

MAINE STATE LEGISLATURE

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March 18, 1932

To Frank H. Holley, State Tax Assessor
Re: Administration of Gasoline Tax

I have your inquiry regarding the fund from which transfers may be made to cover prospective shortage in the sum necessary for the payment of rebates. P. L. 1931, Chapter 251, setting up the general highway fund, apportions \$190,000 for this purpose.

It seems to me that such shortage can be made up by transfer from the remainder of the fund available according to the terms of the act "for the maintenance of state and state aid highways". Shortages in sums appropriated for the purpose of carrying on activities in accordance with law typically come from the contingent fund, but transfers are permitted by law between various appropriations in the same department.

The \$190,000 referred to above is technically not appropriated, but apportioned from the collections of certain revenues, the largest part of which is made up by the gasoline tax.

In principle it is certainly fair and reasonable that at least rebates of sums so collected, and by the same token the expenses of administration, should be defrayed from the sums collected and not from the contingent fund. It would be rather absurd for the state to collect gasoline tax moneys at four cents per gallon from gasoline used in motor boats, apply these sums to road maintenance, and pay back three-fourths of the amount from the contingent fund produced by other state revenues.

This is what might be the ultimate outcome of taking rebate moneys from the contingent fund. If a technical justification is required for preventing this absurdity by transferring the necessary sum from the remainder of the general highway fund, it may be found in the legislation permitting the transfer of appropriations within a department. The payment of rebates is, of course, made by the state treasury on the certificate of your department, and the expenses of administration are charged to your department; but as a practical matter these expenses are in connection with the highway department, since the highway fund which your department collects is collected for the benefit of highways.

I should say, therefore, that for the single purpose of solving the problem which your question presents, it might properly be said that these funds are transferred within the same department. This theory would not permit a transfer to cover the general overhead of the department, but would logically justify such a transfer to cover not only the rebates but also the expense of that part of your department which is definitely allocated to the collection of the gasoline tax.

Such transfer, of course, is subject to the approval of the auditing officer and the Governor and Council. This gives the necessary check on such transfers and protection to the public funds against an excessive or unjustified transfer.

Clement F. Robinson
Attorney General