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March 3, 1980

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

Dear Senator McBreairty:

This will respond to your opinion request in which you ask whether the Legislature can require the Aroostook County Commissioners to hire a county administrator.

30 M.R.S.A. §202 (1978) authorizes the commissioners of each county to hire a county administrator. Section 202 sets forth in considerable detail the eligibility requirements for appointment as county administrator, the duties to be performed by that officer and the grounds for his removal from office. The administrator, if one is appointed, acts as "the chief administrative official of the county and shall be responsible for the administration of all departments and officers over which the county commissioners have control." 30 M.R.S.A. §202. In the event that the commissioners appoint a full-time administrator, "they shall forego the annual salary otherwise due them and shall only receive $25 each for each meeting attended and reimbursement for travel at the same rate established for state employees." 30 M.R.S.A. §202.

It is clear that under present law, the decision as to whether to hire a county administrator rests solely within the discretion of the county commissioners. You have inquired whether there is any action the Legislature can take to require the commissioners of Aroostook County to hire an administrator for the county.

One option which is always available to the Legislature is to amend 30 M.R.S.A. §202 to provide that the commissioners of Aroostook County shall hire a county administrator. A question which may arise is whether such an amendment would constitute special legislation is violation of Article IV, pt.3, §13 of the Maine Constitution, which provides:

> "The Legislature shall, from time to time, provide, as far as practicable, by general laws, for all matters usually appertaining to special or private legislation."

The "special legislation" clause of the Maine Constitution has been interpreted as prohibiting the enactment of laws which "grant a privilege to an individual or individuals not enjoyed by other similarly situated persons." Nadeau v. State, Me., 395 A.2d 107, 112 (1978). See also Opinion of the Justices, Me., 402 A.2d 601 (1979). We are aware of no decision by the Maine Supreme Judicial Court which has construed Article IV, pt.3, §13 as prohibiting the Legislature from enacting laws in the area of county government which apply only to a particular county.[1] Indeed, Title 30 is replete with instances in which the Legislature has done just that. See, e.g., 30 M.R.S.A. §2 (salaries of county officers); 30 M.R.S.A. §58 (county offices of Androscoggin County); 30 M.R.S.A. §§404-406 (authority of counties to obtain loans); 30 M.R.S.A. §412 (Androscoggin County mental health services); 30 M.R.S.A. §412-A (Piscataquis County family services); 30 M.R.S.A. §424 (Cumberland County jail and recreation center); 30 M.R.S.A. §425 (Kennebec County fire protection services); 30 M.R.S.A. §426 (Piscataquis County ambulance service); 30 M.R.S.A. §553-B (salaries of District Attorneys); 30 M.R.S.A. §605 (Androscoggin County treasurer). Moreover, it is a well-established principle of law in this state that the commissioners of each county derive their authority from the Legislature. See, e.g., State v. Vallee, 136 Me. 432, 446, 12 A.2d 421 (1940); Prince v. Skillin, 71 Me. 361, 373 (1888); Inhabitants of Belfast, Appellants, 52 Me. 529, 530 (1864). The authority of the Legislature to regulate the powers and duties of the county commissioners includes the authority to deal with counties on an individual basis. In the absence of a more specific constitutional prohibition, we are not inclined to interpret Article IV, pt. 3, §13 as restricting the power of the Legislature to deal with the problems of county government by enacting laws which apply only to the commissioners of a particular county. Accordingly, it is our conclusion that the Legislature could amend

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1. It is true,of course, that constitutional provisions in other states specifically prohibit special legislation in the area of county government. See generally C.Sands, 2 Sutherland Statutory Construction, §40.10 at 183 (4th Ed., 1973) and cases cited therein. However, Maine's special legislation clause is much less specific than similar provisions found in other jurisdictions.

30 M.R.S.A. §202 to require the commissioners of Aroostook County to hire a county administrator.

You have also inquired whether this could be accomplished by including appropriate language in the legislative resolve approving the county budget. In order to properly respond to your question, it is necessary to analyze the status of a legislative resolve.

In City of Bangor v. Inhabitants of Etna, 140 Me., 85, 34 A.2d 205 (1943) the Legislature passed and the Governor approved a resolve authorizing the appropriation of money to reimburse the Town of Etna for the support of a state pauper. The City of Bangor brought suit against Etna claiming that it had provided the support to the pauper and was entitled to state reimbursement. The case was heard before a referee who ruled in favor of the City of Bangor on the ground that, as a matter of fact, the individual receiving aid was not a pauper. On appeal, the Town of Etna argued that the individual's status as a state pauper was fixed by the legislative resolve. In rejecting this argument, the Law Court discussed the status of a resolve.

> "The Resolve was merely an appropriation to reimburse municipalities and individuals for expenditures upon claims presented and approved by the committee on claims. It was not a legislative enactment. It was purely an order directing the disbursement of certain State funds for particular purposes.
>
> It is within the power of the legislature to make such orders and resolutions, without any purpose or intention to abrogate, annul or repeal any existing general law."

140 Me., at 89. See also Moulton v. Scully, 111 Me., 428, 449, 89 A.944 (1914).

The Court emphasized that the Legislature does not always act as a law-making body and not every legislative act is a law in the sense of legislation of general applicability. A law is typically thought of as intending "to permanently direct and control matters applying to persons or things in general," while a resolution or resolve is an expression of legislative opinion which is designed to "have a temporary effect" on a particular matter. City of Bangor v. Town of Etna, 140 Me., at 90-91, quoting Conley v. United Daughters of the Confederacy, 164 S.W. 24,26 (Tex. Civ. App. 1913). In support of its conclusion that a resolve is not usually viewed or intended as amending the general law on a subject, the Court noted that by virtue of Article IV, pt. 1, §1 of the Maine Constitution, all public laws and private and special laws carry an enacting clause which reads, "Be it enacted by the people of the State of Maine". The Court took notice of the fact that "[u]niformly throughout the history of Legislative procedure in Maine, resolves have carried no enacting clause." City of Bangor v. Town of Etna, 140 Me., at 90.

The fact that a resolve does not usually have the effect of altering the general law does not mean that it is not enforceable as a valid act of the Legislature. As stated by the Law Court in City of Bangor v. Town of Etna, 140 Me., at 90:

> "We are not to be understood as saying that a resolution passed by both branches of the legislature and approved by the Governor does not have the force of law to accomplish the intended purpose...."[2]

Thus, a resolve does have the force and effect of law to the extent of accomplishing the temporary or limited purpose for which it was enacted. However, in the absence of a manifestation of legislative intent to the contrary, a resolve will not be interpreted as making permanent, substantive changes in the general law. Id at 91. For example, the Law Court stated:

> "An appropriation bill, for instance, is not a law in its ordinary sense. Such a bill pertains only to the administrative functions of government. A joint resolution or resolve, is often merely a rule or order for the guidance of the agents and servants of the government....There is no language in the legislative resolve relied upon and there is nothing inherent in or disclosed by it which impliedly annuls the effect of the general law...."

Id.

As mentioned previously, and as implied in the Law Court's opinion in City of Bangor v. Town of Etna, supra, the Legislature could express its intent that a resolve have the effect of changing the general law. For example, the Legislature could place an enacting clause on the resolve. See Moulton v. Scully, 111 Me., at 447-48. In such a case, the resolve would continue to be a resolve, at least nominally, but would have the effect of a Private and Special Law, i.e.,[3] it could amend the general law on a parti-

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2. See also Maine Legislative Drafting Manual 311 (Appendix 3, 1978) which defines a resolve as "[a]n enactment of a temporary or limited nature which has the force and effect of law. A resolve does not begin with an enacting clause but rather with the phrase 'Resolved, that ...'"

3. See, e.g., Maine Legislative Drafting Manual 310 (Appendix 3, 1978) which defines a Private and Special Law as "[a] law that relates to particular persons on things, or to particular persons or things of a class, or which operates on or over a portion of a class instead of all the class or which is temporary in its operation." (emphasis added).

cular subject, if that were the intent of the Legislature. See, e.g., Beckett v. Roderick, Me., 251 A.2d 427, 431 (1969); Poland Telephone Co. v. Pine Tree Tel. & Tel. Co., Me., 218 A.2d 487 (1966); Larson v. New England Tel. & Tel. Co., 141 Me., 326, 332, 44 A.2d 1 (1945). See generally C. Sands, 4 Sutherland Statutory Construction §22.15 at 143 (4th ed., 1972) ("a general law may be amended by a special act.").

Based upon the Law Court's decisions in City of Bangor v. Town of Etna, 140 Me., 85, 34 A.2d 205 (1943) and Moulton v. Scully, 111 Me., 428, 89 A. 944(1914), it would appear that the following fairly summarizes the status of a legislative resolve in Maine. A legislative resolve is an enactment, passed by both Houses of the Legislature and approved by the Governor, which deals with a matter of a temporary or limited nature. Unless the Legislature expresses its intent to the contrary, a resolve does not have the effect and will not be interpreted as changing the general law on a particular subject-matter. Nevertheless, a resolve does have the force of law to accomplish the limited purpose for which it was enacted. Finally, the Legislature can manifest its intention that a resolve amend the general law on a particular subject-matter by including an enacting clause in the resolve.

Having described the status of a resolve, it is now possible to consider your original question, which is whether the Legislature, by inserting appropriate language in the resolve approving the Aroostook County budget, can require the county commissioners to hire a county administrator. In particular, you have inquired whether the Legislature can decrease the salaries of the Aroostook County commissioners in the budget resolve and appropriate funds for the specific purpose of hiring a county administrator such that the commissioners will be required to appoint and pay an administrator.

30 M.R.S.A.§2(1)(B)(1)(1978) provides that the Chairman of the Aroostook County commissioners shall receive an annual salary of $7,778 while the other commissioners receive an annual salary of $4,000 each. Section 2(4)(A) of Title 30 mandates that "[t]he salaries mentioned in this section shall be in full compensation for the performance of all official duties by those officers...." See also 30 M.R.S.A. §106 (1979-80 Supp.).[4] 30 M.R.S.A. §202 (1978)

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4. 30 M.R.S.A. §106 (1979-80 Supp.) provides:

> "The county commissioners in the several counties shall receive annual salaries as set forth in section 2 from the treasurer of the counties in biweekly, monthly, semiannual or annual payments, as determined by the county commissioners. If such payments are made monthly, they shall be made on the last day of each month; if semiannually, they shall be made on the last day of June and the last day of December; if annually, they shall be made on the last day of December.
>
> These salaries shall be in full for all services of the commissioners, including the management of the jails. These salaries shall also be the full compensation for any

vests discretion in the county commissioners to appoint and set the salary of a county administrator.[5] In the event that the commissioners choose to appoint a full-time county administrator, they must forego the annual salaries otherwise due them pursuant to 30 M.R.S.A. §2 and they are entitled to receive $25 each for each meeting attended and reimbursement for travel expenses.

We are confident that the Legislature can decrease the salaries of the county commissioners by amending 30 M.R.S.A. §2. In fact, we have recently issued an opinion to that effect. See Op. Atty.Gen., January 31, 1980, a copy of which is enclosed. Moreover, as mentioned previously, we see no reason why the Legislature cannot amend 30 M.R.S.A. §202 to require the Aroostook County Commissioners to hire a county administrator. However, these conclusions do not answer the question of whether the Legislature can amend these general laws in the Aroostook County budget resolve.

Earlier in this opinion we stated that the Law Court has indicated that a resolve, such as one appropriating money, is normally not viewed as legislation designed to amend the general laws on a particular subject-matter. On the other hand, the Law Court has also suggested that a resolve may be construed as legislation amending the general laws on a particular subject-matter, where the Legislature has expressed such an intent by including an enacting clause in the resolve. Assuming that the Legislature expressed such an intent, it would appear that such legislation would prevail over general laws dealing with the same subject-matter. As stated by the Law Court in Beckett v. Roderick, Me., 251 A.2d 427, 431 (1969):

> "We must not however lose sight of the fact that legislative intent must control and that special legislation may take precedence over general statutory provisions."

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expenses or travel to and from the county seat for any commissioner, except as provided in this paragraph and section 55. The county commissioners may, by majority vote, allow the payment of all necessary expenses and travel allowances to and from the county seat by commissioners who live more than 5 miles from the county seat. When outside of the county seat on official business, including public hearings, inspection and supervising construction, snow removal and maintenance of roads in unincorporated townships in their respective counties, all county commissioners shall be allowed in addition to their salaries, all necessary traveling and hotel expenses connected therewith. All bills for such expenses shall be approved by the district attorney within whose district their county lies and paid by the treasurer of said county and with the further exception of such expenses as are provided for in section 55.

5. We have enclosed a copy of 30 M.R.S.A. §202 for your consideration.

See also State v. Anderson and Sabatino, Me., ___A.2d ___, slip op. at 32-33 (Opinion filed December 31, 1979). Opinion of the Justices, Me., 311 A.2d 103, 108 (1973).

In view of the foregoing, we are inclined to conclude that the Legislature has the authority to amend 30 M.R.S.A. §202 to require the Aroostook County commissioners to hire a county administrator and may accomplish such an amendment of the general law by inserting appropriate language in the Aroostook County budget resolve. However, we must also point out that we do not recommend such a practice. Initially, by attempting to amend 30 M.R.S.A. §202 in the county budget resolve, the Legislature would be creating a conflict between the resolve and the general law, thereby complicating the task of statutory interpretation. Moreover, since county budgets are approved on an annual basis, an argument can be made that any attempt to use the budget resolve to effectuate an amendment of 30 M.R.S.A. §202 would only be effective for a one year period. Finally, use of the budget resolve as a mechanism to amend provisions of the general law is totally inconsistent with the Legislature's past use of resolves.

Consequently, it would appear to us that the most appropriate method by which the Legislature could require the Aroostook County commissioners to apoint a county administrator is to enact general legislation amending 30 M.R.S.A. §202.

Finally,you have also inquired as to what functions or duties the county commissioners are required to perform in the shire town of the county.[6] 30 M.R.S.A. §151 (1979-80 Supp.) requires the county commissioners to "hold sessions in the shire town of each county at least 3 times annually in 3 different months and at other times or other places which they may designate." Additionally, 30 M.R.S.A. §301 requires the commissioners to provide and keep in repair, in the shire town, the county courthouse and jail. Finally, 30 M.R.S.A. §302 places restrictions on the authority of the county commissioners to remove or erect county buildings beyond the limits of the shire town.

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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6. Aroostook County was created, with Houlton as its shire town, by Chapter 395, §1 of the Public Laws of 1839.