

# MAINE STATE LEGISLATURE

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AUGUSTA, MAINE 04330

March 21, 1974

Daniel Webster, Jr., Acting Director  
Bureau of Planning  
Department of Transportation  
State Office Building  
Augusta, Maine 04330

Re: Use of Highway Funds for Bicycle Facilities

Dear Mr. Webster:

This is in response to your request of January 28, 1974:  
"Can monies from the State's General Highway Fund be used for the purposes of constructing bicycle facilities in the following locations and situations?"

1. "To construct a paved shoulder for bicycle use, and concurrently to provide a painted stripe along the edge of the travel lane for motor vehicles, as an indication of separation between motorized vehicles and bicycles,"

Ans. Yes.

2. "To construct a bikeway separated from the highway traveled way (by a barrier or open space), but adjacent to the aforementioned traveled way and falling within the highway right of way,"

Ans. Yes.

3. "To construct a bikeway paralleling the highway, but outside the highway right-of-way,"

Ans. Yes, provided there were enabling legislation which authorized such construction.

4. "To construct a bikeway outside the highway right of way and completely unrelated to the highway,"

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Ans. Yes, provided there were enabling legislation which authorized such construction.

5. "To provide for the costs of signs to designate a shoulder or path as a bicycle route."

Ans. Yes.

It is well settled law that everyone has an equal right to use the public highways for the purpose of travel by proper means. The right is not an unqualified right. The right is subject to be limited and controlled by the State whenever necessary to promote the safety, peace, health, morals and general welfare of the people. State v. Mayo, 106 Me. 62.

The traveler is not entitled to the whole width of the street for his accommodation and portions may be set off for sidewalks and the use of the remaining width of the way so regulated that other vehicles shall use exclusively different portions thereof and still no one be deprived of his rights. State v. Boardman, 93 Me. 73. In fact, the public authorities could be empowered by the Legislature to set apart a portion of the highway for the exclusive use of bicycles. 7 Am Jur 2d Automobiles and Highway Traffic 175.

The limitation on expenditures of highway funds set forth in Section 19, Article 9, Constitution of Maine, is to prevent diversion of certain revenues to other than highway purposes. Opinion of the Justices, 155 Me. 125. Article 9 declares "construction, reconstruction, maintenance and repair of public highways" to be a highway purpose. And, increased traffic safety - the promotion of safety for members of the public who use the highway is a highway purpose. Ward v. Louisville & Nashville Railroad Company, 402 SW 2d 98.

The conclusion is self-evident: If the Department of Transportation determines public necessity and convenience requires construction of a paved shoulder etc., for the accommodation of bicycles which promotes the general welfare of the people and safety of the user such construction is a highway purpose and a proper subject for expenditure of highway funds.

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Article 9 of the Constitution restricts use of general highway funds to construction, reconstruction, maintenance and repair of those highways "under the direction and supervision of a State department having jurisdiction over such highways." The Department of Transportation cannot construct a bikeway outside existing highway rights-of-way first because it is not authorized to lay out and construct other than "seasonal access roads," 23 M.R.S.A. § 53-A, "State and State-aid highways," 23 M.R.S.A. § 153, "parkways or a free way," 23 M.R.S.A. § 252, "service roads," 23 M.R.S.A. § 253, "controlled access highways," 23 M.R.S.A. § 302, and "a system of State and State-aid highways," 23 M.R.S.A. § 701; and second until such right to lay out and construct a "bikeway" were placed under its jurisdiction, expenditure of general highway funds therefor would be prohibited.

Note your use of the word "bikeway." In question 2, it is used in the context of being a portion of an existing public highway but separated from other traffic on the highway, and in the 3rd and 4th question as a way separate and apart from any existing highway. A "bikeway" laid out, constructed and maintained outside an existing public highway pursuant to legislative direction and in which bikeway there existed the common right of enjoyment would, in fact, be a public highway. 39 Am Jur 2d Highways, Streets and Bridges 1.

A "bikeway" under appropriate legislative authorization would be no less a public way than those ways now provided for by statute: "Seasonal Access Road," "State Highway," "State-Aid Highway," "Parkway," "Freeway," "Service Roads," "Interstate" and "Controlled Access Highways." These ways differ one from the other but are none the less public highways. Accordingly, the test of what is a "highway" is not the type of vehicular use which is served by the way, but rather the test is the right of public use.

The term public highway in a general law should be regarded as having been used in its general sense unless there is reason for believing it was used in a limited sense by the subject matter of the statute in which it is employed. 39 Am Jur 2d Highways, Streets and Bridges 1, Weirich v. State 121 NW 652.

We view a bikeway to be within the ambit of "public highways" as used in Article 19. We construe the words according to the common meaning of the language and further opine it a fundamental duty to construe both statutes and the constitution and ascertain not only from the words themselves but from the context from the

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context from the purpose to be sought. Moulton v. Scully, 111 Me. 428. In Wakem, Receiver v. Town of Van Buren, 137 Me. 127 the Court said "A constitutional provision should receive such a liberal and practical construction as will permit the purpose of the people therein expressed to be carried out, if such construction is reasonably possible." And in Opinion of the Justices, 152 Maine 449, "The language of the constitution should not in our view be extended beyond its plain and ordinary meaning."

Yours very truly,

JON A. LUND  
Attorney General

JAL/jwp