

MAINE STATE LEGISLATURE

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DIRECTOR, INVESTIGATIONS

June 5, 1991

Senator N. Paul Gauvreau, Chair
Representative Patrick E. Paradis, Chair
Joint Standing Committee on Judiciary
State House Station 115
Augusta, Maine 04333

Dear Senator Gauvreau and Representative Paradis:

You have inquired whether it would be consistent with the provisions of Article IX, Section 19 of the Maine Constitution for the Legislature to appropriate funds from the General Highway Fund to cover the expenses of the District Attorneys' offices in the prosecution of traffic offenses. For the reasons which follow, it is the opinion of this Department that the utilization of the General Highway Fund for this purpose would not be unconstitutional.

Article IX, Section 19 of the Maine Constitution 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 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.

The question which you raise is whether the costs of prosecuting traffic violations by the District Attorneys' offices can be considered an "expense for State enforcement of traffic laws" within the meaning of this provision.

This question is similar to one which was posed to this Department twice before, when it was asked whether the General Highway Fund could be used to fund the expenses of the State Police. In response to those inquiries, the Department indicated that the activities of the State Police in enforcing the State traffic laws clearly fell within the purview of the constitutional provision, and that the General Highway Fund could be used to cover the expenses of the State Police, but only to the extent that those expenses were attributable to such enforcement. Op. Me. Att'y Gen. 81-16; Op. Me. Att'y Gen. 80-41 (copies attached).


There does not appear to be any difference for purposes of the constitutional provision between the activities of the State Police in enforcing the traffic laws of the State and the activities of the District Attorneys' offices in bringing traffic prosecutions, in which the complaining officer may very well be a member of the State Police. That being the case, this Department can see no reason why the General Highway Fund could not be used to fund such expenses.

It should be emphasized, however, that, consistent with the attached prior Opinions of this Department, the constitutional ability of the Legislature to fund the District Attorneys' offices out of the General Highway Fund is limited to that portion of the District Attorneys' budgets which are fairly attributable to traffic law enforcement. Thus, if the Legislature determines to use the General Highway Fund for this purpose, it is constitutionally obligated to make a good faith inquiry and estimate of the portion of the District Attorneys' expenses attributable to this purpose, just as it has done with regard to the budget of the State Police. In making this judgment, the Legislature should be mindful of the fact that the Supreme Judicial Court has on several occasions been quite firm that the General Highway Fund may not be utilized for purposes which are not directly related to those enumerated in

Article IX, Section 19. Opinion of the Justices, 157 Me. 104, 110-111 (1961); Opinion of the Justices, 155 Me. 138-139 (1959); Opinion of the Justices, 152 Me. 449, 455-456 (1957).

I hope the foregoing answers your question. Please feel free to reinquire if further clarification is necessary.

Sincerely,


MICHAEL E. CARPENTER
Attorney General

MEC:sw

80-41

RICHARD S. COHEN
ATTORNEY GENERAL



STEPHEN L. DIAMOND
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DEPUTY ATTORNEYS GENERAL

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.

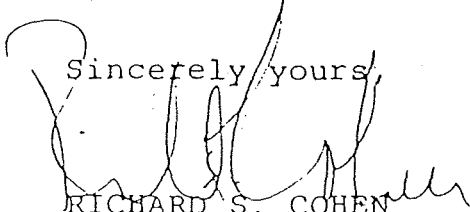
The essence of the question posed in your letter, we think, is whether the Committee on Transportation is constitutionally bound by the State Auditor's determination. In our opinion it is not. It is clear that the Legislature (not the State Auditor) has the responsibility of how to allocate revenues 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

81-16

JAMES E. TIERNEY
ATTORNEY GENERAL



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

February 11, 1981

The Honorable George A. Carroll
State Representative
State House
Augusta, Maine 04333

Dear Representative Carroll:

This will respond to your inquiry regarding the activities of the State Police which may be financed from the General Highway Fund.

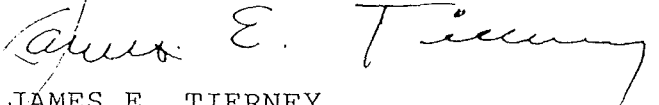
The question you raise was answered in an opinion issued by this Office last year. See Op. Atty. Gen. #80-41. As noted in that opinion, Section 19 of Article IX of the Maine Constitution requires that General Highway Fund revenues "be expended solely" for specifically enumerated purposes including the "expense for state enforcement of traffic laws" and "not be diverted for any [other] purpose. . . ." The constitutional mandate is thus quite clear. General Highway Fund revenues may fund only that portion of the State Police budget which is utilized for the enforcement of the traffic laws.

You have also expressed concern regarding the implementation of the constitutional requirement with respect to the State Police. Put most simply, a determination of the percentage of the State Police budget actually utilized for traffic enforcement is a question of fact which cannot be resolved in a legal opinion. In our view, the Constitution contemplates that the Legislature will make a good faith resolution of this question and that the appropriations from the Highway Fund will be in accordance with its factual conclusions. In short, insuring compliance with art. IX, § 19 of the Maine

Constitution is in the first instance the responsibility of the Legislature.

A copy of our prior opinion, which deals with these questions in more detail, is enclosed. I hope this information is helpful.

Sincerely,



JAMES E. TIERNEY
Attorney General

Enclosure

cc: Honorable David G. Huber, Chairman
Honorable Michael D. Pearson, Chairman
Joint Standing Committee on Appropriations and Financial Affairs