

# MAINE STATE LEGISLATURE

The following document is provided by the  
**LAW AND LEGISLATIVE DIGITAL LIBRARY**  
at the Maine State Law and Legislative Reference Library  
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied  
(searchable text may contain some errors and/or omissions)

JAMES E. TIERNEY  
ATTORNEY GENERAL



STATE OF MAINE  
DEPARTMENT OF THE ATTORNEY GENERAL  
STATE HOUSE STATION 6  
AUGUSTA, MAINE 04333

January 28, 1985

Honorable Polly Reeves  
House of Representatives  
State House Station #2  
Augusta, Maine 04333

Dear Representative Reeves:

This will respond to your letter of January 8, 1985 in which you request this Department's opinion as to whether monies in the General Highway Fund may be used for various public and/or private mass transportation purposes. In particular, you have asked whether, consistent with Article IX, section 19 of the Maine Constitution, money in the Highway Fund may be used to:

1. purchase public transportation equipment including buses, vans, trolleys, etc?
2. construct or purchase public transportation facilities, such as:
  - a. special highway lanes for buses,
  - b. commuter parking lots for persons using public transportation or private mass transportation (industry owned and operated buses, etc.),
  - c. stations, and
  - d. any other facilities required for the operation of public transportation equipment on Maine's highways?

FEB 8 1985

3. fund the operation and administration of public transportation systems?

For the reasons discussed below, it is the Opinion of this Department that, with the exception of constructing special highway lanes for buses and the construction of commuter parking lots immediately adjacent to highways, Article IX, section 19 of the Maine Constitution prohibits the use of the Highway Fund for the purposes described in your letter.

Article IX, § 19 of the Maine Constitution provides in its entirety as follows:

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 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.

This Office has noted on several occasions that the Supreme Judicial Court has strictly construed the language of Article IX, § 19. See, Opinion of the Justices, 157 Me. 104, 111 (1961) (payment from General Highway Fund to compensate automobile dealer for loss of business due to bridge construction would violate Article IX, § 19); Opinion of the Justices, 152 Me. 449, 455-56 (1957) (use of General Highway Fund to pay for relocation of utility facilities necessitated by highway construction would violate Article IX, § 19). See generally Op.Me.Atty.Gen., February 21, 1980 (No. 80-41); Op.Me.Atty.Gen., June 13, 1977; Op.Me.Atty.Gen., June 29, 1976. In particular, the Supreme Judicial Court has stated, with specific reference to Article IX, § 19, that "[t]he

language of the Constitution should not . . . be extended beyond its plain and ordinary meaning." Opinion of the Justices, 152 Me. at 456.

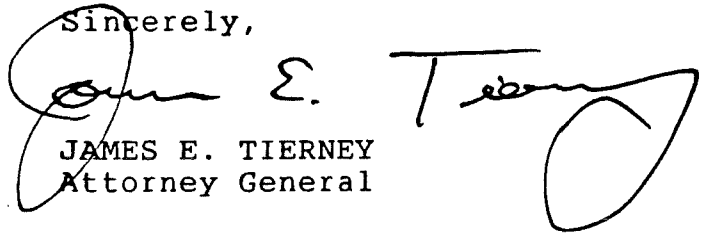
The Constitution expressly provides that the money in the General Highway Fund "shall be expended solely" for the purposes specifically identified in Article IX, § 19 "and shall not be diverted for any purpose." The purchase of public mass transportation equipment, such as buses, the construction of stations or other facilities necessary for mass transportation and the operation and administration of public transportation systems as described in your letter, while arguably indirectly related to highway purposes, do not, in this Department's view, constitute the construction, reconstruction, maintenance or repair of highways and bridges and, therefore, cannot be paid for by the General Highway Fund.

The construction of special highway lanes for buses, however, would appear to fall within the scope of Article IX, § 19, since it would involve the construction or reconstruction of highways. See Op.Me. Atty. Gen., March 21, 1974 (construction of bikeways adjacent or parallel to highway could be paid for from General Highway Fund). For the same reason, the construction of commuter parking lots immediately adjacent or parallel to a highway would be, in this Department's Opinion, permissible under Article IX, § 19.

In view of the conclusion reached above, you have asked whether the proposed constitutional amendment enclosed with your opinion request would be sufficient to authorize expenditures from the General Highway Fund for the purposes described in your letter. The proposal would amend Article IX, § 19 by providing that monies from the General Highway Fund could be used to pay for "the expenses and cost of public transportation facilities and equipment requiring the use of Maine's highways and highway bridges." There would appear to be an inherent ambiguity in the use of the phrase "public transportation facilities and equipment." For example, it is not clear whether Article IX, § 19, if amended as you propose, would limit the use of the General Highway Fund to those transportation systems which are owned and operated by some public entity or whether it would also permit the use of the General Highway Fund for "public transportation facilities and equipment" which are privately owned and operated. Accordingly, this Department would suggest that your proposal be clarified in this regard.

I hope this information is helpful to you, and please feel free to contact this Office if we can be of further assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "James E. Tierney". The signature is written in a cursive style with a large, looping initial "J" and a long, sweeping tail that extends to the right.

JAMES E. TIERNEY  
Attorney General

JET/ec