

MAINE STATE LEGISLATURE

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STATE OF MAINE

R E P O R T

OF THE

ATTORNEY GENERAL

for the calendar years

1949 - 1950

May 27, 1949

To Fred M. Berry, State Auditor
Re: Highway Funds

In your memo of May 12th, with regard to the audit of the State Highway Department accounts, you refer to Chapter 190, Section 1, Art. II, P&SL 1947, which reads in part as follows:

“An amount not to exceed \$5,300,000.00 may be apportioned by the state highway commission from the unappropriated general highway fund surplus during the biennium ending June 30, 1949, to match federal funds apportioned to the state of Maine under the federal act of 1944.”

And to Subsection I, Part II, which reads:

“The unappropriated general highway fund surplus may be apportioned at the discretion of the state highway commission for the following purposes: . . .

2. For matching federal funds.”

You state that your analysis of the highway unappropriated surplus account shows transfers of money per Federal Act of 1944 to be \$6,342,699 for the biennium, which exceeds the amount of \$5,300,000 provided in Section H by \$1,042,690.

You state that the interpretation of Mr. Barrows, Chief Engineer of the State Highway Commission, is that it was the intent of the act that such transfers as the Highway Commission deems expedient for matching federal funds may be made. You further state that Mr. Barrows states that in his opinion the intent of the legislative act is confused by the fact that the words “unappropriated general fund surplus” are used in Article H of Chapter 190, P&SL 1947, when it was the intent of the legislature, as evidenced by the totals for the two fiscal years involved, to allocate \$5,300,000 from current income.

Upon the foregoing statement of facts you solicit my advice, as you feel that there is a conflict in the wording of the statutes and would like to have it determined whether or not such transfers as above reflected were legally made from the unappropriated general highway fund surplus account.

After reading the whole of Article H, the first paragraph of which you quoted in your memorandum, I am of the opinion that it was the intent of the legislature that the State Highway Commission should make apportionments from current income for federal aid matching funds. In my opinion it makes no difference whether the funds for matching federal aid come from the unappropriated general highway fund surplus or from current income, because under Article I, the unappropriated general highway fund surplus may be apportioned by the State Highway Commission for the following purposes, as you state in your memo, “. . . 2. for matching federal funds.” I presume current income not being used would go into the general highway fund surplus, but I can appreciate your position from an auditor's standpoint.

In examining Chapter 208, P&SL 1949, I find that under Article H the same language is in the second paragraph as in the 1947 Article H in Chapter 190, authorizing the Commission to enter into agreements with the Federal Works Agency to provide for obligating \$3,600,000 from the general

highway fund to be collected during the fiscal year ending June 30, 1952 for matching federal aid apportioned to the State of Maine under the Federal Highway Act of 1948. Then in place of Article I of Chapter 190 of the Private & Special Laws of 1947, the legislature enacted Section 2 of Chapter 208, P&SL 1949, which authorizes the State Highway Commission to match federal funds from the general highway fund surplus with the approval of the Governor and Council, which was not necessary under the 1947 Act.

For this reason I believe that the transfers of money under the 1947 Act followed the intention of the legislature and were legally made from the unappropriated general highway fund surplus account.

RALPH W. FARRIS
Attorney General

May 27, 1949

To Lucius D. Barrows, Chief Engineer, State Highway Commission

I received your letter of May 12th stating that on October 17th, 1946, a letter was received from Mr. S. advising that he broke the front spring of his car on account of a depression in the floor of the Wiscasset-Edgecomb Bridge. You state that the situation was promptly investigated by R. M. Vickery of your department who reported that the depression was one of the sections where the 1½-inch asphalt plank had broken out. Mr. Vickery called on Mr. S. and no allowance of his claim was made.

You further state that in 1948 Mr. S. took the matter up again and Mr. Wilder advised him that he did not feel that the depression caused by the failure of the asphalt plank justified the allowance of the claim. In January, 1949, Mr. S. reported the matter to Governor Payne and he still feels that he is entitled to payment for this damage.

It is my opinion after having passed over the Wiscasset-Edgecomb bridge several times during the past two years that in order to break a spring in crossing that bridge in any condition that it has been in since October, 1946, a man would have to be exceeding the speed limit. In fact, he would have to be driving very fast for any depression in the flooring of said bridge to cause a front spring of a Ford car to break. It is my opinion that this claim should not be allowed.

I note that there is a speed limit posted on said bridge and that many motorists are passing over the bridge at an excessive rate of speed. If they do so, they are taking their own chances.

RALPH W. FARRIS
Attorney General

May 27, 1949

To Carl L. Treworgy, Secretary, Racing Commission
Re: Chapter 388, P. L. 1949

Your memo of May 19th received, stating that the Commission would like a ruling on the next to the last paragraph of Section 12, which deals with the 8-week night harness racing meets, the question being whether there can be more than one 8-week night racing meet at the same time.