

MAINE STATE LEGISLATURE

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G. STEVEN ROWE
ATTORNEY GENERAL



Telephone: (207) 626-8800
TDD: (207) 626-8865

STATE OF MAINE
OFFICE OF THE ATTORNEY GENERAL
6 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0006

REGIONAL OFFICES:

84 HARLOW ST., 2ND FLOOR
BANGOR, MAINE 04401
TEL: (207) 941-3070
FAX: (207) 941-3075

44 OAK STREET, 4TH FLOOR
PORTLAND, MAINE 04101-3014
TEL: (207) 822-0260
FAX: (207) 822-0259
TDD: (877) 428-8800

128 SWEDEN ST., STE. 2
CARIBOU, MAINE 04736
TEL: (207) 496-3792
FAX: (207) 496-3291

February 3, 2003

Hon. Christopher Hall, Senate Chair
Hon. Lawrence Bliss, House Chair
Members of the Joint Standing Committee on Utilities and Energy
100 State House Station
Augusta, ME 04333-0100

Dear Senator Hall, Representative Bliss and Committee Members:

You have inquired whether the transfer of \$600,000 from the Conservation Administration Fund of the Maine Public Utilities Commission ("PUC") to the State's General Fund would violate the provisions of the Maine Constitution. We believe that such transfer would not violate the Maine Constitution.

Unless funds are held in trust or are specifically protected by the express terms of the Maine Constitution, the Legislature has discretion in making allocations for any designated governmental purpose, including allocation to the general fund. See ME AG Opinion No. 92-7 (attached).

It is our determination that the funds in the PUC Conservation Administration Fund are not held in trust. There is nothing in Title 35-A M.R.S.A. section 3211 or of which we are aware that suggests that the Legislature intended to establish the Conservation Administration Fund as a trust. Dedicated revenue accounts are, by definition, funds specified to be used for a designated purpose. If this alone were sufficient to render these accounts trust funds, then no dedicated revenue account would be available for reallocation by the Legislature.

I hope this answers your question. Please feel free to inquire again if further clarification is necessary.

Sincerely,

G. STEVEN ROWE
Attorney General

GSR:dp
Attachment



MICHAEL E. CARPENTER
ATTORNEY GENERAL

VENDEAN V. VAFIADES
CHIEF DEPUTY

Telephone: (207) 626-6600
FAX: (207) 287-3145

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

REGIONAL OFFICES:

96 HARLOW ST., SUITE A
BANGOR, MAINE 04401
TEL: (207) 941-3070

59 PREBLE STREET
PORTLAND, MAINE 04101-3014
TEL: (207) 879-4260

December 15, 1992

Sawin Millett, Commissioner
Department of Finance
State House Station #78
Augusta, Maine 04333-0078

Re: Transfer of Trust Monies to General Fund under
Part KKK of Legislative Appropriations Bill

Dear Sawin:

As you know, my office has been in contact with yours regarding the applicability to certain trust funds of Part KKK of the appropriations bill enacted in the last legislative session. Part KKK provides an across-the-board transfer of .9% of accounts to the general fund. It is this office's opinion that Part KKK cannot, however, lawfully effect a transfer to the general fund of monies that the State holds in trust for certain legally designated purposes. Such a transfer would either violate the legal trust relationship by which the State holds the monies involved, or would violate constitutional requirements by which bond or other revenues must be held for expenditure. More detailed legal analysis describing the rationale for this opinion is attached.

In the discussions between my office and yours, the suggestion was made that we provide a concise summary of our views on this issue as it pertains to the trust monies that have been brought to our attention. My purpose then is to simply state what we believe to be the law on the matter and to point out the types of trust-type funds, to the extent known by us, to which this opinion applies. Again, as to the funds described below, an across the board transfer to the general fund as envisioned by Part KKK would violate the trust duties under which the State holds these particular funds. This is in contrast to the applicability of Part KKK to other special or dedicated revenue accounts, held by the State in a non-trust capacity, and over which the Legislature has discretion in making allocations for any designated governmental purpose, including reallocation to the general fund.

These are the funds that have been brought to our attention and from which monies should not be reallocated to the general fund under Part KKK:

Monies in Baxter State Park accounts;

Monies in accounts of Bureau of Parks and Recreation of the Department of Conservation, which were donated to and received by the State with the explicit understanding that the monies would be used for certain park facilities;


Monies in accounts of the Bureau of Public Lands of the Department of Conservation, restricted to the public reserved lands or submerged lands;

Monies raised by bond issues designated for a particular purpose;

Monies in or drawn from highway trust fund accounts.

There may be other trust funds, of which we have not been made aware, and we will respond to these circumstances as they arise. In the meantime, if you have any questions, please let me know.

Sincerely,


MICHAEL E. CARPENTER
Attorney General

MEC/tt

Attachments

cc: Michael D. Pearson, Senate Chair
Legislative Appropriations Committee
Lorraine N. Chonko, House Chair
Legislative Appropriations Committee
Jim Clair
Jack Nicholas