

MAINE STATE LEGISLATURE

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STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
6 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0006

August 13, 1996

Senator Dana C. Hanley
Representative George J. Kerr
Chairs, Joint Standing Committee
on Appropriations and Financial Affairs
5 State House Station
Augusta, Maine 04333-0005

Dear Senator Hanley and Representative Kerr:

I am writing in response to your inquiry of July 25, 1996 concerning the legal status of the reserve account for tax receivables maintained by the Bureau of Accounts and Control of the Department of Administrative and Financial Services. For the reasons which follow, it is the opinion of this Department that this account has been legally established and maintained by the Bureau.

As this Department understands them, the facts relating to the reserve account are as follows: Pursuant to 5 M.R.S.A. § 1541(1), the Department of Administration and Financial Services through the Bureau of Accounts and Control is directed by the Legislature "[t]o maintain an official system of general accounts, unless otherwise provided by law, embracing all the financial transactions of the State Government." The Bureau is further directed by 5 M.R.S.A. § 1541(5) "[t]o make monthly reports on all receipts and expenditures of the State Government to the Governor and the State Auditor;"

Pursuant to this authority, the Bureau has established a system of accounting, which this Department is advised is consistent with generally accepted accounting practices (GAAP), of all funds received and expended by the State government. Because the State employs a modified accrual basis of accounting, the Bureau's system must account for all accounts receivable, as well as funds actually received. It is invariably the case, however, that some of the State's accounts receivable are not collectible, due to the insolvency of the debtor or other reasons. Ultimately, 5 M.R.S.A. § 1504 provides a procedure whereby the State Controller may charge such accounts off the books of the State, upon the certification that they are not

collectible by the appropriate State officials. Until that time, however, the State's accounts receivable account continues to contain these uncollectible claims.

The purpose of maintaining an accounts receivable account, which is in accordance with GAAP, is to ensure that the State's actual income position is accurately stated in such things as the monthly report for receipts and expenditures which the Bureau makes to the Governor and the State Auditor, and in the State's Comprehensive Annual Financial Report. In furtherance of this objective, the Bureau has established a corresponding account on the liability side of the State's balance sheet, entitled the "reserve account." This account, the maintenance of which is also consistent with GAAP, should in theory reflect the amount of doubtful receivables in the accounts receivable account described above. In practice, however, the amount reported by the Bureau in the "reserve account" has not, in recent years, been up to the amount needed to cover doubtful receivables in the accounts receivable account. In recent years, therefore, the Department and Bureau has sought to remedy the situation by periodically increasing the amounts reported in the "reserve account."

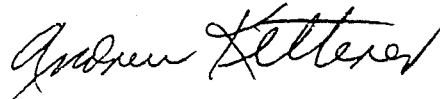
Your question, generally, is whether these actions of the Department and Bureau are authorized by statute, and if so, whether the uncollectible accounts receivable corresponding to the amounts reported in the "reserve account" are available for appropriation by the Legislature. As should be clear from the foregoing, the establishment of the account is authorized by law, because the account is maintained by the Bureau of Accounts and Control, pursuant to its general authority to maintain an official system of accounting contained in 5 M.R.S.A. § 1541(1). Since, as indicated above, the establishment and maintenance of such an account is consistent with GAAP, it must be considered as authorized by the statute.

This leaves your question of whether the uncollectible accounts receivable corresponding to the amounts reported in the "reserve account" are available for appropriation. The existence of 5 M.R.S.A. § 1541(1) does not, of course, restrain the Legislature from passing another statute, in the form of an appropriations bill or otherwise, making appropriations against accounts receivable, particularly since that statute itself says that the State's system of accounts and control shall be maintained by the Department and the Bureau "unless otherwise provided by law." There is, however, a problem presented by the provision of the Maine Constitution which prevents the Legislature from creating "any debt or debts, liability or liabilities, on behalf of the State, ..." in excess of \$2,000,000, unless it does so by a two-thirds vote and the measure is ratified by the electors. Me. Const. art. IX, § 14. If the Legislature were to appropriate and the Executive were to incur obligations to spend money which is not in the Treasury, a debt or liability would have been created. Since, by definition, that part of the accounts receivable account corresponding to the "reserve account" contains not only accounts receivable, rather than cash, but doubtful

receivables,¹ it is highly likely that an appropriation against it would result in the creation of an unconstitutional debt or liability. For this reason, regardless of the soundness of such a course of action as a matter of public policy, this Department would discourage the Legislature from making appropriations against these receivables.

I hope the foregoing answers your questions.

Sincerely,



ANDREW KETTERER
Attorney General

AK/tt

cc: Governor Angus S. King, Jr.

¹Since the reserve account consists only of doubtful receivables, it does not consist of funds appropriated from the Treasury by the Executive Branch. Thus the existence of the account does not constitute a violation of Article V, Part Third, Section 4 of the Maine Constitution, which prohibits the drawing of money from the Treasury, except in consequence of appropriations or allocations authorized by law.