

# MAINE STATE LEGISLATURE

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November 23, 1976

Harry N. Starbranch, Secretary  
of the Senate  
Donald G. Alexander, Deputy

Legislature  
Attorney General

Surplus Material of the Department of Transportation

This responds to your letter of October 29, 1976, in which you raised certain questions relating to charges for disposal of surplus material of the Department of Transportation. Basically, your letter and accompanying correspondence appear to raise the question of whether material of the Department of Transportation which is declared surplus may be transferred to another State agency pursuant to the provisions of 5 M.R.S.A. § 1813-6, or whether such materials must be paid for by the State agency receiving them, in light of the provisions of Article IX, Section 19 of the Maine Constitution relating to non-diversion of highway revenues.

Initially the answer is that material purchased by the Department of Transportation, using highway trust fund revenues, may not be declared surplus and transferred to other State departments without the Department of Transportation receiving reasonable compensation therefor.

Discussion:

The Department of Transportation is supported primarily by highway trust fund revenues. However, the Department of Transportation does receive appropriations from the general fund and from other revenue sources for certain limited purposes. To the extent that material of the Department of Transportation is purchased through funds other than the highway fund, that material, when declared surplus, may be transferred to other State departments, in accordance with the provisions of 5 M.R.S.A. § 1813-6 without other state agencies making payment therefor.

However, the principal issue here relates to that material initially purchased with highway funds and then declared surplus. In this connection, a review of the provisions of Article IX, Section 19 of the Maine Constitution is necessary. Section 19 provides:

"All revenues derived from fees, excises and license taxes relating to registration, operation and use of vehicles on public highways, and to fuels used for the propulsion of such vehicles shall be expended solely for cost administration, statutory refunds and adjustments, payment of debts and liabilities incurred in construction and reconstruction of highways and bridges, the cost of construction, reconstruction, maintenance and repair of public highways and

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bridges, the cost of construction, reconstruction, maintenance and repair of public highways and bridges under the direction and supervision of a state department having jurisdiction over such highways and bridges and expense for state enforcement of traffic laws and shall not be diverted for any purpose, provided that these limitations shall not apply to revenue from an excise tax on motor vehicles imposed in lieu of personal property tax."

In brief, this specifies that Maine highway fund revenues shall not be diverted for any purpose other than the listed purposes of administering and carrying out the highway program. When called upon to interpret this section, the Maine Supreme Court has been quite strict in refusing to allow uses of highway funds even where those uses were indirectly related to the highway construction program. Thus, the Maine Supreme Court has held that highway trust fund monies cannot be used to pay for relocating of utility facilities in the course of reconstructing highways, Opinion of the Justices, 152 Me. 449, 455-456 (1957). The Court has also refused to allow an indemnity fund to cover uninsured motorists from additions to registration fees charged uninsured motorists, Opinion of the Justices, 155 Me. 125, 138-139 (1959), and the Court has refused to allow the Legislature to grant a payment of damages from the highway trust fund for loss of business directly incident to highway construction. Opinion of the Justices, 157 Me. 104, 110-111 (1961).

In light of the rather explicit non-diversion language of Section 19 and the strict interpretation adopted by the Courts, it does not appear that material initially purchased with highway trust funds for administration of the highway construction program could subsequently be declared surplus and diverted to uses other than the highway program without payment being properly made for such material, even by State agencies. As the trust funds themselves cannot be transferred to other State agencies to purchase goods directly, it follows that goods cannot be purchased by the highway trust fund and then diverted to other State agencies for use. To secure the right to such use, the State agencies must make a reasonable payment to the Department of Transportation for the goods, taking into account the amount of use the goods have already had and reasonable depreciation which has been applied to the initial cost of the goods when purchased by the Department of Transportation.

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DONALD G. ALEXANDER  
Deputy Attorney General

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