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G STEVEN ROWE
ATTORNEY GENERAL



Telephone: (207) 626-9800
TDD: (207) 626-8665

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

REGIONAL OFFICES:

84 HARLOW ST., 2ND FLOOR
BANGOR, MAINE 04401
TEL: (207) 941-3070
FAX: (207) 941-3075

44 OAK STREET, 4TH FLOOR
PORTLAND, MAINE 04101-3014
TEL: (207) 822-0260
FAX: (207) 822-0259
TDD: (877) 423-8800

128 SWEDEN ST., STE. 2
CARIBOU, MAINE 04736
TEL: (207) 496-3792
FAX: (207) 496-3291

July 15, 2002

Senator Michael F. Brennan
Maine State Senate
3 State House Station
Augusta, ME 04333-0003

Representative Glenn Cummings
Maine House of Representatives
2 State House Station
Augusta, ME 04333-0002

RE: Request for Advice on General Purpose Aid Curtailment Methodology

Dear Senator Brennan and Representative Cummings:

This letter is in response to your letter of June 28, 2002 requesting advice relating to the methodologies used by Governor King in allocating the curtailment of General Purpose Aid for fiscal year 2002-03. Specifically, you requested advice as to whether the methodologies employed by the Governor "satisfy both state statute and legislative intent." For the reasons set forth below, we believe that they do.

The Governor's allotment 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

In Commissioner Albanese's June 21, 2002 memorandum (referenced in your letter), the Commissioner explained that the methodology used to curtail the foundation allocation subsidy was designed to mirror the "ability to pay" provisions in the operating component of the school funding formula – that is a curtailment based on the 85% property valuation and 15% income factors contained in 20-A M.R.S.A. § 15657. The Commissioner also explained, in his June 21 letter, that curtailments to the adjustments portion of the GPA allocation were made on a flat percentage basis – that percentage being 1.37%.

You have suggested that the school funding statute, 20-A M.R.S.A. § 15603-F, as well as other documents evidencing legislative intent, require the Governor to use the "percentage reduction" method, rather than the "ability to pay" method, in curtailing the foundation allocation. We believe that the Governor would have acted within the scope of his authority had he used the "percentage reduction" method in curtailing the foundation allocation. However, he was not *required* to use the percentage reduction method rather than the ability to pay method in establishing curtailments to the foundation allocation.

The curtailment statute, 5 M.R.S.A. § 1668, is, by its terms, a temporary fiscal management device. It affords the Governor broad discretion to act equitably and consistently with the intent of the Legislature in authorizing the expenditures. *See Butterfield v. Department of Human Services, CV-91-29 (Kenn. Cty., Jan. 17, 1991) (Alexander, J)*. We believe that the methodology used by the Governor in curtailing the foundation allocation sufficiently meets section 1668's "Legislative intent" test because the "ability to pay" factors were the same as those used in initially determining the State share of the foundation allocation. Moreover, we believe the Governor acted within the scope of his authority in choosing to apply one reduction allocation methodology to the foundation allocation and another to adjustments.

To summarize, we conclude that the curtailment methodologies used by Governor King, methodologies based on formulas contained in the school funding statute, are consistent with the broad discretion afforded by section 5 M.R.S.A. § 1668 to act equitably and consistently with the intent of the Legislature in authorizing the expenditures.

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

Sincerely,



G. STEVEN ROWE
Attorney General