

MAINE STATE LEGISLATURE

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

February 7, 1980

Honorable James A. McBreairty
Maine State Senate
State House
Augusta, Maine 04333

Dear Senator McBreairty:

This will respond to your oral request for an opinion regarding the authority of the county commissioners and treasurer of Aroostook County to hire a deputy treasurer. In particular, you have informed us of the following facts. In the 1979 estimates for Aroostook County the county commissioners proposed to hire a deputy treasurer at a certain salary. When the county estimates were submitted to the legislative delegation, that body deleted the proposed salary for the deputy treasurer. On June 15, 1979 Governor Brennan approved Chapter 19 of the Resolves of 1979 which constituted the legislatively approved budget for Aroostook County. Within the county treasurer's department, the Legislature authorized a total appropriation for personal services in the amount of \$6,803. The Legislative resolve contained no limitations on how the appropriation for personal services within the county treasurer's department was to be expended.¹ You have also

1. With respect to the county treasurer, Chapter 19 of the Resolves of 1979 provided:

"Appropriation Account number	Appropriations
	* * *
1035- County Treasurer	
Personal Services	6,803
Contractual Services	17,325
Commodities	1,650
Capital Expenditures	250"

informed us that following the Legislature's approval of the Aroostook County budget, the county commissioners and the county treasurer hired a deputy treasurer at the originally proposed salary.

Initially, you have asked whether the county treasurer is legally obligated to appoint a deputy treasurer. The answer to your question is found in 30 M.R.S.A. §651 (1978) which provides that "[t]he treasurers of the several counties may appoint deputy treasurers, with the approval of the county commissioners, for their respective counties." As a general rule, the word "may" in a statutory enactment is intended to be permissive, discretionary and not mandatory. See, e.g., Boynton v. Adams, Me., 331 A.2d 370, 372 (1975); Collins v. State, 161 Me., 445, 449, 213 A.2d 835 (1965). Accordingly, pursuant to 30 M.R.S.A. §651 the county treasurer, subject to the approval of the commissioners, is permitted, but is not mandated, to appoint a deputy treasurer.

You have also inquired whether the county commissioners and the county treasurer can hire a deputy treasurer at a salary which was deleted from the county estimates by the legislative delegation. The salary of the deputy treasurer, if one is appointed, is "established by the treasurer and approved by the county commissioners." 30 M.R.S.A. §604 (1978). Thus, the county treasurer, subject to the approval of the commissioners, has statutory discretion to set the salary of his deputy. While it is true that the legislative delegation struck the deputy treasurer's proposed salary from the 1979 Aroostook County estimates, that fact, standing alone, did not prevent the treasurer and commissioners from exercising their statutory authority to hire a deputy treasurer. Accordingly, it is our conclusion that the county treasurer, with the approval of the county commissioners, can hire, and set the salary of, a deputy treasurer notwithstanding the fact that the legislative delegation has chosen to delete the deputy's salary from the 1979 county estimates.

You have also asked whether the county commissioners may make intra-departmental transfers of funds or may use the funds in the contingent account to pay the deputy treasurer the salary which the legislative delegation deleted from the 1979 Aroostook County estimates. Obviously, this question arises because the treasurer's appropriation for personal services was insufficient to pay the deputy treasurer's salary.

30 M.R.S.A. §252 (1978) permits funds within a specific line appropriation of a county department or agency to be transferred to another specific line appropriation of the same department or agency. Such an intra-departmental transfer may be requested by an agency or department of county government, but can be approved only by the county commissioners. Furthermore, an intra-departmental transfer of funds is permissible only when a specific line appropriation of a department or agency of county government "prove[s] insufficient to pay the required expenditures for the statutory purposes for which such appropriation was made...." 30 M.R.S.A.

§252 (1978).² 30 M.R.S.A. §252 (1978) also authorizes the county commissioners to use the funds in the contingent account for "emergency purposes only."³

The authority to make intra-departmental transfers and to use the funds in the contingent account are the two mechanisms by which the county commissioners may overspend the specific appropriations as approved by the Legislature. Op. Atty. Gen., June 29, 1979. In approving the Aroostook County budget, the Legislature appropriated to the county treasurer the sum of \$6,803 for personal services within his department. As has already been emphasized, the Legislature did not place any restrictions on or give any specific instructions to either the county commissioners or the treasurer as to how this appropriation was to be spent. Moreover, the Legislature did not limit the authority of the county commissioners to make intra-departmental transfers or to utilize the funds in the contingent account.

The purpose of making a specific appropriation for "personal services" within the county treasurer's department is to pay salaries and wages to employees within that department of county government. Since the treasurer, acting with the approval of the county commissioners, has statutory authority to appoint and set the salary of his deputy, the latter's salary would be payable out of the appropriation for "personal services" for the treasurer's department. Should that appropriation prove insufficient to pay the deputy treasurer's salary, the treasurer could request and the county commissioners could approve an intra-departmental transfer to cover that expenditure.

2. That portion of 30 M.R.S.A. §252 (1978) which authorizes intra-departmental transfers provides in its entirety:

"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."

3. That portion of 30 M.R.S.A. §252 authorizing the establishment and use of the contingent account provides:

"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."

Pursuant to Chapter 19 of the Resolves of 1979, the Legislature appropriated \$25,000 for the Aroostook County contingent account.

With respect to use of the funds in the contingent account to pay the deputy treasurer's salary, it has been the consistent position of this office that what constitutes an emergency within the meaning of 30 M.R.S.A. §252 is for the county commissioners to decide. See, e.g., Op. Atty. Gen., February 27, 1979; Op. Atty. Gen., February 12, 1976; Op. Atty. Gen., April 30, 1975. If the county commissioners conclude that the hiring of a deputy treasurer constitutes an emergency, they have the authority to use the funds in the contingent account for that purpose.⁴

In view of the foregoing, it is our conclusion that the county commissioners have authority to make intra-departmental transfers and to use the funds in the contingent account to pay a deputy treasurer a salary which the legislative⁵ delegation deleted from the 1979 Aroostook County estimates. We wish to point out, without necessarily deciding the issue, that our conclusion may have been different had the Legislature placed appropriate language in Chapter 19, Resolves of 1979, limiting the authority of the county commissioners to make intra-departmental transfers or to use the funds in the contingent account to pay the deputy treasurer's salary. For example, we are aware that in Chapter 24 of the Resolves of 1979, the Legislature placed specific limits on the salaries which certain York County employees could receive.

We also wish to point out that each year our office receives numerous requests for opinions on issues pertaining to the county budget review process. In particular, we receive and respond to a considerable number of inquiries from legislators concerning the authority of county commissioners to make intra-departmental transfers and to use the funds in the contingent account. Based upon our experience in responding to these inquiries, it seems apparent to us that there is a significant 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. 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.

Finally, you have asked for a description of the duties of a county treasurer. Rather than specifically enumerating

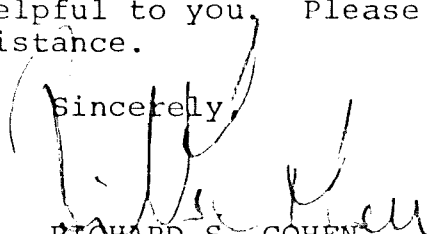
4. Obviously, in determining what constitutes an emergency the county commissioners must act in good faith.

5. It should be observed that 30 M.R.S.A. §252(1978) requires that "[a]ny 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." We have been informed by the Audit Department that as of January 30, 1980 no transfer of funds into the county treasurer's personal services account has been certified or filed by the Aroostook County Commissioners.

all of the various duties which a county treasurer is required to perform, I have taken the liberty of enclosing copies of the pertinent statutory provisions. Should you have a specific question concerning the statutory responsibilities of county treasurers, please feel free to contact me.

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

Sincerely,



RICHARD S. COHEN
Attorney General

RSC:sm