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*Me. Const. Art. 7, § 19
Highway Fund, Uses*

L.D. 1222

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June 13, 1977

Honorable Edwin H. Greeley
Senate Chairman
Committee on Transportation
State House
Augusta, Maine

Honorable George A. Carroll
House Chairman
Committee on Transportation
State House
Augusta, Maine

Dear Senator Greeley and Representative Carroll:

This responds in part to your request for advice dated June 7, 1977, regarding L.D. 1222, An Act to Provide for the Use of Commuter Passes on the Maine Turnpike. In your request you asked whether § 2 of L.D. 1222 which provides for payment for commuter passes from the Highway Trust Fund is constitutional. You also asked two questions regarding the legality of commuter passes in light of the enabling act for the Maine Turnpike Authority and commitments to bond holders of the Maine Turnpike Authority.

We have not had sufficient time to study all of the enabling and bonding documents to respond to your questions regarding the relationship of L.D. 1222 to the bonding documents. However, we have been able to examine the question relating to the Highway Trust Fund.

In our view, the provisions of Article IX, Section 19, of the Maine Constitution would not permit the expenditures proposed by § 2 of L.D. 1222.

Article IX, 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 of 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 bridges under the direction and supervision of a state department having jurisdiction over such highways and bridges and expense for such 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."

There is no provision in Article IX, Section 19 which specifically authorizes purchase of such matters as commuter passes. They certainly do not fall under the categories of administration or construction, reconstruction, maintenance, repair, supervision, or state enforcement of traffic laws. Nor do we think that authorization of these expenditures can be found by implication in these terms.

The only possible provision which might authorize such expenditures is the provision of Article IX, Section 19, which authorizes payment of "statutory refunds and adjustments" from the Highway Trust Fund. This provision was designed, however, to provide for refunds and adjustments of motor vehicle and other related taxes which are paid in connection with non-highway related uses of the taxed item. This section cannot be interpreted to mean any statutory directive from the Highway Trust Fund which the Legislature might choose to make.

In the past, the Supreme Judicial Court has interpreted Article IX, Section 19 rather strictly, cf. Opinion of the Justices, 146 Me. 249 (1951); Opinion of the Justices, 152 Me. 449 (1957) and Opinion of the Justices, 157 Me. 104 (1961), disallowing, in those cases, some expenses which are arguably

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related to highway use or construction. Accordingly, in light of the strict interpretation mandated by the Supreme Judicial Court and the lack of apparent direct or implied authority for purchase of commuter passes in Article IX, Section 19, we do not believe that funds from the Highway Trust Fund could be used for the purposes stated in § 2 of L.D. 1222.

If you seek a further response to your questions regarding the relationship of proposed commuter passes to the Maine Turnpike Authority Enabling Act and obligations to bond holders, please advise.

Sincerely,

JOSEPH E. BRENNAN
Attorney General

JEB/ec

cc: Hon. Robert M. Farley
Roger Mallar