

MAINE STATE LEGISLATURE

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RICHARD S. COHEN
ATTORNEY GENERAL



STEPHEN L. DIAMOND
JOHN S. GLEASON
JOHN M. R. PATERSON
ROBERT J. STOLT
DEPUTY ATTORNEYS GENERAL

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

July 25, 1980

Senator John Chapman
Representative Mary Small
Representative Courtney Stover
Representative David Leonard
Representative Charlotte Sewall
State House
Augusta, Maine 04333

Dear Senator Chapman and Representatives Small,
Stover, Leonard and Sewall:

This letter is in response to your request for an opinion from this office concerning the proposed consolidation of two so-called branch offices of the Motor Vehicle Division. Specifically, you inquire whether such an action would violate Section 51-A of Title 29 of the Maine Revised Statutes.^{1/}

29 M.R.S.A. § 51-A reads as follows:

The Secretary of State shall maintain 4 additional full time offices at convenient places in the State as he deems necessary to carry out his duties relating to applications for registration of and licenses for the operation of motor vehicles.

At the time this statute was enacted the Motor Vehicle Division had six branch offices throughout the State. The offices performed the same duties as those described in § 51-A. Pursuant to the new statute the Secretary of State established four additional branch

^{1/} It is our understanding that the Secretary of State no longer plans to consolidate the Bath and Lewiston facilities into one office in Lisbon Falls. Rather, the current proposal calls for closing the Bath office only. This change has no effect upon the legal issues involved.

offices of the Motor Vehicle Division. In 1976 the Secretary opened in Augusta an office similar in function to the ten Motor Vehicle branch offices. That office was, and continues to be, located in a separate building from the division's central administrative headquarters.

It is important to note that the Augusta facility cannot be considered an additional office within the meaning of § 51-A. The statute's legislative history, though sparse, clearly indicates that the law was intended to provide citizens living outside the Augusta area with better services in the processing of license and registration applications.

Section 51-A came before the 105th Legislature in two drafts. The second draft, L.D. 1765, contained no statement of fact. However, the bill was almost identical in form to its first draft, L.D. 369, which contained a statement of fact noting that the purpose of the bill was to establish Motor Vehicle offices "outside of Augusta." It is of further significance that long before the enactment of § 51-A the central administrative headquarters of the division had been processing motor vehicle license and registration applications. This practice continued until 1976 when the division moved its headquarters into the Department of Transportation Building. At that time the division established its separate Augusta facility to process applications.

Since six branch offices were in existence at the time § 51-A was enacted, the statute effectively fixes the minimum number of Motor Vehicle Division offices outside Augusta at ten. The closing of the Bath facility would lower that number to nine. Such an action clearly contravenes the express language of § 51-A. However, your question cannot be answered fully without considering certain factors beyond § 51-A.

The Secretary of State has indicated that in his opinion it is impossible to maintain the present number of Motor Vehicle branch offices with the current funds available to that division.^{2/} State law prohibits a State official from contracting State obligations

^{2/} P.L. 1980, c. 738, § 8 amended the original Motor Vehicle Division appropriations for fiscal years 1980 and 1981. P.L. 1979, c. 439, Part A, § 1. The 1980 appropriation was reduced by \$60,000, and the 1981 appropriation by \$379,000. These reductions were partially off-set by a temporary increase in certain fees charged by the Secretary of State. P.L. 1980, c. 738, § 7. However, according to the Secretary, at the current rate of expenditure the Motor Vehicle Division would face a deficit in the neighborhood of \$200,000 by the end of fiscal year 1981 unless financial cutbacks occur.

in excess of available appropriations. 5 M.R.S.A. § 1583. The Secretary contends that he cannot maintain the Bath office without violating that statute. Given that the mandates of § 51-A and § 1583 are in apparent conflict under these circumstances, we must determine which statute takes precedence.

It is settled law in Maine that apparently contradictory statutes should be construed to "avoid inconsistency whenever there is available an alternative reading which leaves reasonable and fair operative scope to both enactments." Bernard v. Cives Corp., Me. 395 A.2d 1141, 1148-1149 (1978). Moreover, there is a judicial presumption that the Legislature does not intend its enactments to lead to "inconsistent or unreasonable results." Woodcock v. Atlass, Me. 393 A.2d 167, 170 (1978).

With the above rules of construction in mind we note that the closing of the Bath office will not preclude residents of that area from securing the services of the Motor Vehicle Division. Those services will simply be less conveniently obtained. While such inconvenience should not be taken lightly, we do not believe that the Legislature intended the Secretary to keep ten branch offices in operation at the expense of subjecting the State to legal liability for incurring obligations that could not be fulfilled. The criminal sanctions of § 1583 indicate the importance the Legislature has attached to its requirement that State agencies not spend more monies than are appropriated.^{3/}

It is our conclusion, therefore, that the excess expenditure prohibition of § 1583 establishes an operative limit upon the mandate of § 51-A. In other words, the Secretary of State is empowered to close Motor Vehicle Division branch offices if compliance with § 51-A would necessarily result in expenditures in excess of appropriations.^{4/}

^{3/} We feel it necessary to emphasize that this opinion should not be construed to imply that 5 M.R.S.A. § 1583 places an operative limit upon all statutorily mandated duties of State agencies. We might well reach a different conclusion in a case involving a different legislative mandate. The legal import of § 1583 must, of necessity, be determined on a case by case basis.

^{4/} We recently reached a similar conclusion in a somewhat analogous situation involving the dual responsibilities of county commissioners to expend funds in accordance with the legislatively approved county budget and to control expenditures so as to avoid exceeding the budgetary limits set by the Legislature. We found that under certain circumstances county commissioners have the authority to mandate budgetary cuts in areas of the legislatively approved county appropriations in order to avoid a projected deficit and a consequent default on county loans. Op. Atty. Gen., April 18, 1980.

Having concluded that the greater duty on the Secretary of State is to insure that expenditures do not exceed appropriations, we must address the question of the Secretary's discretion to determine where cuts should be made when faced with insufficient appropriations. In other words, the issue is whether the Secretary has unlimited authority to decide where expenditures should be reduced.

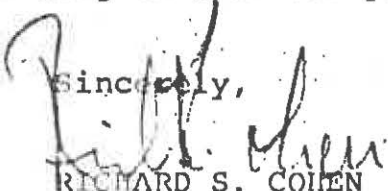
By way of background on this question, we would note that a number of jurisdictions have held that public agencies claiming insufficient funds as a defense to their failure to fulfill statutory duties must undergo close fiscal scrutiny before such a defense will be considered. Commonwealth ex rel. Alessandrone v. Borough of Confluence, Pa. 234 A.2d 852 (1967); Toia v. Regan, 387 N.Y.S.2d 309, aff'd. 356 N.E.2d 276 (1976). Although our Law Court has not squarely addressed the issue we find that the above cited cases represent the majority view on this matter. See Landsman, The Indefensible Defense of Impossibility: Excusing Localities from the Performance of State-Mandated Duties, 27 Cleveland State Law Review 47, 62-66 (1978). In addition, the Maine Legislature has by statute addressed circumstances analogous to those in this case. 5 M.R.S.A. § 1668 empowers the Governor to temporarily curtail allotments when it appears that State revenues will not be sufficient to meet the expenditures authorized by the Legislature. The curtailments must be made, so far as practical, in a manner consistent with the intent of the Legislature.

Applying these principles to the situation at hand, it is our view that the Secretary is under an obligation to take all available steps to comply with an express and unequivocal statutory mandate. The effect of this is that he must attempt to reduce expenditures in other areas before he takes action which would directly violate a statutory mandate such as that found in §51-A. In other words, the Secretary would be justified in reducing the number of branch offices below 10 only if, in order to remain within his appropriations, the alternative would be either to violate some other express mandate or to prevent him from carrying out some other more general statutory duty in a minimally acceptable fashion.

In the final analysis, since complex issues of fact are involved, we are not in a position to ascertain the extent to which the Secretary can reduce expenditures in other areas within the Department of Motor Vehicles. Nevertheless, we believe that the above analysis sets out the preconditions which must be met before the Secretary may legally close a branch office.

I trust this opinion will prove helpful. If I can provide any further information concerning this matter please do not hesitate to contact me.

Sincerely,


RICHARD S. COIEN
Attorney General

RSC:WN:jg
cc: Rodney Quinn
Secretary of State