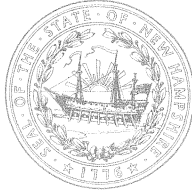


STATE OF NEW HAMPSHIRE
REVIEW OF THE ALLOCATION
OF HIGHWAY FUND RESOURCES
TO SUPPORT AGENCIES AND PROGRAMS

MARCH, 1988



State of New Hampshire

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TO THE FISCAL COMMITTEE OF THE GENERAL COURT:

We have conducted a review of the allocation of highway fund resources to support agencies and programs consistent with recommendations made to you by the joint Legislative Performance Audit and Oversight Committee. Our review was conducted in accordance with generally accepted governmental auditing standards and accordingly, included such procedures as we considered necessary in the circumstances.

The objective of our review was to determine whether highway fund resources are allocated and expended in accordance with the Constitution of the State of New Hampshire, Part II, Article 6-a. To accomplish this objective, we researched Article 6-a, related laws and Opinions of the Justices, compiled historical highway fund data and interviewed numerous state officials.

This report results from our evaluation of all of the information noted above and is intended solely to inform the Legislative Fiscal Committee of our findings.

Office of Legislative Budget Assistant
OFFICE OF LEGISLATIVE BUDGET ASSISTANT

March, 1988

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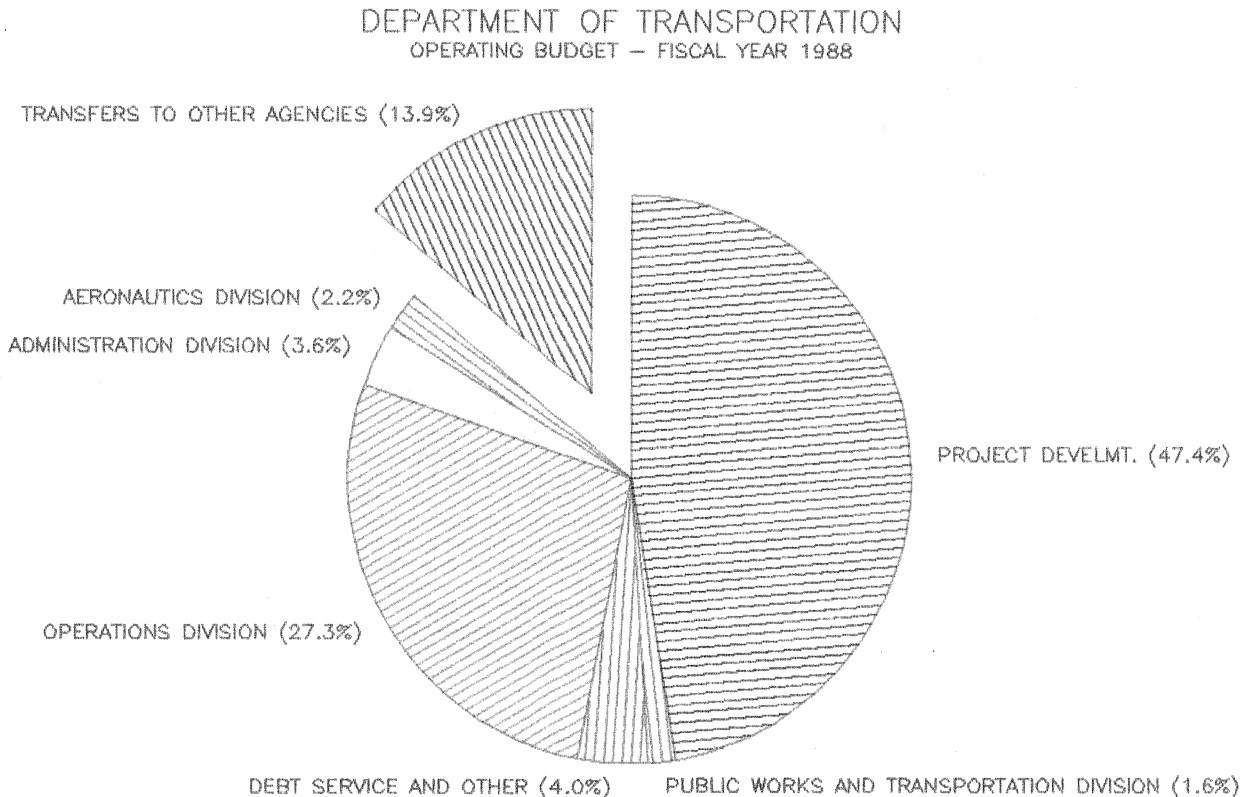
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EXECUTIVE SUMMARY

Part II, Article 6-a of the Constitution of the State of New Hampshire reads as follows:

[Art.] 6-a. [Use of Certain Revenues Restricted to Highways.] All revenue in excess of the necessary cost of collection and administration accruing to the state from registration fees, operators' licenses, gasoline road tolls or any other special charges or taxes with respect to the operation of motor vehicles or the sale or consumption of motor vehicle fuels shall be appropriated and used exclusively for the construction, reconstruction and maintenance of public highways within this state, including the supervision of traffic thereon and payment of the interest and principal of obligations incurred for said purposes; and no part of such revenues shall, by transfer of funds or otherwise, be diverted to any other purpose whatsoever.

In attempting to determine whether highway fund resources are allocated and expended in accordance with Article 6-a, our review focused primarily on the operating budget transfers of the Department of Transportation (DOT) to other agencies since the DOT budget includes all monies budgeted from the highway fund. The Department's total operating budget as originally enacted for fiscal year 1988 is \$214,541,274. The following chart illustrates these transfers in relation to the entire Department of Transportation operating budget for fiscal year 1988.



EXECUTIVE SUMMARY (Continued)

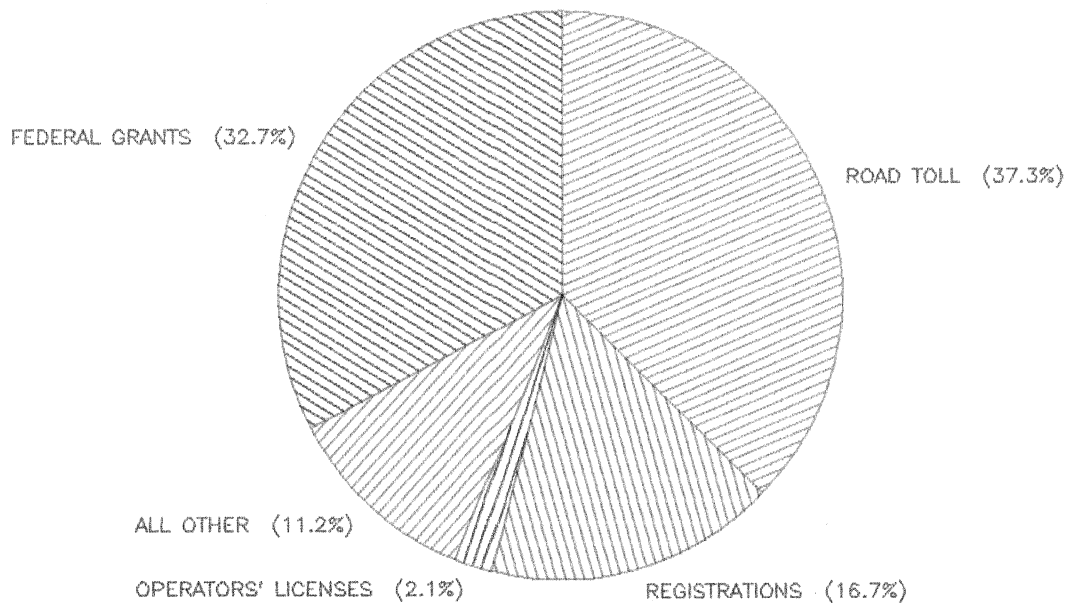
The sources of funds for the 1988 DOT operating budget are:

State-Generated Highway Funds	\$ 143,404,251	66.8 %
Federal Funds	59,729,044	27.9
Other Funds	8,134,400	3.8
General Fund	<u>3,273,579</u>	<u>1.5</u>
	<u>\$ 214,541,274</u>	<u>100 %</u>

While transfers to other agencies are budgeted at 13.9% of the DOT budget, these transfers are a much higher percentage when viewed as a percentage of State-generated highway funds (principally motor vehicle road toll, registration fees and operators' license fees) alone. For fiscal year 1988, this higher percentage is 20.7%. Exhibit IV on pages seventeen and eighteen provides an historical summary of these transfers and this percentage since 1970.

Actual highway fund revenue for fiscal year 1987 totaled \$197,839,560 and is shown in the chart which follows.

ACTUAL HIGHWAY FUND REVENUE
BUDGETARY BASIS - FISCAL YEAR 1987



EXECUTIVE SUMMARY (Continued)

A more detailed historical summary of this revenue since 1970 can be found at Exhibit I on page twelve of this report.

KEY ISSUE

The issue concerning the allocation of highway fund resources for other than the construction, reconstruction and maintenance of public highways is one of interpretation; interpretation of what programs or activities fall within the meaning of the phrase "the supervision of traffic thereon" and the Supreme Court's interpretation of that phrase. In the words of the Justices, "such a determination must be made in the first instance by the legislative branch subject to such possible attacks as may be made upon that determination by persons in an adversary proceeding." In other words, the decision of the Legislature will stand unless subsequently challenged in court.

During this review, we compared Article 6-a with the manner in which the State is currently using highway fund resources. The following are our major findings, observations and recommendations.

FINDINGS AND OBSERVATIONS:

- o Allocations of highway funds to the following agency appear to be inconsistent with Article 6-a:

Amount Allocated
in Fiscal Year 1988

Office of Alcohol and Drug Abuse Prevention	\$ 365,653
--	------------

- o Allocations of highway funds to the following components of the Judicial branch may be inconsistent with Article 6-a:

Amount Allocated
in Fiscal Year 1988

Superior Court	\$ 1,000,000
District Court	1,000,000

- o With the exception of the Public Health Laboratories, those agencies receiving highway funds do not have documentation which supports the amount of highway funds budgeted. The amount of highway funds utilized by some of these agencies appears more than what may be permitted by Article 6-a. For example, the Administration and Support Division of the Department of Safety does not reduce its use of highway funds for activities related to non-highway purposes. Similarly, the Transportation and Construction Bureau within the Office of the Attorney General does not reduce its use of highway funds for work not related to highways.

EXECUTIVE SUMMARY (Continued)

FINDINGS AND OBSERVATIONS (Continued):

- o RSA 263 requires that funds from a part of initial operators' license fees and vanity number plates be used for a driver education fund, with the excess funds deposited in the general fund. This appears to be in conflict with the language and intent of Article 6-a. The general fund received \$1,282,984 under this statute in fiscal year 1987 while the driver education fund received \$960,290.
- o The amount of highway funds used by the Department of Transportation appears to be more than what may be permitted by Article 6-a. Its Aeronautics and Public Works and Transportation Divisions account for 3.8% of its fiscal year 1988 operating budget. Yet, the DOT's funding of its Administration Division by highway funds is not reduced by a similar amount for effort expended on behalf of these non-highway Divisions. This reduction would amount to approximately \$300,000 in 1988.
- o The amount of highway funds used by the Highway Safety Agency appears to be more than what is permitted by Article 6-a. The administration of the Agency is funded 100% from highway funds yet, based upon statistics provided by the Agency for 1980 through 1988, only approximately 38% of its federal grants are associated with the enforcement of traffic laws. The Agency's use of highway funds for administrative purposes is not reduced to reflect the effort expended in other areas.
- o RSA Chapters 375-A, 375-B and 376 require motor vehicles carrying household goods for hire, property for hire and passengers for hire, respectively, to obtain certificates and permits from the Department of Transportation before engaging in the business of operating a motor vehicle as a common carrier. The revenues and expenditures of the Bureau of Common Carriers have historically been recorded in the general fund. This may be in conflict with the language and intent of Article 6-a. In fiscal year 1987, these revenues totaled approximately \$2,225,000 while expenditures totaled \$339,772.
- o For financial reporting purposes, general fund revenues and highway fund expenditures are historically overstated by the amount of the transfers made from the Department of Transportation to the various general fund agencies. In fiscal year 1987, this overstatement was \$25,370,849 according to Exhibit II on page thirteen of this report. This is also an issue raised by Ernst and Whinney in their Management Letter issued in connection with their fiscal year 1987 examination of the State's comprehensive annual financial report.

EXECUTIVE SUMMARY (Continued)

RECOMMENDATIONS:

- o All agencies which utilize highway funds should be required to submit documentation with their biennial budget requests which supports the use of highway funds consistent with Article 6-a.
- o The Legislature should consider amending RSA 9, which addresses the budget process, to require the submission of this documentation along with the Governor's recommended budget, as well as with the budget of the court system submitted by the Supreme Court.
- o The Legislature should consider amending RSA 263 so that all revenue from operators' license fees and vanity plate fees are expended in accordance with Article 6-a.
- o The Legislature should consider amending RSA 375-A, 375-B and 376 to specify the fund in which these revenues should be deposited, consistent with its interpretation of Article 6-a.
- o The Legislature should consider requesting an Opinion of the Justices of the Supreme Court concerning the constitutionality of the current allocation of highway fund resources and a definition of the phrase "enforcement of traffic laws" which they used in their 1977 Opinion (Appendix B).

INTRODUCTION

Part II, Article 6-a of the Constitution of the State of New Hampshire reads as follows:

[Art.] 6-a. [Use of Certain Revenues Restricted to Highways.] All revenue in excess of the necessary cost of collection and administration accruing to the state from registration fees, operators' licenses, gasoline road tolls or any other special charges or taxes with respect to the operation of motor vehicles or the sale or consumption of motor vehicle fuels shall be appropriated and used exclusively for the construction, reconstruction and maintenance of public highways within this state, including the supervision of traffic thereon and payment of the interest and principal of obligations incurred for said purposes; and no part of such revenues shall, by transfer of funds or otherwise, be diverted to any other purpose whatsoever.

The restrictions applied to these revenues in Article 6-a have a long and consistent legislative history. Motor vehicle registration fees were first established in 1905. Chapter 154 of the Laws of 1909 restricted the amounts in excess of the sums necessary to carry out the provisions of the registration statutes to "be expended for the maintenance and improvement of the highways." The motor vehicle road toll (gasoline road toll) became effective on July 1, 1923 with the passage of Chapter 75 of the Laws of 1923. According to Chapter 75:9, the proceeds of this road toll were to be "... disposed of in like manner as the revenue from the registration fees of motor vehicles," i.e., for the maintenance and improvement of the highways.

Part II, Article 6-a of the Constitution became effective on November 29, 1938 by the Governor's Proclamation of the results of the following question submitted to the voters of New Hampshire on November 8, 1938:

Do you approve of amending the Constitution so as to require that the net revenues derived by the state from the operation of motor vehicles, including the gasoline road toll, shall be appropriated and used exclusively for highway purposes?

By a vote of 96,631 to 23,851, the voters of New Hampshire supported the amendment to the Constitution (the only question which won support out of four which were submitted).

With this legislative history having been established, the issue of interpretation became paramount for the use of highway funds. The Governor's proposed budget for fiscal years 1978 and 1979 called for the funding of the Detective Bureau of the Division of State Police with 95% highway funds. Having doubt about the constitutionality of

INTRODUCTION (Continued)

applying revenues from the Highway Trust Fund (as the highway fund is also known) for the purposes proposed by the Governor's budget, the House of Representatives adopted a resolution on March 10, 1977. This resolution asked for the opinion of the Justices of the Supreme Court as to whether the Governor's proposed use of highway funds was consistent with Part II, Article 6-a.

On March 31, 1977, the Justices issued their opinion which said, in part, that "... the express language of Part II, Article 6-a 'including the supervision of traffic thereon' authorizes the expenditure of such funds for the enforcement of traffic laws and the patrolling of the highways ... Such funding does not violate Part II, Article 6-a provided the amount of funding from highway trust funds is in the proportion that the work of a particular bureau relates to the supervision of traffic, including the enforcement of traffic laws" (emphasis added). In the opinion, the Justices also noted that motor vehicle fines are not revenues from the sources set forth in Part II, Article 6-a and therefore do not fall within the restrictions of that article. This opinion continues to be cited as the authoritative source for the allocation of highway funds for purposes other than the construction, reconstruction and maintenance of public highways.

The issue, then, concerning the allocation of highway fund resources for other than the construction, reconstruction and maintenance of public highways continues to be one of interpretation; interpretation of what programs or activities fall within the meaning of "the enforcement of traffic laws."

Because the operating budget of the Department of Transportation as originally enacted includes all of the resources of the highway fund, the focus of this review is on the transfers required by statute to be made by the Department to other agencies and programs from those highway funds.

THE CONSTITUTIONAL CONVENTION OF 1938

From May 11 to June 1, 1938, a convention to revise the New Hampshire Constitution was held in Concord. Among the thirty-four resolutions introduced at the convention was Resolution No. 5 relating to the use of motor vehicle and motor fuel revenues, the resolution behind Part II, Article 6-a to the Constitution.

Resolution No. 5 was introduced by Charles A. Holden of Hanover "to make secure for highway purposes the revenue received from motor vehicle charges, which are paid by one group of people, who in addition also pay general taxes in common with other residents of the State of New Hampshire." In addition to this issue of equity, Mr. Holden wanted to avoid any penalties under the Hayden-Cartwright Act of 1934, which permitted penalties of up to one-third of the federal highway aid against those states diverting highway money (defined by the act to include registration fees, licenses, gasoline taxes, and other special taxes on motor vehicle owners and operators).

At the time, diversion of highway money was a serious problem in a number of states including Massachusetts, New York, Pennsylvania, New Jersey and Maryland. Four states had already adopted Constitutional prohibitions against such diversions. Although diversion was not considered a problem in New Hampshire, a precedent had been established for using highway funds for purposes other than highways when the Governor and Council authorized borrowing money from the highway fund to purchase additional land for the Daniel Webster Homestead. Mr. Holden felt general statutory prohibitions against such other uses were not effective and that a constitutional amendment was necessary.

Most of the recorded debate on Resolution No. 5 centered on whether the Constitution should be amended for such a purpose, rather than on the principle of the resolution itself. There was virtually no disagreement that motor vehicle and motor fuel revenues should be spent for the improvement and maintenance of the highways - the State was already spending nearly twice the amount of these revenues for the highways. Delegates merely questioned the wisdom of "cluttering" the Constitution with that kind of an amendment.

On a roll call, 242 1/2 votes were cast in favor of Resolution No. 5, with 180 votes opposed. Thus, the question of amending the constitution was submitted to the voters of the State.

Appendix A, starting on page thirty-six, contains all of the excerpts from the Journal of the Convention to Revise the Constitution dealing with Resolution No. 5.

THE HIGHWAY FUND

REVENUES

The highway fund and its record-keeping predecessors was established to account for all revenue accruing to the state from motor vehicle registration fees, operators' licenses, gasoline taxes (motor vehicle road toll) or any other special charges or taxes with respect to the operation of motor vehicles or the sale or consumption of motor vehicle fuels. All such revenues, together with federal grants-in-aid received by the State for highway purposes, are credited to the highway fund.

Exhibit I on page twelve provides an historical summary of the actual highway fund revenue for fiscal years 1970 through 1987. The three major sources of highway fund revenue are the motor vehicle road toll, motor vehicle registration fees and grants from the federal government. In fiscal year 1987, these three revenue sources accounted for \$171,577,471 out of total revenue of \$197,839,560, or 87% of the total. Motor vehicle road toll and registration fees (the majority of State-generated highway funds) alone accounted for 54% of the total.

During the period from 1970 to 1987, total highway fund revenues increased by 296%. This compares with an increase in total general fund revenues of 684% during the same period.

Prior to fiscal year 1978, motor vehicle fines were a source of revenue to the highway fund. Since the enactment of a motor vehicle law by Chapter 133 of the Laws of 1911, fines had been expended for the maintenance of the highways. In 1977, these fines, net of court costs, amounted to \$1,553,288. When the Opinion of the Justices mentioned in the Introduction of this report was issued, the State began accounting for these fines in the general fund. In fiscal year 1987, these fines totalled \$13,463,264.

As stated above, motor vehicle road toll revenues are a major source of highway fund resources. While this road toll is assessed on all motor fuels sold in the State, the statutes and the Constitution allow for the refund of the road toll paid for motor fuel not used by motor vehicles (primarily boats and off-highway recreational vehicles). RSA 260:60 and 61 requires calculations to be made for the transfer of an estimated amount of refundable, yet unclaimed, road toll revenue to other funds. In fiscal year 1987, \$233,717 was transferred to the fish and game fund, \$233,717 was transferred to the general fund and \$215,393 was transferred to the Bureau of Off-Highway Recreational Vehicles (general fund).

THE HIGHWAY FUND (Continued)

During our review of the sources of revenue for the highway fund, we also noted that RSA 263:42 requires that \$5.00 of the \$20.00 fee for each original driver's license is to be credited to the driver training fund established by RSA 263:52. In addition, RSA 263:52, II requires that \$5.00 of the \$25.00 fee for vanity number plates is also to be credited to the driver training fund. The remaining \$20.00 of the fee for vanity plates is accumulated until all fees set aside equal the legislative estimate to be available for expenditure for the driver training program. Once the estimate has been met, the excess is transferred to the general fund as unrestricted revenue. In fiscal year 1987, the amount transferred to the general fund totaled \$1,282,984 and the amount expended for driver education totaled \$960,290.

RSA Chapters 375-A, 375-B and 376 require motor vehicles carrying household goods for hire, property for hire and passengers for hire, respectively, to obtain certificates and permits from the Department of Transportation before engaging in the business of operating a motor vehicle as a common carrier. The revenues and expenditures of the Bureau of Common Carriers have historically been recorded in the general fund. In fiscal year 1987, these revenues totaled approximately \$2,225,000, while expenditures totaled \$339,772.

Inasmuch as Article 6-a specifically states that revenues from operators' licenses and any other special charges or taxes with respect to the operation of motor vehicles are to be expended on highways, the requirements of RSA 263, 375-A, 375-B and 376 as noted above do not appear consistent with that requirement.

RECOMMENDATION:

The Legislature should consider amending RSA 263, 375-A, 375-B and 376 so that all revenue from operators' license fees and vanity plate fees and other special charges for common carriers are expended in accordance with its interpretation of Article 6-a.

EXPENDITURES

Expenditures from the highway fund amounted to \$194,552,538 in fiscal year 1987, compared with total expenditures of \$61,100,157 in 1970, an increase of 223%. Exhibit II on page thirteen provides a summary of the expenditures from the highway fund for fiscal years 1970 to 1987. The expenditures have been reported by function. Administration of Justice and Public Protection expenditures are primarily for the reflectorized motor vehicle plate inventory. Debt Service expenditures are for interest and principal payments on bonds issued to finance construction of highways. Capital outlays are primarily contract payments for the construction or improvement of highways having at least a twenty-year useful life. Finally, Transportation expenditures include the amounts expended for the operation of the Department of Transportation, highway maintenance not classified as capital outlays, apportionment of motor vehicle road toll revenue to local highway aid funds and transfers to other agencies.

Because transfers to other agencies are recorded as expenditures of the highway fund and revenue of the general fund, expenditures of the highway fund have historically been overstated and revenues of the general fund have been overstated by a like amount.

RECOMMENDATION:

Highway fund transfers to other agencies should be reported as transfers versus expenditures for financial reporting purposes so that highway fund expenditures and general fund revenues are not artificially overstated in the future.

STATE OF NEW HAMPSHIRE
 ACTUAL HIGHWAY FUND REVENUES - FISCAL YEARS 1970-1987
 BUDGETARY BASIS

	1987	1986	1985	1984	1983	1982	1981	1980	1979
BUSINESS LICENSE TAXES:									
MOTOR VEHICLE ROAD TOLL	\$ 73,768,203	\$ 69,115,581	\$ 64,689,341	\$ 61,894,090	\$ 58,325,295	\$ 57,106,712	\$ 46,235,398	\$ 46,950,819	\$ 43,292,187
RATE PER GALLON	.14	.14	.14	.14	.14	.14	.11	.11	.10
OTHER	5,692,817	6,326,583	1,369,901	3,667,326	3,205,937	2,535,297	1,187,329	1,004,028	1,001,359
NON-BUSINESS LICENSE TAXES:									
MOTOR VEHICLE REGISTRATIONS	33,056,803	30,963,670	28,719,912	26,842,896	23,814,832	23,393,008	20,555,907	19,919,022	19,121,815
MOTOR VEHICLE OPERATORS' LICENSES	4,068,333	4,111,174	4,103,065	3,792,246	2,963,528	3,108,858	2,122,459	1,945,611	1,738,353
OTHER	(6,247)	6,670	(10,734)	1,595	(2,291)	14,667	(3,399)	6,348	(530)
FEES:									
MOTOR VEHICLE MISCELLANEOUS	2,142,030	2,037,748	1,768,844	1,834,635	1,558,455	1,583,957	1,852,326	1,265,707	720,715
CERTIFICATE OF TITLE	2,327,292	2,204,662	2,008,845	1,816,037	967,433	885,322	557,355	554,808	690,145
INSPECTION STICKERS	1,657,056	1,112,113	1,036,332	972,880	712,893	667,540	205,333	199,041	257,345
OTHER	870,151	993,744	620,661	596,595	439,012	376,556	40,655	37,554	34,730
MOTOR VEHICLE FINES	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-
GRANTS FROM FEDERAL GOVERNMENT	64,752,465	74,687,379	80,822,278	55,700,334	55,653,345	49,191,646	48,652,195	32,578,680	41,921,310
GRANTS FROM PRIVATE & LOCAL GOVERNMENT	2,485,852	5,813,672	3,949,075	7,301,394	5,262,426	4,308,589	4,991,440	6,010,027	5,891,637
MISCELLANEOUS	<u>7,024,805</u>	<u>4,546,909</u>	<u>3,263,045</u>	<u>2,620,130</u>	<u>1,968,589</u>	<u>2,174,593</u>	<u>1,897,559</u>	<u>2,613,106</u>	<u>2,145,515</u>
TOTAL HIGHWAY FUND REVENUE	<u>\$197,839,560</u>	<u>\$201,919,905</u>	<u>\$192,340,565</u>	<u>\$167,040,158</u>	<u>\$154,869,454</u>	<u>\$145,346,745</u>	<u>\$128,294,557</u>	<u>\$113,084,751</u>	<u>\$116,814,581</u>
	1978	1977	1976	1975	1974	1973	1972	1971	1970
BUSINESS LICENSE TAXES:									
MOTOR VEHICLE ROAD TOLL	\$ 43,101,540	\$ 39,605,786	\$ 37,737,035	\$ 35,962,098	\$ 35,855,949	\$ 37,415,848	\$ 34,568,527	\$ 25,883,161	\$ 23,950,718
RATE PER GALLON	.10	.09	.09	.09	.09	.09	.09	.07	.07
OTHER	860,875	445,066	381,582	316,353	345,856	351,917	310,828	257,967	257,121
NON-BUSINESS LICENSE TAXES:									
MOTOR VEHICLE REGISTRATIONS	18,580,935	16,990,093	15,877,113	15,187,024	15,203,208	14,372,889	13,362,749	12,131,874	11,495,482
MOTOR VEHICLE OPERATORS' LICENSES	1,933,338	1,922,258	1,663,387	1,412,262	2,237,817	2,104,119	1,534,168	1,159,732	1,192,118
OTHER	(1,510)	(328)	(543)	33	(526)	1,118	(89)	(89)	(493)
FEES:									
MOTOR VEHICLE MISCELLANEOUS	572,833	456,982	373,973	282,486	275,165	266,490	287,256	287,478	225,379
CERTIFICATE OF TITLE	995,710	655,023	581,582	485,108	506,647	580,508	459,432	366,796	347,760
INSPECTION STICKERS	762,806	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-
OTHER	34,835	33,085	32,666	31,123	27,610	29,873	26,537	26,495	25,815
MOTOR VEHICLE FINES	-0-	1,553,288	1,329,860	1,273,300	1,168,292	1,041,762	657,474	508,391	410,374
GRANTS FROM FEDERAL GOVERNMENT	37,321,743	32,505,915	30,367,693	28,313,232	23,939,386	7,857,049	26,181,300	27,834,186	27,971,930
GRANTS FROM PRIVATE & LOCAL GOVERNMENT	1,650,250	2,179,158	2,826,401	-0-	-0-	-0-	-0-	-0-	-0-
MISCELLANEOUS	<u>1,728,878</u>	<u>2,178,995</u>	<u>1,402,101</u>	<u>926,272</u>	<u>1,075,135</u>	<u>1,121,474</u>	<u>1,033,463</u>	<u>1,070,945</u>	<u>1,052,711</u>
TOTAL HIGHWAY FUND REVENUE	<u>\$107,542,233</u>	<u>\$ 98,525,321</u>	<u>\$ 92,572,850</u>	<u>\$ 84,189,291</u>	<u>\$ 80,634,539</u>	<u>\$ 65,143,047</u>	<u>\$ 78,421,645</u>	<u>\$ 69,526,936</u>	<u>\$ 66,928,915</u>

Sources: Annual Reports of the Comptroller, 1970-1983
 Supplemental Financial Data to the Comprehensive Annual Financial Report, 1984-1987
 Chapter Laws, various years

STATE OF NEW HAMPSHIRE
ACTUAL HIGHWAY FUND EXPENDITURES - FISCAL YEARS 1970-1987
BUDGETARY BASIS

	1987	1986	1985	1984	1983	1982	1981	1980	1979
ADMINISTRATION OF JUSTICE AND PUBLIC PROTECTION	\$ 1,114,467	\$ 1,434,692	\$ 790,166	\$ 456,035	\$ 202,553	\$ 210,570	\$ 9,705	\$ 19,904	\$ 22,341
TRANSPORTATION	116,370,293	109,486,596	102,587,377	95,938,523	84,474,954	81,456,160	76,239,089	72,780,218	63,327,601
DEBT SERVICE	7,273,949	7,273,949	6,597,212	5,554,077	5,215,300	6,378,432	6,057,040	6,382,567	6,616,018
CAPITAL OUTLAYS	<u>69,806,141</u>	<u>76,686,141</u>	<u>77,403,391</u>	<u>55,826,760</u>	<u>61,293,282</u>	<u>48,244,866</u>	<u>54,415,000</u>	<u>61,202,511</u>	<u>53,622,364</u>
TOTAL EXPENDITURES	<u>\$194,564,850</u>	<u>\$194,881,378</u>	<u>\$187,378,146</u>	<u>\$157,775,395</u>	<u>\$151,186,089</u>	<u>\$136,290,028</u>	<u>\$136,720,834</u>	<u>\$140,385,200</u>	<u>\$123,588,324</u>
HIGHWAY FUND TRANSFERS INCLUDED IN TRANSPORTATION EXPENDITURES ABOVE	<u>\$ 25,370,849</u>	<u>\$ 23,975,017</u>	<u>\$ 21,387,208</u>	<u>\$ 19,076,353</u>	<u>\$ 15,529,805</u>	<u>\$ 14,682,223</u>	<u>\$ 14,219,884</u>	<u>\$ 13,055,286</u>	<u>\$ 10,594,573</u>
ACTUAL TRANSFERS TO OTHER AGENCIES AS A PERCENTAGE OF ACTUAL EXPENDITURES	<u>13.0%</u>	<u>12.3%</u>	<u>11.4%</u>	<u>12.1%</u>	<u>10.3%</u>	<u>10.8%</u>	<u>10.4%</u>	<u>9.3%</u>	<u>8.6%</u>
	1978	1977 ¹	1976 ¹	1975 ¹	1974 ¹	1973 ¹	1972 ¹	1971 ¹	1970 ¹
ADMINISTRATION OF JUSTICE AND PUBLIC PROTECTION	\$ 13,217	\$ -0-	\$ -0-	\$ -0-	\$ 823,063	\$ -0-	\$ -0-	\$ -0-	\$ -0-
TRANSPORTATION	58,753,922	52,477,321	51,051,376	47,873,332	43,749,148	43,096,322	39,662,640	33,082,417	31,298,715
DEBT SERVICE	5,674,500	4,322,300	4,651,100	1,088,900	1,005,383	1,105,658	1,076,689	856,481	883,643
CAPITAL OUTLAYS	<u>52,574,145</u>	<u>59,081,587</u>	<u>46,991,831</u>	<u>45,436,938</u>	<u>41,594,694</u>	<u>42,423,909</u>	<u>38,563,140</u>	<u>37,409,146</u>	<u>32,734,844</u>
TOTAL EXPENDITURES	<u>\$117,015,784</u>	<u>\$115,881,208</u>	<u>\$102,694,307</u>	<u>\$ 94,399,170</u>	<u>\$ 87,172,288</u>	<u>\$ 86,625,889</u>	<u>\$ 79,302,469</u>	<u>\$ 71,348,044</u>	<u>\$ 64,917,202</u>
HIGHWAY FUND TRANSFERS INCLUDED IN TRANSPORTATION EXPENDITURES ABOVE	<u>\$ 9,631,281</u>	<u>\$ 8,487,408</u>	<u>\$ 7,984,402</u>	<u>\$ 7,163,303</u>	<u>\$ 6,644,857</u>	<u>\$ 5,991,279</u>	<u>\$ 5,207,118</u>	<u>\$ 4,276,773</u>	<u>\$ 3,817,045</u>
ACTUAL TRANSFERS TO OTHER AGENCIES AS A PERCENTAGE OF ACTUAL EXPENDITURES	<u>8.2%</u>	<u>7.3%</u>	<u>7.8%</u>	<u>7.6%</u>	<u>7.6%</u>	<u>6.9%</u>	<u>6.6%</u>	<u>6.0%</u>	<u>5.9%</u>

¹ Restated to conform to fiscal year 1978-1987 presentation.

Sources: Annual Reports of the Comptroller, 1970-1983
Supplemental Financial Data to the Comprehensive Annual Financial Report, 1984-1987

USERS OF HIGHWAY FUNDS

As stated in the Introduction to this report, the operating budget of the Department of Transportation includes all of the resources of the highway fund. All highway fund monies are appropriated to the Department and either expended by it or transferred to other agencies as required by the budget.

For fiscal year 1988, the following exhibit summarizes the users of highway funds according to the operating budget as originally enacted.

EXHIBIT III

STATE OF NEW HAMPSHIRE
USERS OF HIGHWAY FUNDS
FISCAL YEAR 1988

	<u>Total</u> <u>Appropriated</u>	<u>Amount</u> <u>Supported From</u> <u>Highway</u> <u>Fund</u>	<u>Percent</u> <u>Supported</u> <u>From</u> <u>Highway</u> <u>Fund</u>
Department of Transportation (including transfers)	\$214,541,274	\$206,586,622	96.3%
Department of Safety	31,240,044	26,501,322	84.8
Superior Court	10,287,812	1,000,000	9.7
District Court	7,792,152	1,000,000	12.8
Water Resources Bureau	683,365	26,486	3.9
Public Health Laboratories	1,224,875	175,083	14.3
Highway Safety Agency	627,783 ¹	119,890	19.1
Office of the Attorney General	4,211,950	301,366	7.2
Board of Tax and Land Appeals	456,422	165,544	36.3
Office of Alcohol and Drug Abuse Prevention	2,267,943	360,373	15.9%

Source: Operating budget, Chapter 400, Laws of 1987

The following section of this report discusses these users of highway funds in detail.

¹ Includes estimated federal pass-through grants of \$450,000.

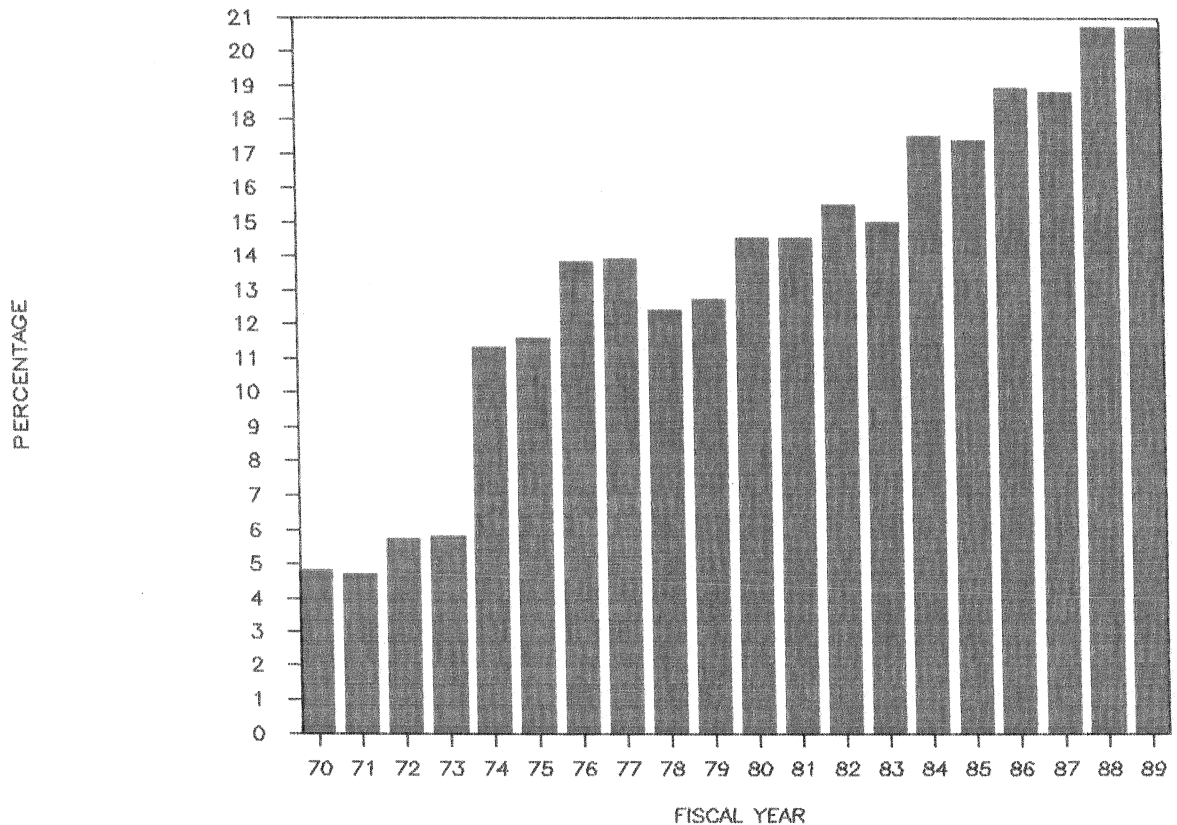
TRANSFERS TO OTHER AGENCIES

Highway fund transfers to other agencies are made through the operating budgets of the Department of Transportation (DOT). While supplemental operating budgets, special legislation and actions of the Fiscal Committee and the Governor and Council can have an impact on transfers, the original operating budgets provide a reasonable basis upon which conclusions about the allocation of highway fund resources can be made.

Exhibit IV on pages seventeen and eighteen summarizes the operating budget transfers from the DOT, as the budget was originally enacted, for fiscal years 1970 to 1989. These transfers are shown in relation to State-generated highway funds only. Federal grants and other sources of funds for highway fund appropriations are excluded in order to demonstrate the relationship of transfers to sources of revenue under the direct control of the State. Transfers to other agencies from highway funds increased by 879% from 1970 to 1989 while the sources of State revenues to fund these transfers increased by only 202% during the same period. The net result of this trend is that there are proportionally fewer State-generated revenues being budgeted for the construction, reconstruction and maintenance of the highways in the current fiscal year than in any previous year at least since 1970.

The following graph illustrates the increase in transfers to other agencies as a percentage of appropriations from State-generated highway funds for fiscal years 1970 to 1989 (Exhibit IV).

DEPARTMENT OF TRANSPORTATION
BUDGETED TRANSFERS TO OTHER AGENCIES AS A PERCENTAGE
OF APPROPRIATIONS FROM STATE-GENERATED HIGHWAY FUNDS



TRANSFERS TO OTHER AGENCIES (Continued)

The remainder of this section of the report will address each of the transfers budgeted for the current fiscal year. During our review, we attempted to: 1) identify the basis upon which a particular agency requested the use of highway funds, 2) obtain documentation for the amount of highway funds requested, and 3) determine whether the basis and documentation supported a use of highway funds consistent with Part II, Article 6-a of the Constitution.

RECOMMENDATION:

The most direct way of determining whether the State's use of highway funds is consistent with Article 6-a is to ask for an Opinion of the Justices of the Supreme Court. The Legislature should consider requesting such an opinion concerning the constitutionality of the current allocation of highway fund resources and a definition of the phrase "enforcement of traffic laws" which they used in their 1977 Opinion (Appendix B).

STATE OF NEW HAMPSHIRE
 STATE-GENERATED HIGHWAY FUNDS
 OPERATING BUDGET TRANSFERS - FISCAL YEARS 1970-1989

	1989	1988	1987	1986	1985	1984	1983	1982	1981	1980
Department of Transportation Appropriation From State-Generated Highway Funds, Including Transfers (as originally enacted)	<u>\$145,896,773</u>	<u>\$143,404,251</u>	<u>\$126,571,121</u>	<u>\$125,751,415</u>	<u>\$106,144,518</u>	<u>\$101,200,503</u>	<u>\$ 93,709,183</u>	<u>\$ 91,034,149</u>	<u>\$ 90,642,240</u>	<u>\$ 88,835,121</u>
Department of Transportation Transfers to Other Agencies From State-Generated Highway Funds:										
Department of Safety	\$ 26,948,711	\$ 26,501,322	\$ 20,812,866	\$ 20,770,126	\$ 17,437,115	\$ 16,653,252	\$ 13,480,797	\$ 13,598,723	\$ 12,606,168	\$ 12,361,923
Superior Court	1,000,000	1,000,000	1,000,000	1,000,000	281,965	263,862	208,414	203,703	187,266	186,978
Public Works Bureau (Asbestos)	100,000	100,000	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-
District Court	1,000,000	1,000,000	1,000,000	1,000,000	-0-	-0-	-0-	-0-	-0-	-0-
Water Resources Bureau	27,006	26,486	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-
Department of HHS, Public Health Services, Disease Prevention and Control, Public Health Labs (Expert Witness)	175,083	175,083	162,817	160,723	86,694	88,564	-0-	-0-	-0-	-0-
Highway Safety Agency	130,411	119,890	76,196	74,839	58,912	59,039	66,179	65,359	82,578	80,794
Attorney General, Division of Legal Counsel, Transportation (Eminent Domain Division)	314,582	301,366	219,228	211,832	185,364	176,000	158,261	130,702	149,833	143,072
Board of Tax and Land Appeals (Eminent Domain Commission)	172,105	165,544	147,306	148,681	113,974	113,716	102,241	100,657	148,963	147,040
Department of HHS, Alcohol and Drug Abuse Prevention, Treatment and Prevention - State	365,653	360,373	347,010	339,751	311,015	310,127	-0-	-0-	-0-	-0-
State Treasurer - Services	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-
Junkyards	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-
Outdoor Advertising	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-
Morton Building - Bldg. & Grounds	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-
	<u>\$ 30,233,551</u>	<u>\$ 29,750,064</u>	<u>\$ 23,765,423</u>	<u>\$ 23,705,952</u>	<u>\$ 18,475,039</u>	<u>\$ 17,664,560</u>	<u>\$ 14,015,892</u>	<u>\$ 14,099,144</u>	<u>\$ 13,174,808</u>	<u>\$ 12,919,807</u>
Transfers to Other Agencies as a Percentage of Appropriations from State-Generated Highway Funds	<u>20.7%</u>	<u>20.7%</u>	<u>18.8%</u>	<u>18.9%</u>	<u>17.4%</u>	<u>17.5%</u>	<u>15.0%</u>	<u>15.5%</u>	<u>14.5%</u>	<u>14.5%</u>

STATE OF NEW HAMPSHIRE
STATE-GENERATED HIGHWAY FUNDS
OPERATING BUDGET TRANSFERS - FISCAL YEARS 1970-1989

	1979	1978	1977	1976	1975	1974	1973	1972	1971	1970
Department of Transportation Appropriation From State-Generated Highway Funds, Including Transfers (as originally enacted)	\$ <u>71,801,819</u>	\$ <u>74,294,186</u>	\$ <u>58,371,866</u>	\$ <u>57,809,515</u>	\$ <u>55,601,089</u>	\$ <u>55,080,142</u>	\$ <u>81,365,771</u>	\$ <u>81,427,261</u>	\$ <u>73,887,223</u>	\$ <u>72,071,631</u>
Department of Transportation Transfers to Other Agencies From State-Generated Highway Funds:										
Department of Safety	8,438,306	8,537,150	7,612,589	7,495,070	6,085,616	5,885,385	4,422,325	4,403,940	3,292,628	3,289,075
Superior Court	160,504	151,800	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-
Public Works Bureau (Asbestos)	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-
District Court	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-
Water Resources Bureau	-0-	-0-	21,650	21,650	17,000	17,000	10,000	10,000	10,000	10,000
Department of HHS, Public Health Services, Disease Prevention and Control, Public Health Labs (Expert Witness)	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-
Highway Safety Agency	64,681	67,400	49,078	47,299	44,780	43,331	39,034	37,594	35,069	32,440
Attorney General, Division of Legal Counsel, Transportation (Eminent Domain Division)	129,221	131,297	116,390	111,084	97,738	114,426	84,020	82,375	76,718	73,905
Board of Tax and Land Appeals (Eminent Domain Commission)	103,690	104,368	96,387	95,226						
Department of HHS, Alcohol and Drug Abuse Prevention, Treatment and Prevention - State	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-
State Treasurer - Services	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-	22,762	22,528
Junkyards	-0-	-0-	-0-	-0-	1,000	1,000	10,000	10,000	10,000	10,000
Outdoor Advertising	-0-	-0-	-0-	-0-	30,000	30,000	1,000	1,000	1,000	1,000
Morton Building - Bldg. & Grounds	<u>224,688</u>	<u>227,706</u>	<u>198,125</u>	<u>196,917</u>	<u>164,552</u>	<u>159,579</u>	<u>132,563</u>	<u>131,831</u>	<u>-0-</u>	<u>-0-</u>
	\$ <u>9,121,190</u>	\$ <u>9,219,721</u>	\$ <u>8,094,219</u>	\$ <u>7,967,246</u>	\$ <u>6,440,686</u>	\$ <u>6,250,721</u>	\$ <u>4,698,942</u>	\$ <u>4,676,740</u>	\$ <u>3,448,177</u>	\$ <u>3,438,948</u>
Transfers to Other Agencies as a Percentage of Appropriations from State-Generated Highway Funds	<u>12.7%</u>	<u>12.4%</u>	<u>13.9%</u>	<u>13.8%</u>	<u>11.6%</u>	<u>11.3%</u>	<u>5.8%</u>	<u>5.7%</u>	<u>4.7%</u>	<u>4.8%</u>

Source: Operating Budgets for various bienniums, as originally enacted
Year-End Statement of Appropriation By Office, 1982 and 1983

DEPARTMENT OF SAFETY

The Department of Safety was established by Chapter 166 of the Laws of 1961. The purpose of the chapter was "to improve the administration of state government by providing unified direction of related functions in the field of public safety, a single highway patrol, consolidating criminal enforcement functions in the division of state police, and making possible increased economy and efficiency from the integrated administration and operation of these and other safety functions of the state government." The chapter combined the responsibilities of the Commissioner of Motor Vehicles (originally established by Chapter 154, Laws of 1915) with those of the Department of State Police (originally established by Chapter 134, Laws of 1937), in addition to other, smaller programs.

Through its various Bureaus within the Division of Motor Vehicles, the Department is responsible for the collection of numerous taxes, fees and tolls which are deposited in the highway fund. In fiscal year 1987, the Department collected approximately \$124,000,000, which represents nearly all State-generated highway funds. The Department also collects and deposits certain general fund revenues, of which motor vehicle fines is the largest component. In fiscal year 1987, these fines amounted to approximately \$13,500,000.

Exhibit V on page twenty-two shows the total operating budget for the Department of Safety as originally enacted for fiscal year 1988. Although the Department of Safety is reported as a general fund agency, approximately 85% of its funding comes from the highway fund. In the period between fiscal years 1970 and 1988, the percentage of highway fund support ranged from a low of 70.5% in 1975 to a high of 86.0% in 1986.

This fluctuation in the percentage of support can be attributed, in part, to the inconsistent funding patterns for several bureaus within the Department. For example, in 1975, all of the Administration and Support program appropriation units (PAU's) were funded 95% from highway funds versus 100% in 1986; the Communications Section of the Division of State Police used 71% highway funding in 1975 versus 100% in 1986; the Detective Bureau did not use any highway funds in 1975 versus 70% in 1986; while the Traffic Bureau utilized 79% highway funds in 1975 versus 90% in 1986. In addition, new programs were added during the period, such as the DWI Enforcement Unit, which are funded 100% from highway funds. While the use of highway funds for specific PAU's has been inconsistent, with the exception of the Division of Motor Vehicles, which has historically been funded entirely by highway funds, the general trend has been an increased allocation of highway fund resources.

DEPARTMENT OF SAFETY (Continued)

CONCLUSION:

We could not determine whether the Department of Safety's use of highway funds is consistent with Part II, Article 6-a of the Constitution of the State of New Hampshire since the Department could not provide documentation to support its allocations. However, many PAU's on Exhibit V appear on their face to be consistent with Article 6-a, such as all PAU's within the Division of Motor Vehicles and all PAU's within the Division of Safety Services. Other PAU's could be questioned on their face such as all of Administration and Support. Why is this area funded 100% from highway funds when the entire Department's funding from highway funds is 85%? Likewise, why are state overhead charges supported by all highway funds when 15% of the Department's budget is supported by non-highway funds? Further, is 70% of the work of the Detective Bureau related to the enforcement of traffic laws? Answers to these and other questions are needed before a determination can be made concerning the constitutionality of the Department's allocation of highway fund resources.

RECOMMENDATION:

The Department of Safety, along with all other agencies, should be required to submit documentation with its biennial budget requests which supports its use of highway funds consistent with Article 6-a. This documentation should be submitted to the Legislature as part of the Governor's recommended budget.

The Legislature should consider amending RSA 9, which addresses the budget process, to require the submission of this documentation.

AUDITEE RESPONSE:

The department has no problem with being required to submit documentation with its budget requests which explain the rationale used for the appropriation of highway funds. However, it must be understood that the preciseness of that rationale will leave a lot to be desired due to the lack of precise records and the subjectivity involved in identifying certain activities as being highway related. The question raised above about the Detective Bureau and the enforcement of traffic laws is an example of what we mean when one reads RSAs 265:80 and 318-B:26 regarding drugs and their illegal transportation.

The department also has a problem with the source of funds for the various PAUs being too varied. Such variations will make transfers between PAUs virtually impossible. Given the lead time associated with biennial budgets this will put the department at a severe disadvantage especially in the second year of the biennium.

DEPARTMENT OF SAFETY (Continued)

AUDITEE RESPONSE (Continued):

We also feel that the driver education funding should be reviewed. We feel that a good case could be made for those activities being 100% highway funded. After all, education and training of those who will be the drivers in the highway traffic is directly related to the supervision of traffic. It is well known that such education leads to less traffic problems on the highways since insurance companies offer reduced premiums for those who have taken driver education courses and/or defensive driving courses.

STATE OF NEW HAMPSHIRE
DEPARTMENT OF SAFETY OPERATING BUDGET
AS ORIGINALLY ENACTED FOR
FISCAL YEAR 1988

	<u>TOTAL</u> <u>APPROPRIATED</u>	<u>TRANSFER</u> <u>FROM</u> <u>DEPARTMENT OF</u> <u>TRANSPORTATION</u>	<u>PERCENT</u> <u>SUPPORTED</u> <u>FROM</u> <u>HIGHWAY</u> <u>FUND</u>
ADMINISTRATION & SUPPORT			
OFFICE OF COMMISSIONER	\$ 553,086	\$ 553,086	100.00%
DATA PROCESSING UNIT	3,225,080	3,225,080	100.00
TOWN CLERK REGISTRATION	191,835	191,835	100.00
SAFETY INSPECTORS	792,970	792,970	100.00
SAFETY INSPECTORS-FEDERAL	274,311	54,862	20.00
CENTRAL MAINTENANCE	10,000	10,000	100.00
EMISSION CONTROL UNIT	303,039	303,039	100.00
BUSINESS OFFICE	514,112	514,112	100.00
EQUIPMENT CONTROL	254,838	254,838	100.00
WEIGH STATION DETAIL	363,013	363,013	100.00
DIVISION OF MOTOR VEHICLES			
DRIVER LICENSING	1,302,448	1,302,448	100.00
MOTOR VEHICLE REGISTRATION	1,767,430	1,767,430	100.00
MOTOR VEHICLE INSPECTION	335,877	335,877	100.00
CERTIFICATE OF TITLE	752,043	752,043	100.00
FINANCIAL RESPONSIBILITY	1,099,102	1,099,102	100.00
ADMIN., DIV. OF MOTOR VEHICLES	192,678	192,678	100.00
ROAD TOLL SECTION	878,325	878,325	100.00
DRIVER & SAFETY EDUCATION	955,513	0	0.00
DIVISION OF SAFETY SERVICES			
WATERCRAFT SAFETY	628,863	0	0.00
PROGRAM ON FIRE SAFETY	514,346	0	0.00
AERIAL LIFT SAFETY	85,226	0	0.00
BINGO INSPECTION	155,304	0	0.00
DIVISION OF STATE POLICE			
COMMUNICATION SECTION	1,061,557	961,557	90.58
DETECTIVE BUREAU	2,685,211	1,879,648	70.00
TRAFFIC BUREAU	10,628,344	9,565,510	90.00
AUXILIARY POLICE	38,281	34,453	90.00
AIRCRAFT TRAFFIC SURVEILLANCE	35,730	32,157	90.00
DWI ENFORCEMENT UNIT	252,188	252,188	100.00
STATE POLICE INTERSTATE	300,258	300,258	100.00
STATE OVERHEAD CHARGES	427,662	427,662	100.00
PRINCIPAL AND INTEREST	483,628	457,151	94.53
REGULATION OF ELECTRICIANS BOARD	177,746	0	0.00
	<u>\$ 31,240,044</u>	<u>\$ 26,501,322</u>	84.83%

Source: Operating Budget, Chapter 400, Laws of 1987

SUPERIOR COURT AND DISTRICT COURT

Chapter 383 (HB 200) of the Laws of 1983 created the State-funded unified court system and provided for its initial funding. Chapter 383:66, I appropriated \$763,308 and \$1,552,367 in highway funds to the supreme court in fiscal years 1984 and 1985, respectively, for the support of the entire court system. Prior to the enactment of Chapter 383, the courts were funded by a combination of state, county and municipal support. In addition, courts retained a portion of the fines and fees they collected to help pay for their operating costs.

While this initial appropriation allocated highway funds to the entire unified court system, all subsequent fiscal years' appropriations have been for the Superior and District courts only. The following table shows the total appropriations made to the Superior and District courts for fiscal year 1988 and the source of funding for those appropriations as authorized by Chapter 400, Laws of 1987 (operating budget).

	<u>Fiscal Year 1988</u>	
	<u>Superior Court</u>	<u>District Court</u>
Total Appropriation	\$ <u>10,287,812</u>	\$ <u>7,792,152</u>
Source of Funds:		
Highway Fund	\$ 1,000,000	\$ 1,000,000
General Fund	9,182,930	6,792,152
Transfers from Other Agencies	<u>104,882</u>	<u>-0-</u>
	\$ <u>10,287,812</u>	\$ <u>7,792,152</u>
Percent of Highway Fund Support	9.7%	12.8%

The idea behind the use of highway funds in the initial funding of the unified court system was summarized in testimony before the House Appropriations Committee on April 25, 1983 during a hearing on HB 200.

The first full year of operation of this proposal would be fiscal year 1985. The changes in the statute that are provided in the bill would generate \$12 million from fines and fees. We estimate that the cost of running the court system that year, the court system all levels, to be a little over \$17 million. So, \$12 million would come from fines and fees. We are asking the counties to make a one-time contribution of \$2.75 million, and they are agreeable. They came in and spoke in favor of the bill. The rest of the money we are proposing to take from the Highway Fund. We think there is a precedent for using Highway Fund money for court purposes. As you know, being Members of

SUPERIOR COURT AND DISTRICT COURT (Continued)

this Committee, right now 20% of the State's share of the Superior Court costs are paid for out of the Highway Fund. I think that the rationale behind that and the rationale behind our proposal to use it now is that a certain percentage of the caseload in the Superior Court is highway related, and in the Superior Court it is estimated to be 20%. That's where that number came from.

The caseload studies in the District and Municipal Courts, which we're proposing to fund under this bill, show that 65% of the cases are highway related. This is based on the number of cases heard, and there was some objection that we should not base it on the number of cases, but we should base it on the amount of time spent, so we did a survey and we found that the amount of time is approximately 65%. So, I think we're on solid ground as far as the amount of money coming from the Highway Fund. First of all, it is highway related, and it doesn't exceed the percentage of time or caseload spent on highway-related cases.

In his testimony before the Committee, Jeffrey Leidinger, Director, Administrative Office of the Courts, provided the following synopsis as to why the court was requesting the use of highway funds and why the use of those funds was consistent with Part II, Article 6-a.

In 1977, this Committee made the choice that the Superior Court and, indeed, 20% of the State portion of the Superior Court costs be underwritten with the use of Highway Funds.

Part II, Article 6A, New Hampshire Constitution, includes the phrase, "supervision of traffic." Supervision of traffic, as defined by, in an opinion of the justices in 1977, encompassed the enforcement of traffic laws. Until this proposal, or until this bill was submitted to you, the Superior Court was really the only body, or only court function, appropriate for financing from the Highway Fund. Enforcement anticipates three functions: first, the apprehension; secondly, the prosecution; and thirdly, the adjudication of traffic offenders. If those three aspects are to be reviewed, you will find that the State Police receive a substantial amount of money, the apprehension function from the Highway Fund. The prosecution, the Attorney General's Office, also receives a substantial amount of money. Until current, or currently the Superior Court will be receiving, in FY '84, \$248,000 and in FY '85 \$252,000 from the Highway Fund.

It should be noted that while the Office of the Attorney General does receive funding from the highway fund, it is not for the prosecution of

SUPERIOR COURT AND DISTRICT COURT (Continued)

traffic offenders but for expenditures of the Transportation and Construction Bureau of the Attorney General's Office. This Bureau provides legal resources to the Department of Transportation (DOT) in eminent domain proceedings and other DOT areas as explained more fully on page thirty-one of this report.

As can be seen from Exhibit IV on pages seventeen and eighteen, the Superior and District courts have each received \$1,000,000 in highway fund support since fiscal year 1986. These amounts are not based upon any formula, but are well below the amount of highway funds which could be allocated to the court system if the 20% and 65% figures referred to in the testimony above were used. These percentages reflect the "highway-related" work load of the Superior and District courts, respectively, as of 1982, and compare with the budgeted highway fund support percentages of 9.7% and 12.8% for fiscal year 1988.

While it is a relatively easy objective exercise to determine the amount of highway-related activity within the court system, it is a much more subjective exercise to determine whether the use of highway funds by the court system is consistent with Article 6-a. In his testimony, Mr. Leidinger applied a broad interpretation of Article 6-a and of the 1977 Opinion of the Justices in justifying the use of highway funds.

A narrower interpretation of Article 6-a and of the 1977 Opinion of the Justices would suggest that the use of highway funds by the court system is not constitutional. During the recorded debate concerning Article 6-a at the 1938 Constitutional Convention, there was no mention of the word "courts" or the "court system," although fines presumably required adjudication in 1938. Further, an amendment to Article 6-a was proposed to drop the words "including the supervision of traffic thereon." While this amendment was defeated, the debate concerning it gives some insight into the intent of this phrase. Mr. Charles A. Holden of Hanover, sponsor of Article 6-a, said this in response to the proposed amendment:

Mr. President and Members of the Convention: From the start of motor vehicle traffic up to now it has been necessary to patrol the highways in order to protect such traffic, especially in regard to accidents and for general supervision. We cannot, in justice to the people of this state, in justice to motorists who come from abroad, in justice to ourselves, have no supervision of the traffic on the highways. And the part that would be taken from this resolution is "including the supervision of traffic thereon" - **on the highways, not somewhere else** (emphasis added). And I submit to you, members of this Convention, that we must have protection and supervision of the traffic on the highways.

SUPERIOR COURT AND DISTRICT COURT (Continued)

It could be argued that when the 1977 Opinion of the Justices interpreted "including the supervision of traffic thereon" as authorizing the expenditure of highway funds for the "enforcement of traffic laws and the patrolling of the highways," that the Justices did not intend to include the adjudication of traffic laws within the meaning of their Opinion. Lastly, the Opinion does not specifically say that highway funds may be used by the courts.

CONCLUSION:

We have attempted to provide what may be considered the two extremes concerning the interpretation of Article 6-a and its applicability to the use of highway funds by the court system. The appropriate interpretation is a matter for the Legislature to continue to determine.

RECOMMENDATION:

The court system should be required to submit documentation to the Legislature with its biennial budget requests which supports its use of highway funds consistent with Article 6-a.

AUDITEE RESPONSE:

Please refer to Appendix C for the response of the Chief Justice, Supreme Court, dated April 21, 1988.

PUBLIC WORKS BUREAU, DEPARTMENT OF TRANSPORTATION

The Public Works Bureau is one of four bureaus within the Public Works and Transportation Division of the Department of Transportation. The Bureau's total operating budget as originally enacted for fiscal year 1988 is \$1,582,789. For this fiscal year and next, \$100,000 has been appropriated from highway funds for the removal of asbestos from Department of Transportation buildings, while the remainder of the Bureau's operating budget is funded from the general fund and used for non-highway purposes.

CONCLUSION:

The Bureau's use of highway funds for removal of asbestos from Department of Transportation buildings appears to be consistent with Article 6-a.

RECOMMENDATION:

During our review of the Department of Transportation's operating budget for fiscal year 1988, we noted the Department receives general funds for non-highway purposes. For example, the Public Works and Transportation Division and the Aeronautics Division are not highway-related. Yet, the Administration Division is funded 100% by highway funds, but provides support to these non-highway Divisions.

The Department of Transportation should develop a consistent method to recover all costs paid from highway funds in support of its general and special revenue fund activities. The Department should also be required to submit documentation with its biennial budget requests which supports its use of highway funds consistent with Article 6-a.

AUDITEE RESPONSE:

The Department concurs with the conclusions and recommendations as stated. We will develop a consistent method of recovering all costs paid from highway funds in support of its general and turnpike funded activities. The Department will cooperate with any requirements for documentation to support its request for highway funds.

Please refer to Appendix D for an additional response from the Commissioner, Department of Transportation, dated April 19, 1988.

WATER RESOURCES BUREAU

The Water Resources Bureau, formerly the Water Resources Board, is a part of the Division of Water Resources in the Department of Environmental Services. The Bureau's total operating budget for fiscal year 1988 is \$683,365, \$26,486 of which is funded by a transfer of highway funds from the Department of Transportation, with the remainder funded by the general fund.

The Water Resources Bureau has for many years engaged in a joint stream flow gauging program with the U.S. Geological Survey. Information gathered from this survey is used by the Bridge Design Bureau of the Department of Transportation (DOT). In return for this information, the DOT has historically funded approximately one-third of the program's cost.

CONCLUSION:

The Water Resources Bureau's use of highway funds appears to be consistent with Part II, Article 6-a of the New Hampshire Constitution.

RECOMMENDATION:

Even though the Bureau's use of highway funds is consistent with Article 6-a, the Water Resources Bureau should be required to submit documentation with its biennial budget requests which supports its use of highway funds consistent with Article 6-a.

AUDITEE RESPONSE:

The Water Resources Division has completed its review of that portion of the report relating to the "Allocation of Highway Fund Resources" as such resources support programs of this agency. The former Water Resources Board was the co-operating state agency with the United States Geological Survey (U.S.G.S.) in the establishment and maintenance of a stream flow gauging program as authorized by Chapter 148 in the 1937 Session. State funding for the program, at that time and thru the years, was approximately one third from Highway Department and the balance from general funds.

The program provides steam flow and other data which is used by the Department of Transportation for design of bridges and other drainage facilities. The department uses this expenditure as part of its cost sharing match with the Bureau of Public Roads. The Water Resources Division (Board) has recommended in the past that other agencies having Federal funds, such as the Water Supply and Pollution Control Division, fund a portion of these costs to relieve the General Fund.

This office supports the conclusion shown and will provide that level of documentation necessary to support the use of highway funds for these programs.

PUBLIC HEALTH LABORATORIES

The Public Health Laboratories are a part of the Disease Prevention and Control section of the Division of Public Health Services, Department of Health and Human Services. Within the Public Health Laboratories is what is known as the "expert witness unit." According to William T. Wallace, Jr., Director, Division of Public Health Services, this unit spends its time "performing blood alcohol analysis; certifying, calibrating, maintaining and repairing the Intoximeter 3000's; training and certifying operators of the Intoximeter 3000's; providing expert testimony in court; and performing quality control procedures on the breath tubes used for split samples."

The Public Health Laboratories' total operating budget for fiscal year 1988 is \$1,224,875, of which \$175,083 is funded by a transfer of highway funds from the Department of Transportation. This amount is based upon the adjusted authorized appropriation from the prior fiscal year and is supported by a detailed breakdown of expenditures. The amount includes salaries for three full-time and one part-time employee and other operating expenses of the expert witness unit.

CONCLUSION:

The amount of highway funds allocated to the Public Health Laboratories appears to be based on a reasonable allocation of costs related to the expert witness unit. The determination of whether the costs of the expert witness unit are costs which can be funded from highway funds in a manner consistent with Article 6-a depends upon the interpretation given to the phrase "including the supervision of traffic thereon" and the Opinion of the Justices concerning that phrase.

If the work of the expert witness unit is considered a part of the enforcement of traffic laws, then funding of that unit from highway funds would be consistent with Article 6-a. If the work of the unit is not considered a part of the enforcement of traffic laws because of the unit's organizational standing or some other reason, then its funding from highway funds would not be consistent with Article 6-a.

RECOMMENDATION:

The Public Health Laboratories should be required to submit documentation with its biennial budget requests which supports its use of highway funds consistent with Article 6-a. This documentation should be submitted to the Legislature as part of the Governor's recommended budget.

AUDITEE RESPONSE:

We are in agreement with your findings as they relate to the Public Health Laboratories. We will be happy to submit documentation with our biennial budget request to support our use of highway funds.

HIGHWAY SAFETY AGENCY

The Highway Safety Agency was created by Chapter 333, Laws of 1967, to assist in implementing "a highway safety program designed to reduce traffic accidents and deaths, injuries and property damage resulting therefrom." Chapter 333 was enacted in response to the National Highway Safety Act of 1966, which authorized the federal government to provide financial assistance to the states for highway safety programs which met basic requirements. The act also carried penalties for noncompliance with those requirements, including the potential for a 10% reduction in federal aid for the states' highway construction programs.

The total operating budget for the Highway Safety Agency for fiscal year 1988 is \$627,783, of which \$119,890 is funded by a transfer of highway funds from the Department of Transportation, with the remainder being funded by the federal government.

CONCLUSION:

The amount of highway funds used by the Highway Safety Agency appears to be more than what is permitted by Article 6-a. The administration of the Agency is funded 100% from highway funds. Based upon statistics provided by the Agency for 1980 through 1988, only approximately 38% of its federal grants are associated with the enforcement of traffic laws. The Agency's use of highway funds is not reduced to reflect the effort expended in other areas.

RECOMMENDATION:

The Highway Safety Agency should reduce its requests for highway fund resources by a reasonable allocation of costs associated with work not related to the enforcement of traffic laws. It should be required to submit documentation with its biennial budget requests which supports the Agency's use of highway funds consistent with Article 6-a.

AUDITEE RESPONSE:

The Highway Safety Agency agrees the amount of funding from highway trust funds should be in the proportion that its projects with State, County and local government entities relates to the supervision of traffic, including the enforcement of traffic laws.

OFFICE OF THE ATTORNEY GENERAL

The Transportation and Construction Bureau, Division of Legal Counsel within the Office of the Attorney General "represents the State in negotiations and litigation involving land acquisition and acts as counsel to the Department of Transportation." In this capacity, the Bureau becomes involved in construction litigation, eminent domain compensation cases, defense against tort claims, attempts to halt construction projects in process and other investigations.

The total operating budget for the Transportation and Construction Bureau for fiscal year 1988 is \$301,366, funded entirely by highway funds transferred from the Department of Transportation (DOT). The majority of the money is used to pay the salaries, wages and benefits for the five attorneys and two secretaries employed by the Bureau. During fiscal year 1987, the Bureau spent 7,630 hours on DOT activities according to the Office of the Attorney General.

CONCLUSION:

The Transportation and Construction Bureau provides significant services to the Department of Transportation relative to highway construction, reconstruction and maintenance. In addition, the Office of the Attorney General has provided a reasonable basis for capturing costs associated with DOT work by establishing the Bureau as a separate program appropriation unit (PAU). However, the Bureau does provide legal services to the Public Works and Transportation Division and the Aeronautics Division of the Department of Transportation, both funded from general funds, and others. Yet, the time devoted to these non-highway activities is not deducted from the Bureau's highway fund allocation.

Except for the highway funds allocated to the Bureau for non-highway activities mentioned above (which we were unable to quantify), the Bureau's use of highway funds appears to be consistent with Article 6-a.

RECOMMENDATION:

The Office of the Attorney General should reduce its requests for highway fund resources for its Transportation and Construction Bureau by a reasonable allocation of costs associated with non-highway work. It should submit this documentation to the Governor with its budget requests who, in turn, should include it with the recommended budget to the Legislature.

OFFICE OF THE ATTORNEY GENERAL (Continued)

AUDITEE RESPONSE:

Auditee agrees that establishing Transportation and Construction Bureau as a separate PAU provides a reasonable basis for capturing costs associated with Department of Transportation work. Auditee does not agree that requests for Highway Fund resources should be reduced, although we are prepared to provide additional justification for maintaining the current allocation percentages.

Less than 8% of the Department's budget is allocated to the Highway Fund. These funds support one of the five major bureaus, which include five attorneys and eight total personnel. The Bureau's budget does not, however, include amounts for supervisory and administrative personnel outside of the Bureau but who work with the Bureau. Nor does it include case specific support provided by attorneys and other personnel outside of the Bureau, or office equipment purchases that support the Bureau and other bureaus. As provided in Opinion of the Justices, 117 N.H. 301 (1977), funding of a budget from Highway Trust Funds in the proportion that highway activities bear to the total work of the Department is consonant with New Hampshire Constitution Part 2, Article 6-a. Through reconstruction of time sheets and other work estimates, the Department can verify that at least 8% of the office's work is highway related.

BOARD OF TAX AND LAND APPEALS

The Board of Tax and Land Appeals was established on December 31, 1982 by Chapter 42:72, Laws of 1982. Chapter 42 combined the responsibilities of the former Board of Taxation with those of the former Eminent Domain Commission. According to RSA 71-B:5, the Board of Tax and Land Appeals has authority "to hear and determine all matters involving questions of taxation properly brought before it, to hear and determine any appeals relating to the equalization of valuation performed by the Commissioner of the Department of Revenue Administration, and to hear and determine all matters relating to the condemnation of property for public purposes and the assessment of damages thereon." The Board receives highway fund support for its work on the condemnation of property for public purposes, i.e., for highway construction.

The operating budget for the Board for fiscal year 1988 totals \$456,422, of which \$165,544 (36%) is funded by a transfer of highway funds from the Department of Transportation. While the Board did not have any documentation for its request to use this amount of highway funds, Board personnel informed us the amount is based on the funding pattern of the former Eminent Domain Commission. Eminent Domain was funded on the basis of 40% from the highway fund and 60% from the general fund.

However, the Board provided us with hearing statistics for fiscal years 1985, 1986 and 1987. In 1985, a total of 41 cases were heard by the Board, 31 (76%) of which were highway-related, according to Board personnel. In 1986, 25 (69%) of 36 were highway-related, while 30 (79%) of 38 were highway-related in 1987.

CONCLUSION:

Due to the fact that condemnation proceedings are necessary for the construction of highways, the Board of Tax and Land Appeals' use of highway funds appears consistent with Article 6-a. However, we could not determine whether the amount appropriated from highway funds is reasonable, since the Board did not have documentation to support the amount, despite the fact that hearing statistics were provided.

RECOMMENDATIONS:

The Board should be required to submit documentation with its biennial budget requests which supports its use of highway funds consistent with Article 6-a. This documentation should be submitted to the Legislature as part of the Governor's recommended budget. Since the Board's case numbering system allows it to segregate the Department of Transportation's condemnation cases from all others, this data should be used in developing its cost allocations.

BOARD OF TAX AND LAND APPEALS (Continued)

In addition, personnel from the Board informed us that all eminent domain filing fees received by the Board are deposited on a 90% highway fund / 10% general fund split (RSA 498-A:16-a). The Legislature should consider amending this RSA to eliminate the requirement that the Department of Transportation pay a filing fee. Funds collected from non-highway condemnors are distributed according to RSA 498-A:21. Revenues should be deposited to the appropriate fund based upon the substance of each transaction.

AUDITEE RESPONSE:

The Board concurs with the LBA's conclusion that the Board's use of highway funds appears to be consistent with Article 6-a of the New Hampshire Constitution. As noted by the LBA there is a problem with determining if the amount of funds allocated to the Board from highway funds is reasonable since neither hearing statistics nor filing statistics reflect the amount of personnel time and other expenses actually spent on highway cases versus non highway cases.

The best method for calculating actual expenses is probably determining the amount of time each employee spends on highway cases versus non-highway cases and using the monetary value of all that time versus the monetary value of all the time spent on non-highway cases to determine the allocation from highway funds.

The weakness of this method is its poor predictive value since the number of tax cases filed annually has varied up to 360% in the last five years and the number of eminent domain cases has varied up to 270%. For that reason and because of the easy administration factor the Board would prefer to stick with the 40%, 60% that was determined by Administrative Services in 1982 after a substantial amount of research. Moreover, the 40%, 60% split is actually adjusted for Board expenditures relating to non-highway department takings by RSA 498-A:21.

However if the Fiscal Committee determines an allocation by time spent is preferable to the 40%, 60% split the Board will collect the data necessary to make that calculation.

OFFICE OF ALCOHOL AND DRUG ABUSE PREVENTION

The Office of Alcohol and Drug Abuse Prevention (OADAP), Department of Health and Human Services, is responsible to provide for the care, treatment and rehabilitation of alcohol and drug abusers, and to work towards the prevention and control of alcohol and drug abuse through education, treatment, community organization and research. The Office fulfills its legislative mandate largely through support to community programs run by non-profit organizations. Its support to these community organizations takes the form of pass-through funds from the federal government as well as grants of State funds.

OADAP's operating budget for its State treatment and prevention program for fiscal year 1988 totals \$1,056,216, of which \$360,373 (34%) is funded by a transfer of highway funds from the Department of Transportation. The Office did not have any documentation concerning the amount of highway funds used to support the appropriation. While not documented, the Office's use of highway funds is consistent with the original funding pattern from highway funds originally established in fiscal year 1984.

We note that OADAP supported HB 319 during the 1987 legislative session. HB 319 called for a premium on the sale of alcoholic beverages, the proceeds of which were to fund the Office of Alcohol and Drug Abuse Prevention and eliminate the Office's use of highway funds. While this premium did not win support, testimony before the House Appropriations Committee on March 25, 1987 clearly indicates a preference by OADAP for an alternative means of funding.

CONCLUSION:

The Office of Alcohol and Drug Abuse Prevention's use of highway funds does not appear to be consistent with Article 6-a. Although the Office's programs may have an impact on the number of DWI cases through treatment and prevention of alcohol and drug abuse, we question whether these activities fall within the intent of the phrase "including the supervision of traffic thereon" within Article 6-a.

RECOMMENDATION:

The Legislature should consider funding the Office of Alcohol and Drug Abuse Prevention from a source other than the highway fund. This recommendation is not meant to imply that the Office should not be funded, but only that the use of highway funds may be inappropriate.

AUDITEE RESPONSE:

We agree with the recommendation that all agencies which utilize highway funds should be required to submit careful documentation which would justify utilization of these funds. The Office also believes that the final decision as to whether or not these funds are being utilized in an appropriate manner should be left to the General Court.

RESOLUTION No. 5

Resolution Relating to the Use of Motor Vehicle and Motor Fuel Revenues.

Resolved, That Part Second of the Constitution be amended by adding after Article 6 thereof the following new article:

Article 6-a. All revenue in excess of the necessary cost of collection and administration accruing to the state from registration fees, operators' licenses, gasoline road tolls or any other special charges or taxes with respect to the operation of motor vehicles or the sale or consumption of motor vehicle fuels shall be appropriated and used exclusively for the construction, reconstruction and maintenance of public highways within this state, including the supervision of traffic thereon and payment of the interest and principal of obligations incurred for said purposes; and no part of such revenues shall, by transfer of funds or otherwise, be diverted to any other purpose whatsoever.

Mr. Barton of Lempster introduced the following resolution:

RESOLUTION

Mr. Sanborn of Wakefield offered the following resolution and moved its adoption :

Resolved, That the President be instructed to appoint five tellers, one from each division, to act during the Convention.

On a *viva voce* vote the resolution was adopted.

And the President appointed the following :

- Division 1. Mr. Pridham of Newcastle.
- Division 2. Mrs. Mason of Berlin.
- Division 3. Mr. Hamlin of Claremont.
- Division 4. Mr. Sanborn of Wakefield.
- Division 5. Mr. Hart of Wolfeboro.

ANNOUNCEMENT

In accordance with the unanimous agreement previously entered into the Chair announces reference of the following resolutions :

Resolutions numbered, 1, 9, 12, 15, 18, 20, and 28 to the Committee on Bill of Rights and Executive Department.

Resolutions numbered 3, 14, 19, 24, 25 and 26 to the Committee on Future Mode of Amending the Constitution and Other Proposed Amendments.

Resolutions numbered 2, 4, 6, 7, 8, 10, 11, 27, 29, 30 and 32 to the Committee on Judicial Department.

Resolutions numbered 5, 13, 16, 17, 21, 22, 23 and 31 to the Committee on Legislative Department.

No. 1—Resolution providing for absentee voting, by Mr. Emerson of Milford, referred to Committee on Bill of Rights and Executive Department.

No. 2—Resolution relating to attendance of members of the legislature at the regular sessions, by Mr. Weston of Hancock, referred to Committee on Judicial Department.

No. 3—Resolution relating to pensions, by Mr. Spring of Nashua, referred to Committee on Future Mode of Amending the Constitution and Other Proposed Amendments.

No. 4—Resolution relating to compensation and mileage of members of the legislature, by Mr. McDaniel of Nottingham, referred to Committee on Judicial Department.

No. 5—Resolution relating to the use of motor vehicle and motor fuel revenues, by Mr. Holden of Hanover, referred to Committee on Legislative Department.

Tuesday, May 24, 1938.

The Convention met at ten o'clock in the forenoon, according to adjournment.

Prayer was offered by the Chaplain.

The reading of the Journal of the preceding day having begun:

On motion of Mr. Etsler of Claremont, the rules were so far suspended as to dispense with the further reading of the Journal.

COMMITTEE REPORT

Mr. Rainie of Concord moved that the rules be suspended and reports of Committees on Resolutions Nos. 14, 26 and 32 be considered in that order after the special orders have been disposed of.

The question being on the motion of Mr. Rainie.

On a *viva voce* vote the motion prevailed.

Mr. Smart of Tilton for the Committee on Legislative Department, to whom was referred Resolution No. 5, resolution relating to the use of motor vehicle and motor fuel revenues, reported the following resolution:

Resolved, That it is inexpedient to amend the Constitution as proposed in the resolution.

The question being on the report of the Committee.

On a *viva voce* vote the report of the Committee was adopted.

Wednesday, May 25, 1938.

The Convention met at ten o'clock in the forenoon, according to adjournment.

Prayer was offered by Rev. Clarence B. Etsler, Delegate from Claremont.

The reading of the Journal of the preceding day having begun:

On motion of Mr. Goodwin of Bethlehem, the rules were so far suspended as to dispense with the further reading of the Journal.

RECONSIDERATION

Mr. McDaniel of Nottingham moved that the vote whereby the Convention adopted the report of the committee on Legislative Department on Resolution No. 5, Resolution relating to the use of motor vehicle and motor fuel revenues, be reconsidered.

On a *viva voce* vote the motion prevailed.

The question being upon the report of the committee.

Mr. McDaniel of Nottingham: Mr. President: This may present a rather unusual situation. This resolution was given public hearing, and action was taken by the committee. It was, however, not by unanimous vote, and as a member of the committee I notified the other members of the committee that it was the wish of the gentleman from Hanover to have this resolution presented before this convention, and that I should be with him and support him.

We feel that in view of the action that has been taken in many other states regarding gasoline taxes, motor vehicle taxes and other revenues, and in view of the fact that there was quite a serious attempt during the last session of the legislature to use those fees for other purposes than for highway purposes that we should have a constitutional amendment that would prohibit the use of motor vehicle taxes and gasoline taxes being used for any purpose but for highways.

Action, as I understand it, was taken by the Tax Assessors Association of our state favoring such an amendment. After the action by the Tax Assessors Association, Professor Holden conferred with

me and it was my privilege to present the matter to the New Hampshire State Board of Assessors.

We feel that this matter should be given careful consideration by this assembly. We do not feel that there was any desire or attempt to slide this thing over, but just a few minutes previous to the fall of the gavel yesterday the gentleman from Hanover, who introduced this resolution, and I came to the desk and asked if there were any reports in on this resolution, and we were told there were not, so we were not expecting any action on this yesterday. We therefore feel we should give this favorable consideration.

Mr. Sanderson of Pittsfield: Mr. President: Following the remarks of Mr. McDaniel, I will say we were hardly settled in our seats after having been prayed over and prayed for and our minds were not on such material things as taxes. No consideration was given this resolution, which really deserves discussion before this body. Generally we lock the stable door after the horse is stolen. I have been a member of the last two sessions of the legislature. At the first session there was no apparent attempt to divert the gasoline funds for purposes other than for what they were intended. However, at the last session I viewed with alarm the very serious attempt to use money from this source for other purposes than that for which it was intended. Evidently the appropriation committee and the legislature as a whole looked with disfavor on the attempt to divert the funds, but to my mind it showed a tendency that there might be further attempts to divert money from these revenues for other purposes. Other states have had the same experience. That is, easy money raised through gasoline taxes has been diverted for various purposes. A very bad tendency. After the legislature adjourned, a further raid, if I may call it so—perhaps a perfectly legitimate raid—was made upon highway funds. In other words, the governor and council borrowed money with which to buy certain property in this state. We know it was additional land for the Daniel Webster Homestead. It was a very worthy purpose, and fortunately for the highway funds, it is expected it will be reimbursed from the sale of lumber cut on the land purchased for the Daniel Webster Homestead. Fortunately there will be a return of that raid on the highway funds, made when the legislature was not in session, but I think it is a very bad example they are setting. We cannot tell what future governors and councils may want to do, and with the precedent already given them, there is no reason why they cannot borrow it for other purposes, with the perfectly good intention of replacing the money, but that place that some of us will perhaps unfortunately go to they say is paved with good intentions. I hope we will see fit to lock the stable door

before the horse is stolen this time, and I urge you to give serious consideration to tying up highway funds so that they will be used only for the purposes for which they were intended.

Mr. Page of Gilmanton: When you go to the filling station to pay your taxes and get a little gasoline thrown in, do you realize that you are paying a straight sales tax of from thirty-three to forty percent? An utterly exorbitant tax! The legislature in this hall turned down, or rather the committee didn't see any chance of the passage in the legislature of a proposal in the last session for a two percent sales tax, and that certainly is the highest rate a sales tax ever should be, and it is higher, I believe, than can ever be adopted in New Hampshire. Nonetheless, we have this at least thirty-five percent sales tax upon gasoline; and the only possible justification for such a tax is that it should be used for the immediate benefit of the people who pay it. Because in the State of New Hampshire it has been so used up to now, we have not complained too much about it; but I do not wonder that some want to have a safeguard against future diversions of that exorbitant tax put into the constitution.

I should not be here speaking to you of it, because I very strongly do not think any one delegate should speak too often on this floor, and I think I shall have to speak once more today on a bill which was before my committee. I do it only for my friendship for the sponsor of this bill, my friend Professor Holden, for whom I promised to do it. However, I do very strongly agree with the proposal.

One of the finest things the last legislature did, and perhaps the finest, was to establish a secondary road system in this state, as proposed by the highway department after considerable study. As you probably realize, and you probably do if you come from some of the country towns, and Professor Holden asked me to speak for the small towns, the secondary road system is not half built, not nearly half, and all the taxes from gasoline revenues will be needed for the building of that system for many years to come.

Let me cite you one instance which is more or less typical. Last month I had to go and give an address six miles from where I live, and I had to travel eighty miles in order to do so, on account of the condition of the roads between my home and that place. There are in our town eighty miles of roads that are in such a condition every year; the farm to market roads, which are just as important, more important to the cities than to the towns, because if food cannot get from the farms to the towns and cities, the cities are worse off than the farmers, who still have something to live on; on the rural delivery routes, as well as on the Star Routes, the carriers have to smash up their cars, they have to spend more sometimes

than they get, to keep up their transportation, on account of the condition of the roads. The conditions are such that a lot of money has yet to be spent in the state of New Hampshire on its roads, and it ought not to be diverted to anything else.

One more point. It is evidently the desire of the people to vote upon this subject. I believe it is more evident that the people want to vote on this question, from the action of the Grange and from talking with other people about it, than on any other question that may come before them, except general taxation, and we ought to give them that privilege.

If the time ever comes when we do not need all the money for road purposes, then there will be a movement to have it used for other purposes stronger than there is now. But what we ought to do then, for once in history by exception, is to reduce the tax.

Mr. Spring of Nashua: Mr. President, Gentlemen of the Convention, Ladies and Gentlemen: I want to remind this convention that this resolution is here on a report from the Legislative Committee. The majority of that committee are in favor of the resolution, inexpedient to amend the constitution. The reason for that, and the sole reason for that, is they think this kind of a proposition has no place in the constitution of the State of New Hampshire.

Now, I had no intention of speaking on this subject. I am a friend of Professor Holden, but the committee believed that this kind of a proposition should not be in the constitution. I simply want to make that statement.

Mr. Emerson of Milford: Mr. President and Delegates of the Convention: I am generally in favor of supporting reports of committees. Here is an instance where I will depart from the usual. We all know that every automobile owner in the State of New Hampshire pays substantial sums for the upkeep and the building up of our highway system. We also know as we look abroad that in other states sums out of these road tolls, as we might call them, are being diverted for other purposes. In the State of New Hampshire an attempt has already been made to divert some of these funds. Such diversions should not be permitted.

You know that every ship that sails the seas carries an anchor, and every ship, probably the majority of them, has never loosed the anchor for any purpose, but there are times when an anchor has saved it from a major disaster, and it seems to me we should equip our state with such an anchor to save it from any diversion of these road funds.

Mr. Upton of Concord: In considering the matter now before the convention, I suggest that we take our bearings and then determine our course.

The resolution which you have under consideration would appropriate for highway purposes all the revenues derived from the motor vehicles, with the exception of permit fees. You would by this resolution, if you adopted it, undertake to say in advance how revenues accruing to the state should be spent. The Committee on Legislative Department heard the proponents of this resolution at length. There was no attempt on the part of the committee to rush this matter through the convention. The action of the committee recommending that it was inexpedient to amend the constitution as proposed by the amendment, was taken at a well attended executive session, and the report was filed here in the convention with the clerk before the morning session. If the proponents of this resolution did not know of the filing of the report, it was through no fault of the committee.

Personally, I am glad the matter has been reopened by the adoption of the motion for reconsideration. We should not dispose of resolutions without full consideration in the convention. The majority, and I would say the large majority, of this committee were of the opinion that there was no occasion for such an amendment. The highway toll or gasoline tax produces approximately \$2,500,000 annually. The fees from registrations and licenses amount to approximately \$2,000,000 more. This resolution applies, therefore, to state revenues aggregating at the present time approximately \$4,500,000. Every cent of that is now being used for the improvement and maintenance of our highways. In addition there is raised from other sources, principally from the towns and the Federal Government through subsidies to maintain and improve our highways, about \$4,000,000. We are spending each year for the maintenance and improvement of our highways approximately twice the amount of the taxes received from automobiles. I think there was no member of the committee who did not favor the principle embodied in the resolution. But the committee did not see any occasion for writing this principle into the fundamental law. There are many good laws which we do not write into our constitution. The committee further felt there was no reason to apprehend any diversion of this money from the purposes for which they are now used, as there is nearly twice as much spent on highways as is received from the automobile taxes and highway tolls. We did not feel it was desirable to write into the constitution special rules for the use of funds in advance of their collection. We believed this matter might safely be left to future legislatures. Consequently

your committee reported that it was inexpedient to amend the constitution as proposed by this resolution.

Mr. Holden of Hanover: Mr. President, Members of the Convention: The object of this resolution is to make secure for highway purposes the revenue received from motor vehicle charges, which are paid by one group of people, who in addition also pay general taxes in common with other residents of the State of New Hampshire.

It also would help in relieving the tax burden, because it prohibits the expenditure of motor vehicle revenues to new types of expenditures. It thereby relieves the taxpayers from paying that additional amount which would be necessary to make up for the amount of money diverted.

There are those who say that it cannot happen in New Hampshire, that there will be no money diverted. Should there not be, the resolution if adopted can do no harm, but we have the experience of many other states to show us that it has happened in those states. And, the situation became so serious that the Hayden-Cartwright act of 1934 makes it possible to impose a penalty up to one-third of the federal highway aid against those states which do divert highway money. Some will say that the above penalty is sufficient to prevent states from making diversion, but we must remind ourselves in the first place that the penalty is simply legislation by congress which at any time may be repealed, and that in many states the penalty has not been found to be effective. Four states have found it necessary to put such prohibition in their constitutions. Other states have them in process, and it is interesting to note that two of the above states already having legislative prohibition have found it not to be effective. Upon notice that penalties would be applied, Pennsylvania has replaced some nineteen million dollars, Maryland has replaced \$3,300,000 and other states have promised to do the same. In New Jersey they have been penalized \$250,000 for diversion and probably will be penalized an additional amount this year, so that there is now in circulation a petition to the governor and legislature to write into the constitution a prohibition, and also to enact prohibitive legislation to be effective until the Constitutional prohibition is adopted. If neither of the above provisions is adopted the petition asks for a reduction in motor vehicle and motor fuel taxes. In the state of New York, which has diverted \$258,000,000 in six years, and in 1936 diverted about \$60,000,000, there is a bill in the present sitting Constitutional Convention seeking to prevent such diversion.

I would like, if I had the time, to read extensively to you from a publication upon the effect of automotive diversion in Massachu-

setts, which is sponsored by thirty-seven different organizations, including many motor groups, the State Grange of Massachusetts, the Farm Bureau of Massachusetts, highway associations, and the Building and Construction Trade Council of Boston, a subdivision of the American Federation of Labor. The Secretary of the American Federation of Labor subdivision said that in 1937 sixty-six hundred men in Massachusetts were deprived of the opportunity to earn some real honest wages as a result of the diversion of \$6,600,000 of the highway funds. Another writer states that the motorist pays for the highways he uses; he also pays additional taxes, because of the misuse of funds.

They also have made a study in Massachusetts of the average value of automobiles owned there and they figured the average federal, state and local motor vehicle taxes—you should bear in mind that the taxes come on the average from those of small means. The result was that while the rate on real estate was \$35.00 per thousand of assessed value, which was a high tax, the annual tax rate on automobiles was \$238.00 per thousand, or about seven times the tax rate on real estate.

In 1937 the Massachusetts State Grange, attended by 1500 persons, representing 46,000 members, passed a resolution strongly condemning diversion. The Massachusetts State Grange is joining forces with many other state agricultural organizations to stop this diversion by constitutional amendment, because that is the only way it can be stopped.

Now, we are told that the diversion prohibition should not be placed in the constitution. Just think back a bit. In the early times, roads were a charge on the towns and the charges were raised by general taxation. A little later, as the highways became more important, the state highway department was formed, which had charge of the principal roads, and these roads were financed by state and town taxes. When the automobile came, it was recognized that here was a different condition, and so it was agreed that automobile owners and users should pay a special tax or special taxes for the use of the highways, and the revenue received should be spent on the highways. We have in the general statutes specific laws stating in detail how the money shall be spent, what the charges shall be, and so forth, but so far as I know there is no general statement of principle and policy in regard to the recognized fact that the net motor vehicle revenues should be spent on the highways. Resolution No. 5 is a general statement of principle and policy, and therefore by its own right has a position in the constitution. Further, it has been found by other states that it is the only effective way to obtain prohibition, and we have, as a matter

of fact, in this state's constitution a provision similar to this, providing that the general court shall not authorize any town to give its money or credit directly or indirectly for the benefit of any corporation having for its object a dividend of profits. That is a provision which was passed by a constitutional convention and was adopted in 1877, sixty-one years ago, and last year it served this state well. If you adopt the provisions of Resolution No. 5, they will serve this state well.

There are those who say that some day the motor vehicle revenues will be more than are needed for highways, and therefore we should have an opportunity to use them for other purposes. I doubt whether there is anybody in this convention who believes that during his life time such a condition will happen. If this resolution is adopted, and should there at any future time be receipts from motor vehicles greater than are needed on the highways, the charges on automobiles, which charges are more than hard on people of limited income, should be reduced.

They say also that in times of calamity we ought to be able to tap the revenue from motor vehicles. Why should one group in the state bear the burdens of all in the state? As to calamities, how about the use of highways in time of war? What about times of flood? Highways then are damaged, and need more money.

We need also and wish to attract more people to buy homes, to spend their vacations here and to come here for winter sports. The recreational business which is one of the large industries in New Hampshire requires good highways.

This bill was sponsored by the Association of New Hampshire Assessors, a body fully representative of the people of New Hampshire, since every town official has the right to be represented thereon, and I feel that this body, which is representative of the entire State of New Hampshire, will wish to vote for this resolution so that the people themselves shall have an opportunity to say whether they wish to have the money, which they as owners and operators of motor vehicles pay, spent on the highways.

Therefore, Mr. President, if it is in order, I would like to move: In the report of the committee on Resolution No. 5 to substitute for "inexpedient to amend" the following: "the amendment as proposed in the resolution be adopted."

Mr. Holden of Hanover moved to amend the report of the Committee on Legislative Department on Resolution No. 5 by substituting for "inexpedient to amend the Constitution" as proposed in the resolution the following: "The

amendment as proposed in the resolution be adopted by the convention."

The question being on the motion of Mr. Holden of Hanover.

Mr. Sawyer of Jaffrey: Mr. President, Fellow Delegates: I feel there is no disagreement here in this convention. I want to tell you there was no disagreement within the committee. We are all in favor of spending the money received from motorists throughout New Hampshire on New Hampshire roads. I want to tell you also when this first came before the committee, every member of the committee was inclined to vote for it, but the more we considered and thought it over, and I assure you we spent sufficient amount of time on it, the more we thought that as an amendment to the constitution it was entirely unnecessary, absolutely uncalled for, absolutely out of place to be enshrined in that document. I offer you not the opinion of the twenty men on the committee as the reason you should vote to sustain the committee, but I offer the fact that by that reasoning they changed their minds.

There are ten million dollars being spent on New Hampshire roads now, and less than half of that comes from road fees. Is there any likelihood of diversion there? Is there any likelihood it will ever reach diversion? New Hampshire is a little different from some of the other states that have adopted rules for diversion; we are a motor using public. I suppose, if we wanted to, there are enough automobiles so that everybody could get in and ride at once. There is also this in the statutes; the statute says the money shall be used on roads. They never have changed it. They say it was suggested they be used for other purposes in the last session. I was in the last session; I never heard of the suggestion. It wasn't important enough so that it reached the floor and had active consideration. The members of the legislature have to use the roads to get here. There is no other way to get here, unless they walk. Are they going to vote contrary to their own interests? I say if you feel it is necessary to have it in the constitution, there is no strong feeling that it should not be in. There has been no pressure to bring in an unfavorable report. They reached their decision by common reasoning and the exercising of common sense.

If you feel it should be enthroned in the constitution, if you wish to support this measure, by all means do so; the legislative committee shall not feel hurt or insulted if you overturn their report, but on the other hand, if you follow our line of reasoning and feel it is a matter of legislation and that the constitution should not be

cluttered up with legislation, and if you vote to sustain the report, in my judgment you will be exercising greater wisdom.

Mr. Britton of Wolfeboro: I rise in support of the report of the committee. Yesterday there seemed no differences of opinion as to the matter under question. You can find men who will argue whether digging clams is fishing or farming. I could say, what keeps the bricks together? I would say mortar, and the other fellow would say it isn't, that is what keeps them apart.

Now, ladies and gentlemen, the constitution of the State of New Hampshire is a declaration of great general principles. Out in one of the western states I understand they put a section in the constitution saying that hotel sheets should be eight feet long and six feet wide. Now, isn't that ridiculous? Everybody knows that. It would be ridiculous here to clutter up the constitution with a multitude of prohibitions just like this. There has been no serious diversion of the gasoline taxes in New Hampshire. As far as I know, there has been none. If there has been none, why worry about something that may happen in the future? There is no occasion for it. If they had taken a million or so frequently here and there and it took a lot of effort to beat it in various legislatures, there would be some standing here. They are worrying about something that will never happen. It reminds me of a grandmother glorying about the birth of a new baby in the family. After a month they found her crying with the baby in her arms. They said, "Grandmother, I thought you were gloriously enjoying this baby, what is the matter now?" She said, "It just came to me when this baby grows up she may marry someone I don't like." Here is the same situation there. They are worrying about something that hasn't happened in New Hampshire, and probably never will. I am willing to trust the legislature on it.

On a *viva voce* vote the motion did not prevail.

Mr. Holden of Hanover called for a division.

A division being had, 211 delegates voted in the affirmative and 185½ delegates voted in the negative, and the motion of Mr. Holden of Hanover was adopted.

The question being on the report of the Committee as amended.

Mr. Conner of Exeter offered the following amendment.

Amend said Resolution No. 5 by striking out the words

“including the supervision of traffic thereon” so that said article as amended shall read as follows:

Art. 6-A. All revenue in excess of the necessary cost of collection and administration accruing to the state from registration fees, operators' licenses, gasoline road tolls or any other special charges or taxes with respect to the operation of motor vehicles or the sale or consumption of motor vehicle fuels shall be appropriated and used exclusively for the construction, reconstruction and maintenance of public highways within this state and payment of the interest and principal of obligations incurred for said purposes; and no part of such revenues shall, by transfer of funds or otherwise, be diverted to any other purpose whatsoever.

The question being on the amendment.

Mr. Connor of Exeter: I offer this amendment because I believe that the clause “Including the supervision of traffic thereon” is put in the resolution so that highway funds may be diverted for the support of the state police. While it is true that as yet the gasoline tax has not been so diverted, other highway funds were used by the last legislature to start the state police. The inauguration of state police in New Hampshire has already cost a great deal more money than the original appropriation. Talk of barracks is already prevalent and the broadcasting and radio-equipped cars necessary to make barracks effective will enormously increase the cost of the police system. I estimate that the state police will, within a few years, cost at least half a million dollars annually, and under this resolution, without my amendment, all the necessary money could be diverted by the legislature from highway funds to support the police department. I am in favor of the resolution with my amendment and I ask your support in its adoption.

Mr. Holden of Hanover: Mr. President and Members of the Convention: From the start of motor vehicle traffic up to now it has been necessary to patrol the highways in order to protect such traffic, especially in regard to accidents and for general supervision. We cannot, in justice to the people of this state, in justice to motorists who come from abroad, in justice to ourselves, have no supervision of the traffic on the highways. And the part that would be taken from this resolution is “including the supervision of traffic

thereon"—on the highways, not somewhere else. And I submit to you, members of this Convention, that we must have protection and supervision of the traffic on the highways.

On a *viva voce* vote the amendment was not adopted.

The question being on the report of the Committee as amended.

On a *viva voce* vote the chair was in doubt.

Mr. Stevens of Landaff demanded a roll call and a sufficient number seconded his demand, the roll was called with the following result:

YEAS 242½

ROCKINGHAM: Tuttle of Atkinson, Lallier, Lake, Shaw of Candia, Chase of Deerfield, Hepworth, Foss, Fecteau, Gowen, Thurlow, Palmer of Kensington, Adams, Labranche, Willey, Bluitte, Knowles, Johnson of Northwood, McDaniel, Palmer of Plaistow, Fransoso, Herrick, Palfrey, Downs, Foote of Portsmouth, Gray, Yeaton, Leary, McEachern, Goldsmith, Burkhardt, Brown of Rye, Lancaster, Drowne, Foote of Seabrooke, Jewell, Dining.

STRAFFORD: Atwood, Reynolds, Sherry, Wentworth, Willand, Chesley, Hall of Dover, Ward 4, Redden, Thompson of Lee, Garnett, Conrad, Potvin, Turcotte, Dickinson of Rochester, Hudon, Habel, Berry of Strafford.

BELKNAP: Chamberlain of Alton, Little, Friend, Sanborn of Center Harbor, Page, Gallagher, Hoey, Rivers, Newell, Sanders, Piper, Plummer, Sanborn of Sanbornton.

CARROLL: Morrill, Simpson, Prindall, Furber, Kenison of Conway, Kenneson of Eaton, Thompson of Effingham, MacGown, Morey, Gale, Staples, Banfield, O'Brien of Sandwich, Seeley, Palmer of Tuftonboro, Sanborn of Wakefield.

MERRIMACK: Vander Haegen, Welch, Nicoll, Stevens of Bradford, Kelley of Chichester, Chase of Concord,

Matthews, Otis, Demond, Patten, Saltmarsh, Shaw of Concord, Russell, Mackay, Milburn, Griffin, Hersey, Lemire, Mitchell of Hooksett, Davis of Hopkinton, Merrill of Loudon, Brook, Sawyer of New London, Woodbury of Pembroke, Sanderson, Whitford.

HILLSBOROUGH: Tracy, Putnam of Antrim, Melendy, Barnaby, Ellsworth, Chandler of Francestown, Avery, Pattee, Reynolds, Charois, Buxton, Reid of Litchfield, Cummings of Lyndeborough, Carter of Manchester, Cronin of Manchester, Boisvert, Betley, Towers, Sullivan of Manchester, Corbin, Sanborn of Manchester, Knowlton, Egan, Lavallee, Brown of Manchester, Currie, Hunter of Manchester, Mack, Tuohy, Beauchemin, Barnes, Carter of Merrimack, Emerson of Milford, Kimball, Prescott, Carleton, Cooper, Hamblett, Bernier, Levesque, Drumm, Fournier of Nashua, St. Francois, Groux, Hagerty, O'Hare, Grandmaison, Shedd, Currier, Holt, Tuttle of Temple, Barry of Wilton, Nelson of Windsor.

CHESHIRE: Gowing, Hanson, Aldrich, Southwell, Lombard, Duffy, Kennedy, Wiswall, Spaulding, Bullock, Goodspeed, Perry of Swanzey, Grimes of Troy, Relihan, Horner.

SULLIVAN: Danforth, Hamlin of Claremont, Handly, Lloyd, Pierce of Claremont, Sweet, Cutting, Gamsby, Barton, Condon, Fairbanks, Kempton, Sullivan of Newport, Read of Plainfield, Heath, Callum.

GRAFTON: Blandin, Hutchins of Benton, Goodwin, Young of Bridgewater, Coolidge, Mitchell of Campton, Ashley, Glover, Conkey, Jesseman, Holden, Dean, Cole, Howard of Lebanon, Shores, Astle, Eames, Soper, Wight of Littleton, Pushee, Bull, Cushman, Bell, Huckins of Plymouth, Kidder, Weeks of Warren.

Coos: Mason, Roy, Smith of Berlin, Lasure, Palmer of Berlin, Sullivan of Berlin, Brungot, Thomas, Bixby, Dugas, Fortier of Berlin, Gagnon of Berlin, Seymour, Felton, Parkhurst, Emerson of Dalton, Hamlin of Dummer, Jordan

of Errol, Crawford, Hancock, Hawes, Lowe, Peabody, Phelan, McGinley, Whitcher.

NAYS 180

ROCKINGHAM: Weston of Derry, Connor of Exeter, Merrill of Exeter, Tozier, Sanborn of Fremont, Emerson of Hampstead, Munsey, Wood, Pridham, Smith of Newfields, Coleman, Liberson, Sanborn of Raymond, Nesmith.

STRAFFORD: Chabot, Cronin of Dover, Grimes of Dover, Chamberlin of Durham, Blanchard, Young of Madbury, Longley, Miller, Wright of Rochester, Meader, Greenfield, Varney, Lagueux, Boucher, McGreal of Somersworth, Coffin.

BELKNAP: Hunt, Guay, Normandin, Johnson of Laconia, Jewett, Keller, Swain, Smart.

CARROLL: Weeks of Chatham, Britton of Wolfeboro, Hart.

MERRIMACK: Alexander, Hildreth, Coakley, McGirr, Davis of Concord, Duncan, Rainie, Langley, Upton, Sharaf, Haskell, Jordan of Concord, Nutter, Douphinett, Kelley of Franklin, Holmes of Henniker, Ladd, Johnson of Hooksett, Carr, Whittemore, Perkins, Pillsbury of Sutton, Gerrish, Clark of Wilmot.

HILLSBOROUGH: Pierce of Bennington, Poore, Weston of Hancock, Boynton, Butler, Blood, Bodwell, Daniels, Langdell, Wilson, Barnard, Clough, Graf, Harrington, Bartlett, Johnston of Manchester, Jennings, Murphy, Lane, Mullen, Creighton, Glynn, Lepage, O'Dowd, Savageau, Connor of Manchester, Flanagan, Looney, McCarthy, Berry of Manchester, Quinn, Roche, Sheehan, Bouthiette, Chevrette, Constant, Lacroix, Moran of Manchester, Clark of Manchester, Keane, VanWambeke, Aubin, Carol, Letendre, Prichard, Beaudet, Croteau, Laberge, Lesmerises, Calderwood, Spring, Dowd, Tolman of Nashua,

Marquis, Spillane, Madison, Cummings of Peterborough, Perry of Sharon, Peaslee.

CHESHIRE: Winslow, Firmin, Clark of Harrisville, Robertson, Despres, Sawyer of Jaffrey, McAllister of Keene, Olson, Martin, Watson, Tolman of Nelson, Rice, Baker of Roxbury, Woodbury of Sullivan, Bradley, Wells, Britton of Westmoreland, Burbank.

SULLIVAN: Davidson of Charlestown, Etsler, Hunter of Claremont, Putnam, Charles H., of Claremont, Putnam, Howard S., of Claremont, Quimby, Nelson of Goshen, Holmes of Langdon, Crowther, Lincoln.

GRAFTON: Wadhams, Gammons, Shepherd, Howe, Gould, Gorden, Keir, Smith of Haverhill, Morse, Stevens of Landaff, Cronin of Lebanon, Hoyt, Jones, Lynch, Clark of Lisbon, Pike, Burgault, Frazer, Howard of Piermont, Fountain, Austin, Breck, Woodbury of Woodstock.

Coos: Montminy, Ripley, Willis, Baker of Lancaster, Hinkley, Noyes.

And the report of the committee as amended was adopted and the resolution was referred to the Committee on Form and Style under the rules.

COMMITTEE REPORTS

Mr. Page of Gilmanton for the Committee on Bill of Rights and Executive Department, to whom was re-committed Resolution No. 12, Resolution relating to paupers, reported the following resolution:

Resolved: That it is inexpedient to amend the Constitution as proposed in the resolution.

The question being on the report of the committee.

Mr. Nelson of Windsor moved that the words "recommend the resolution be adopted in new draft" be substituted for the words "inexpedient to amend."

On a *viva voce* vote the resolution was adopted.

Mr. Langley of Concord for the Committee on Form and Style, and the Committee on Time and Mode of Submitting Amendments to the People, as a joint committee, submit the following report:

The Joint Committee on Form and Style and Time and Mode of Submitting Amendments to the People, to whom was referred:

Resolution No. 1, Resolution relating to absentee voting,

Resolution No. 5, Resolution relating to use of motor vehicle and motor fuel revenues,

Resolution No. 12, Resolution relating to paupers,

Resolution No. 34, Resolution relating to taxation,

Having considered the same, report the same with the following resolutions:

In the Convention of Delegates assembled at Concord on the second Wednesday in May in the Year of Our Lord One Thousand Nine Hundred and Thirty-Eight, for the purpose of revising the Constitution of this state in pursuance of the act of the Legislature passed August 12, 1937.

I. *Resolved*, That the alterations and amendments proposed to the Constitution shall be submitted to the qualified voters of the State at the regular biennial election to be holden on the Tuesday next following the first Monday in November, 1938, to be by said voters acted upon at said election.

II. *Resolved*, That the selectmen of the several towns, wards and places in the state be and are hereby directed to insert in their warrants for said election an article to the following effect: To take the sense of the qualified voters whether the alterations and amendments to the Constitution proposed by the Convention to Revise the Constitution shall be approved.

III. *Resolved*, That the sense of the qualified voters shall be taken by ballot upon each of the following questions submitted to them by the Convention:

1. Do you approve of amending the Constitution so as to empower the Legislature to provide for absentee voting, by voters who are unable to vote at their regular polling places, on any question or in the choice of any officers at biennial elections?

2. Do you approve of amending the Constitution so as to require that the net revenues derived by the state from the operation of motor vehicles, including the gasoline road toll, shall be appropriated and used exclusively for highway purposes?

3. Do you approve of amending the Constitution so as to empower the Legislature to define the word "paupers" as used in the Constitutional provision withholding from paupers the right to vote?

4. Do you approve of amending the Constitution so as to empower the Legislature, for the purposes of encouraging conservation of forest resources and development of industry and business, avoiding an excessive burden on real estate, and equalizing tax burdens, (a) to classify and tax at special rates growing wood and timber, stock in trade and machinery, (b) to tax sales of particular luxuries and commodities except foods, clothing and medicine, (c) to impose graduated taxes on property passing at death with reasonable classifications and exemptions, and varied according to relationship, and (d) to impose graduated taxes on incomes with reasonable classifications and exemptions, at rates never higher than six per cent?

IV. *Resolved*, That the Secretary of State be directed to procure to be printed sixty thousand copies of such parts of the Constitution as are altered and amended by the amendments proposed by this Convention, together with the alterations and amendments, and the same number of copies

ing manner, viz.: Every inhabitant of each town, and parish with town privileges, and places unincorporated, in this state, of twenty-one years of age and upwards, excepting paupers, and persons excused from paying taxes at their own request, shall have a right at the biennial or other meetings of the inhabitants of said towns and parishes, to be duly warned and holden biennially forever in the month of November, to vote in the town or parish wherein he dwells, for the senator in the district whereof he is a member. Provided, however, that the legislature may by appropriate legislation define the word "paupers."

On a *viva voce* vote the amendments were adopted.

RESOLUTION NO. 1

Do you approve of amending the Constitution so as to empower the legislature to provide for absentee voting by voters who are unable to vote at their regular polling places on any questions or in the choice of any officers at biennial elections?

RESOLUTION NO. 5

Do you approve of amending the Constitution so as to require that the net revenues derived by the state from the operation of motor vehicles, including the gasoline road toll, shall be appropriated and used exclusively for highway purposes?

RESOLUTION NO. 12

Do you approve of amending the Constitution so as to empower the legislature to define the word "paupers" as used in the constitutional provision withholding from paupers the right to vote?

RESOLUTION NO. 34

4. Do you approve of amending the Constitution so as to empower the legislature, for the purposes of encouraging conservation of forest resources and development of

Request of House of Representatives
No. 7728

OPINION OF THE JUSTICES

March 31, 1977

1. Highways—Funds—Legitimate Use of

The appropriation and use of revenues from the highway trust fund for the purpose of funding the operation of the detective bureau of the division of state police is consonant with the limitations imposed upon the use of such revenues by the New Hampshire Constitution's provision that such revenues may be used only for construction, reconstruction and maintenance of public highways, including the supervision of traffic thereon, provided the percentage of the bureau's budget coming from the highway trust fund is reasonably related to the amount of the work of the bureau which is devoted to the enforcement of traffic laws. N.H. CONST. pt. II, art. 6-a.

2. Highways—Funds—Legitimate Use of

Funds derived from motor vehicle fines do not fall within provision of New Hampshire Constitution restricting use of certain revenues to highways where the funds do not come from sources listed in the constitution's provision. N.H. CONST. pt. II, art. 6-a; RSA 6:12, 106-B:10.

The following resolution was adopted by the house of representatives on March 10, 1977, and filed with the supreme court on March 14, 1977:

"WHEREAS, the Governor is required by RSA 9:2 to transmit to the Legislature no later than February 15th a budget setting forth his financial program for each of the fiscal years of the ensuing biennium; and

"WHEREAS, said budget must also set forth the Governor's recommendations to the legislature with respect to the manner in which the appropriations recommended in said budget may be funded; and

"WHEREAS, there is pending before the Appropriations Committee of the House of Representatives the Governor's proposed budget for fiscal years 1978 and 1979; and

"WHEREAS, the Governor's recommendations regarding the manner in which proposed appropriations may be funded have, in the past, carried great weight in the deliberations on the budget bill; and

"WHEREAS, the serious fiscal problems facing this state make it likely that any proposal for drawing upon revenues other than general fund revenues will be given serious consideration in the course of enacting the pending budget bill; and

"WHEREAS, PAU 02-20-05-02 on page 180 of the Governor's proposed budget proposes to draw upon certain revenues accruing to the state from registration fees, operators' licenses, gasoline road tolls and other special charges and taxes with respect to the operation of motor vehicles and the sale and consumption of motor vehicle fuels (commonly known as the 'Highway Trust Fund') in order to provide 95% of the revenue necessary to fund the detec-

tive bureau of the division of state police within the department of safety; and

“WHEREAS, Part 2, Article 6-a of the New Hampshire Constitution restricts the appropriation of all revenue from the Highway Trust Fund to purposes pertaining exclusively to ‘the construction, reconstruction and maintenance of public highways within this state, including the supervision of traffic thereon and payment of the interest and principal of obligations incurred for said purposes’; and

“WHEREAS, doubt has been expressed as to the constitutionality of applying revenues from the Highway Trust Fund for the purposes set out in PAU 02-20-05-02 of the Governor’s proposed budget.

“Now, Therefore Be It Resolved:

“That the Justices of the Supreme Court be respectfully requested to give their opinion upon the following important questions of law:

“1. Is the appropriation and use of revenues from the Highway Trust Fund for the purpose of funding the operation of the detective bureau of the division of state police in the manner recommended by the Governor, consonant with the limitations imposed upon the use of such revenues by Part 2, Article 6-a of the New Hampshire Constitution?

“2. If the answer to the previous question is ‘No’ to what extent, if any, may the operation of the detective bureau of the division of state police be funded from revenues drawn from the Highway Trust Fund?

“Be It Further Resolved that the clerk of the house transmit ten (10) copies of this resolution to the clerk of the Supreme Court for consideration by said court.”

The following answer was returned:

To the House of Representatives:

The undersigned, justices of the supreme court, return the following answers to the questions contained in your resolution of March 10, 1977, and filed in this court on March 14, 1977.

[1] Your first question asks whether the appropriation and use of revenues from the Highway Trust Fund for the purpose of funding the detective bureau of the division of state police in the

manner recommended by the Governor in his proposed budget is consonant with the limitation placed on the use of such revenues by part II, article 6-a of the New Hampshire Constitution.

Our answer is "Yes", as limited below.

N.H. CONST. pt. II, art. 6-a reads as follows:

[Use of Certain Revenues Restricted to Highways.]

All revenue in excess of the necessary cost of collection and administration accruing to the state from registration fees, operators' licenses, gasoline road tolls or any other special charges or taxes with respect to the operation of motor vehicles or the sale or consumption of motor vehicle fuels shall be appropriated and used exclusively for the construction, reconstruction and maintenance of public highways within this state, including the supervision of traffic thereon and payment of the interest and principal of obligations incurred for said purposes; and no part of such revenues shall, by transfer of funds or otherwise, be diverted to any other purpose whatsoever.

The justices in the past have given opinions that this provision of the constitution is not violated by legislation providing that the cost of relocating utility facilities required because of the relocation of the highway be paid out of such revenues, *Opinion of the Justices*, 101 N.H. 527, 132 A.2d 613 (1957), or by using additional motor vehicle permit fees to fund construction of public parking facilities. *Opinion of the Justices*, 109 N.H. 396, 254 A.2d 273 (1969).

In our opinion the express language of pt. II, art. 6-a "including the supervision of traffic thereon" authorizes the expenditure of such funds for the enforcement of traffic laws and the patrolling of the highways. This is consistent with the constitutional convention history of the article. See Jour. N.H. Const. Conv. 148-49 (May 25, 1938). We note that a substantial part of the budget of the division of state police for the communication and traffic bureaus is and has been funded from revenues drawn from the highway trust fund. Such funding does not violate pt. II, art. 6-a provided the amount of funding from highway trust funds is in the proportion that the work of a particular bureau relates to the supervision of traffic, including the enforcement of traffic laws.

We are informed in the memorandum submitted on behalf of the Governor that the detective bureau is involved with the enforcement of traffic laws, including the apprehension and prosecution of violators. We are not in a position to make a determination in this proceeding of what percentage of the work of that bureau is devoted to such purposes. Such a determination must be made in the first instance by the legislative branch subject to such possible attacks as may be made upon that determination by persons in an adversary proceeding. *See Monitor Publishing Co. v. Hill*, 103 N.H. 397, 173 A.2d 725 (1961). It is our opinion, however, that the funding of the detective bureau budget from highway trust funds in the proportion that its traffic control activities bears to the total work of the bureau would be consonant with N.H. CONST. pt. II, art. 6-a. Our answer to the first question therefore is "Yes", provided the percentage of such financing is reasonably related to the amount of the work of that bureau which is devoted to the enforcement of traffic laws.

[2] We also note in passing that the restrictions of pt. II, art. 6-a relate only to revenue from "registration fees, operators' licenses, gasoline road tolls or any other special charges or taxes with respect to the operation of motor vehicles or the sale or consumption of motor vehicle fuels." RSA 106-B:10 provides that the director of motor vehicles shall pay over all motor vehicle fines to the state treasurer who is directed to pay the net amount after certain deductions to the highway department to use "for maintenance of highways." RSA 6:12. Because these funds are not revenues from the sources set forth in pt. II, art. 6-a, N.H. Constitution, they do not in our opinion fall within the restrictions of that article.

The foregoing opinion makes it unnecessary to answer your second question.

FRANK R. KENISON
EDWARD J. LAMPRON
WILLIAM A. GRIMES
MAURICE P. BOIS
CHARLES G. DOUGLAS III

March 31, 1977.

STATE OF NEW HAMPSHIRE
SUPREME COURTDAVID A. BROCK
CHIEF JUSTICESUPREME COURT BUILDING
CONCORD, N. H. 03301
(603) 271-3415

April 21, 1988

Mr. Michael Buckley
Director of Audits
Legislative Budget Assistant's Office
Room 102
State House
Concord, New Hampshire 03301

Dear Mr. Buckley:

I have reviewed the Legislative Budget Assistant's Draft Report entitled "Review of the Allocation of Highway Fund Resources to Support Agencies and Programs" dated March, 1988. The portions of the Report which specifically apply to the Judicial Branch include: (1) a "finding" on page 3 questioning whether the allocation of Highway Funds for the Judicial Branch is inconsistent with Article 6-A; (2) a recommendation on the bottom of page 4 regarding the Legislature requesting an opinion of the Justices; and, (3) commentary found on pages 21-24. As noted in a portion of the testimony included on pages 21-24, the decision to allocate Highway Funds to the Judicial Branch was made by the Legislature in approximately 1977. Whether or not such funding continues is clearly a legislative determination; however, any documentation that is required to substantiate our existing use of funds will be provided upon request, consistent with the recommendation contained on page 4.

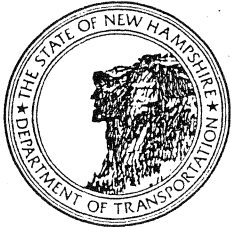
Lastly, I cannot comment on the advisability of your final recommendation on page 4, as the opportunity to request an "opinion of the justices" by the Legislature is available at any time.

Sincerely,

A handwritten signature in black ink that reads "David A. Brock".

David A. Brock
Chief Justice

DAB:bsm



The State of New Hampshire
Department of Transportation
John G. Morton Building

APPENDIX D

Wallace E. Stickney, P.E.
Commissioner

Hazen Drive
P.O. Box 483
Concord, N.H. 03301-0483

April 19, 1988

Michael Buckley
Director of Audits
Office of Legislative
Budget Assistant
Room 102, State House
Concord, NH 03301

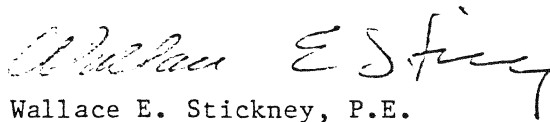
Dear Mr. Buckley:

Thank you for the opportunity to review the final draft of your study of the highway fund. I found it to be extremely informative and, in particular, I find it very helpful in understanding how the present system of highway fund income and expenditures evolved.

Since the DOT reorganization and with the event of the formal reorganization of our turnpike accounts as an enterprise fund, we have been steadily moving towards a more rigorous accounting and separation of all of our general fund and highway funded activities. When that separation is not possible, we are cross-billing to make sure that the proper accounting is done. You are correct in noting that we still have some work to do in this regard. I want to assure you that we will continue to deal with those remaining areas in which we need to do a more careful separation of general and highway funds.

I think that this report will be an excellent reference for our policy makers. It certainly will be very helpful for us as we try to understand what ought to be available to the highway fund and what the legitimate uses of the fund are.

Sincerely,


Wallace E. Stickney, P.E.

WES/ab