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Memorandum

TO: **Sen. Peggy Rotundo**
Rep. Jeremy Fischer
Co-Chairs, Committee on Appropriations and Financial Affairs
123rd Maine Legislature

FROM: **Attorney General Steve Rowe**

DATE: **January 2, 2008**

SUBJECT: **Governor's Curtailment Power**

Attached are documents summarizing the law governing the Governor's curtailment powers. If you have any questions regarding these documents, please contact Chief Deputy AG, Linda Pistner at 626-8820 or me at 626-8599. Thank you.

OVERVIEW OF THE LAW GOVERNING THE BALANCED BUDGET REQUIREMENT AND THE GOVERNOR'S CURTAILMENT POWER

Summary. The curtailment statute provides a short term mechanism to ensure that State government does not overspend its revenues in violation of the constitutional requirement that the budget be balanced, by authorizing the Governor to curtail allotments until the Legislature is able to take action to address revenue shortfalls. The statute has been upheld at the Superior Court level against constitutional challenge in a decision that affords substantial deference to the Governor in his exercise of the curtailment power.

The balanced budget requirement. The requirement that the State budget be balanced originates from the limits imposed on the state's indebtedness by Me. Const. Article IX, § 14 (tab 1). Section 14 prohibits the creation of debts or liabilities on behalf of the State which in the aggregate "at any one time, exceed two million dollars." As noted in Attorney General Opinion 83-8 (tab 2), this provision "guarantees that the State's budget will be balanced and precludes deficit finanacing." Op. Atty. Gen. 83-8, p. 2.

The Governor's authority to curtail allotments. Under 5 M.R.S.A. §1668 (tab 3), the Commissioner of Administrative & Financial Services is required to report to the Governor "[w]henever it appears...that the anticipated income and other available funds of the State will not be sufficient to meet the expenditures authorized by the Legislature," and to send a copy of that report to the Senate President and Speaker of the 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." This language authorizes (though it does not require) the Governor to curtail allotments in order to bring budgeted expenditures into alignment with anticipated revenues and other income.

Statutory standards for exercise of the curtailment power. Section 1668 imposes two limitations on exercise of the curtailment power: allotment curtailments must be equitable, and no allotment may be terminated by curtailment. The statute also requires that curtailments "insofar as practicable, be made consistent with the intent of the Legislature in authorizing these expenditures."

There is one judicial decision providing guidance from the courts concerning the interpretation and application of §1668, *Butterfield v. Department of Human Services* (tab 4). In that case, the Superior Court upheld an 80% cut to the Maine Child Care Voucher Program which supported child care for children of low income parents who were working or pursuing further education; this cut was imposed by a curtailment order issued by then Governor John McKernan on December 31, 1990. The Court's opinion addressed a number of challenges to both the statute and its application to the Child Care Voucher Program.

a. In rejecting the constitutional claim of improper delegation of legislative power: "[I]t is important to recognize that §1668 is hardly the statutory equivalent of a constitutional line item veto provision. 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 [§1668] recognizes that prompt action to curtail expenditures may be necessary once a shortfall of revenues is perceived. This allows the impact of reduced expenditures to be spread over the longest period of time, with consequent lesser disruption than if the same shortfall had to be accommodated n a very short time at the end of the fiscal year." *Butterfield* opinion, pp. 4-5.

b. On the Legislature's intent in enacting §1668: "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 a device to assure responsible fiscal management of revenue shortfalls on a temporary basis, pending legislative review and ultimate legislative control of the expenditure process. See Statement of Fact, Senate document No. S-526, 107th Legislature (1976); 1976 Maine Legislative Record pp. 971-972." *Butterfield* opinion, pp. 5-6

c. On what is "equitable": "Because of the highly temporary nature of the expenditure curtailment authority which §1668 extends to the Governor, the directive that such allotment curtailments be imposed "equitably" is not so vague a standard as to render the statute unconstitutional. Essentially, this statute directs that program cuts must be fair, but need not necessarily be imposed equally by percentage. This recognizes the maxim that there is perhaps no greater unfairness than absolute equality mechanically imposed across a broad spectrum of persons or programs. The term "equitably" implies making of choices rather than uniform, across the board equality such as would have been directed if the term "equally" had been used. There is the protection, however, that these cuts "equitably" imposed cannot be used as a subterfuge to absolutely terminate any program allotment." *Butterfield* opinion, p. 6.

d. In concluding that curtailment of the Child Care Voucher funds was not an unconstitutional impoundment: "...there is a constitutional mandate that regardless of amounts of funds appropriated, expenditures may not exceed revenues, as state borrowing authority is severely restricted, Me. Const. Art. 9, §14... [A]uthority which has been provided in §1668 is simply being utilized to assure, as the Constitution requires, that expenditures do not exceed revenues. Absent the existence of §1668, it may well be that the executive would have responsibility, on finding no money in the till, to decline to make expenditures not covered by revenues. To do anything else would be violative of the constitutional duty of the executive not to expend funds in excess of revenues." *Butterfield* opinion, p. 7.

e. On the deferential standard of judicial review: "Where there are entitlements, they can be enforced. But policy choices are more appropriately committed to elected Executive and Legislative political leadership. Courts have only a limited and very deferential review of such choice making and priority setting. Here the court is being invited to supersede the Governor who has overall policy responsibility for all state programs and impose a choice regarding expenditure of a finite amount of funds based on a specific petition supported by a compelling policy argument. By the separation of powers doctrine, Art. III, of our Constitution, this choice-making is committed to the Legislature and the Governor."

What is an "allotment" for purposes of the curtailment statute. Title 5, § 1582 provides that appropriations do not become available for expenditure by state agencies until allotted upon the basis of the work program approved by the Governor. The work program procedure outlined in § 1667 essentially requires agencies to allot their appropriations and revenues to the four quarters of the fiscal year, classified by personal services, capital expenditures, and all other expenses. These agency proposals are reviewed by the Governor (with the assistance of the State Budget Officer), who may revise them before giving his approval.

Prepared by the Office of the Attorney General
June 18, 2002

Maine Constitution, Article IX, § 14

Section 14. Authority and procedure for issuance of bonds. The credit of the State shall not be directly or indirectly loaned in any case, except as provided in sections 14-A, 14-B, 14-C and 14-D. The Legislature shall not create any debt or debts, liability or liabilities, on behalf of the State, which shall singly, or in the aggregate, with previous debts and liabilities hereafter incurred at any one time, exceed $2,000,000, except to suppress insurrection, to repel invasion, or for purposes of war, and except for temporary loans to be paid out of money raised by taxation during the fiscal year in which they are made, and except for loans to be repaid within 12 months with federal transportation funds in amounts not to exceed 50% of transportation funds appropriated by the Federal Government in the prior federal fiscal year; and excepting also that whenever 2/3 of both Houses shall deem it necessary, by proper enactment ratified by a majority of the electors voting thereon at a general or special election, the Legislature may authorize the issuance of bonds on behalf of the State at such times and in such amounts and for such purposes as approved by such action; but this shall not be construed to refer to any money that has been, or may be deposited with this State by the Government of the United States, or to any fund which the State shall hold in trust for any Indian tribe. Whenever ratification by the electors is essential to the validity of bonds to be issued on behalf of the State, the question submitted to the electors shall be accompanied by a statement setting forth the total amount of bonds of the State outstanding and unpaid, the total amount of bonds of the State authorized and unissued, and the total amount of bonds of the State contemplated to be issued if the enactment submitted to the electors be ratified. For any bond authorization requiring ratification of the electors pursuant to this section, if any bonds have not been issued within 5 years of the date of ratification, then those bonds may not be issued after that date. Within 2 years after expiration of that 5-year period, the Legislature may extend, by a majority vote, the 5-year period for an additional 5 years or may deauthorize the bonds. If the Legislature fails to take action within those 2 years, the bond issue shall be considered to be deauthorized and no further bonds may be issued. For any bond authorization in existence on November 6, 1984, and for which the 5-year period following ratification has expired, no further bonds may be issued unless the Legislature, by November 6, 1986, reauthorizes those bonds by a majority vote, for an additional 5-year period, failing which all bonds unissued under those authorizations shall be considered to be deauthorized. Temporary loans to be paid out of moneys raised by taxation during any fiscal year shall not exceed in the aggregate during the fiscal year in question an amount greater than 10% of all the moneys appropriated, authorized and allocated by the Legislature from undedicated revenues to the General Fund and dedicated revenues to the Highway Fund for that fiscal year, exclusive of proceeds or expenditures from the sale of bonds, or greater than 1% of the total valuation of the State of Maine, whichever is the lesser.

1 of 2 DOCUMENTS

OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF MAINE

83-8

1983 Me. AG LEXIS 1

March 2, 1983

REQUESTBY:

[*1] Honorable John Diamond
House of Representatives
State House Station #2
Augusta, Maine 04330

OPINIONBY:

JAMES E. TIERNEY, Attorney General

OPINION:

You have requested an opinion from this office on the question of whether the state budget is required to be balanced under current constitutional and statutory provisions, or whether an amendment to the Maine Constitution is necessary to achieve that purpose. This office concludes that the current constitutional and statutory structure contemplates that the state budget be balanced.

It is important at the outset to define the term "balanced budget." It will be assumed, for purposes of this opinion, that a balanced budget is one in which "proposed expenditures [do] not exceed estimated available funds." *People ex rel. Ogilvie v. Lewis, 274 N.E.2d 87, 88 (Ill. 1971).* A review of our relevant constitutional and statutory provisions indicates that they contemplate a budgetary and appropriation process in which no deficits occur.

Maine's constitutional limitation on the incurrence of debt by the State has the effect of ensuring that the State function on a "cash basis." n1 See *Stein v. Morrison, 75 P. 246 (Ida. 1904).* Section [*2] 14 of Art. IX of the Maine Constitution provides, in pertinent part:

The Legislature shall not create any debt or debts, liability or liabilities, on behalf of the State, which shall singly, or in the aggregate, with previous debts and liabilities hereafter incurred at any one time, exceed two million dollars, except to suppress insurrection, to repeal invasion, or for the purposes of war, and except for temporary loans to be paid out of money raised by taxation during the fiscal year in which they are made; and excepting also that whenever two-thirds of both Houses shall it necessary, by proper enactment ratified by a majority of the electors voting thereon at a general or special election, the Legislature may authorize the issuance of bonds on behalf of the State at such times and in such amounts and for such purposes as approved by such action. . . .

Thus, § 14 prohibits the State from incurring long-term debt in the amount of more than $2,000,000, except for certain specified emergencies, without a vote of the people. By requiring the State to function on its revenues and by prohibiting loans except under carefully limited circumstances, the Maine Constitution guqrantees [*3] that the State's budget will be balanced and precludes deficit financing.

n1 It is true that certain states do have both debt limits similar to ours and balanced budget requirements. See, e.g., Colo. Const., Art. X, § 16, and Art. XI, § 3. The language of the balanced budget provisions, however, is similar to the language of our budget statutes. Moreover, where a state is limited in its power to incur debt, that state's budget must ultimately balance in the sense that anticipated expenditures must equal estimated revenues, because, under such limitations, the need for state debt must be anticipated by the legislature.

The specific statutory provisions which govern the budgetary process in Maine are consistent with the mandate of Art. IX, § 14, in that they contemplate that a balanced budget will be submitted to the Legislature. *5 M.R.S.A. § 1663*, setting out the scope of the budget, provides that,

The budget of State Government . . . shall set forth all proposed expenditures for the administration, operation and maintenance of the departments and agencies of the State Government; all interest and debt redemption charges during each fiscal year and all [*4] expenditures for capital projects to be undertaken and exeucted during each fiscal year of the biennium.

It goes on to require that

the state budget . . . set forth the anticipated revenues of the State Government and any other additional means of financing expenditures proposed for each fiscal year of the biennium.

Section 1664 of that Title requires that Part 1 of the budget

shall embrace a general budget summary setting forth the aggregate figures of the budget in such manner as to show the balanced relations between the total proposed expenditures and the total anticipated revenues together with the other means of financing the budget. . . .

Section 1666 of Title 5 similarly anticipates a budget based on

estimates . . . of the needs of the various departments and agencies and the total anticipated income of the State Government during the ensuing biennium.

Thus, the specific provisions of the budget statutes strongly support the proposition that Maine is to have a balanced budget. n2

n2 Indeed, the language of our statutes bears a strong similarity to language found in other states' constitutions which has been characterized by the courts as requiring a balanced budget. See, e.g., Mass. Const., Art. 63, § 2; *Opinion of the Justices, 376 N.E.2d 1217, 1225 (Mass. 1978)*. See, n. 1, supra.

[*5]

Other statutes dealing with the consequences of the budget procedure also suggest a budgetary and appropriation process in which no deficits are to occur. Sections 1511 and 1544 of Title 5 establish procedures dealing with budget surpluses. No such statutes exist for deficits. Section 1668 establishes a method for temporarily curtailing allotments where it "appears . . . that the anticipated income and other available funds of the State will not be sufficient to meet the expenditures authorized by the Legislature."

The specific constitutional and statutory provisions discussed herein therefore have the practical effect of requiring this State to function on a balanced budget. I hope this information addresses your concern. Please do not hestitate to call on us if this office can be of further service.

Legal Topics:

For related research and practice materials, see the following legal topics:
Constitutional LawAmendment ProcessGovernmentsState & Territorial GovernmentsGeneral OverviewTax LawFederal Income Tax ComputationTax AccountingGeneral Overview

Title 5, §1668, Temporary curtailment of allotments

§1668. Temporary curtailment of allotments

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. [1991, c. 780, Pt. Y, §49 (amd).]

The Governor shall immediately upon the curtailment of any allotment, notify the President of the Senate and the Speaker of the House and the majority and minority leaders of the Senate and House 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. [1975, c. 771, §77-A (new).]

PL 1975, Ch. 771, §77-A (NEW).
PL 1985, Ch. 785, §A59 (AMD).
PL 1991, Ch. 780, §Y49 (AMD).

Butterfie

STATE OF MAINE
KENNEBEC, SS.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. CV-91-29

HEIDI BUTTERFIELD, et al.,

Plaintiffs

v.

DEPARTMENT OF HUMAN SERVICES,[1]

Defendants

OPINION AND ORDER

This matter is before the court on plaintiffs' Complaint and Motion seeking a preliminary injunction to prevent termination of payments for approximately 700 children whose child care is supported by the Maine Child Care Voucher Program. Without objection, the court has approved plaintiffs' motion to join as a class of plaintiffs all persons whose participation in the Voucher Program is being terminated as a result of spending cuts imposed by the Department of Human Services in order to meet its reduced allotment.

The Maine Child Care Voucher Program supports child care for children of low income parents who are working or advancing their education. Without the Voucher Program, many of these low-income

[1]As originally filed, the suit named Governor John R. McKernan, Jr. and Commissioner Rollin T. Ives of the Department of Human Services, in their official capacities, as defendants. The Law Court has indicated that the proper defendant in such actions regarding official acts of a department is the named department itself. As this suit involves actions of the Department of Human Services in implementing reduced allotments imposed as a result of an executive order issued by the Governor, the Department of Human Services is more properly the defendant in this matter.

parents would have to terminate their jobs or education programs in order to care for their children. As a result of reduced third quarter allotments the Department of Human Services imposed as a result of an executive order of the Governor dated December 31, 1990, the Child Care Voucher Program, which is supported by the General Fund, is being reduced by approximately 80%. The program has been authorized by legislative appropriation.

The reduced allotments have been imposed by executive order utilizing as authority 5 M.R.S.A. § 1668. Paraphrased, § 1668 provides that where it appears that anticipated revenues will be insufficient to cover expenditures authorized by the legislative appropriation process, the Commissioner of Finance must notify the Governor and the Legislature. Then the Governor "may temporarily curtail allotments equitably so that expenditures will not exceed the anticipated income and other available funds." In addition to equitable curtailments, the law provides that: "No allotment may be terminated pursuant to this section." Section 1668, in pertinent part, reads as follows:

> Whenever it appears to the Commissioner of Finance that the anticipated income and other available funds of the State will not be sufficient to meet the expenditures authorized by the Legislature, he 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 shall, insofar as practicable, be made consistent with the intent of the Legislature in authorizing these expenditures.

The Legislature must be immediately notified of curtailments.

Plaintiffs essentially seek to enjoin the actions of the Department of Human Services taken with regard to the Maine Child Care Voucher Program pursuant to this statute. To obtain a preliminary injunction, plaintiffs must demonstrate four things:

1. That they will be irreparably injured by the challenged action,

2. That they have a reasonable likelihood of success on the merits of their claim,

3. That a balancing of the harms from not issuing the injunction compared with the harms of issuing the injunction tips plaintiffs in their favor, and

4. That the public interest will not be adversely affected by issuance of the injunction.

Department of Environmental Protection v. Emerson, 563 A.2d 762, 768 (Me. 1990); Ingraham v. University of Maine at Orono, 441 A.2d 691, 693 (Me. 1982).

At pre-hearing conference held on January 14, 1991, the State agreed that there is no dispute that the members of the plaintiff class will be irreparably injured by termination of the voucher programs. Many class members will be required to terminate jobs or education programs to care for their children if the Voucher Program is not reinstated soon.

With irreparable harm established, the key focus of the parties' attention has been on plaintiffs likelihood of success on

the merits. Plaintiffs make five claims for relief which must be examined in this determination.

First, plaintiffs assert that actions taken pursuant to 5 M.R.S.A. § 1668 are invalid because § 1668 amounts to an improper and standardless delegation of Legislative power to the Executive.

Second, plaintiffs contend that the actions pursuant to § 1668 are invalid because they represent an illegal impoundment of funds, contrary to the direction of the Legislature in the appropriations process.

Third, plaintiffs assert that imposing an 80% cut in the Child Care Voucher Program while imposing no cuts or significantly lesser cuts in other programs violates the provisions of § 1668 that allotments be curtailed "equitably".

Fourth, plaintiffs contend that the actions with respect to the Maine Child Care Voucher Program are improper because they amount to a termination of the program contrary to the direction of § 1668 that: "No allotment may be terminated . . ."

Fifth, plaintiffs allege that this cut is not made "consistent with the intent of the Legislature."

The five claims will be examined in order. In examining the constitutional claim, it is important to recognize that § 1668 is hardly the statutory equivalent of a constitutional item veto provision. 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. This allows the impact of reduced expenditures to be spread over the longest period of time, with consequent lesser disruption than if the same shortfall had to be accommodated in a very short time at the end of the fiscal year.

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 re-examination 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 a device to assure responsible fiscal management of revenue shortfalls on a temporary basis, pending legislative review and ultimate legislative control of the

expenditure process. See Statement of Fact, Senate Document No. S-526 107th Legislature (1976); 1976 Maine Legislative Record pp. 971-972. This does not amount to an unconstitutional delegation of legislative authority.

Because of the highly temporary nature of the expenditure curtailment authority which § 1668 extends to the Governor, the directive that such allotment curtailments be imposed "equitably" is not so vague a standard as to render the statute unconstitutional. Essentially, this statute directs that program cuts must be fair, but need not necessarily be imposed equally by percentage. This recognizes the maxim that there is perhaps no greater unfairness than absolute equality mechanically imposed across a broad spectrum of persons or programs. The term "equitably" implies making of choices rather than uniform, across the board equality such as would have been directed if the term "equally" had been used. There is the protection, however, that these cuts "equitably" imposed cannot be used as a subterfuge to absolutely terminate any program allotment.

The court also determines that there is no unconstitutional or illegal impoundment, violative of the appropriations process, in implementation of the allotment curtailments pursuant to § 1668. Much of the impoundment law cited to the court developed from federal case law arising when federal officials unilaterally refused to expend sums appropriated for specific purposes in certain programs in the early 1970's. In those instances, while federal officials may have disagreed with the necessity of the

expenditures, there was no question of availability of funds to make the expenditures.

The instant case presents a very different situation than the "impoundment" cases of the early 1970's. No one disputes the existence of the shortfall. There is no issue of a claimed shortfall being used as a pretext to cut disfavored programs. Further, there is a constitutional mandate that regardless of amounts of funds appropriated, expenditures may not exceed revenues, as state borrowing authority is severely restricted, Me. Const. Art. 9, § 14. This necessarily implies that where projected revenues are less than authorized expenditures, some entity must decide not to make commitments that cannot be backed up with revenues. Instead, authority which has been provided in § 1668 is simply being utilized to assure, as the Constitution requires, that expenditures do not exceed revenues. Absent the existence of § 1668, it may well be that the executive would have responsibililty, on finding no money in the till, to decline to make expenditures not covered by revenues. To do anything else would be violative of the constitutional duty of the executive not to expend funds in excess of revenues. Accordingly, the court finds the impoundment cases and claims regarding improper impoundments inapplicable to this situation.

Thus, the court determines that there is no constitutional infirmity with 5 M.R.S.A. § 1668 and the allotment curtailment process initiated by the Executive Order of December 31, 1990 pursuant to 5 M.R.S.A. § 1668.

The court now turns to the question of whether the curtailment process, as applied to the Child Care Voucher Program, is violative of the "equitably", "no termination" or "legislative intent" provisions of § 1668. Before addressing those issues directly, the court must first examine the standard of review which the court will apply to its determinations.

Courts regularly take actions requiring expenditure of public funds. Those actions are generally taken in areas where the court finds a regulatory, statutory or constitutional entitlement to or mandate for expenditures. However, this case is presented in a slightly different posture than most entitlement or mandate enforcement cases. There is an appropriation authorizing the expenditure of general funds for the Child Care Voucher Program. However, the program is not an "entitlement" program as such. Its benefits are discretionary subject only to general requirements of nondiscrimination and fairness in application. No particular person could claim or enforce entitlement to program benefits or to program benefits at a specific level. In fact, it is precisely because this program is not an entitlement program that, as the Department of Human Services indicated at hearing, this program has taken a heavier "hit" than larger entitlement programs to which specific eligible persons might enforce entitlements to benefits at specific levels.

The court is being asked to enforce the appropriations authorization and require expenditures in a context where it has been determined, in findings of the Executive Order, that there is

a finite amount of funds which are insufficient to pay the total of the expenditures authorized by all General Fund appropriations. Accordingly, if the court determines to require expenditure of part or all of the authorized but not allotted funds for child care vouchers, there will necessarily be a greater shortage of funds available for other General Fund supported programs. In effect, the court would involve itself in making choices, over the entire range of General Fund supported programs as to which programs are entitled to support and which are not. Certainly, on a case-by-case basis, it may be possible to make a particularly compelling claim that certain curtailed expenditures should be spent for the public good. That is clearly the case here. As a matter of policy, the case for continuation of full expenditures for the Child Care Voucher Program may be compelling indeed. However, the policymakers who have responsibility to make these choices at the executive or legislative level have a general overview and mandate to consider and establish priorities for all of the programs supported by the General Fund. That is a role for which courts are particularly ill suited. Courts respond to specific claims regarding specific cases. Where there are entitlements, they can be enforced. But policy choices are more appropriately committed to elected Executive and Legislative political leadership. Courts have only a limited and very deferential review of such choice making ad priority setting.

Here the court is being invited to supersede the Governor who has overall policy responsibility for all state programs and

impose a choice regarding expenditure of a finite amount of funds based on a specific petition supported by a compelling policy argument. By the separation of powers doctrine, Art. III, of our Constitution, this choice-making is committed to the Legislature and the Governor. The choice as to whether a finite amount of funds is more approximately spent on full funding for child care vouchers, correctional programs, health care, fish hatcheries or regulating hairdressers is constitutionally committed to the elected political leadership of the State.

The court may review the process by which choices are made if there are legal flaws in the process by, for example, implementing the process in a discriminatory manner violative of provisions such as Article I, § 6A of the Maine Constitution or the Maine Human Rights Act, 5 M.R.S.A. § 4551 et seq. The court may review the process if the mandate of the process -- in this case the mandate of § 1668 for broad based cuts "equitably" distributed is violated by, for example, focusing all cuts on one or very few programs. However, such legally significant flaws in the allocation process do not appear on the record that has been developed in this case. Nor does it appear that the program is being terminated. If the Child Care Voucher Program was being terminated, an argument might be made that, as it is a specific line item in the appropriation bill, this line item amounts to an allotment which cannot be terminated pursuant to § 1668. There is a reduction of 80% in General Fund expenditures for the program. That is not termination. It is within the range of discretion

which the political leadership which has general responsibility for allocating priorities and making choices may impose without inference by the court.

The court also finds no violation of legislative intent in the allotment curtailment that has been imposed. The Legislature has given other programs higher priority by creating entitlement to their benefits. The greater cuts to this program, to preserve the entitlement programs, recognize that legislative priority.

Courts involve themselves only reluctantly in what are ultimately political decisions and then respond only to specific flaws in the decision-making process to address the flaw or to enforce a specific entitlement. As the court cannot find (1) a legally significant flaw, such as bias, in application of the allotment curtailment process or (2) an entitlement of a specific person, or class of persons, to a specific expenditure or a specific level of expenditure, or (3) clear violations of specific language of § 1668, the court does not involve itself further in the process. This necessarily deferential standard of review is mandated by the essentially political nature of the decisions which must be made curtailing allotments across the board, in an equitable manner, to bring expenditures into line with revenues well below those necessary to support all authorized expenditures.

As the court finds that the plaintiffs have not demonstrated reasonable likelihood of success on the merits, plaintiffs' Motion for Preliminary Injunction must be denied.

Therefore the court orders and the entry shall be:

Plaintiffs' Motion for Preliminary Injunction DENIED.

DATED: January 17, 1991

DONALD G. ALEXANDER
JUSTICE, SUPERIOR COURT

Citation/Title
Me. Op. Atty. Gen. No. 90-1

*363 Office of the Attorney General
State of Maine

Opinion No. 90-1
January 12, 1990

Honorable John R. McKernan, Jr.
State House Station #1
Augusta, ME 04333

Dear Governor McKernan:

This is in response to your inquiry of January 11 whether Maine law requires you to ensure that the State budget for fiscal year 1991 is in balance prior to the commencement of that year on July 1, 1990. For the reasons which follow, it is the opinion of this Department that you are under no such obligation.

As set forth more fully in the attached Opinion of the Attorney General of March 2, 1983, there are two legal obligations concerning the balancing of the State budget. First, Article IX, Section 14 of the Maine Constitution prohibits the State from incurring any debts or liabilities in excess of $2,000,000, unless bonds to cover any debt or liability in excess of that amount are approved by the Legislature and the people. Second, Section 1664 of the State Budget Act, 5 M.R.S.A. §§ 1661 et seq., requires that the Governor submit a budget for each biennium showing "the balanced relations between the total proposed expenditures and the total anticipated revenues together with the other means of financing the budget for each fiscal year of the ensuing biennium, . . ."' Op. Me. Att'y Gen. 83-8.

The second of these requirements is not implicated by your question, since it relates only to the submission of a proposed budget at the outset of each biennium. The first requirement, however, does impose upon the State government the obligation not to overspend (in excess of $2,000,000) actual revenues (and other available funds). Thus, during any one fiscal year, if insufficient funds are on hand to meet new debts or liabilities, no such obligations (in excess of $2,000,000) can be incurred. Article IX, Section 14 of the Maine Constitution, however, does not require you to take any particular step in advance of the actual event of such a shortfall. As we understand it, no shortfall is projected for fiscal 1990 in any case.

With respect to your question about how you may act to assure that the budget remains in balance, the answer depends on the circumstances. First, and most obvious, you and the Legislature may enact an amended budget for the biennium to take into account projected reductions in revenues. Second, if it appears that revenues will be insufficient to meet budgeted expenses, you may "'temporarily curtail"' allotments following the procedures set forth in 5 M.R.S.A. § 1668.

As the attached opinion reflects, that section requires an explanation of the impact of such curtailments so that the Legislature may amend the budget should it choose to do so in response to your action. Op. Me. Att'y Gen. 80-65.

This leads to your final question about FY 1991. Should the Legislature adjourn without enacting an amended balanced budget, you could exercise your allotment curtailment powers in fiscal 1991 to assure a balanced budget for that year. That power is, as the attached opinion by Attorney General Cohen makes clear, restricted to temporary curtailments of allotments, on an emergency basis.

I hope the foregoing answers your questions. Please feel free to reinquire if further clarification is necessary.

Sincerely,

James T. Kilbreth

Chief Deputy Attorney General