

# MAINE STATE LEGISLATURE

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October 16, 2002

Senator Jill M. Goldthwait  
Maine State Senate  
3 State House Station  
Augusta, ME 04333-0003

Representative Randall Berry  
Maine House of Representatives  
2 State House Station  
Augusta, ME 04333-0002

Dear Senator Goldthwait and Representative Berry:

This is in response to your request for a letter reflecting the substance of the advice provided by our Office to your committee this morning. The question raised was whether the spending reductions achieved by the allotment curtailments ordered by the Governor must be reflected in the supplemental budget bill by corresponding reductions to appropriations. While not legally required, there are a number of benefits that can be achieved by doing so.

The process of curtailing allotments set out in 5 M.R.S.A. §1668 gives quasi-legislative authority to the Governor to reduce expenditures by state agencies in order to bring the State's overall spending into closer balance with available revenues. These spending reductions, necessitated by the overriding constitutional requirement that the budget be balanced, are accomplished by an executive order reducing an agency's program allotments. Established within the structure of the appropriations in the state budget, allotments represent the amounts each agency expects to spend for each program in each quarter of the fiscal year, and their approval by the governor serves as authorization for the release of those funds from the State Treasury and hence a limitation on agency spending.

By acting to curtail allotments, the Governor is reducing the amounts agencies can lawfully spend on specified programs. In short, an agency requires both legislative authorization (appropriation) and executive authorization (approved allotments) in order to spend money. The curtailment process cannot be used to increase spending or move money from one program to another. However, spending can be reduced within programs by executive order alone when the terms of the curtailment statute are satisfied without legislation changing the budget. While the curtailment statute provides that "the Governor may *temporarily* curtail allotments," §1668 does

not require legislative action on the curtailments.<sup>1</sup> Yet in a very real sense, spending cuts achieved by curtailment do not become permanent without legislative action because the legislative authorization of the original spending levels remains in place.

By deappropriating the funds already cut by the Governor's executive order, the Legislature would be making those cuts permanent and at the same time bringing the budget itself into balance. Taking this step would also improve the State's ability to effectively defend any further legal challenges to spending cuts attributable to curtailments, and potentially reduce the costs attributable to defense. Finally, to the extent that the Legislature acts to restore funding to any curtailed programs, doubt could be cast on the status of the remaining curtailments if they are not included in the budget.

I hope this information is helpful to you. Please let me know if we can provide any further assistance.

Sincerely,

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

G. STEVEN ROWE  
Attorney General

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<sup>1</sup> Of course the Legislature has the power to take action on the curtailments, such as restoring funds to particular programs, should it choose to do so.