June 25, 1975

EDWARD G. HOFGESANG, *Acting Director*
Division of Budget and Accounting
Department of the Treasury
State House
Trenton, New Jersey 08625

FORMAL OPINION NO. 15—1975

Dear Acting Director Hofgesang:

Inquiries have been made concerning whether the Legislature may transfer sums from the Motor Vehicle Liability Security Fund ("MVLSF") and the Unsatisfied Claim and Judgment Fund ("UCJF") to the General State Fund by provisions to be included in the general appropriations act for fiscal year 1975-76.* For the reasons discussed below, it is concluded that such transfers may be effected by means of substantive legislation directed to that purpose, but that the State Constitution appears to prohibit the use of an appropriations act to accomplish the transfers.

The MVLSF has been established by N.J.S.A. 39:6-29 *et seq.* to satisfy certain statutory claims which arise upon the insolvency of insurers authorized to transact the business of motor vehicle liability insurance on motor vehicles principally garaged in New Jersey. The original fund was provided by an assessment against such insurers for the privilege of issuing policies of motor vehicle liability insurance (L. 1952, c. 175, § 4), and was maintained at a level of $6 million by additional annual assessments by the Commissioner of Insurance, when required, against the insurers (N.J.S.A. 39:6-95, 96). The Treasurer is the custodian of the fund which is to be kept "separate and apart from any other fund and from all other state moneys." N.J.S.A. 39:6-98.

The functions of the fund are eventually to be assumed by the New Jersey Property-Liability Insurance Guaranty Association, established by L. 1974, c. 17, N.J.S.A. 17:30A-1 *et seq.* That statute provides for such assumption when the Commissioner of Insurance declares the existing balance in the MVLSF exhausted. N.J.S.A. 17:30A-2(b). On August 30, 1974, the Commissioner of Insurance determined that MVLSF assets, while adequate to satisfy pending and anticipated claims arising from previous insurer insolvencies, would not fully discharge the fund's obligations if it were required to respond to claims arising from the insolvency of the Gateway Insurance Company. N.J.A.C. 11:1-5(b). This determination underlay the Commissioner's consequent declaration of exhaustion of the MVLSF. N.J.A.C. 11:1-5.1(c). That declaration has had these consequences: *first,* Gateway motor vehicle liability claims (as well as all future motor vehicle liability claims upon insurer insolvency) have become chargeable to the Guaranty Association; and *second,* an amount, estimated by the Joint Appropriations Committee to exceed $5,000,000, remains in the MVLSF, but is no longer subject to claims of any kind. It is this sum which S-3175 proposes to transfer, virtually in its entirety, to the General State Fund.

The UCJF has been established under N.J.S.A. 39:6-61 *et seq.* to satisfy certain statutory claims for loss or injury caused by financially irresponsible or unidentified owners or operators of motor vehicles. The UCJF is currently maintained (apart from recoveries upon judgments against financially irresponsible defendants assigned to it by claimants against the fund under N.J.S.A. 39:6-77) by assessments by the Director of the Division of Motor Vehicles against insurers writing policies of liabili-

ty insurance on motor vehicles principally garaged in New Jersey. N.J.S.A. 39:6-63. The sums paid into the Fund are remitted to the Treasurer and held by him in trust for the accomplishment of the purposes of the UCJF statute. N.J.S.A. 39:6-88.

The UCJF currently maintains a surplus, determined by the Joint Appropriations Committee to exceed $3,300,000, over and above sums necessary to meet pending and anticipated claims in the next fiscal year. It is this sum which the committee proposes to transfer to the General State Fund.

The purpose and intent of the proposed transfers is to remove the restrictions imposed upon expenditure of the subject sums by the UCJF and MVLSF statutes and to free those funds for use for general state purposes. The effect of that action is to convert the existing MVLSF balance and the UCJF surplus into general revenue, and also potentially to require assessment sometime in the future against insurers under the UCJF statute to restore the amount transferred from that fund, when and if it is needed to discharge UCJF obligations. Moreover, it is not entirely clear whether, under the Guaranty Association statute, that body has a claim upon any MVLSF assets remaining after the Commissioner's declaration of exhaustion. N.J.S.A. 17:30A-2(b) quite clearly contemplates that the Guaranty Association shall not succeed to MVLSF obligations until the MVLSF is in fact totally spent for the satisfaction of claims, and the Guaranty Association has asserted a claim against unexpended MVLSF balances. Legislative action transferring the funds would also extinguish any such claim by the Guaranty Association.

The restrictions which attach to the expenditure of MVLSF and UCJF funds (as well as any claim by the Guaranty Association) derive exclusively from the operative statutes. Since these provisions were enacted by the Legislature in the first place, there is no reason to believe that they are not revocable by legislative action. Cf. *McCutcheon v. State Building Authority*, 13 N.J. 46, 66 (1953).

The conversion of the sums so transferred, however, to general state revenue would necessarily be contingent upon the State's having the authority to utilize assessments against insurers for purposes of general revenue. The assessments against motor vehicle liability insurers, under both N.J.S.A. 39:6-63 and 39:6-95, 96, are calculated as a percentage of gross premiums, less certain deductions, received on policies of liability insurance upon motor vehicles principally garaged in this State. The gross premiums tax upon insurers for purposes of general revenue is a familiar and longstanding element in the State's revenue program (see N.J.S.A. 54:16-1 *et seq.*, 54:16A-1 *et seq.*, 54:17-4 *et seq.*, 54:18A-1 *et seq.*). The gross premiums tax has, moreover, consistently been sustained against constitutional challenge in the United States Supreme Court. *State Bd. of Insurance v. Todd Shipyards Corp.*, 370 U.S. 451 (1962); *Prudential Ins. Co. of America v. Benjamin*, 328 U.S. 408 (1946); *Lincoln National Ins. Co. v. Read*, 325 U.S. 673 (1945); *Connecticut General Life Ins. Co. v. Johnson*, 303 U.S. 77 (1938).

It would therefore appear that the statutory impediments, deriving from N.J.S.A. 39:6-61 *et seq.* and 39:6-92 *et seq.* and possibly from the Guaranty Association statute, to expenditure of UCJF and MVLSF funds for general state purposes may be rescinded validly by legislative action. However, the State constitutional provisions concerning the form and content of legislation and of the general appropriations act in particular, suggest that such rescission may not be accomplished in the manner proposed by S-3175.

Two constitutional restrictions are relevant to the question. The first is *N.J. Const.*, Art. IV, Sec. 7, par. 4, which provides in pertinent part:

"To avoid improper influences which may result from intermixing one and the same act such things as have no proper relation to each other, every law shall embrace but one object, and that shall be expressed in the title."

The usual title of the general appropriations act (and of the as yet unenacted appropriations bill, S-3175, for fiscal year 1975-76) has been:

"An act making appropriations for the support of the state government and the several public purposes for the fiscal year ending June 30, 19 and regulating the disbursement thereof."

The act is passed to apply the various sources of state revenue to the purposes of government for which such sources may be utilized in accordance with the mandate found in Article VIII, Sec. 2, par. 2 of the State Constitution:

"All monies for the support of the state government, and for all other state purposes as far as can be ascertained or reasonably foreseen, shall be provided for in one general appropriation law covering one and the same fiscal year. . . ."

An appropriation is not the creation of revenue, but rather the statutory authorization to expend specified sums for specified purposes. See *Brown v. Honiss*, 74 N.J.L. 501, 521 (E. & A. 1906). The act thus constitutes and governs the state's spending program for the given fiscal year. By virtue of Article IV, Sec. 7, par. 4 of the State Constitution, every portion of an act must have a substantive force which the courts have variously expressed as "in furtherance of" its purpose or "germane" to that purpose, or "necessary and appropriate" to it, or "reasonably connected" therewith. See, *e.g. General Public Loan Corp. v. Director, Div. of Taxation*, 13 N.J. 393 (1953); *Bucino v. Malone*, 12 N.J. 330 (1953); *Jersey City v. Martin*, 126 N.J.L. 353 (E. & A. 1941); *Public Service Electric Gas Co. v. Camden*, 118 N.J.L. 245 (Sup. Ct. 1937).

The transfer provisions in question appear to do something other than, and not incidental to, the allocation of revenue or the regulation of the state's spending program. They actually create revenue, or more particularly, extend the permissible objects of given restricted revenues and thereby have the effect of amending the statutes that created those restrictions, as described above. This distinction between the creation of a revenue source and the allocation to a revenue object would appear crucial. There are no New Jersey cases directly in point, but decisions of other states in interpreting provisions similar to *N.J. Const.*, Art. IV, Sec. 7, par. 4 give guidance. The South Carolina courts have struck down or severely questioned revenue creating provisions in appropriations laws. *Colonia Life Ins. Co. v. South Carolina Tax Comm.*, 233 S.C. 129, 103 S.E. 2d 908 (1958); *Chesterfield City v. State Highway Dept.*, 191 S.C. 19, 3 S.E. 2d 686 (1939). More to the present point, the Missouri Supreme Court has declared that an appropriations act could not repeal restrictions upon the source from which salaries of certain state officers were to be paid. *State v. Smith*, 335 Mo. 1069, 75 S.W. 2d 828 (1934).

The amendatory effect of the proposed transfer provisions upon the MVLSF, UCJF and Guaranty Association statutes raises constitutional questions under both

Article IV, Sec. 7, par. 4 and also Article IV, Sec. 7, par. 5 which provides, in pertinent part:

> "No law shall be revived or amended by reference to its title only, but the act revived or the section or sections amended, shall be inserted at length."

Under Article IV, Sec. 7, par. 4, it would appear that the purpose of appropriation legislation would not extend to the amendment of permanent law. Cf. *Rutgers College v. Morgan,* 70 N.J.L. 460, 477 (Sup. Ct. 1904), aff'd 71 N.J.L. 663, 664 (E. & A. 1905).

Under Article IV, Sec. 7, par. 5, the issue is more precisely presented. That section does not forbid an amendment, expressed or implied, of previous legislation, provided the amendment is in itself complete and sufficient, with its purpose, meaning and full scope apparent on its face. *Kline v. N.J. Racing Comm.,* 38 N.J. 109 (1962); *Evernham v. Hulit,* 45 N.J.L. 53 (Sup. Ct. 1883); *Baldwin Lumber-Junction Milling v. Moskowitz,* 15 N.J. Misc. 438 (Hudson Cty. Cir. Ct. 1937). The transfer provisions in question, however, are just that—naked transfers, notwithstanding the provisions of certain other laws. They do not indicate that specific UCJF and MVLSF trust and dedication provisions are revoked as to the transferred funds, that contingent obligations are created on the part of insurers, and that all possible claims of the Guaranty Association against the unspent MVLSF balance are extinguished. It would therefore appear that the transfer provisions are not a self-contained amendment.

For the reasons stated, it is concluded that transfers from the UCJF and the MVLSF to the General State Fund may be accomplished by means of substantive legislation specifically drafted for that purpose. However, the transfer provisions included in S-3175 appear to violate constitutional proscriptions governing the form and content of the general appropriations law, and it is our opinion that they ought not to be included in the Appropriations Act for fiscal 1975-76.

Very truly yours,
WILLIAM F. HYLAND
Attorney General of New Jersey
By: PETER D. PIZZUTO
Deputy Attorney General

* The following language has been included in the appropriations bill for fiscal 1975-76, S-3175, at page 14:

> "Not withstanding any other provision of C. 39:6-61 *et seq.*, the amount of $3,395,610 shall be transferred from the unrestricted reserve of the Unsatisfied Claim and Judgment Fund to the General State Fund.
>
> "Notwithstanding any other provision of C. 39:6-92 *et seq.* and P.L. 1974, c. 17, the amount of $4.2 million shall be transferred from balances remaining in the Motor Vehicle Liability Security Fund to the General State Fund."