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*Maine Turnpike Authority
Legislative Delegation of Taxing Power
Maine Turnpike Authority*

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February 17, 1978

Honorable John Jensen
House of Representatives
State House
Augusta, Maine

Dear Representative Jensen:

This responds to your request for an opinion on certain questions regarding a new draft of L.D. 2125, relating to the Maine Turnpike, which you have left with the office. Specifically, with regard to the new draft, you have asked:

Does delegation of the authority to the Department of Transportation to set and revise the rates of toll on the Maine Turnpike, as set forth in the proposed section 336, constitute an unconstitutional delegation of the Legislature's taxing powers?

This question is raised in light of Article IX, Section 9, of the Maine Constitution which provides that: "The Legislature shall never, in any manner, suspend or surrender the power of taxation."

We do not construe the provisions of the proposed § 336 to be inconsistent with the Constitution. The section involves establishment of a user fee for the Maine Turnpike. Further, this user fee, as § 336 makes clear, is not to be a revenue-raising measure but is intended to cover the costs of use of the turnpike. Further, in specifying that the fee is to be set at a rate "sufficient to pay the cost of maintaining, improving and operating the Maine Turnpike," the Legislature has established a specific standard for exercise of the delegated fee-setting power by the Department of Transportation.

As the fees controlled by § 336 would be user fees, not taxes, and as there is a specific standard by which the executive agency is to set these fees, we find no problem with either Article IX, Section 9, or the general common law doctrine that the Legislature cannot delegate its legislative functions to an executive agency.

I hope this information is helpful.

Sincerely,



DONALD G. ALEXANDER
Deputy Attorney General

DGA/ec

cc: Hon. Edwin H. Greeley, Senate Chairman, Transportation Committee
Hon. George A. Carroll, House Chairman, Transportation Committee
Hon. Lawrence P. Greenlaw, Jr.
Roger Mallar, Commissioner, Transportation