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April 18, 1980

Honorable James K. McMahon
P. O. Box 125
Kennebunk, Maine 04043

Honorable Frank P. Wood
P. O. Box 365
Springvale, Maine 04083

Dear Representatives McMahon and Wood:

This will respond to your opinion request of April 10, 1980 in which you ask the following questions:

"1. May a board of county commissioners terminate the employment of county employees from departments other than their own, which departments are headed by other elected officials (register of deeds, register of probate, sheriff, etc.) without the approval of the department heads involved in order to avoid a deficit in the county budget? The positions in question were budgeted for and are a part of the county budget approved by the Legislature.

2. What is the responsibility of a county treasurer when he is directed by the county commissioners not to pay county employees who are budgeted for and who are certified as having worked by their department head in those instances where the department head is an elected county official?"

It is our understanding that your opinion request was prompted by the financial situation occurring in York County. In order to properly reply to your inquiries it is necessary for us to set out the factual circumstances existing in York County, as we understand them.

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Facts

On March 28, 1980 Governor Brennan approved Chapter 50 of the Resolves of 1980 being the legislative Resolve "for Laying of the County Taxes and Authorizing Expenditures of York County for the year 1980." By virtue of Chapter 50, which constitutes the 1980 budget for York County, the Legislature authorized a total appropriation of \$2,217,477. Additionally, the Legislature appropriated specific amounts for personal services within each department or agency of county government.

It is our understanding that the commissioners of York County now anticipate, based upon projected expenditures for the remainder of the year, that there will be a deficit in the county budget of approximately \$152,000. Apparently, the projected deficit is the result of a variety of causes. First, additional expenditures are expected as a result of increased costs of borrowing in anticipation of tax revenue. Second, the commissioners project lower revenues than estimated. Third, and perhaps most significantly, it is anticipated that the cost of boarding county prisoners will greatly exceed original estimates.

In order to avoid a projected deficit in the county budget, as well as to avoid defaulting on the county's loans, the commissioners have proposed discharging personnel in various county departments¹ unless expenditures can be substantially reduced in some other way. For the purposes of this opinion we must assume that the commissioners have acted in good faith in concluding that there is a real possibility of a substantial deficit in the York County budget if expenditures are not drastically reduced.

I

In determining whether a board of county commissioners has the authority to dismiss employees in the circumstances

1. It is our understanding that the county departments in question are the registry of deeds, the registry of probate, the Sheriff's department and the courthouse personnel.

described above, we must candidly acknowledge that the statutes pertaining to county government do not provide a clear answer. Nevertheless, it may be helpful to examine the statutory process by which a county's budget is prepared by the commissioners and ultimately approved by the Legislature.

Pursuant to 30 M.R.S.A. §252 (1978) it is the responsibility of the county commissioners to "prepare estimates of the sums necessary to defray the expenses which have accrued or may probably accrue for the coming year... ." Section 252 also provides specific guidance to the commissioners as to how these 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."

The estimates as prepared by the commissioners are then presented to the Legislature² which has the responsibility to review and adopt the county budget. See Op. Atty. Gen., April 11, 1980; Op. Atty. Gen., February 4, 1980. In reviewing the annual estimates the Legislature has the power to amend them, including the authority to alter specific line appropriations. See 30 M.R.S.A. §§253, 253-A (1978). As we have stated in a prior opinion, "[t]he 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." Op. Atty. Gen., February 4, 1980.

We have consistently taken the position that legislative approval of the county budget acts as a direction to the county commissioners that county funds be expended in accordance with that budget. See, e.g., Op. Atty. Gen., March 11, 1980; Op. Atty. Gen., February 4, 1980; Op. Atty. Gen., June 29, 1979. Thus, as a general rule, the specific appropriations approved by the Legislature are to be expended for the specific purposes for which they were made.

2. Prior to their presentation to the Legislature the estimates are subject to a public hearing to be held before December 1 of each year. Following the hearing, but prior to the convening of the Legislature, the commissioners are required to meet with the county legislative delegation "to finalize estimates for the year." 30 M.R.S.A. §252.

On the other hand, it is a well-established principle of law in this State that the commissioners are the exclusive fiscal agents of the county and are responsible for keeping expenditures within the legislatively approved budget.³ See 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); Inhabitants of Cumberland County v. Pennell, 69 Me. 357, 364 (1879); Walton v. Greenwood, 60 Me. 356, 363 (1872). See also Op. Atty. Gen., February 4, 1980; Op. Atty. Gen., February 12, 1976. As expressed by the Maine Law Court in Watts Detective Agency, Inc. v. Inhabitants of County of Sagadahoc, 137 Me. at 238, it is the duty of the county commissioners

"... to determine in advance, so far as practicable, the financial requirements, to provide the necessary funds and to control expenditures. Without some measure of such control, estimates and budgets would be a worthless formality and the taxpayer would be subject to such expenditures as every county officer might regard suitable for the department with which he was concerned."

As the foregoing discussion illustrates, both the Legislature and the county commissioners have significant roles to play in county government in Maine. While the Legislature fixes the budget under which county government will function, it is the county commissioners who must make the day to day decisions to insure that county government operates within the financial limits of the legislatively approved budget. As we have stated on a previous occasion, "[a]s 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." Op. Atty. Gen., March 11, 1980. See also Op. Atty. Gen., February 12, 1978. Thus, the county commissioners

3. 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."

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are under a dual responsibility to expend county funds in accordance with the budget as approved by the Legislature and to control the expenditure of those funds so as to avoid exceeding the budgetary limits as set by the Legislature. Unfortunately, the statutes pertaining to county budgeting are remarkably unclear as to what action the commissioners may take when these two responsibilities conflict in the extraordinary situation of a financial crisis.

In attempting to respond to your original question, we must begin with the premise that a board of county commissioners possesses those powers which are expressly granted by statute and all implied powers which are necessary to carry out the duties of the office. See 30 M.R.S.A. §251 (1978). See also State v. Vallee, 136 Me. 432, 445, 12 A.2d 421 (1940); 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 generally C. J. Antieau, 4 County Law §32.03 at 34 (1966). Thus, our task is to ascertain what the Legislature intended when it conferred upon county commissioners the authority to act as the general fiscal agents of their counties and to control the expenditure of county funds. See Town of South Berwick v. White, Me., ___ A.2d ___, slip op. at 2-3 (Opinion filed April 4, 1980).

In the context of your specific question, we perceive two possible interpretations of legislative intent. First, it can be argued that, as the fiscal agents for the county with the responsibility to control expenditures, the commissioners have the authority to order other county department heads to make budget cuts in order to avoid a deficit in the county budget. Alternatively, it may be suggested that the commissioners have no such authority unless the department heads agree to reduce their expenditures. Assuming that the latter approach is adopted, and county officials refuse to reduce expenditures as requested by the commissioners, it would appear that the only way a county could avoid a projected deficit would be if the Legislature convened in special session to appropriate additional funds.⁴

4. It may be argued that another possible method of avoiding a deficit in the county budget would be to request the Governor to allocate funds from the State Contingent Account pursuant to 5 M.R.S.A. §1507(4) (1979). Whether a projected deficit in a county's budget is an emergency within the meaning of 5 M.R.S.A. §1507(4) (1979) is beyond the scope of your inquiries and, consequently, we do not address that question in the context of this opinion. However, we would observe that, in the absence of a situation in which county government is virtually unable to function, we have serious doubts that a Governor would invade the State Contingent Account in order to avoid a projected deficit in a county's budget.

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Notwithstanding the fact that the Legislature has approved specific appropriations for individual departments of county government, (See Chapter 50, Resolves of 1980), we believe that the county commissioners do have the authority to order county department heads to reduce expenditures by making cuts in their legislatively approved appropriations. As the general fiscal agents of the county, the commissioners are responsible for the overall financial condition of the county. Implicit in this responsibility is the power to order a reduction of county expenditures in the face of an economic emergency. We do not believe the Legislature intended that, absent a special session, a county would be powerless to avoid a deficit in its budget.⁵

Having concluded that the county commissioners have the authority, in the circumstances described herein, to mandate cuts in the county budget, we turn to your specific question as to whether they have the authority to terminate county employees in departments other than their own.⁶ While the county commissioners have the authority to mandate budget cuts, it is our view that, in the first instance, how those cuts are to be made should be decided by the department heads involved. Should those department heads refuse to comply with

5. In your opinion request you have made specific reference to the fact that other departments of county government are headed by elected officials. We do not consider this fact to be relevant to our conclusion that the commissioners have the authority, in order to avoid a deficit in the county budget, to order county departments to make reductions in their legislative appropriations.

6. Irrespective of who has dismissal authority, it is a well-established principle of law that public employees may be dismissed for economic reasons. See e.g., Gannon v. Perk, 46 Ohio St.2d 301, 348 N.E. 2d 342, 349-50 (1976); Connecticut State Employees Assoc. v. Board of Trustees of the University of Connecticut, 165 Conn. 757, 345 A.2d 36, 40 (1974); Kraftician v. Borough of Carnegie, Pa. Cmwlth., 386 A.2d 1064, 1066 (1978); Morrison v. City of Moline, 37 Ill.App. 3d 697, 346 N.E.2d 55, 58 (1976); Atkins v. Klute, Ind.App. 346 N.E.2d 759, 762 (1976). See generally McQuillin, 4 Municipal Corporations §12.246 at 297-98 (3rd rev.ed., 1979); Municipal Corporations, Counties, and other Political Subdivisions, 56 Am.Jur.2d §313 at 349-50 (1971); Public Officers and Employees, 63 Am.Jur.2d §257 at 779 (1972); Annotation, Ill A.L.R. 432 (1937). Of course, in dismissing employees for financial reasons, public officials must act in good faith.

the order to reduce expenditures, the county commissioners have the authority to enforce their order by specifying the budget cuts to be made. As a necessary corollary to their power to enforce cuts in the county budget, the commissioners have the authority to dismiss employees in departments other than their own in order to avert a financial crisis.

Finally, we would emphasize that the authority possessed by the commissioners to order county department heads to make cuts in their legislatively approved appropriations should be exercised with extreme reluctance and only in those situations which constitute financial emergencies. Moreover, such authority should be exercised in an equitable fashion and, to the extent possible, in a manner which is consistent with the Legislature's intent when it approved the county budget. Cf. 5 M.R.S.A. §1668 (1979). For example, funds in the contingent account are designed to be used for emergency purposes and should be expended for such purposes before making cuts in the legislatively approved appropriations. 30 M.R.S.A. §252 (1978). Furthermore, where appropriate, the commissioners may wish to consider making intra-departmental transfers of funds pursuant to section 252.8

7. It may be argued that the Law Court's decision in Sheltra v. Auger, Me., 376 A.2d 463 (1977) stands for the proposition that the county commissioners have no authority to dismiss employees in county departments other than their own. However, the decision in Sheltra v. Auger involved a situation in which the commissioners attempted to discharge two clerks in the county treasurer's department and replace them with individuals of their own choosing. Under those circumstances, the Court held that the commissioners had no authority "to select the individuals who shall perform clerical duties within the various offices of the county government." Id. at 464. Sheltra v. Auger is inapposite to a situation in which the commissioners propose to discharge county employees in order to avoid a financial crisis.

8. We wish to emphasize that our opinion as to the authority of a board of county commissioners to order other county department heads to make cuts in their legislatively approved appropriations is limited to the situation where such cuts are necessary in order to avert a financial crisis. We intimate no opinion as to the authority of the county commissioners to mandate budget cuts in the absence of such an emergency situation.

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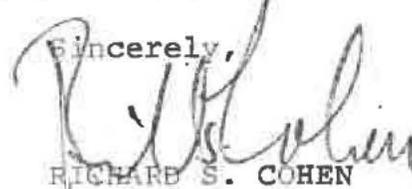
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II

We are somewhat unsure of the meaning of your second question. We have concluded that a board of county commissioners may discharge county employees in order to avert a financial crisis in York County, provided the commissioners act in good faith. In the event that the commissioners exercised this authority, the discharged employees would no longer be entitled to receive compensation. Consequently, the treasurer would have no authority to pay individuals who are no longer on the county payroll. See 30 M.R.S.A. §751 (1978). Of course, the employees are entitled to be paid until such time as they are dismissed. Cf. Op. Atty. Gen., January 31, 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