

# MAINE STATE LEGISLATURE

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JAMES E. TIERNEY  
ATTORNEY GENERAL



87-4

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

March 3, 1987

Honorable John L. Martin  
Speaker, Maine House of Representatives  
State House Station #2  
Augusta, Maine 04333

Dear Speaker Martin:

You have inquired whether the Legislature, in discharging its responsibilities in regard to the budget for Aroostook County pursuant to 30 M.R.S.A. § 1425(5), has any alternative but to approve or disapprove a budget as submitted to it by the Aroostook County Budget Committee. For the reasons which follow, it is the Opinion of this Department that the Legislature retains full authority with regard to the Aroostook County budget, and therefore may amend the budget as presented to it by the Aroostook County Budget Committee, as well as approve or disapprove it.

The current statutory structure for the approval of the Aroostook County budget was created in 1986, when the Legislature established the Aroostook County Budget Committee in its present form. P.L. 1985, c. 737, § A, 85-B, enacting 30 M.R.S.A. § 1421, et seq. Under this structure, the Aroostook County Budget Committee is to prepare an annual budget for the County and submit that budget to the Legislature prior to January 15 of each fiscal year. The statute then provides;

The Legislature shall approve or disapprove the budget as submitted prior to April 1st of each year. If the Legislature disapproves of the budget, the budget committee shall submit within 15 calendar days, new budget proposals in accordance with [the statute] and the provisions of

this section shall be followed until a budget is finally approved. 30 M.R.S.A. § 1425(5).

Though this provision is not drafted as clearly as it could be, it seems clear that the Legislature intended that its determination with regard to the proposed budget of the committee should be limited either to approving it or disapproving it, and that it should have no power to amend it. Assuming this reading to be correct, however, does not end the inquiry, because it raises the further question as to whether the Legislature may by statute limit itself in its discharge of future legislative responsibilities.

It is a well established principle of constitutional law that "The legislature by statute or by joint resolution cannot bind itself or restrict itself or its successors to the procedure to be followed in the passage of legislation." Sutherland Statutory Construction § 7.04 (4th ed. 1985). Thus, the United States Supreme Court, in reviewing a state statute posing a procedural requirement for the enactment of future legislation, held:

As this is not a constitutional provision, but a general law enacted by the legislature, it may be repealed, amended, or disregarded by the legislature which enacted it. . . . [I]t is not binding on any subsequent legislature, nor does a non-compliance with it impair or nullify the provisions of an act passed without [satisfying its requirements].

Manigault v. Springs, 199 U.S. 473, 487 (1905) (emphasis added). Similarly, the Supreme Judicial Court of Maine has held that such a provision

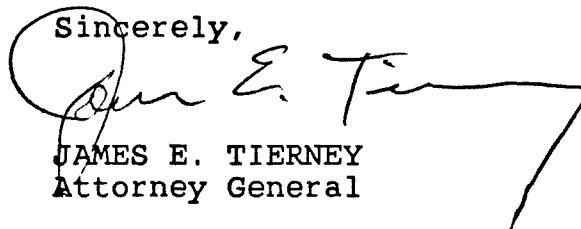
being a mere act of the assembly, cannot bind any subsequent session thereof; for the power which prescribes the formalities to be observed in order to [enact legislation], is able to dispense with them.

McClinch v. Sturgis, 72 Me. 288, 295-96 (1881). The statute at issue here attempts to do precisely that: impose a limitation on a subsequent Legislature for the approval of the Aroostook County budget. In view of the foregoing authority, such an effort by the Legislature must be viewed as constitutionally ineffective.

It should only be added that the conclusion reached by this Opinion, that full authority for the approval of the Aroostook County budget remains with the Legislature, does not apply to the approval of other counties' budgets. Thus, for example, the Legislature has delegated such authority to county officials in Cumberland County, 30 M.R.S.A. § 1651, et seq., and Waldo County, 30 M.R.S.A. § 1401, et seq. There is no constitutional impediment to the Legislature should it decide to act similarly with regard to Aroostook County.

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

Sincerely,

A handwritten signature in black ink, appearing to read "James E. Tierney". The signature is written in a cursive style and is enclosed within a large, hand-drawn circle.

JAMES E. TIERNEY  
Attorney General

JET/ec

cc: County Commissioners, Aroostook County  
John McElwee, D.A.