

MAINE STATE LEGISLATURE

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June 29, 1976

Honorable Rodney S. Quinn
15 Green Streets
Gorham, Maine 04038

Dear Rod:

This responds to your letter of June 13 by which you requested an opinion of this office regarding the constitutionality of legislation you are considering to place a progressively larger tax on gasoline and use the proceeds from that tax primarily for research into substitute energy production, and secondarily for construction of improved transportation networks. The problem with this legislation, as your letter recognizes, is Article IX, § 19, of the Maine Constitution which limits use of motor vehicle fuel tax proceeds to highway construction and related activities.

Other than the extent to which, under your proposal, fuel tax revenues would be used for highway construction or related activities as part of improving transportation networks, it is our view that there would be no way to place a tax on motor vehicle fuel and at the same time avoid the problem the prohibition on other uses of that fuel tax specified by Article IX, § 19. Certain assessment of fees against motor vehicle fuel has been permitted despite Section 19, Portland Pipeline Corp. v. Environmental Improvement Commission, 307 A.2d 1 (Me., 1973); but this assessment was for transfer at a point where motor vehicle fuel was like all other petroleum products. Thus fuel might be taxed under special circumstances where it was not yet differentiated as motor vehicle fuel.

The Maine Constitutional limitation is, however, fairly comprehensive in its coverage. Efforts to otherwise tax the registration, operation or use of motor vehicles would

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face similar problems. It might be possible to provide some funding for your goals by use of the excise tax on motor vehicles which is imposed in lieu of the personal property tax and which is specifically exempt from § 19. Other than use of this tax, we do not see, consistent with the provisions of § 19, any clear way to use revenues which are generated by highway related uses for purposes other than more highways.

Very truly yours,

Joseph E. Brennan
Attorney General

JEB/ec