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DEPARTMENT OF THE ATTORNEY GENERAL  
AUGUSTA, MAINE 04333

March 11, 1980

Honorable Sandra Prescott  
House of Representatives  
State House  
Augusta, Maine 04333

Dear Representative Prescott:

This will respond to your opinion request of January 22, 1980, and subsequent oral conversations, in which you raise a series of questions concerning county budgeting.

Your first question relates to whether the commissioners of a county may "transfer funds from one department or agency to another department or agency" of county government. In other words, you have asked whether the county commissioners have authority to make an inter-departmental transfer of county funds. This question has been addressed in several prior opinions of this office. See, e.g., Op. Atty. Gen., June 29, 1979; Op. Atty. Gen., November 26, 1975. The answer to your question is that the county commissioners have no authority to make inter-departmental transfers of funds. I have enclosed copies of our opinions dated June 29, 1979 and November 26, 1975.

In your second question you have asked under what circumstances county officials are "authorized to exceed the expenditures approved for a particular department or agency" of county government. Your inquiry actually consists of two questions. First, to what extent may the specific line appropriations of a department or agency of county government be overspent? The answer to this question is found in 30 M.R.S.A. §252 (1978) which authorizes the county commissioners, in the absence of further legislative action, to overspend specific line appropriations in the county budget in two instances only. Those instances are intra-departmental transfers and use of the funds in the contingent account. Our opinion of June 29, 1979 contains a full discussion of the circumstances under which the county commissioners may overspend specific line appropriations as approved by the Legislature. Second, to what extent may the total appropriation to a department or agency of county government be overspent? In the absence of further legislative action, there is only one

method by which the total appropriation to a county department or agency may be overspent. That method is use of the funds in the contingent account for emergency purposes. See 30 M.R.S.A. §252 (1978).

Your third question involves whether a county is "authorized to exceed the expenditures approved for the entire budget." In other words, you have inquired whether the county commissioners are authorized to spend more funds than appropriated by the Legislature in the budget resolve, including the funds authorized to be expended from the contingent account.

We have consistently taken the position that "[t]he Legislature's approval of the county budget is a direction to the county commissioners that county funds be expended in accordance with that budget." Op. Atty. Gen., February 4, 1980; Op. Atty. Gen., June 29, 1979; Op. Atty. Gen., August 14, 1975. The Legislature recognized, however, that circumstances may arise which necessitate a deviation from the legislatively approved budget. Consequently, the Legislature gave county commissioners the statutory authority to transfer funds within a department or agency of county government and to use the funds in the contingent account for emergency purposes only. 30 M.R.S.A. §252 (1978). See also Op. Atty. Gen., February 27, 1979; Op. Atty. Gen., June 22, 1977; Op. Atty. Gen., February 1, 1977. Of course, intra-departmental transfers and use of the funds in the contingent account do not involve any over-expenditure of the total appropriation approved by the Legislature in a county's budget resolve. As a general principle, the commissioners of a county are not authorized to spend more money than the total amount appropriated by the Legislature in the budget resolve. See Op. Atty. Gen., February 12, 1978. However, we would point out that it is possible that a particular county could receive funds outside the normal county budget review process. For example, a county could receive funds from a specific appropriations bill, in which case the commissioners could expend more money than that appropriated in the annual budget resolve. See Op. Atty. Gen., February 12, 1978. Moreover, an argument can be made that the county commissioners are permitted, during the fiscal year, to use funds from a surplus account to restore the contingent account to its established limit. The commissioners could then use the funds in the contingent account for emergency purposes, and in this way, county expenditures could exceed the total appropriation authorized in the annual budget resolve. This issue is discussed in greater detail, infra.

With respect to your fourth question, you have provided us with the following information. On June 15, 1979 Governor Brennan approved Chapter 22 of the Resolves of 1979, being the Penobscot County budget for that fiscal year. During fiscal year 1979, a certain county department exhausted its funds, with the result that expenditures exceeded the legislative appropriation by approximately \$103,000. This over-expenditure in a particular department of county government did not result in Penobscot County exceeding its total legislative appropriation, because, presumably, there was a surplus in other areas of the county budget. In view of this information, you have requested our opinion as to how the \$103,000 deficit in a county department was paid.

Based upon the information you have provided, we have no way of knowing how a \$103,000 deficit was paid by the Penobscot County commissioners. It seems to us that those individuals best able to answer your question are the county commissioners themselves. Consequently, in the absence of more specific information, we are not able to respond to your question.

In your fifth question, you have asked for an interpretation of that portion of 30 M.R.S.A. §252 (1978) which provides:

"Prior to the convening of the Legislature, the county commissioners of each county shall meet with the respective county legislative delegations to finalize estimates for the year."

In particular, you have asked what is meant by the phrase "finalize estimates for the year."

Pursuant to 30 M.R.S.A. §252 (1978) the county commissioners are required to "prepare estimates of the sums necessary to defray the expenses which have accrued or may probably accrue for the coming year." Prior to the first of December of each year, the county commissioners are required to hold a public hearing on the estimates. Following the public hearing, but prior to the convening of the Legislature, the commissioners must meet with the members of the county legislative delegation to "finalize the estimates." After the estimates have been "finalized," they are presented to the Legislature for its review, amendment and ultimate approval.

The purpose of requiring the commissioners to meet with the legislative delegation regarding the county estimates is to provide an opportunity for the county officers and members of the Legislature to discuss and place in final form the estimates which will be presented to the Legislature as a whole. By conferring with the legislative delegation, the commissioners may recognize and resolve potential problems in the county budget, thereby reducing the amount of time the Legislature will have to devote to the county budget review process. In "finalizing" the county estimates, it is expected that the commissioners and the legislative delegation will place the estimates in final form prior to their presentation to the Legislature.

You have also orally requested a discussion of the authority of the county commissioners to use surplus funds. 30 M.R.S.A. §408 (1978) provides:

"The county commissioners of any county shall use the unexpended balances and the actual revenue in excess of estimates from the previous fiscal year to reduce the tax levy in the ensuing year and restore the contingent account to the limit as set.

Any unexpended balance of capital expenditures shall not lapse but shall be carried forward into the next year or until the purpose for which said account was established has been completed.

As of January 1, 1969 and each January 1st thereafter, the county commissioners of any county shall use unencumbered surplus funds in excess of 10% of the amount to be raised by taxation each year to reduce the tax levy."

With respect to use of the surplus funds to restore the contingent account, 30 M.R.S.A. §252 (1978) provides, in relevant part, that "[a]t the end of the fiscal year there shall be transferred from unencumbered county funds an amount sufficient to restore the established county contingent account." Juxtaposing sections 252 and 408, the county commissioners are required, at the end of each fiscal year, to use any surplus funds, with the exception of unexpended balances in capital expenditure accounts, to restore the contingent account to its established limit. Op. Atty. Gen., November 26, 1975. In the event that as of the first of January of each year, there are unencumbered surplus funds in excess of 10% of the amount to be raised by taxation, that excess (beyond 10%) must be used to reduce the tax levy. 30 M.R.S.A. §408 (1978). However, with respect to any unencumbered surplus funds which do not exceed 10% of the amount to be raised by taxation, the county commissioners are not legally obligated to use these surplus funds to reduce the tax levy. Of course, the commissioners may choose to use such surplus funds to reduce the tax levy. On the other hand, the commissioners may decide to keep these funds as surplus. The question then arises as to how the commissioners can expend these funds.

We must acknowledge at the outset that the answer to this question is not entirely clear. An argument can be made that these surplus funds can be used to replenish a depleted contingent account during the fiscal year. The funds in the contingent account could then be expended for emergency purposes pursuant to 30 M.R.S.A. §252 (1978). This argument finds implicit support in the provisions of 30 M.R.S.A. §408 which authorize the county commissioners to use surplus funds for two purposes only, namely, to reduce the tax levy and to restore the contingent account. As mentioned above, the commissioners are mandated to use surplus funds in excess of 10% of the amount to be raised by taxation to reduce the tax levy. It would seem to follow, therefore, that with respect to surplus funds which do not exceed 10% of the amount to be raised by taxation, the commissioners could expend such funds for some other permissible purpose, to wit, restoration of the contingent account during the fiscal year. To conclude otherwise may result in a situation in which, notwithstanding the language of section 408, the commissioners must either use such surplus funds to reduce the tax levy or not at all. Such a conclusion, it can be argued, results in rendering the third paragraph of section 408 a nullity, an interpretation which is generally not favored by the courts. See, e.g., Waddell v. Briggs, Me., 381 A.2d 1132, 1135 (1978); Goodwin v. Luck, 135 Me. 288, 290, 194 A.305 (1937).

On the other hand, 30 M.R.S.A. §252 (1978) also provides that "[t]here 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." (emphasis added).

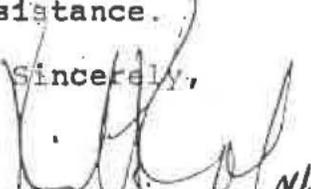
It is unclear whether the \$50,000 limit is intended to be a ceiling on the total amount of funds which may be expended from the contingent account during the fiscal year or whether it is designed to restrict the amount of money in the contingent account at any one time during the fiscal year. Unfortunately, our research has not uncovered any evidence as to what the Legislature intended when it enacted this portion of section 252. If the \$50,000 limit referred to in section 252 is interpreted as a ceiling on the total amount of money which may be expended from the contingent account, then it would seem clear that the commissioners are not authorized to transfer funds from a surplus account to the contingent account during the fiscal year. If, however, the \$50,000 figure is viewed simply as a limitation on the amount of funds which can be in the contingent account at any one time during the fiscal year, then there would appear to be no reason why the county commissioners could not use surplus funds to replenish a depleted contingent account during the fiscal year. It should be observed that in an opinion dated November 26, 1975 we indicated that a county's contingent account could be replenished, up to its established limit, during the fiscal year with whatever funds were available to the county commissioners.

In view of the ambiguities surrounding the authority of county commissioners to use surplus funds, we cannot provide an unequivocal answer to your question. We would simply point out, however, that it is at least arguable that the commissioners are authorized to use surplus funds to restore the contingent account during the fiscal year. Given the ambiguous nature of sections 252 and 408 as they pertain to the use of surplus funds, the Legislature may wish to take action to clarify the authority of county commissioners in this area.

Finally, you have asked what action can be taken against county officers who overspend the legislatively approved appropriations without lawful authority. This question was the subject of a recently issued opinion of this office and we have taken the liberty of enclosing a copy of that opinion for your consideration. See Op. Atty. Gen., February 4, 1980.

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

RSC:sm