

MAINE STATE LEGISLATURE

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JAMES E. TIERNEY
ATTORNEY GENERAL



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

January 23, 1984

Hon. Richard L. Trafton
Maine Senate
State House Station #3
Augusta, Maine 04333

Dear Senator Trafton:

You have inquired as to whether there would be no purpose for the Legislature to enact Legislative Document No. 1809, which provides that funds previously appropriated for food stamps in Androscoggin County be distributed to the cities and towns of the county before February 1, 1984, in view of 30 M.R.S.A. § 408 which directs that any excess in a county budget at the end of a fiscal year be used to reduce the county tax levy in the ensuing year. For the reasons which follow, it is the opinion of this Department that, notwithstanding 30 M.R.S.A. § 408, it would not be futile for the Legislature to enact L.D. 1809 since the funds in question are still in the possession of Androscoggin County and the tax levy for 1984 has not as yet been fixed.

The history of your question is as follows: At the first Regular Session of the 111th Legislature, a budget for Androscoggin County was approved containing \$100,000 to be used for the purpose of food stamp assistance. Resolves 1983, ch. 11. Later in the session, however, the Legislature enacted a Resolve providing as follows:

Funds allocated for food stamps in the
Androscoggin County budget for the year

1983 shall not be expended for that purpose, or any other purpose, but shall lapse to the unencumbered surplus to be used entirely for reducing the tax levy in the ensuing year. Resolves 1983, ch. 38.

Moreover, the problem of unexpended balances in county budgets is also the subject of general legislation:

The county commissioners of any county shall use the unexpended balances and the actual revenue in excess of estimates from the previous fiscal year^{1/} to reduce the tax levy in the ensuing year and restore the contingent account to the limit as set.

* * *

[At the end of each fiscal year], the county commissioners of any county shall use unencumbered surplus funds in excess of 10% of the amount to be raised by taxation each year to reduce the tax levy.

Thus, at the end of 1983 (the end of the fiscal year for Androscoggin County), it was the clear intention of the Legislature that the \$100,000 previously appropriated for food stamps be used to reduce the tax levy in the county, and not be redistributed to the constituent municipalities.

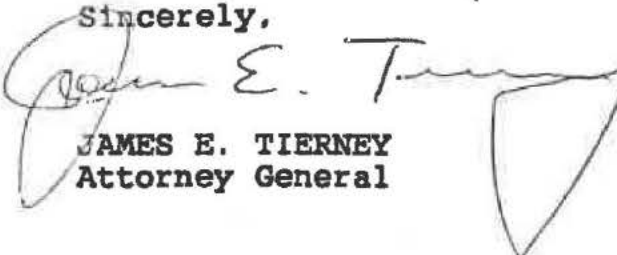
Legislative Document No. 1809 would alter this treatment of the \$100,000, and direct that it be redistributed to the municipalities before February 1, 1984. Your question is whether such a redistribution can occur in view of the fact that the fiscal year has ended, and, arguably, the constituent municipalities of Androscoggin County are entitled, by virtue of 30 M.R.S.A. § 408, to an immediate reduction of their tax levy.

^{1/} Counties in Maine traditionally use the calendar year as their fiscal year.

In the view of this Department, however, the presence of 30 M.R.S.A. § 408 does not prevent the Legislature from directing that a redistribution occur immediately. Although the county's fiscal year has ended, the levy of taxes upon the constituent municipalities does not occur, according to law, until the month of March, and the payment of the taxes levied upon the municipalities is not required until the first day of September. 30 M.R.S.A. § 254. Thus, since the funds in question are in the possession of Androscoggin County, and neither the levying nor the payment of taxes from the constituent municipalities in 1984 has yet occurred, there is no impediment to the Legislature simply directing that the funds be redistributed to the municipalities immediately.^{1/}

I hope this answers your question. Please feel free to reinquire if further clarification is necessary.

Sincerely,



JAMES E. TIERNEY
Attorney General

JET/ec

cc: Sen. R. Donald Twitchell

Rep. Edward A. McHenry
Chairman, Joint Standing Committee on Local
and State Government

Sen. Richard R. Charette
Chairman, Androscoggin County Delegation

Rep. Louis Jalbert

Rep. Roger M. Pouliot

^{1/} Your question, of course, is simply one of statutory construction, that is, whether the operation of an existing statute renders the enactment of a succeeding statute futile. There is no constitutional barrier to the Legislature enacting any statute whatever with regard to the counties. Counties in Maine are the creation of the Legislature; and since they enjoy no independent constitutional status, they can therefore be abolished by that body.