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). See also Op. Atty. Gen., June 29, 1979; Op. Atty. Gen., February 27, 1979; Op. Atty. Gen., February 2, 1979. The county commissioners are statutorily obligated to prepare the annual county estimates, but it is the Legislature's ultimate responsibility to determine what the county's budget will be.

Once the Legislature has approved the county budget, it then becomes 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). As we stated in an opinion dated February 12, 1976:

"The county commissioners have exclusive jurisdiction, with regard to other county officers, in matters of county property and fiscal management. Therefore, it is the commissioners who must bear the responsibility of keeping expenditures within the budget."

Op. Atty. Gen., February 12, 1976 (citation omitted). See also 30 M.R.S.A. §251 (1978).¹

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1. 30 M.R.S.A. §251 (1978) 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."

The Legislature's approval of the county budget is a direction to the county commissioners that county funds be expended in accordance with that budget. See, e.g., Op. Atty. Gen., June 29, 1979; Op. Atty. Gen., August 14, 1975. However, there are two situations in which it is permissible, without further legislative action, for specific line appropriations in the county budget to be overspent. As will be discussed in greater detail below, in each instance in which overspending of a county department's specific line appropriation is permitted, the approval of the county commissioners is required.

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 expenditure, 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 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.

Any transfers between specific line categories or from the contingent account shall be certified by the county commissioners within 30 days to the State Department of Audit."

Pursuant to 30 M.R.S.A. §252 (1978) funds within a specific line appropriation of a county department or agency may be transferred to another specific line appropriation of the same department or agency. While such an intra-departmental transfer may be requested by a particular department or agency of county government, the authority to approve a request for the intra-departmental transfer of funds is vested solely in the county commissioners. Individual departments or agencies of county government have no independent authority to make intra-departmental transfers of county funds.

With respect to use of the contingent account, it is apparent from a reading of the plain language of 30 M.R.S.A. §252 (1978), that only the county commissioners may expend funds from that account for emergency purposes.² Individual departments or

2. We have repeatedly stated that "[w]hat constitutes an

agencies of county government have no independent authority to expend funds from the contingent account.

In view of the foregoing, it is our conclusion that the responsibility of controlling county expenditures and of assuring that such expenditures do not exceed the legislatively approved appropriations, rests with the county commissioners, who are authorized to overspend the appropriations in two instances only. "Those instances are intra-departmental transfers and use of the funds in the contingent account." Op. Atty. Gen., June 29, 1979. See also Op. Atty. Gen., November 26, 1975; Op. Atty. Gen., February 1, 1977.

II

In your second question you have inquired as to the "procedures the commissioners or the legislative delegation should take if overdrawn accounts are done improperly and without the appropriate authority." The decision as to what action, if any, should be taken in the event that departments or agencies of county government overspend their legislatively approved appropriations without lawful authority, is a matter which is best left to the judgment of the commissioners, the legislative delegation and the Legislature as a whole. However, within the context of this opinion we can touch upon possible areas of inquiry which the county commissioners, the legislative delegation or the Legislature may wish to consider when confronted with a situation involving the overspending of specific line appropriations in the county budget.

In a prior opinion dated April 30, 1975 we indicated that in certain circumstances it is possible to bring criminal action against county agents or officers who willfully violate 30 M.R.S.A. §252 (1978). Section 59 of Title 30 provides:

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

As we emphasized in our prior opinion, in order to sustain a conviction under 30 M.R.S.A. §59 it must be established by proof beyond a reasonable doubt that the county officer or agent willfully violated 30 M.R.S.A. §252. See Op. Atty. Gen., April 30, 1975.³

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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." Op. Atty. Gen., February 27, 1979. See also Op. Atty. Gen., February 12, 1976; Op. Atty. Gen., April 30, 1975.

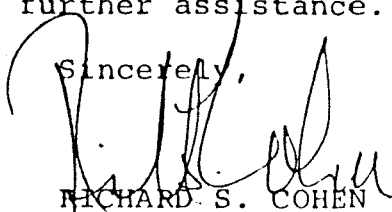
3. Since we are unaware of any prosecutions under 30 M.R.S.A. §59, we cannot predict with assurance the types of situations to which that statute would apply or even if it would apply to overspending of specific line appropriations in the county budget.

Overspending of specific line appropriations in the county budget can also be the result of negligence or incompetence. In such a case, the matter of overspending of county funds may be brought to the attention of the electorate as a suggested basis for non-re-election of the county officer involved. Moreover, the county commissioners or the Legislature may wish to consider whether the action of a county officer in overspending the appropriations of his department warrants initiation of proceedings for his removal from office.⁴ See Op. Atty. Gen., April 30, 1975.

We wish to point out that each year our office receives numerous requests for opinions on issues pertaining to the county budget review process. Generally speaking, these requests arise out of disputes involving two or more of the following parties: the legislative delegation, the county commissioners and county department heads. Based upon our experience in responding to these inquiries, it seems apparent to us that there is a considerable amount of confusion on the part of Legislators and county officers as to who is responsible for the fiscal management of the counties and under what circumstances the legislatively approved appropriations may be exceeded. The repetitive nature of these inquiries suggest that the statutes governing county budgets are either unclear or lack sufficient sanctions. Given the frequency of these inquiries, and in view of the fact that the county budgets are reviewed and approved on an annual basis, the Legislature may wish to consider enacting general legislation to clarify these areas of confusion.

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

Sincerely,



RICHARD S. COHEN
Attorney General

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4. Of course, one option available to the Legislature, should it conclude that county officers are not following its intent with respect to the county budget, is to make cuts in that budget.