

MAINE STATE LEGISLATURE

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March 19, 1980

Honorable Jerome A. Emerson
Maine Senate
State House
Augusta, Maine 04333

Dear Senator Emerson:

You have asked whether under 5 M.R.S.A. § 1668 the Governor may, when there is a shortfall in revenues, "curtail allotments" to the State Aid Construction Fund which have been made pursuant to appropriations by prior Legislatures. While the answer is by no means free from doubt, we do not believe that the Governor has this authority.

The general power of the Governor to curtail allotments from legislative allocations because of a shortfall in revenues is set out in 5 M.R.S.A. § 1668. That section provides:

"Whenever it appears to the Commissioner of Finance and Administration that the anticipated income and other available funds of the State will not be sufficient to meet the expenditures authorized by the Legislature, he shall so report in writing to the Governor, and shall send a copy of the report to the President of the Senate and the Speaker of the House and the majority and minority leaders of the Senate and House. After receiving the report, the Governor may temporarily curtail allotments equitably so that expenditures will

not exceed the anticipated income and other available funds. No allotment shall be terminated pursuant to this section. Any curtailment of allotments shall, insofar as practicable, be made consistent with the intent of the Legislature in authorizing these expenditures.

"The Governor shall immediately upon the curtailment of any allotment, notify the President of the Senate and the Speaker of the House and the majority and minority leaders of the Senate and House of the specific allotments curtailed, the extent of curtailments of each allotment and the effect of such curtailment on the objects and purposes of the program so affected."

Section 1668 was enacted in 1976 as part of comprehensive legislation redistributing the powers of the abolished Executive Council. P.L. 1975, c. 771, § 77-A (1976). It was not included, however, in the original bill redistributing such powers, but rather was added by amendment on the floor of the Senate. 1976 Maine Legislative Record, p. 971-72 (1976). The Statement of Fact to the amendment stated that:

"The purpose of the amendment is to put into the statutes a provision that has been in each appropriations bill for many years.^{1/} The provisions allowed

^{1/} An example is the last such provision to be enacted, which appeared in the so-called special appropriation bill for the fiscal year 1976-77. P. & S.L. 1975, c. 147, § 3 (1976). The section provided:

"Sec. 3. Temporary curtailment of allotments."

Whenever it appears to the Commissioner of Finance and Administration that the anticipated income and other available funds of the State will not be sufficient to meet the expenditures authorized by the Legislature, he shall so report to the Governor and Council and they may temporarily curtail allotments equitably so that expenditures will not exceed the anticipated income and other available funds."

the Governor and the Executive Council to curtail allotments, temporarily and equitably, after notice of an anticipated revenue deficit from the Commissioner of Finance and Administration." Statement of Fact to Senate Document No. S-526, 107th Legislature (1976).

The purpose of the amendment was further explained by its sponsor, Senator Merrill, at the time of its introduction on the Senate floor:

"What this amendment requires is that [the curtailment] be done equitably, which is the traditional language in appropriations bills, and it requires that it be done in such a way as to be consistent, so far as possible and practical, with the intent of the Legislature in passing the appropriations bill.

"The thing that is really somewhat new, and I think is a very minor step, is that it provides that once the Governor has made this curtailment he will notify the President of the Senate and the Speaker of the House^{2/} of the cuts that he had made, in essence so to give those people an impact statement of what the impact of his actions will be. The obvious remedy, if this is grossly unacceptable to the President and to the Speaker and to the constituents that they represent, namely, the members of the Legislature, that the Legislature can call itself into session or, if it is in session, take some action to change this result." 1976 Maine Legislative Record, p. 971-72 (1976).

The purpose of Section 1668 is therefore clear. It was intended to codify the long-standing practice in biennial appropriations bills of giving the Governor the authority to make emergency curtailments of allotments authorized by those bills. The narrow question which your inquiry raises is whether

^{2/} The bill was subsequently amended to include the Majority and Minority Leaders of each House. 1976 Maine Legislative Record, p. 972 (1976).

the Governor may make such curtailments with regard to past allotments from the State Aid Construction Fund. Any response to this question, therefore, requires an understanding, not only of the legislative history of Section 1668 just set forth, but also of the precise operation of the State Aid Construction Fund.

The State Aid Construction Fund was created in 1913, P.L. 1913, c. 130, §§ 19-25 (1913), now codified as amended at 23 M.R.S.A. §§ 1101-1109. From the beginning the Fund was characterized as a "joint fund," 23 M.R.S.A. § 1102, into which the municipalities of the State would be able to contribute money which they had appropriated for specific highway purposes and into which the State would contribute matching funds, generally on an equal basis. Until 1931, the State contributions to the Fund were made from its general revenues. In that year, however, the Legislature established the General Highway Fund and began funding the State Aid Construction Fund from it, providing that all "unexpended balances of the General Highway Fund as have been set up for general construction and maintenance of highways and bridges shall be deemed nonlapsing carrying accounts." P.L. 1931, c. 251, § 4 (1931), now codified at 23 M.R.S.A. § 1652. Thus, State contributions to the State Aid Construction Fund were to be made from the General Highway Fund but were not to lapse if not actually spent in the period for which they were appropriated. Rather, they would remain in the "joint fund" for future use as needed.

The process, as we understand it, by which the Department of Transportation makes money available to the municipalities from the State Aid Construction Fund, under this statutory scheme, is as follows: After the Legislature has made a biennial appropriation for the State Aid Construction Fund from the General Highway Fund, the Department commits a portion of that appropriation for each municipality which notifies the Department that it has made a like appropriation for highway purposes, and continues to set aside such funds until the entire fiscal year's appropriation has been committed. The State Controller then carries the State appropriated funds on his books until notified by the Department that a municipality for which it has committed funds in the past is ready to begin construction on an approved project. The Controller then pays the municipality the committed funds. Since, however, a municipality may not be ready to begin construction for many years after it first makes an appropriation and State funds are committed, the State Aid Construction Fund had built up a balance of over \$12,000,000 at the beginning of the 1979-1981 biennium. All of this money, however, the Department advises us, is committed to match specific municipal appropriations.

Having recited the relevant legal and factual background, the question becomes whether 5 M.R.S.A. § 1668 applies to money in the State Aid Construction Fund appropriated and matched with municipal contributions in prior biennia. While, as indicated above, the answer is not entirely free from doubt, it is our view that the Governor's power to curtail allotments does not extend to the funds under consideration.

Critical to our conclusion are two aspects of the State Highway Law. First, the Legislature has provided that the aggregate of the money appropriated by the towns and the matching funds apportioned by the Department "shall constitute a joint fund for the construction and improvement of the state or state aid highways in such towns." 23 M.R.S.A. § 1102. Second, the Legislature has further provided that once established, this joint fund shall constitute a nonlapsing carrying account. 23 M.R.S.A. § 1652. When read together, these statutes reveal a clear legislative intent to establish an ongoing "special fund" to be used for the construction and improvement of state or state aid highways and not for any other purpose.

It is a general principle of law that money in a special fund must be expended for the purpose recited in the statute creating the fund.

"Where a special fund is created or set aside by statute for a particular purpose or use, it must be administered and expended in accordance with the statute, and must be applied only to the purpose for which it was created or set aside, and not diverted to any other purpose, or transferred to any other fund." 81A C.J.S. States § 228 (1977).

In our view, a construction of 5 M.R.S.A. § 1668 which would allow the Governor to reduce the amount of money appropriated and placed in the State Aid Construction Fund in prior biennia, would violate the above principle, in that it would constitute a diversion of the funds to other purposes.^{3/} Similarly, it

^{3/} We should emphasize that we are dealing only with money appropriated by prior Legislatures and already placed in the "joint fund" in accordance with the applicable sections of the Highway Law.

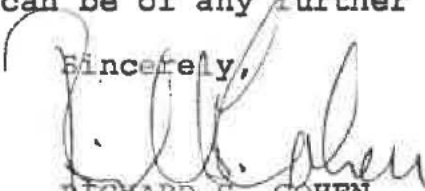
would defeat what we perceive as the intent behind the non-lapsing provision, namely, that State Aid money unexpended at the end of the biennium be maintained in the Fund and utilized for its original purpose.

We recognize that 5 M.R.S.A. § 1668 could be read as overriding the relevant sections of the Highway Law and thus authorizing the Governor to reduce the amount of money placed in the Fund pursuant to appropriations by prior Legislatures. That reading does not, however, appear compatible with the language of § 1668 which was designed to allow the Governor to deal with shortfalls in "anticipated income and other available funds." Since the Legislature has limited the "availability" of money previously placed in the State Aid Construction Fund, we think it more reasonable to conclude that § 1668 does not extend to that money. Furthermore, in attempting to reconcile potentially conflicting statutes, every attempt must be made to effectuate the intent behind those laws. We believe that the interpretation rendered herein accomplishes that objective, insofar as it construes the Governor's power to curtail allotments in a manner which preserves the legislative intent that certain areas of highway construction and improvement be financed through a special, nonlapsing fund.

To summarize, it is our view that 5 M.R.S.A. § 1668 does not authorize the Governor to reduce the amount of money placed in the State Aid Construction Fund pursuant to appropriations in prior biennia.^{4/}

Please let me know if we can be of any further service.

Sincerely,


RICHARD S. COHEN
Attorney General

RSC/ec

^{4/} In light of the question posed, our opinion is limited to an interpretation of 5 M.R.S.A. § 1668. We do not address the extent of the Governor's power, under 23 M.R.S.A. § 1652, to approve temporary transfers from one account of the General Highway Fund to another account thereof.