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Honorable Thomas W. Murphy, Jr.
House of Representatives
State House
Augusta, Maine 04333

Dear Representative Murphy:

This will respond to your request for advice on the following question:

> Does Maine law allow municipalities. . . to provide tax monies to social service agencies for expenditures on social programs, and if so, under what circumstances?

Your inquiry apparently stems from proposals for municipalities to raise and expend money for purposes other than those enumerated in 30 M.R.S.A. § 5101 to § 5108. Thus, the legal issue is whether those sections constitute a limitation on municipal spending authority.

Our analysis of this issue must begin with 30 M.R.S.A. § 5101 which provides that "[a] municipality may raise or appropriate money for the purposes specified in sections 5102 to 5108." At the time § 5101 was enacted, it operated both as a grant of spending authority and as a limitation on that authority. With the subsequent adoption of the Home Rule provisions, see Me. Const., art. VIII, pt. 2, § 1; 30 M.R.S.A. c. 201-A, the relationship between state and municipal government changed dramatically. Accordingly, as with other statutes dealing with municipal matters, § 5101 must now be interpreted in light of those provisions.

The Home Rule provision most directly relevant to your inquiry is 30 M.R.S.A. § 1917, the first sentence of which reads as follows:

> Any municipality may, by the adoption, amendment or repeal of ordinances or by-laws, exercise any power or function which the Legislature has power to confer upon it, which is not denied either expressly or by clear implication, and exercise any power or function granted to the municipality by the Constitution, general law or charter.

Given the above language, the question is whether 30 M.R.S.A. § 5101 denies to municipalities, either expressly or by clear implication, the power to expend money for purposes not specifically listed in sections 5102 to 5108.

We do not believe it can be reasonably argued that § 5101 constitutes an "express" restriction on municipal spending authority. That provision and those which follow outline the purposes for which municipalities may raise or appropriate money. The statutes, then, represent authorizing legislation and contain no language which could be taken as an express prohibition of other expenditures.1/

The argument for a "clearly implied denial" of other spending authority would appear to rest upon the proposition that unless 30 M.R.S.A. §§ 5101 to 5108 are so construed, the statutes become superfluous, in that the Home Rule provisions would already give municipalities the powers conferred by those sections. The principal flaw with this argument stems from the fact that sections 5101 to 5108 predate Home Rule. At the time those provisions were originally enacted, legislation was necessary if municipalities were to have any spending power at all. Accordingly, it cannot be said those sections were enacted with an intent to limit Home Rule authority with respect to appropriations.

The sole argument we can discern for an implied denial of other spending authority arises not from the mere existence of 30 M.R.S.A. §§ 5101 to 5108, but rather from the fact that those sections have been amended subsequent to the adoption of the Home Rule provisions.2/ The crux of this argument is that the

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1/ While 30 M.R.S.A. §§ 5101 to 5108 do not expressly bar spending for purposes not enumerated in those sections, they do contain some express limitations with respect to specific expenditures. See, e.g., 30 M.R.S.A. § 5104(9). Needless to say, those limitations are binding on municipalities.

2/ More specifically, the sections which have been amended are 30 M.R.S.A. §§ 5102, 5104, 5105 and 5106.

amendments in question would not have been necessary unless the Legislature believed that a municipality could raise or appropriate money only for the purposes set forth in sections 5101 to 5108. While conceding that this argument has merit, we are unable to accept as a general rule the proposition that whenever authorizing legislation is broadened by post-Home Rule amendments, it must necessarily be concluded that municipalities are without authority to exercise related powers not mentioned by the Legislature.[3/]

With respect to the problem at hand, it is our opinion that the post-Home Rule amendments to 30 M.R.S.A. §§ 5101 to 5108 should not be construed as clearly implying a denial to municipalities of the authority to spend for other purposes. We reach this conclusion for a number of reasons. First, there is no other evidence that the Legislature intended sections 5101 to 5108 to restrict municipal spending authority. Second, the statutes in question do not form part of a state regulatory scheme, in which the need for uniform application must be deemed to preclude local discretion. Cf. Schwanda v. Bonney, Me., 418 A.2d 163 (1980). Third, the power to determine how public money will be spent is a matter of fundamental importance to the local community which raises the money and receives the services, and thus, it would be inconsistent with the basic purpose of Home Rule to lightly imply legislative restrictions on this authority. Fourth, the Report by the Maine Intergovernmental Relations Commission, which was one of the catalysts for Home Rule, strongly suggests that discretion and flexibility with respect to the providing of municipal services was a major objective of Home Rule.

> In addition to the more democratic administration of government, Home Rule creates a greater flexibility in the operation of community services. Through charter amendments and alterations, municipalities may readily merge service functions and provide

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3/ On a somewhat analogous issue, the Law Court has held that the repeal of a statutory provision mandating a certain type of municipal action did not, without more, clearly imply an intent to deny municipalities the power to take that action. Begin v. Inhabitants of Town of Sabattus, Me., 409 A.2d 1269, 1275 (1979).

> more efficient and complete services to the community. The broader functions will also permit the municipality to exercise the necessary alternatives that it may encounter as circumstances change.4/

To interpret sections 5101 to 5108 as limiting municipal spending authority would hardly promote the objectives of enabling municipalities to provide more complete community services and to respond to changed circumstances.5/

Having concluded that sections 5101 to 5108 do not prohibit spending for purposes not listed in those sections, we may briefly summarize the general principles which control this aspect of municipal government. A municipal expenditure is permissible if: 1) it is for a public purpose; 2) it is not otherwise prohibited by the federal or state constitutions; 3) it is not prohibited by statute; and 4) it is not prohibited by the municipal charter.

I hope this information is helpful.

Sincerely,

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4/ Report by the Maine Intergovernmental Relations Commission on Home Rule, p. 1 (1968). The Home Rule amendment was approved at the legislative session immediately following the submission of this report. Furthermore, a majority of the Commission members were legislators.

5/ We note that your question was apparently prompted by just such changed circumstances, namely, the reduction of federal money available to fund certain social services. It would appear that the very purpose of Home Rule was to allow municipalities the flexibility to respond to this type of change by empowering them to decide whether, and to what extent, they wish to assume the funding of these services.