

MAINE STATE LEGISLATURE

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June 20, 1995

Senator Albert G. Stevens, Jr.
Chair, Joint Standing Committee on Transportation
115 State House Station
Augusta, ME 04333-0115

Dear Senator Stevens:

I am writing in response to your request to this Department, asking whether the provision of 5 M.R.S.A. § 135, providing that interest earned on the investments of the Highway Fund be credited to the General Fund, is in violation of Article IX, Section 19 of the Maine Constitution, which established the Highway Fund. For the reasons which follow, it is the Opinion of this Department that the statute is unconstitutional.

Article IX, Section 19 of the Maine Constitution provides in pertinent part:

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 highway purposes, generally].

So far as this Department is aware, since the enactment of this provision in 1944, interest earned on the assets of the Highway Fund has been retained by the Fund. At its first regular session in 1991, however, the Legislature amended 5 M.R.S.A. § 135 to include the following provision:

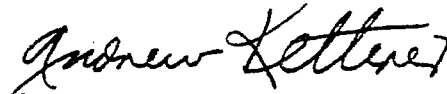
Effective November 1, 1991, interest earned on investments of the Highway Fund must be credited to the General Fund of the State.

Laws of Maine of 1991, ch. 622, § K-1, amending 5 M.R.S.A. § 135, first paragraph. Your question is whether this statute is constitutional, in light of the constitutional provision.

In the Opinion of this Department, the statute is not constitutional. The text of the constitutional provision specifies that not only must all "fees, excises and license taxes" relating to motor vehicle use be expended for highway purposes generally, it also provides that "all revenues derived" from such fees, excises and license taxes be so expended. It thus appears that the drafters of the constitutional provision intended that not only were these fees, excises and license taxes to be deposited into the Highway Fund, but that any additional revenues derived therefrom also be part of the Highway Fund. As such revenues clearly would include interest derived from any investments made by the Fund, such interest must be regarded as part of the Fund, and not subject to diversion for nonhighway purposes. Thus, since the provision of 5 M.R.S.A. § 135 quoted above directs such a diversion, by specifying that interest derived from Highway Fund investments be credited to the General Fund, the provision conflicts with Article IX, Section 18, and is therefore unconstitutional.

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

Sincerely,



ANDREW KETTERER
Attorney General

AK:sw

cc: Governor Angus S. King, Jr.
Senator Dana C. Hanley
Representative George J. Kerr
Co-Chairs, Joint Standing Committee on
Appropriations and Financial Affairs