

JUN-05-2005 09:45 UPLH-RUJM 107 P. 04/05

G. STEVEN ROWE
ATTORNEY GENERAL



STATE OF MAINE
OFFICE OF THE ATTORNEY GENERAL
6 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0006
May 20, 2003

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

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
CARBON, MAINE 04736
TEL: (207) 496-3792
FAX: (207) 496-3291

Senator Christopher Hall, Senate Chair
Maine State Senate
3 State House Station
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 constrained¹ 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.

¹ This opinion speaks only to the legal issues raised by your question.

Senator Christopher Hall, Senate Chair
Representative Lawrence Bliss, House Chair
May 20, 2003
Page 2

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

03-1

G. STEVEN ROWE
ATTORNEY GENERAL



COPY

Telephone: (207) 826-5500
TDD: (207) 826-2222

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

REGIONAL OFFICES:
24 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) 426-8800
128 SWEDEN ST., STE. 2
CARIBOU, MAINE 04736
TEL: (207) 496-3792
FAX: (207) 496-3291

February 3, 2005

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,
B. St. Rowe

G. STEVEN ROWE
Attorney General

GSR:dp
Attachment

Post-It™ Fax Note		7671	Date	6/16/05	# of pages	5
To	Margie McLaughlin		From	JON CLARK		
Co./Dept	PUC		Co.	OPLA		
Phone #			Phone #	7-1670		
Fax #	7-1039		Fax #	7-1275		



MICHAEL E. CARPENTER
ATTORNEY GENERAL

VERDEAN V. MARADEE
CHIEF DEPUTY

Telephone: (207) 525-2500
FAX: (207) 257-3145

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

REGIONAL OFFICES

65 HAWLOW ST., SUITE A
BANGOR, MAINE 04401
TEL: (207) 621-3030

59 PEARL 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.

- 2 -

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 XXX:

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;

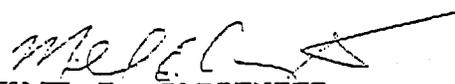
Monies in accounts of the Bureau of Public Lands of the Department of Conservation, restricted to the public reserved lands or submerged lands;

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 W. Chonko, House Chair
Legislative Appropriations Committee
Jim Clair
Jack Nicholas