



STATE OF MAINE  
 OFFICE OF THE GOVERNOR  
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 AUGUSTA, MAINE  
 04333-0001

Paul R. LePage  
 GOVERNOR

**REQUEST FOR OPINION ON QUESTION OF LAW**  
**TO THE JUSTICES OF THE MAINE SUPREME JUDICIAL COURT**  
**FROM THE HONORABLE PAUL LEPAGE, GOVERNOR,**  
**STATE OF MAINE, SUBMITTED PURSUANT TO**  
**ARTICLE VI, SECTION 3 OF THE CONSTITUTION OF MAINE**

To the Honorable Justices of the Maine Supreme Court;  
 From the Honorable Paul LePage, Governor of the State of Maine  
 Submitted pursuant to Article VI, Section 3 of the Constitution of Maine.

**RECEIVED**  
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 Maine Supreme Judicial Court

WHEREAS, the Constitution of the State of Maine at Article IX, Section 19 provides that “[a]ll revenues derived from fees, excises and license taxes relating to the registration, operation and use of vehicles on public highways, and to fuels used for the propulsion of such vehicles shall be expended solely for the cost of administration, statutory refunds and adjustments, payments of debts and liabilities incurred in the construction and reconstruction of highways and bridges...” and for other purposes specified therein; and,

WHEREAS, the Constitution of the State of Maine at Article IX, Section 19 provides further that the revenues specified therein may also be used for the “...expense for state enforcement of traffic laws and shall not be diverted for any purpose...;” and,

WHEREAS, Article IX, Section 19 was proposed for popular approval because funds generated from such revenue sources had been diverted for purposes other than highway purposes; Legis. Rec. 657-658 (1943) (Senator Dunbar), Legis. Rec. 753 (1943) (Representative Osgood); Legis. Rec. 1061-1062 (1943) (Representative Ward), and, there was concern that



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some highway funds had been diverted for other than highway purposes and never returned.

Legis.. Rec. 1140-1141 (1943) (Senator Dunbar); and,

WHEREAS, although a law had been enacted by popular vote prohibiting the diversion of highway funds for other than highway purposes, the Legislature had amended that law allowing for such diversions provided they were not permanent, P.L. 1937, Ch. 1; and,

WHEREAS, Article IX, Section 19, was proposed for popular approval because of concern that the existing statutory restriction was insufficient to prevent the diversion of highway funds for other than highway purposes. Legis. Rec. 749-750 (1943) (Representative Cross); Legis. Rec. 1061-1062 (1943) (Representative Ward); and,

WHEREAS, when Article IX, Section 19 was considered by the Legislature, there was a particular and expressly stated concern that highway funds had been used to support all functions of the Bureau of State Police even though not all the functions of the Bureau of State Police involved highway-based services. Legis. Rec. 753 (1943) (Representative Osgood); and,

WHEREAS, in 1934 Congress enacted a statute that provided that federal highway funds would be withheld from any state which did not apply gasoline taxes and other taxes on motor vehicle owners and operators to highway purposes, now cited as 23 U.S.C. §126; and,

WHEREAS, at the time Article IX, Section 19 was under consideration by the Legislature, there was concern that the State of Maine allowed the diversion of highway fund monies for other than highway purposes and, therefore, highway funding from the United States to the State of Maine could have been placed at risk. Legis. Rec. 1056 (1943) (Representative Barnes); Legis.. Rec. 1058-1059, (1943) (Representative Murchie) and,

WHEREAS, Article IX, Section 19 was submitted to the people of Maine for their approval and was duly approved by the people of Maine and thereafter incorporated into the Constitution of Maine; and,

WHEREAS, from time to time, the Justices of the Supreme Judicial Court have issued their opinions setting forth their views on the purpose and meaning of Article IX, Section 19, and set forth rules of construction for the interpretation of Article IX, Section 19, those opinions being, *Opinion of the Justices*, 157 Me. 104, 170 A.2d 647 (1961); *Opinion of the Justices*, 132 A.2d 440 (1957), *Opinion of the Justices*, 146 Me. 249, 80 A.2d 417 (1951), and, *Opinion of the Justices*, 152 Me. 449; and,

WHEREAS, the Supreme Judicial Court of Maine sitting as the Law Court has interpreted the purpose and meaning of Article IX, Section 19, *Portland Pipeline Corporation v. Environmental Improvement Commission*, 307 A.2d 1 (Me. 1973); and,

WHEREAS, the Bureau of State Police receives funding from the revenue sources set forth in Article IX, Section 19; and,

WHEREAS, the authority and duties of the Bureau of State Police have been established by the Legislature and set forth at 25 M.R.S.A. §1501, *et seq.*; and,

WHEREAS, the authority and duties of the Bureau of State Police comprehend and include “the same powers and duties throughout the several counties of the State as sheriffs have in their respective counties...” and extend to and include the authority “to investigate and prosecute any law of this State...”; 25 M.R.S.A. §1502; and,

WHEREAS, the Legislature has established the Department of Public Safety and has established the authority and duties of the Commissioner of Public Safety and such department and authorities and duties have been set forth at 25 M.R.S.A. §2901, *et seq.*; and,

WHEREAS, the authority and duties of the Commissioner of Public Safety extend to and include duties and activities of the Bureau of State Police, the Office of the State Fire Marshal, the Maine Criminal Justice Academy, the Bureau of Highway Safety, the Maine Drug Enforcement Agency, Maine Emergency Medical Services, the Bureau of Capitol Security, the Bureau of Consolidated Emergency Communications, the Bureau of Building Codes, and, the Gambling Control Unit, all as set forth at 25 M.R.S.A. §2901, *et seq.*

WHEREAS, Article IX, Section 19 authorizes the use of revenues from the sources set forth therein by and for “state enforcement of the traffic laws” and prohibits their diversion “for any other purpose”; and,

WHEREAS, in February of 2007, the Office of Program Evaluation and Governmental Accountability issued a report entitled “Highway Fund Eligibility at the Department of Public Safety;” and,

WHEREAS, in said report, the Office of Program Evaluation and Governmental Accountability noted that, as they appear in Article IX, Section 19, there was no authoritative definition of the term of the phrase “enforcement of traffic laws,” taken together, or the words “enforcement” or “traffic laws,” taken separately causing the Office of Program Evaluation and Governmental Accountability to estimate a range for permissible expenditures; and,

WHEREAS, in said report, the Office of Program Evaluation and Governmental Accountability found that revenues from the sources set forth in Article IX, Section 19 had been used to support activities performed by agencies under the jurisdiction of the Department of Public Safety beyond the high range estimated by the Office at thirty four percent, including the Bureau of State Police, that did not constitute “the state enforcement of traffic laws” as required by Article IX, Section 19; and,

WHEREAS, the Legislature receiving this report enacted P.L. 2008, Ch. 537, directing the Governor or the Governor-elect in preparing Department of Public Safety, Bureau of State Police biennial budgets to use activity data of the Bureau to identify activities eligible for funding from the Highway Fund; and

WHEREAS, the Bureau of State Police reported to the Legislature and Governor following the preparation of the submittal of the current budget to the Legislature its finding that not more than thirty three percent of the Bureau's activities were eligible for Highway Fund funding; and

WHEREAS, the 125<sup>th</sup> Legislature has enacted a budget which provides for the use of revenues from the sources set forth in Article IX, Section 19 to fund forty nine percent of the activities of the Bureau of the State Police ; and,

WHEREAS, pursuant to the plain meaning of Article IX, Section 19, and the interpretation thereof as provided by the Justices of the Supreme Judicial Court in the Opinions cited herein and by the Supreme Judicial Court sitting as the Law Court in the Decision cited herein, there is a substantial question as to whether the percent of funding for Bureau of State Police activities just cited constitute "state enforcement of traffic laws" as provided in Article IX, Section 19; and,

WHEREAS, Article IX, Section 19 expressly provides that the revenues from the sources identified therein may only be used for the "state enforcement of traffic laws and shall not be diverted for any purpose...;" and,

WHEREAS, under Article V, Part First, Section 12 of the Constitution of Maine as Governor of Maine, Governor Paul LePage must "take care that the laws be faithfully executed"; and,

WHEREAS, before assuming the Office of Governor of the State of Maine, Governor Paul LePage took the oath required by and administered pursuant to Article IX, Section 1 of the Constitution of Maine swearing, thereby, “to support the Constitution of the United States and of this State” and swearing further to “faithfully discharge, to the best of [his] abilities, the duties incumbent upon me as according to the Constitution and Laws of the State...”; and,

WHEREAS, the limitation imposed on the expenditure of revenues from the sources set forth in Article IX, Section 19 and the expenditures proposed for the activities of the Bureau of State Police in the current biennial budget, as aforesaid, raise serious and substantial questions as to whether the revenues from such sources can be used to support such activities of the Bureau of State Police;

WHEREAS, the Governor and 125<sup>th</sup> Maine Legislature convening for the Second Session have the opportunity to amend the current budget, if necessary, to mitigate any inappropriate proportion of funding from the Highway Fund;

WHEREFORE, Governor Paul LePage respectfully submits and suggests that the questions presented as set forth above constitute a solemn occasion within the meaning of Article VI, Section 3 of the Constitution of Maine.

Dated this 13 day of January, 2012,

Respectfully submitted,

  
Paul R. LePage,  
Governor, State of Maine