

# MAINE STATE LEGISLATURE

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May 20, 2003

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Senator Christopher Hall, Senate Chair  
Maine State Senate  
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Augusta, ME 04333-0003

Representative Lawrence Bliss, House Chair  
Maine House of Representatives  
2 State House Station  
Augusta, ME 04333-0003

Dear Senator Hall and Representative Bliss:

I am writing in response to your letter of March 21, 2003. Although this office has provided a verbal response, I would like to put that response in writing. Your inquiry follows from the opinion I issued on February 3, 2003, advising that "[u]nless 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." You now ask whether the Legislature can establish a trust sufficient to protect from reallocation to the General Fund dedicated revenue funds such as the telecommunications education access fund established under 35-A M.R.S.A. §7104-B. We have found no legal precedents on this issue. However, for the reasons that follow, it is my conclusion that where the Legislature has exercised its authority to raise funds, even if those funds are dedicated to a specified purpose, its authority to redirect those funds would survive any trust that it could create.

The telecommunications education access fund results from a legislative allocation of certain assessments imposed on telecommunications providers. As noted in your initial letter, other assessments on various utilities are used for purposes such as conservation and support of the Public Advocate. Similarly, a host of other dedicated revenue funds are raised, pursuant to assessments or fees imposed by the State. The resulting funds are public monies, raised by authority of government to be used for public purposes as determined by the Legislature. In administering such funds, agencies are bound by the terms of any governing statutes, but the Legislature is legally constrained<sup>1</sup> only by the terms of the Constitution or the terms of a privately or other non-legislatively established trust from which monies or other property have been given to the State for certain trust purposes.

<sup>1</sup> This opinion speaks only to the legal issues raised by your question.

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While public funds and charitable funds may share some characteristics, they are fundamentally different. Charitable funds are private monies that have been given by a person to be used for an identified purpose that benefits some segment of the public. Public funds, on the other hand, are monies raised by government in one or more ways—through taxation, imposition of assessments or fees, issuance of bonds—that must constitutionally be used for public purposes. Even if the Legislature chose to establish a trust to hold public monies for some specified purpose, establishing such a trust to be irrevocable would amount to the surrender of legislative power. The Constitution does not permit this. At most, the Legislature could be characterized as a trust grantor or settlor that can change its mind about the appropriate use of funds under its control.

Accordingly, the Legislature cannot establish a public funds trust sufficient to prohibit reallocation of funds by subsequent legislative action. I hope this information is helpful.

Sincerely,



G. STEVEN ROWE  
Attorney General

GSR/dp