

MAINE STATE LEGISLATURE

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July 3, 2002

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Representative Thomas W. Murphy, Jr.
House of Representatives
2 State House Station
Augusta, ME 04333-0002

Dear Representative Murphy:

I am responding to your letter of June 26, 2002, requesting an opinion on two issues related to the curtailment of allotments undertaken by the Governor in response to the revenue shortfall reported by the Commissioner of Administration & Financial Services for fiscal years 2002 and 2003. Specifically, you ask the following:

1. Have the Chief Executive and his Commissioner of Education exceeded their legal authority by unilaterally reducing General Purpose Aid substantially below the level approved by the Maine Legislature and recently signed into law?
2. Has the Chief Executive circumvented and disenfranchised the members of the Maine Legislature by his failure to call the Legislature in a prompt manner back into Special Session so that they can review and then either approve, amend, or disapprove the budgetary actions the Chief Executive has proposed?

For the reasons set forth below, we do not find a basis to conclude that the Governor's actions exceed his authority or otherwise violate the Maine Constitution.

The Governor's curtailment power is set out in 5 M.R.S.A. § 1668 (2002), which provides in pertinent part as follows:

Whenever it appears to the Commissioner of Administrative and Financial Services that the anticipated income and other available funds of the State will not be sufficient to meet the expenditures authorized by the Legislature, the commissioner shall so report in writing to the Governor, and shall send a copy of the report to the President of the Senate and the Speaker of the House and the majority and minority leaders of the Senate and House. After receiving the report, the Governor may temporarily curtail allotments equitably so that expenditures will not exceed the anticipated income and other available funds. No allotment may be terminated pursuant to this section. Any curtailment of allotments must, insofar as practicable, be made consistent with the intent of the Legislature in authorizing these expenditures.

On June 13, 2002, the Commissioner of Administrative and Financial Services issued the written report contemplated by § 1668, concluding that it appeared that anticipated income and other available funds of the State General Fund would not be sufficient to meet expenditures authorized by the

Legislature for fiscal year 2002 and for fiscal year 2003. The issuance of this report triggered the Governor's power to curtail allotments to bring expenditures into line with anticipated income and other available funds pursuant to the standards established by § 1668. In short, the Governor's exercise of the curtailment power in reducing General Purpose Aid to Education is within the authority granted to him by statute.

We turn now to the question of whether this statutory authority is consistent with the requirements of the Maine Constitution. In *Butterfield v. Department of Human Services, CV-91-29* (Kenn. Cty, Jan. 17, 1991)(Alexander, J.),¹ the Superior Court upheld then Governor McKernan's exercise of the curtailment power in cutting eighty percent of the funding for the Maine Child Care Voucher Program. In rejecting the claim that the curtailment process constitutes an improper exercise of legislative authority by the executive, the Court reached the following conclusions about the curtailment statute.

It is, by its terms, a temporary fiscal management device. It permits the Governor to begin realignment of expenditures to meet reduced revenue projections only between the time when those reduced projections are recognized and the later time when the Legislature is able to act to bring projected revenues and authorized expenditures back into line. This legislation recognizes that prompt action to curtail expenditures may be necessary once a shortfall of revenues is perceived....Section 1668 also recognizes that the Legislature is not a body which can act instantly. It must convene and then give matters due deliberation. Such deliberations may necessarily be extended when an apparent revenue shortfall requires reexamination and new priority setting across the entire spectrum of programs in the state budget. Section 1668 supports the legislative process by allowing this priority reallocation debate to occur rationally and thoroughly, without time pressures for immediate action.

No program can be terminated as a result of this allotment curtailment process and, theoretically, any cuts which the Governor makes in expenditures can be promptly restored by the Legislature. Thus, § 1668 extends to the Governor no authority to usurp or displace the Legislature's role in appropriating and expending funds, it simply provides device to assure responsible fiscal management of revenue shortfalls on a temporary basis, pending legislative review and ultimate legislative control of the expenditure process.

Butterfield at 5-6.² While the *Butterfield* decision concerned executive curtailment of a different program, we do not find any basis to conclude that the Court's reasoning would not apply to Governor King's curtailment of General Purpose Aid to Education, a program that was curtailed in 1991.

Your second question is whether the Governor has usurped powers reserved to the Legislature by issuing his curtailment order without calling the Legislature into a special session to approve or modify the substance of that order. The curtailment statute, 5 M.R.S.A. § 1668, does not require the Governor to convene a special session upon issuance of an executive order curtailing allotments. To the extent that this question concerns the constitutionality of the curtailment process as provided by § 1668, the *Butterfield* decision rejected claims that the statute represented an unconstitutional delegation of legislative authority to the executive, impoundment of funds, or a separation of powers violation. Section 1668 does contain a provision requiring that the Governor immediately notify the Senate President and

¹ The Superior Court's decision was appealed to the Law Court and briefed at that level, but the appeal was dismissed as moot by the Law Court before a decision on the merits issued.

² Enclosed is a guidance memorandum, provided to the Governor, President, and Speaker under cover of a letter dated June 18, 2002, that outlines the *Butterfield* analysis of these and other issues. A copy of the Court's decision can be found at tab 4.

Speaker of the House, as well as the other members of legislative leadership, “of the specific allotments curtailed, the extent of curtailment of each allotment and the effect of each curtailment on the objects and purposes of the program so affected.” The Maine Constitution provides a procedure for the Legislature to convene without the Governor’s call. Specifically, Article IV, Part 3rd, § 1, provides that the Legislature may convene on the call of the President of the Senate and Speaker of the House with the consent of a majority of the Members of the Legislature of each political party, all Members of the Legislature having been polled.

Please let me know if we can be of any further assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "G. Rowe", with a long horizontal flourish extending to the right.

G. STEVEN ROWE
Attorney General