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February 3, 2022

Honorable Ned Claxton
Honorable Michele Meyer
Cross Building, Room 209
Augusta, Maine 04333

Re: LD 1523 *An Act To Establish the Trust for a Healthy Maine*

Greetings, Senator Claxton and Representative Meyer,

I am writing this letter neither for nor against the passage of LD 1523 but instead to provide some information which the Committee may find helpful.

The intent of LD 1523, to ensure that the annual payments received by the State of Maine pursuant to the Tobacco Master Settlement Agreement go towards tobacco use prevention and cessation and other public health goals, is admirable. Smoking is the leading cause of preventable death. According to the U.S. Centers for Disease Control and Prevention, more than 16 million Americans are living with a disease caused by smoking. There is a total national economic cost of \$300 billion attributed to the direct medical care and loss of productivity due to premature death and exposure to second-hand smoke. Additionally, Maine's youth tobacco use has significantly increased in the past few years with the rise in popularity of e-cigarettes. The 2019 Maine Integrated Youth Health Survey found that 45% of Maine high school students have used e-cigarettes. Comprehensive statewide tobacco control programs using evidence-based methods have been shown to reduce smoking rates, along with tobacco-related diseases and deaths. Funding Maine's tobacco use prevention and cessation program at the U.S. CDC recommended level is imperative in the face of the staggering rates of youth usage of tobacco products in Maine.

This bill proposes a trust structure for holding and distributing the tobacco settlement funds to ensure they are spent on tobacco prevention and cessation and other public health purposes rather than used to fill budget holes. However, the Maine Constitution grants the Legislature the power to designate public funds. This power may not be constrained by a trust structure. In 2003, then Attorney General G. Steven Rowe was asked whether establishing a trust was sufficient to protect dedicated revenue funds from reallocation to the General Fund. AG Rowe concluded:

Even if the Legislature chose to establish a trust to hold public monies for some specified purpose, establishing such a trust to be irrevocable would amount to the surrender of legislative power. The Constitution does not permit this. At most, the Legislature could be characterized as a trust grantor or settlor that can change its mind about the appropriate use of funds under its control. Accordingly, the Legislature cannot establish a public funds trust sufficient to prohibit reallocation of funds by subsequent legislative action.


Maine Attorney General Opinion 03-2 (May 20, 2003). We reaffirm this opinion. Thus, LD 1523 cannot truly limit the Legislature's ability to determine the allocation of the public funds received by the State as a result of the Master Settlement Agreement.

LD 1523 allots a significant amount of funds for the administration of a new trust structure. Up to 0.003 of the annual settlement funds would go to administration of the fund. If that had been true in 2021, over \$145,000 would have gone to administration of the Trust for Healthy Maine. In addition to the 0.003 allotted for administration, LD 1523 would allow payment for a fulltime coordinator and travel costs for the Board members from the trust funds. Ensuring that funds are spent on tobacco use prevention and cessation is important. It is worth considering whether administrative costs would be better spent on evidence-based tobacco control measures.

Additionally, this structure is not nearly as transparent as the current system. Currently, once the tobacco settlement funds are transferred to the State's Fund for Healthy Maine account, the money is appropriated to certain subaccounts intended to effectuate the specifically listed health promotion purposes. 22 M.R.S. § 1511(6). The funds can be monitored from the moment they are transferred to the State through their final use on programs meant to carry out the public health purposes. LD 1523, if enacted, would direct the funds out of the State's accounts. The Trust would be required to produce an annual report on the programs funded and their results. However, from the time that the money was transferred out of the State's account until the issuance of the report a year later, there would be no ability to monitor the spending.

In sum, while I take no position on LD 1523, I strongly encourage the Legislature to appropriate funds sufficient to meet the U.S. CDC recommended funding level for Maine's tobacco use prevention and cessation programs.

Sincerely,


Aaron M. Frey
Attorney General