

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

G. STEVEN ROWE
ATTORNEY GENERAL



Telephone: (207) 626-8800
TDD: (207) 626-8865

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

REGIONAL OFFICES: 05-2

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) 428-8800

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

March 17, 2005

Senator Richard Nass
Representative Sawin Millett
Representative Robert Nutting
Representative Stephen Bowen
Representative Darlene Curley
Joint Standing Committee on Appropriations and Financial Affairs
122nd Maine Legislature
100 State House Station
Augusta, ME 04333-0100

Dear Senator Nass and Representatives Millett, Nutting, Bowen and Curley:

In your letter, dated March 3, 2005, you have asked for an opinion concerning whether or not the "annual expenditures" for the Maine Residents Property Tax Program (known as the "circuit breaker" program), for fiscal years ending June 30, 2006 and June 30, 2007, would violate the prohibition in Article V, part 3, section 4 of the Maine Constitution, on drawing money "from the treasury except in consequence of appropriations or allocations authorized by law." Because the Legislature has clearly authorized state funds to be spent for the circuit breaker program, we do not believe that this provision of the Constitution is violated by the manner in which this expenditure is reflected in the budget document.

Background.

We begin by summarizing our understanding of the manner in which the costs of the circuit breaker program were previously treated in the state budget process and how they are currently being handled as the result of a change in the law that took effect last year. Under the circuit breaker program, persons who meet the eligibility criteria set forth in Title 36, which are based on income level and the amount of property taxes (or qualifying rent) they have paid, may file a claim with the State Tax Assessor. Prior to the recent law change, the State Tax Assessor was authorized to pay certified claims from the General Fund directly to the taxpayers who were deemed eligible, pursuant to 36

M.R.S.A. § 6203. The projected cost of paying these claims was listed as a General Fund appropriation in the biennial budget. *See* P.L. 2003, ch. 20, Part A, at p. 16.

In the Supplemental Appropriations bill enacted last spring, the Legislature amended the circuit breaker program statute to include a different funding mechanism. P.L. 2003, c. 673, Pt. BB, §§ 1 and 2, repealing 36 M.R.S.A. § 6203 and enacting 36 M.R.S.A. § 6203-A. The new provision directs the State Tax Assessor to determine each month the benefits for all claimants who have filed under the circuit breaker program and to certify that amount to the State Controller, who is instructed to transfer the certified amount into a “circuit breaker reserve” from “General Fund undedicated revenue within the individual income tax category.” 36 M.R.S.A. § 6203-A. The State Tax Assessor then pays the certified amounts directly to the taxpayers who have been approved for the benefit in accordance with the statute. *Id.*¹

The amounts to be paid to taxpayers under the circuit breaker program are now listed as “tax expenditures,” which must be listed in the budget document that is prepared pursuant to 5 M.R.S.A. § 1664² for submission to the Legislature. All tax expenditures, including tax credits, exclusions, deductions and exemptions, are treated as revenue losses and are subtracted from the total General Fund revenue. They are itemized in the budget that is enacted by the Legislature, *see, e.g.*, P.L. 2003, ch. 673, Part UU, but they are not identified as appropriations from the General Fund in Part A of the budget.

As noted in your letter, the budget bill now pending before the Legislature includes a proposed amendment to the statute governing the Business Equipment Tax Reimbursement program (known as “BETR”) that is similar to the recent circuit breaker amendment. L.D. 468, Part JJ, amending 36 M.R.S.A. § 6656. The proposed amendment would authorize the transfer of the amounts certified by the State Tax Assessor for eligible business claimants into a “Business Tax Equipment Reimbursement reserve account established, maintained and administered by the State Controller from General Fund undedicated revenue.” *Id.* If this amendment is enacted, the total amount of BETR reimbursement claims also would be listed as a tax expenditure, rather than a General Fund appropriation. *See* State of Maine 2006-2007 Governor’s Budget, Volume II, at T-1 through T-16.

Thus your question, in essence, is whether the treatment of these two programs in the budget document as tax expenditures deducted from total revenues, as opposed to program expenditures appropriated from General Fund revenues, violates Article V, part

¹ Along with this statutory change, last year’s Supplemental Appropriations bill established a cap on the amount of funds the Tax Assessor could certify for transfer to the circuit breaker reserve from undedicated General Fund revenues in fiscal year 2004-05. P.L. 2003, ch. 673, Pt. BB, § 3.

² All tax expenditures, including those for the Maine Resident Taxpayers program, are listed in Volume II of the State of Maine 2006-2007 Governor’s Budget, at pp. T-2 through T-16, and although originally omitted from the printed version of L.D. 468, they have since been included on page 85 of the “change package” for this bill, prepared by the Office of Fiscal and Program Review.

3, section 4 of the Maine Constitution. Before analyzing your question, we briefly outline the history of this provision of the Constitution.

The history of Article V, part 3, section 4.

The full text of Article V, part 3, section 4 is as follows:

Section 4. No money drawn except upon appropriation or allocation. No money shall be drawn from the treasury except in consequence of appropriations or allocations authorized by law.

As originally adopted, this section of the Constitution provided: “No money shall be drawn from the Treasury, but by warrant of the Governor and Council and in consequence of appropriations made by law.” In 1963, the Constitutional Commission recommended deleting the requirement for a warrant of the Governor and Council, finding that this had become obsolete given the statutory role of the State Controller and State Budget Officer. L.D. 1394 (101st Legis. 1964).³ During the Legislature’s review of the Commission’s proposal, the Attorney General’s Department suggested a “technical amendment” that would alter the wording of the last clause from “appropriations made by law” to “appropriations *or allocations authorized* by law.” House Amend. “A” to L.D. 1434, No. H-333 (101st Legis. 1963)(emphasis added); Legis. Rec. H-1786 (1963). The Legislature passed the resolve with this suggested wording, and the constitutional amendment was subsequently adopted by the voters at the general election in November, 1964. Const. Res. 1963, ch. 105.

The terms “appropriation” and “allocation” are not currently defined in the Maine Constitution or in the Maine Revised Statutes, and no such definitions existed in 1963 when this particular section of the Maine Constitution was amended to its present form. These words have become terms of art in today’s budget documents, with “appropriation” used to reflect the Legislature’s authorization of expenditures from the General Fund, and “allocation” to represent legislative authorization of expenditures from special revenues.⁴ And there appears to be a historical pattern of such usage, pre-dating the unified state budgets that are required by law today. *Compare* P. & S.L. 1961, c. 164, “An Act to Appropriate Moneys for the Expenditures of State Government,” P. & S.L. 1961, ch. 182 “An Act to Make Allocations from the General Highway Fund,” and P. & S.L. 1961, ch. 202, “An Act to Allocate Moneys for the Administrative Expenses of the

³ The Commission also recommended deleting the second sentence of this section of Article V, which required the Treasurer to produce an annual account of all receipts and expenditures of all public money. This amendment was ultimately adopted, as well, but is not relevant to our analysis here.

⁴ See Glossary of terms in State of Maine 2006-2007 Governor’s Budget, Volume I, at D-1; and “Selected Budget Terms and Definitions,” published by the Legislature’s Office of Fiscal and Program Review, updated 12/2/02. Although phrased differently, both of these sources indicate that the term “allocation” is used to authorize expenditures from the highway fund, federal expenditure and block grant funds, internal service funds, enterprise funds, and any other funds designated by the Legislature for specific operating purposes.

State Liquor Commission.” Certainly, by the early 1960’s, the number of federally funded programs was growing, along with other types of special revenue funds.

At the time the Attorney General recommended the technical amendment to Article V, part 3, section 4 of the Maine Constitution in 1963, the word “allocation” was also being used in other contexts in Maine law, including: allocations by the Governor and Council from the Construction Reserve Fund, pursuant to 5 M.R.S.A. § 1503, and from the State Contingent Account, pursuant to 5 M.R.S.A. § 1507;⁵ as well as the allocation of bond proceeds, *e.g.*, P. & S.L. 1959, ch.175, §6. Although the legislative history of the 1963 amendment to Article V does not reveal the specific reason for his recommendation, it is likely that the Attorney General suggested inclusion of the phrase “allocations authorized by law” in section 4 of Article V, part 3 to capture these other methods by which the Legislature authorizes expenditure of funds that come into the State treasury.

Discussion.

The Legislature has “full power to make and establish all reasonable laws and regulations for the defense and benefit of the people of this State.” Me. Const. Art. IV, pt. 3, § 1. The Justices of the Maine Supreme Judicial Court, noting that this broad power gives rise to a presumption of constitutionality with respect to any spending enactment, stated that “the court will invalidate a statute only in those cases where the Legislature has *clearly* exceeded its constitutional authority by expending tax revenues for other than a ‘public purpose...’” *Opinion of the Justices*, 601 A.2d 610, 619 (Me. 1991)(citations omitted)(emphasis in original). In construing the limits of their Governor’s item veto authority, the Iowa Supreme Court described the appropriation power in this way:

The appropriation of money is essentially a legislative function under our scheme of government. The classic statement of the doctrine followed throughout the country was made in a Mississippi decision, *Colbert v. State*, 86 Miss. 769, 775, 39 So. 65, 66:

⁵ Other than with regard to these types of allocations by the Governor and Council, as of 1963 the word “allocation” did not appear in the provisions of the Maine Revised Statutes relating to accounts and control, budgeting or appropriations – *e.g.*, R.S. 1964, chapters 141 (general provisions), 143 (accounts and control), 145 (appropriations) and 149 (budget). Use of the phrase “appropriations or allocations” in the Maine Revised Statutes has become common much more recently. *E.g.*, 5 M.R.S.A. § 1583-A, as originally enacted by PL 1991, ch. 780, § OO-1 (eff. June 30, 1990)(prohibition on temporary positions continuing “unless funds are specifically appropriated or allocated by the Legislature); 5 M.R.S.A. § 1585, as amended by PL 1999, ch. 731, Pt. BB, § 1 (eff. Aug. 11, 2000)(adding last sentence referring to transfers of unexpended appropriations or allocations); 5 M.R.S.A. § 1589, as amended by PL 1993, ch. 476, § 2 (eff. July 13, 1993)(adding reference to “unencumbered appropriation and allocation balances”); 5 M.R.S.A.

§ 1664, as amended by PL 1993, ch. 675, Pt. C, § 11 (eff. July 14, 1994)(adding paragraph regarding appropriations or allocations for the Judicial Department).

Under all constitutional governments recognizing three distinct and independent magistracies, the control of the purse strings of government is a legislative function. Indeed, it is the supreme legislative prerogative, indispensable to the independence and integrity of the Legislature, and not to be surrendered or abridged, save by the Constitution itself, without disturbing the balance of the system and endangering the liberties of the people. The right of the Legislature to control the public treasury, to determine the sources from which the public revenues shall be derived and the objects upon which they shall be expended, to dictate the time, the manner, and the means, both of their collection and disbursement, is firmly and inexpugnably established in our political system.

Welden v. Ray, 229 N.W. 2d 706, 709 (Iowa 1975)(citations omitted).

The language of Article V, part 3, section 4 as well as its placement in that article of the Constitution that specifies the duties of the Treasurer, do not reflect any limitation on the Legislature's power to authorize spending but rather an intent to limit the authority of the other branches of government to spend money from the State Treasury. While it is clear that legislative authorization of the purpose and amount to be expended is required before funds may be drawn down from the state treasury, the Constitution itself does not require enactment of a budget bill, much less any particular format for such a budget.⁶

Although the Legislature has established a statutory framework for the preparation, submission and implementation of the state's budget, those statutes contain no definitions of key terms like "appropriation" or "allocation." In the absence of specific legislative definitions, terms used in the constitution as in statutes must be given meaning consistent with the overall context and construed in light of the subject matter, purpose and consequences of a particular interpretation. See *Brent Leasing Co. v. State Tax Assessor*, 2001 ME 90, ¶6, 773 A.2d 457, 459; see also *Rockland Plaza Realty Corporation v. City of Rockland*, 2001 ME 81 ¶12, 772 A.2d 256, 260. Thus, any method by which the Legislature designates or assigns revenues for certain statutorily defined purposes should be sufficient to constitute an "appropriation or allocation authorized by law."

The Law Court has not been called upon to address the scope of the appropriation clause in Maine's Constitution. Other state courts construing analogous provisions of their state constitutions have concluded, however, that no magic words are required to meet the substantive constitutional requirement. The Vermont Supreme Court upheld a

⁶ Maine's Law Court has stated that "Constitutional provisions are accorded a liberal interpretation in order to carry out their broad purpose, because they are expected to last over time and are cumbersome to amend." *Allen v. Quinn*, 459 A.2d 1098, 1102 (Me. 1983). Similarly, federal courts interpret the U.S. Constitution as setting forth general principles and are therefore reluctant to construe provisions of the Constitution as prescribing detailed methodologies. See, e.g., *Nixon v. Supreme Court of the United States*, 506 U.S. 224, 230 (1993)(declining to construe impeachment clause to limit method by which Senate might "try" impeachments); *Utah v. Evans*, 536 U.S. 452, 476 (2002)(declining to interpret the word "enumeration" in census clause as prescribing that census taker contact each individual).

tax reimbursement statute enacted by the Legislature under the appropriations clause in Vermont's Constitution,⁷ noting that the clause

is not, and was not intended to be, a restriction of the power of the Legislature over the public revenue. It is the province of that body to cast the appropriation in a mould of its own making. Under it, no particular form of expression is necessary. No technical words are required. All that is essential is that the Legislature, by a valid enactment, shall assign to a particular use a sum of money from the public revenues. Such an act authorizes the proper officers to draw and use the same accordingly. Merely authorizing such officers to pay a certain claim amounts to an appropriation.

City of Montpelier v. Gates, 170 A. 473, 474 (Vt. 1933)(citations omitted). *Accord State ex rel v. King*, 67 S.W. 812, 814 (Tenn. 1901)(use of word appropriated not required where intent of Legislature was clearly manifested); *Campbell v. Board of Commissioners of State Soldiers and Sailors Monument*, 18 N.E. 33, 34 (Ind. 1888)(an appropriation "may be made impliedly as well as expressly, and in general, as well as specific terms").

It is clear from the following language, added to 5 M.R.S.A. § 1666 in 1995, that the purpose of listing the tax expenditures in the budget is to give the Legislature the opportunity to approve or reject them:

A biennial budget transmitted by the Governor or Governor-elect must include a part that *asks the Legislature whether it wishes to continue funding each individual tax expenditure, as defined in section 1664*, provided in the statutes. The part must include for each tax expenditure a statutory section reference, a brief description of each tax expenditure and the loss of revenue estimated to be incurred by funding source and fiscal year. This paragraph applies with respect to the preparation of the budget document and biennial budget bills for the 1998-1999 biennium and thereafter.

P.L. 1995, c. 464, § 14 (eff. July 3, 1995)(emphasis supplied). In accordance with this amendment, the biennial budget bills enacted by the Legislature since fiscal year 1998-1999 have included the entire list of tax expenditures with specific dollar amounts listed for each. *See, e.g.*, P.L. 1997, ch. 24, Part M; P.L. 1999, c. 16, Part H; P.L. 2003, ch. 673, Part UU.

The items that appear in the budget as tax expenditures are not listed under the heading "appropriation" or "allocation," but that is a matter of form. In terms of the substantive meaning of the Maine Constitution, the spending of the sums listed therein is nonetheless authorized by the Legislature when it enacts a budget bill in final form.

⁷ Vt. Const., c. II, § 27 provides that "no money shall be drawn out of the treasury unless first appropriated by an act of the legislature."

Based on this analysis, our conclusion is that the constitutional prohibition on drawing funds from the state treasury "except in consequence of appropriations and allocations authorized by law" was not violated by last year's amendment to the circuit breaker law, and would not be violated by a similar amendment to the BETR program statute, if the Legislature decides to make that change.

Sincerely,

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

G. STEVEN ROWE
Attorney General

GSR/djp