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January 23, 2006

The Honorable Mark W. Lawrence
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RE: *Authority of York County Commissioners Under 30-A M.R.S.A. § 501(1)*

Dear District Attorney Lawrence:

Pursuant to 5 M.R.S.A. § 199, I am writing in response to your letter of November 18, 2005 regarding whether the York County Commissioners have authority under 30-A M.R.S.A. § 501(1) to refuse to fill a position in your office that was approved by the York County Budget Committee.

It is my understanding that, in September 2004, you submitted to the York County Board of Commissioners a proposed budget that included the creation of a new clerical position to assist you in addressing your office's increased caseload. The Board of Commissioners recommended that the Budget Committee not fund this new position. The Budget Committee, though, voted eleven to one in favor of creating the position, and the final budget included the position. Nevertheless, the County Manager has advised you that the Board of Commissioners will not post the position and will not allow the position to be filled.

In your letter, you raise the following questions:

1. Can the York County Commissioners refuse to allow the posting of a position that has been funded through the York County Budget process?
2. If they cannot, can the York County Commissioners refuse approval of every person submitted for employment in that position on the grounds that as a matter of policy they disagree with the expenditure of funds for this purpose?

Before addressing the questions raised by your letter, I will briefly discuss both the statutes that govern the operation of District Attorneys' offices and the statutes that establish the York County budget process.

Operation of District Attorneys' Offices

District Attorneys are elected every four years by the voters in their respective prosecutorial districts. 30-A M.R.S.A. § 251. In many cases, a single prosecutorial district is made up of more than one county. 30-A M.R.S.A. § 254. District Attorneys' offices are funded by both the State and the counties. District Attorneys and Assistant District Attorneys are declared to be "officers of the State," 30-A M.R.S.A. § 256, and the State pays their salaries. 30-A M.R.S.A. § 255. The State must provide "sufficient funds" such that each District Attorney will have an "adequate staff of [Assistant District Attorneys] to screen, process and investigate complaints, to assist law enforcement agencies, to conduct trials in the District and Superior Courts, to prosecute appeals in the Supreme Judicial Court and to carry out all other duties and responsibilities." 30-A M.R.S.A. § 272(5).

All other District Attorney expenses are funded by the counties. County Commissioners "shall allow to the district attorney serving the county sufficient funds for all office expense, clerk hire and travel . . ." 30-A M.R.S.A. § 281(1). County Commissioners must also either provide district attorneys with "office space suitable for the performance of the duties of the office" or "provide sufficient funds to the district attorney for the rental of suitable quarters at locations convenient to courthouses within the county." 30-A M.R.S.A. § 281(2).

York County Budget Process

Originally, the budget for York County (and other counties) was proposed by the Board of Commissioners and approved, with or without modification, by the Legislature. 30-A M.R.S.A. §§ 701-702 (1987). In July 1989, the Legislative Council authorized a study of county government, and the Joint Standing Committee on State and Local Government established a subcommittee to perform the study. The subcommittee issued its report in December 1989. *County Government: A Study of Its Structure & Possible Redistribution of Certain Functions*, Joint Standing Committee on State and Local Government (Dec. 1989). Among the subcommittee's recommendations was that "all counties establish an autonomous budget process by January 1, 1992." *Id.* at 1.¹ The subcommittee noted that the Legislature was "not well equipped to continue reviewing the budgets for every county," and that autonomous budget processes would give counties "more direct responsibility for their own budgets." *Id.* at 17. The subcommittee specifically recommended that each county establish a Budget Committee to review the budget proposed by the County Commissioners. *Id.* The proposed budget would become

¹ The subcommittee noted that two counties – Cumberland and Waldo – already had autonomous budget processes which did not involve the Legislature, and that two other counties – Aroostook and Kennebec – were in the process of establishing autonomous budget processes. *Id.* at 17-18.

final only if approved by a majority of the budget committee. *Id.* In essence, then, the Budget Committee would assume the role previously played by the Legislature.

In 1994, a bill was introduced to create an autonomous budget process for York County. L.D. 1817, "An Act Creating the York County Budget Advisory Committee." (116th Legis.). As the title suggests, this bill would have created a Budget Committee with only advisory powers – the Committee could make recommendations on the budget proposed by the Board of Commissioners, but the Board would have final authority over the budget. A Committee Amendment was proposed which, among other things, changed the title of the bill to "An Act Creating the York County Budget Committee" and gave the Budget Committee final authority over the budget. Ultimately, the Committee Amendment prevailed.

L.D. 1817, as amended by the Committee Amendment, was enacted as 30-A M.R.S.A. §§ 831-836. The York County Budget Committee consists of fifteen voting members and one nonvoting member. 30-A M.R.S.A. § 832. The Board of Commissioners must submit a proposed budget to the Budget Committee no later than sixty days before the end of the fiscal year. 30-A M.R.S.A. § 833(1). The Budget Committee, after holding a public hearing, may accept or modify the proposed budget. 30-A M.R.S.A. § 833(2). Once adopted by the Budget Committee, the budget "may be changed only by a majority vote of the county commissioners and a majority vote of all elected members of the budget committee." 30-A M.R.S.A. § 833(4).

Analysis

I will consider your second question first. It is my understanding that the Board of Commissioners, in refusing to fill the position that was authorized by the Budget Committee, is relying upon 30-A M.R.S.A. § 501(1). Section 501(1) states:

All county officers or department heads shall submit to the county commissioners or the County Personnel Board, if one has been established under article 2, the name of any person the county officer or department head proposes to employ or the names of more than one person from which the county commissioners or personnel board are to select a person for employment. The county commissioners or the County Personnel Board may approve the employment of the person or select a person for employment. If approval is withheld or a selection is not made, the county commissioners or the county Personnel Board, within 14 days after the name or names have been submitted, shall notify the county officer or department head of the reasons for their disapproval or failure to make a selection.

It is my opinion that this statute does not give the Board of Commissioners authority over District Attorneys' hiring decisions, and, even if it does, it does not permit the Board to

exercise its authority so as to effectively veto budget decisions made by the Budget Committee.

First, Section 501(1) gives the Board of Commissioners authority over hiring decisions made by "county officers" and "department heads," and District Attorneys are neither. "County officers" are defined as "the commissioners, treasurer, sheriff, register of deeds and register of probate of a county." 30-A M.R.S.A. § 1(2). District Attorneys are not included in this definition, and are thus not county officers.

"Department heads" is not defined. A reasonable interpretation, though, is that a department head is a person who oversees a particular unit of county government. District Attorneys' offices are not units of county government. Indeed, in many cases, a single District Attorney serves a prosecutorial district made up of multiple counties. Further, District Attorneys are elected officials and are "officers of the State." 30-A M.R.S.A. § 256. Such status belies the proposition that District Attorneys are county department heads.

The fact that District Attorneys may supervise some clerical staff who are county employees does not mean that District Attorneys are county department heads. They are still state officers and supervise Assistant District Attorneys, who are also state officers. I note, too, that 30-A M.R.S.A. § 281 does not require counties to provide clerical staff to District Attorneys, but instead states that county commissioners shall give District Attorneys "sufficient funds" to hire clerks. 30-A M.R.S.A. § 281(1). That counties have chosen to meet this obligation by providing staff directly does not convert District Attorneys into county department heads.

Even if District Attorneys were to be considered "county officials" or "department heads," the authority of the Board of Commissioners under Section 501(1) is, in my opinion, limited to approving or rejecting a specific candidate based upon the candidate's particular merits and qualifications. It does not give the Board the authority to effectively veto a budget decision made by the Budget Committee.

In interpreting a statute, courts usually start with the plain meaning of the language used. *See, e.g., Coker v. City of Lewiston*, 1998 ME 93, ¶ 7, 710 A.2d 909, 910. Here, though, the plain meaning is of little help because Section 501(1) does not indicate one way or the other whether the Board of Commissioners may reject a candidate for budget reasons. Given this ambiguity, it is appropriate to attempt to determine the Legislature's intent in enacting Section 501(1), and then interpret the statute in accordance with that intent. *Mahaney v. State*, 610 A.2d 738, 741 (Me. 1992); *Greaves v. Houlton Water Co.*, 143 Me. 207, 212 (Me. 1948); *see also Paradis v. Webber Hospital*, 409 A.2d 672, 675 (Me. 1979) ("Of course, legislative intent is always of fundamental importance.").

Two provisions in Section 501 provide clues to the Legislature's intent. First, Section 501(1) states that county officers and department heads who wish to fill a

position are to submit the names of the candidates. Second, Section 501(2) is captioned "qualifications" and states that county employees are to be hired without regard to political affiliation and solely upon their individual qualifications. These two provisions indicate that the Legislature's intent was that the Board of Commissioners would review the merits of individual candidates. Nothing suggests that the Legislature intended that Section 501(1) would be used as a budgetary tool.

Further, interpreting Section 501(1) to permit the Board of Commissioners to refuse to fill a position for budgetary reasons would frustrate the Legislature's intent in creating the Budget Committee. As is discussed above, the Legislature, in creating the Budget Committee, clearly intended that the Committee would have ultimate authority over the budget. Indeed, the Legislature considered and rejected a proposal that the Committee serve in only an advisory capacity. To interpret 501(1) to allow the Board of Commissioners to refuse, for budgetary reasons, to fill a position created by the Budget Committee would frustrate the Legislature's intent that it is the Budget Committee, and not the Board of Commissioners, that makes the final budget decisions.

In this respect, the present situation is similar to one involving the Androscoggin County Sheriff's Office in 1984. There, the Sheriff requested, and the Legislature approved, a county budget that included money to create a new position. The Androscoggin County Commissioners, though, refused to create the position. This Office opined that "the authority of the County Commissioners to control expenditures is exercised within the bounds established by the legislatively approved budget and must not be exercised in such a way so as to frustrate the legislative intent which is expressed therein." Opinion of the Attorney General, 1984 Me. AG Lexis 11 (Apr. 27, 1984). Here, while it is now the Budget Committee and not the Legislature that sets the budget, the same analysis applies. The authority of the County Commissioners must be exercised within the bounds established by the budget, as set by the Budget Committee.²

Finally, while the Legislature gave counties the option of either directly providing office space to District Attorneys or paying for office space, it did not give counties such an option with respect to clerical staff. Compare 30-A M.R.S.A. § 281(2) to § 281(1). So, the Legislature presumably intended that County Commissioners would provide funding for clerical staff, but would not exercise any authority over individual hiring decisions. Interpreting Section 501(1) to permit the Board of Commissioners to review a District Attorney's hiring decisions would frustrate this intent.

² Also relevant is a case from New York. In *Poillucci v. Pattison*, 466 N.Y.S.2d 360 (A.D.2 Dept. 1983), the County Executive proposed a budget to the County Legislature that included the creation of new positions. The County Legislature modified the budget to eliminate the new positions. *Id.* at 361. But, the County Executive vetoed the modifications and the County Legislature failed to override the veto. *Id.* So, under applicable law, the budget that went into effect included the new positions. *Id.* Subsequently, though, the County Legislature passed a "salary resolution" that did not allocate any funds to pay the salaries for the new positions. *Id.* The Court held that the County Legislature had no authority to refuse to fund positions that had been validly created as part of the budget process: "positions [established through the budget process] cannot be abolished by the adoption of a salary resolution which is inconsistent with the budget." *Id.* at 363.

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With respect to your second question, then, it is my opinion that the Board of Commissioners cannot refuse to fill a position that was created by the Budget Committee. Section 501(1) does not apply to District Attorneys because they are neither "county officers" nor "department heads." And, in any event, the Board of Commissioners does not have the authority under Section 501(1) to take actions that would effectively veto a budget decision made by the Budget Committee. The Legislature clearly intended that the Budget Committee would have final authority over the budget, and, in exercising its authority, the Board must respect that intent.³

With respect to your first question, I am not aware of any legal authority that would require the Board of Commissioners to post the position that was created by the Budget Committee. On the other hand, I am not aware of any legal authority that would preclude you from advertising the position yourself.

I hope this information is helpful to you. Please let me know if I can be of further assistance.

Sincerely,



G. STEVEN ROWE
Attorney General

³ To the extent that the Board of Commissioners relies on 30-A M.R.S.A. § 102, the reliance is misplaced. Section 102 gives the Board "final authority over the operation of all county offices by elected or appointed county officials." As is discussed above, District Attorneys are not county officials, and their offices are not county offices. And, as with Section 501(1), any authority the Board has under Section 102 may not be exercised so as to effectively veto budgetary decisions made by the Budget Committee.