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STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04333

February 21, 1980

Senator Jerome Emerson, Chairman
Representative George Carroll, Chairman
Joint Committee on Transportation
State House
Augusta, Maine 04333

Re: Allocations from the General Highway Fund for the State Police

Gentlemen:

This responds to your February 15, 1980 request for an opinion from this office as to whether the Legislature is required, by reason of Article IX, Section 19 of the Maine Constitution, to adjust the existing funding ratio for the State Police as between the General Highway Fund and the General Fund. For the reasons explained below, we are of the opinion that the Legislature is required to adjust the present ratio if, but only if, it determines that the proportion of expenses of the State Police presently funded from the General Highway Fund exceeds those attributable to state enforcement of traffic laws.

As you point out, Section 19 of Article IX of the Maine Constitution provides that General Highway Fund revenues "shall be expended solely for" specifically enumerated purposes including the "expense for state enforcement of traffic laws" and "shall not be diverted for any [other] purpose" This constitutional provision has been strictly construed by our Supreme Judicial Court, which has refused to allow uses of highway funds even where those uses were indirectly related to a highway construction program. See, Opinion of the Justices, 152 Me. 449, 455-56 (1957); Opinion of the Justices, 155 Me. 125, 138-139 (1959) and Opinion of the Justices, 157 Me. 104, 110-111 (1961). Because we are dealing with a provision of the Maine Constitution, the Legislature is obviously bound to adhere to the prohibition against diverting General Highway Funds to unauthorized purposes.

However, the question you have raised, as we understand it, is not what the Constitution means or whether the Legislature must comply with it, but how it should be implemented. You explain in your letter that the 108th Legislature directed the State Auditor

to "evaluate and determine the portion of State Police activities related to highway transportation" so that the Legislature "could consider on a factual basis that portion of the State Police budget which should be supported from the Highway Fund and General Fund respectively." P.L. 1977, ch. 423, Part B, §5. Pursuant to this direction, the State Auditor determined, by letter dated September 26, 1978, that the then existing ratio for State Police funding of 75% General Highway Fund to 25% General Fund should be changed to 65%/35% as a result of a manpower study of the State Police.

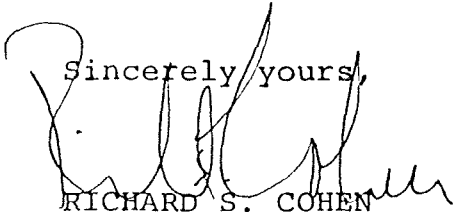
The essence of the question posed in your letter, we think, is whether the Committee on Transportation is constitutionally bound by the State Auditor's determination. In our opinion it is not. It is clear that the Legislature (not the State Auditor) has the responsibility of how to allocate revenues from the General Highway Fund. 23 M.R.S.A. §1651. In our opinion the 108th Legislature did not delegate this responsibility to the State Auditor. Rather, we interpret the 1977 law as directing the State Auditor to assist the Legislature to better enable the Legislature to make a determination.

Moreover, even if one were to interpret P.L. 1977, c. 423 as delegating to the State Auditor the determination of how much of the revenues of the General Highway Fund should be allocated for State Police activities, we do not consider that delegation to be binding on the 109th Legislature. It is well established that the Legislature may enact any law of any character or on any subject unless prohibited by the Constitution. Baxter v. Waterville Sewerage District, 146 Me. 211, 215, 79 A.2d 585, 588 (1951); Jones v. Maine State Highway Comm., Me., 238 A.2d 226, 230 (1968). A corollary to the foregoing is that "a legislature cannot, through the enactment of statutes, preclude future legislatures from altering or repealing those statutes. In short, the Legislature clearly has broad authority to depart from self-imposed restrictions." Op. Atty. Gen., April 12, 1979 at 15. Baxter v. Waterville Sewerage District, supra; Jones v. Maine State Highway Comm., supra. Thus the 109th Legislature has the constitutional power to alter any delegation which may have been made by a previous legislature with respect to allocations from the General Highway Fund revenues.

In the final analysis, then, it is the task of the 109th Legislature to determine whether adjustments are needed to the present funding ratios for the State Police in order to comply with Section 19 of Article IX of the Maine Constitution. If the Legislature determines in good faith that the State Auditor's judgment concerning the allocation of the expenses of the State Police is not accurate and that the existing ratio continues to be appropriate, then it is fully within the power of the Legislature to make that determination. If, on the other hand, the Legislature determines that the State Auditor's evaluation of the funding ratios is accurate, then the Legislature, in conformity with Article IX, Section 19, should change the existing funding ratios.

Please call upon me if I can be of any further assistance in this matter.

Sincerely yours,



RICHARD S. COHEN
Attorney General

RSC:jg

cc: Honorable Joseph E. Brennan
David G. Huber, Chairman Appropriations Committee
Michael D. Pearson, Chairman Appropriations Committee