

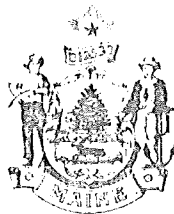
MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

JAMES E. TIERNEY
ATTORNEY GENERAL



STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
STATE HOUSE STATION 6
AUGUSTA, MAINE 04333

March 2, 1983

Honorable John Diamond
House of Representatives
State House Station #2
Augusta, Maine 04330

Dear Representative Diamond:

You have requested an opinion from this office on the question of whether the state budget is required to be balanced under current constitutional and statutory provisions, or whether an amendment to the Maine Constitution is necessary to achieve that purpose. This office concludes that the current constitutional and statutory structure contemplates that the state budget be balanced.

It is important at the outset to define the term "balanced budget." It will be assumed, for purposes of this opinion, that a balanced budget is one in which "proposed expenditures [do] not exceed estimated available funds." People ex rel. Ogilvie v. Lewis, 274 N.E.2d 87, 88 (Ill. 1971). A review of our relevant constitutional and statutory provisions indicates that they contemplate a budgetary and appropriation process in which no deficits occur.

Maine's constitutional limitation on the incurrence of debt by the State has the effect of ensuring that the

State function on a "cash basis."^{1/} See Stein v. Morrison, 75 P. 246 (Ida. 1904). Section 14 of Art. IX of the Maine Constitution provides, in pertinent part:

The Legislature shall not create any debt or debts, liability or liabilities, on behalf of the State, which shall singly, or in the aggregate, with previous debts and liabilities hereafter incurred at any one time, exceed two million dollars, except to suppress insurrection, to repeal invasion, or for the purposes of war, and except for temporary loans to be paid out of money raised by taxation during the fiscal year in which they are made; and excepting also that whenever two-thirds of both Houses shall it necessary, by proper enactment ratified by a majority of the electors voting thereon at a general or special election, the Legislature may authorize the issuance of bonds on behalf of the State at such times and in such amounts and for such purposes as approved by such action. . . .

Thus, § 14 prohibits the State from incurring long-term debt in the amount of more than \$2,000,000, except for certain specified emergencies, without a vote of the people. By requiring the State to function on its revenues and by prohibiting loans except under carefully limited circumstances, the Maine Constitution guarantees that the State's budget will be balanced and precludes deficit financing.

The specific statutory provisions which govern the budgetary process in Maine are consistent with the mandate of Art. IX, § 14, in that they contemplate that a balanced budget will be submitted to the Legislature. 5 M.R.S.A. § 1663, setting out the scope of the budget, provides that,

The budget of State Government. . . shall set forth all proposed expenditures for the administration, operation and maintenance of the departments and agencies of the State Government; all interest and debt

^{1/} It is true that certain states do have both debt limits similar to ours and balanced budget requirements. See, e.g., Colo. Const., Art. X, § 16, and Art. XI, § 3. The language of the balanced budget provisions, however, is similar to the language of our budget statutes. Moreover, where a state is limited in its power to incur debt, that state's budget must ultimately balance in the sense that anticipated expenditures must equal estimated revenues, because, under such limitations, the need for state debt must be anticipated by the legislature.

redemption charges during each fiscal year and all expenditures for capital projects to be undertaken and executed during each fiscal year of the biennium.

It goes on to require that

the state budget. . . set forth the anticipated revenues of the State Government and any other additional means of financing expenditures proposed for each fiscal year of the biennium.

Section 1664 of that Title requires that Part 1 of the budget

shall embrace a general budget summary setting forth the aggregate figures of the budget in such manner as to show the balanced relations between the total proposed expenditures and the total anticipated revenues together with the other means of financing the budget. . . .

Section 1666 of Title 5 similarly anticipates a budget based on

estimates. . . of the needs of the various departments and agencies and the total anticipated income of the State Government during the ensuing biennium.

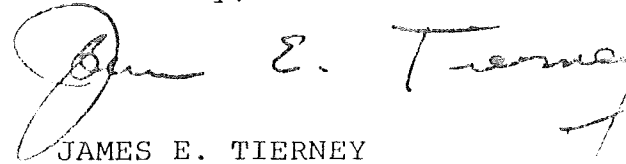
Thus, the specific provisions of the budget statutes strongly support the proposition that Maine is to have a balanced budget.^{2/}

Other statutes dealing with the consequences of the budget procedure also suggest a budgetary and appropriation process in which no deficits are to occur. Sections 1511 and 1544 of Title 5 establish procedures dealing with budget surpluses. No such statutes exist for deficits. Section 1668 establishes a method for temporarily curtailing allotments where it "appears. . . that the anticipated income and other available funds of the State will not be sufficient to meet the expenditures authorized by the Legislature."

^{2/} Indeed, the language of our statutes bears a strong similarity to language found in other states' constitutions which has been characterized by the courts as requiring a balanced budget. See, e.g., Mass. Const., Art. 63, §2; Opinion of the Justices, 376 N.E.2d 1217, 1225 (Mass. 1978). See, n. 1, supra.

The specific constitutional and statutory provisions discussed herein therefore have the practical effect of requiring this State to function on a balanced budget. I hope this information addresses your concern. Please do not hesitate to call on us if this office can be of further service.

Sincerely,

A handwritten signature in cursive script that reads "James E. Tierney". The signature is written in dark ink and is positioned above the typed name.

JAMES E. TIERNEY
Attorney General

JET/ec