IN THE

Supreme Court

OF THE

Commonwealth of the Northern Mariana Islands

IN THE MATTER OF A CERTIFIED QUESTION PETITION FROM

RALPH DLG. TORRES, GOVERNOR OF THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS,

AND

MARYLOU S. ADA, CHAIRPERSON OF THE BOARD OF EDUCATION,
Petitioners.

Supreme Court No. 2018-SCC-0021-CQU

OPINION

Cite as: 2020 MP 2

Decided January 14, 2020

CHIEF JUSTICE ALEXANDRO C. CASTRO
ASSOCIATE JUSTICE JOHN A. MANGLOÑA
ASSOCIATE JUSTICE PERRY B. INOS

CASTRO, C.J.:

¶ 1 Governor of the Commonwealth of the Northern Mariana Islands Ralph DLG Torres ("Governor") and Chairperson of the Board of Education Marylou S. Ada ("Board") submit three certified questions.[1] All questions relate to the provisions governing education financing for the Public School System ("PSS") in Article XV, Section 1(e) of the Constitution of the Northern Mariana Islands ("NMI Constitution"), which guarantees the school system "an annual budget of not less than twenty-five percent of the general revenues of the Commonwealth." We are asked to answer the following questions:

1. What sources of income must be included when determining PSS's "guaranteed annual budget of not less than twenty-five percent of the general revenues of the Commonwealth through an annual appropriation"? In particular, what sources of income can be properly earmarked without depriving PSS of its constitutionally guaranteed budget?

2. Can the legislature properly suspend an earmark in an annual appropriations bill? If so, does the suspension transform the income source into "general revenue"?

3. In the case of supplemental budgets, is PSS entitled to 25% percent of each supplemental budget during the course of a fiscal year or is PSS entitled to 25% percent of the total "general revenues" generated annually?

Pet. 4. For the reasons set forth below, we conclude that (1) PSS is constitutionally entitled to general revenues, not special revenues; (2) the legislature may suspend an earmark in an appropriations bill, transforming those revenues into general revenues, in which PSS is entitled to a percentage; and (3) PSS is constitutionally entitled to a portion of supplemental budgets when there is a revenue surplus; when there is a revenue shortfall, the legislature may proportionately reduce PSS's budget as long as its twenty-five percent share is maintained.

¶ 2 The first certified question hinges on what general revenues in Article XV, Section 1(e) of the NMI Constitution ("Section 1(e)") encompasses. Balancing the ordinary understanding of relevant terms with the drafters' intent to constitutionally guarantee PSS funding, we render two findings. First, general and special revenue fall under the broader category of revenue, thereby precluding general revenue from meaning all revenue. Second, special revenue includes those revenues generated for a particular purpose which is related to the

[1] The Court sua sponte amends the caption to accurately reflect the procedural posture in this matter. Petitions for certified questions brought by Commonwealth officials are jointly filed by the parties and do not always originate in an adversarial proceeding such as in federal court. *See* NMI SUP. CT. R. 13, 14(b)(2). Henceforth, where a Petition does not originate from an adversarial proceeding, we will fashion the caption as reflected in this decision.

revenue's source. All revenues not designated as special under this standard are general revenues, in which PSS is entitled twenty-five percent. As to the second certified question, the Board and the Governor agree that the legislature may suspend an earmark and transform those revenues into general revenue. Finally, when the CNMI government passes supplemental budgets in the event of a revenue surplus, PSS is constitutionally entitled to supplemental revenues commensurate with its twenty-five percent share of total general revenues. When there is a revenue shortfall, the legislature may proportionately reduce PSS's budget so long as the constitutionally mandated twenty-five percent share is preserved.

I. FACTS AND PROCEDURAL HISTORY

¶ 3 Although the NMI Constitution has always included provisions on education, particular aspects of education financing were not adopted until ten years after the Constitution's original ratification. Briefly summarizing the history and development of the provision at issue today, we begin with the genesis of Article XV of the NMI Constitution.

¶ 4 The framers of the original 1978 NMI Constitution confronted a number of choices on fashioning provisions on education. These choices are expressed in the Briefing Papers, which drew upon a wide variety of materials such as other state constitutions and records, political science research, judicial decisions, statutes, and the legislative history of the Covenant. *See* Briefing Paper No. 1 at 30–31 (Oct. 8, 1976). The Briefing Papers were thus a series of extensive discussions on matters considered in drafting the NMI Constitution. Briefing Paper No. 13, in particular, addressed whether to include an article on education in the constitution, discussing education financing while remaining cognizant of the resources in and limitations of the Commonwealth. Briefing Paper No. 1 at 52 (Oct. 8, 1976). On the topic of education financing, Briefing Paper No. 13 noted the dissimilarities among state constitutions. Some constitutions provided for permanent school funds. Briefing Paper No. 13 at 25 (Oct. 8, 1976). Other constitutions "address the funds composition, investment of and interest on the fund, [and] school taxes. . . ." *Id*. Still, other jurisdictions omitted any provision on education and finance, "leav[ing] the matter to legislative determination." *Id*. at 26. Critically, Briefing Paper No. 13 also discussed the option of "a constitutional mandate that the educational system be funded out of *general revenues*. This approach has the advantage of allowing school finance to respond to the current fiscal status of the Commonwealth, which is probably the most efficient method of funding governmental functions." *Id*. (emphasis added). It included no other discussions on general revenues.

¶ 5 The framers ultimately elected not to provide any provisions on education financing. In fact, the Committee on Finance, Local Government and Other Matters recommended that no language concerning education financing "either of a permissive or restrictive nature in a separate article" be included. Committee Recommendation No. 2 at 283: Education, Committee on Governmental Institutions (Oct. 22, 1976). "Each raises very difficult and often controversial

matters." *Id*. Leaving these matters to the legislature, the Committee felt it necessary to "preserve needed flexibility with regard to the educational policy . . . ." *Id*. Consequently, Article XV was included in the 1978 NMI Constitution, which only contained provisions guaranteeing the right to free public elementary and secondary education, and the right to higher adult education, in the Commonwealth. *See* NMI CONST. art. XV, §§ 1(a)–(b).

¶ 6 Ten years after its original adoption, the NMI Constitution was amended to include a provision specifically on education financing. Members of the Second Constitutional Convention submitted Amendment No. 38, which provided in relevant part:

> The public elementary and secondary education system shall be guaranteed an annual budget of not less than fifteen percent of the general revenues of the Commonwealth through an annual appropriation. The budgetary appropriation may not be reprogrammed for other purposes, and any unencumbered fund balance at the end of a fiscal year shall be available by reappropriation.

NMI CONST. art. XV, § 1(e) (prior to 2014 amendment). The stated intent of this provision was to "guarantee[] a minimum budget to the elementary and secondary school system and to the college in order to ensure that sufficient resources are dedicated to the educational needs of our people." Committee Report No. 64 at 1, Committee on Governmental Institutions (July 17, 1985). The Convention adopted the amendment in its entirety. Thus, not only did the members of the Second Constitutional Convention amend the NMI Constitution to include a provision on education financing, they also constitutionally guaranteed a percentage of general revenues of the Commonwealth.[2]

¶ 7 This guaranteed percentage would later increase by ten percent in 2014, when House Legislative Initiative 18-12 was approved by the people of the CNMI. This initiative proposed to increase the constitutionally guaranteed fifteen percent of general revenues to twenty-five percent of general revenues. It contained the following findings:

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[2] In 1995, the CNMI held the Third Constitutional Convention. At this time, members of the Convention suggested to remove Section 1(e) in its entirety. In particular, Judiciary Committee Report No. 5 stated that the Committee:

> does not believe that earmarking has produced a higher quality of education over the past 10 years. The school system should have to justify its budget to the legislature just like any other agency. There are competing interests such as the health care system . . . . Earmarking revenues introduces an inflexibility into the system that may prevent the legislature from making the best choices in the interest of all the people.

Committee Report No. 5 at 15, Committee on Judiciary and Other Elected Offices (July 18, 1995). Despite this, no changes were made to Section 1(e).

> The Legislature finds that the guaranteed funding level of fifteen percent for the Public School System was established in 1985. The level of funding public education in other jurisdictions of the United States is closer to twenty-five percent of their annual budget. Increasing the guaranteed portion of the annual budget to twenty-five percent is reasonable and necessary to address the importance of education in the Commonwealth.

HLI 18-12, § 1 (2014). The initiative garnered enough support from the voters of the CNMI to ratify the amendment, thereby increasing PSS's guaranteed percentage of general revenues from fifteen percent to twenty-five percent.[3]

¶ 8 No changes to Section 1(e) have since been made. The petitioners now invoke the jurisdiction of this Court to define the contours of Article XV, Section 1(e) of the NMI Constitution.

II. JURISDICTION

¶ 9 We have original jurisdiction over disputes arising between elected or appointed Commonwealth officials regarding the exercise of their responsibilities or powers under the NMI Constitution. NMI CONST. art. IV, § 11. Here, the Governor is an elected Commonwealth official with the duty to act on budget and appropriations bills approved by the legislature. NMI CONST. art. III, § 9(a). The Chairperson of the Board of Education is an elected Commonwealth official pursuant to Article XV, Section 1(c) of the NMI Constitution charged with "formulat[ing] policy and exercis[ing] control over the public school system through the superintendent." NMI CONST. art. XV, § 1(b). The issues concerning education financing squarely concern the petitioners' exercise of their responsibilities. We thus have jurisdiction and answer the certified questions.

III. STANDARD OF REVIEW

¶ 10 We review certified questions de novo. *In re Status of Certain Tenth Legislature Bills*, 1998 MP 3 ¶ 1.

IV. DISCUSSION

¶ 11 It is undisputed that the *relative* share (in terms of percentage) is clearly specified in the text, by use of the phrase "not less than twenty-five percent." NMI CONST. art. XV, § 1(e). What is left somewhat ambiguous in the text, however, is the *object* of that percentage—i.e., to what *quantity* that percentage is relative to. The first and second certified questions address two pivotal issues in calculating that quantity: (1) how to determine what "the general revenues of the Commonwealth" encompasses; and (2) what actions can add to, or take away

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[3] *See* Dennis B. Chan, *BOE, PSS Plan for Implementation of HLI 18-12*, SAIPAN TRIBUNE, (Dec. 8, 2014), https://www.saipantribune.com/index.php/boe-pss-plan-implementation-hli-18-12/ (stating HLI 18-12 garnered 7,826 "yes" votes and 3,958 "no" votes in polls).

from, what it encompasses? The third question, meanwhile, asks when is PSS entitled to receive its full share of guaranteed funds?

A. Revenues

¶ 12 The petitioners present diametrically opposed arguments. The Board proposes a broad and expansive definition of "general revenue" such that PSS is guaranteed twenty-five percent of *all* revenue.[4] Although acknowledging the sparse drafting history on defining the contours of "general revenue," the Board suggests historical records and practices support its interpretation. The Governor argues the Board's interpretation of general revenue is unsubstantiated and not based on any legal authority or authenticated documents. He submits a broad and expansive definition of "special revenue" such that the legislature may effectively categorize *any* revenue as special as long as there is some articulated purpose for it. Asserting the terms' plain meaning, he proffers the following definition of special revenue: "(1) income from a specific constitutionally or statutorily identified source, (2) deposited into an account kept separate from the General Fund, and (3) used for a particular constitutionally or statutorily defined purpose." Opening Br. 5. Critically, according to the Governor, the "particular constitutionally or statutorily defined purpose" need not be related to the revenue's source. *Id*. Thus, any revenue—including general revenue—may be appropriated as special revenue by articulating any purpose. To properly delineate and understand the interplay between these concepts, we marshal the canons of constitutional construction, beginning with the plain meaning doctrine.

¶ 13 We have consistently interpreted constitutional provisions according to their plain, ordinary meaning. *See Peter-Palican v. Commonwealth*, 2012 MP 7 ¶ 6; *Camacho v. NMI Retirement Fund*, 1 NMI 362, 368 (1990) ("A basic principle of construction is that language must be given its plain meaning."). We do this "unless there is evidence that a contrary meaning was intended," *Camacho*, 1 NMI 362 at 368, or if the interpretation "def[ies] common sense or

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[4] The Board has shifted positions at various points. Initially, the Board's position in the Petition for Certified Question was that "the term 'general revenues' does not include certain earmarks, specifically revenue streams generated from specific taxes or fees that are deposited into special accounts and appropriated for particular purposes . . . ." Pet. 2. In its Opening Brief, the Board stated that its position was "that the 'general revenues of the Commonwealth' should be defined as all the identified budgetary resources of a given fiscal year." Opening Br. 14. That is, no earmarks could escape PSS's guarantee. It reiterated this position in its Reply Brief. Reply. Br. 8. At oral argument, it stated that self-supporting fees of government agencies like the Law Revision Commission's publication income are exempted from PSS's guarantee but earmarked taxes are not.

In deciding whether to answer a certified question, the Court's determination is based on the representations made in the Petition for Certified Question. NMI CONST. art. IV, § 11 ("[P]arties to the dispute may certify to the supreme court the legal questions raised, setting forth the stipulated facts upon which the dispute arises."). We remind future litigants that misrepresentations inhibit the Court's ability to render a proper determination in whether to accept or reject a certified question.

lead[s] to absurd results." *Peter-Palican*, 2012 MP 7 ¶ 6 (internal citation omitted). Dictionaries may be consulted to ascertain a provision's plain meaning. *Commonwealth v. Inos*, 2013 MP 14 ¶ 12; *see, e.g., Manibusan v. Larson*, 2018 MP 7 ¶ 15 (using Black's Law Dictionary in defining "independent"); *Commonwealth v. Santos*, 2017 MP 12 ¶ 9 (using Black's Law Dictionary in defining common-law marriage); *Commonwealth v. Quitano*, 2014 MP 5 ¶ 31 (using Merriam Webster's Dictionary in defining "premeditation"); *Pangelinan v. NMI Retirement Fund*, 2009 MP 12 ¶ 18 (using Merriam Webster's Dictionary to define "elect"). In analyzing particular language, we must conform our interpretation with "the context of the entire provision at issue," *Peter-Palican*, 2012 MP 7 ¶ 6 (internal quotation marks omitted), and "give effect to every word of a constitutional provision, if possible, to avoid rendering any portion of the provision superfluous." *Palacios v. Yumul*, 2012 MP 12 ¶ 4; *see Sablan v. Superior Court*, 2 NMI 165, 186 n.21 (1991) (interpreting every provision of the Covenant as having meaning). Finally, "[n]o provision should be construed to nullify or impair another." *Commonwealth v. Lot No. 218-5 R/W*, 2016 MP 17 ¶ 24 (internal citation omitted).

¶ 14 Historical sources are also used to interpret constitutional provisions. *See Teregeyo v. San Nicolas*, 2018 MP 17 ¶ 19 ("[H]istorical documents concerning the provisions of local government provide[] substantial insight supporting this proposition."); *Larson*, 2018 MP 7 ¶ 15 ("Legislative history confirms our interpretation."). Interpreting constitutional provisions may involve reliance on "committee recommendations, constitutional convention transcripts, and other relevant constitutional history." *Palacios*, 2012 MP 12 ¶ 5. The Analysis is a memorandum summarizing the intent of the Constitutional Convention adopting the 1978 NMI Constitution and "is extremely persuasive authority when one is called upon to discern the intent of the framers." *Rayphand v. Tenorio*, 2003 MP 12 ¶ 71.

¶ 15 We have also looked to other jurisdictions' constitutional jurisprudence in construing provisions of the NMI Constitution. *See, e.g., Torres v. Manibusan*, 2018 MP 4 ¶ 23 (quoting *Sec'y of Admin. & Fin. v. Att'y Gen.*, 326 N.E. 334, 339 (Mass. 1975)) (relying on Massachusetts Supreme Court precedent to note that attorney generals "cannot act arbitrarily and capriciously or scandalously." (internal quotation marks omitted)); *Peter-Palican*, 2012 MP 7 ¶ 13 (citing cases standing for the proposition that interpreting ambiguous constitutional provisions concerning public office terms require limiting the term to the shortest time); *Dep't of Pub. Lands v. Commonwealth of the N. Mariana Islands*, 2010 MP 14 ¶ 15 (citing *Preece v. Rampton*, 492 P.2d 1355 (Utah 1972)) (referencing Utah Supreme Court case to posit that legislatures "cannot transfer the functions of [a government] entity to another governmental body absent a constitutional amendment."). Similarly, we may look to how other jurisdictions have understood the relevant concepts in the case at bar. With these principles in mind, we turn to the text of Section 1(e).

i. General Revenues

¶ 16 We make two observations regarding general revenue. First, ordinary understandings of revenue and general revenue suggest no synonymity. Looking to the ordinary meaning of these terms, "revenue" unmodified is an all-encompassing term, which includes all collected monies. *See* Black's Law Dictionary 1482 (4th ed. 1968) (defining revenue "[a]s applied to the income of a government, a broad and general term, including *all public moneys* which the state collects and receives, *from whatever source and in whatever manner*." (emphasis added)); Black's Law Dictionary 1185 (5th ed. 1979) (same); Black's Law Dictionary (11th ed. 2019) ("income from *any and all sources*," or "gross income." (emphasis added)).[5] However, when modified by the word "general," the definition transforms. In particular, the definitions of revenue and revenue modified by general suggest that general revenue is a subcategory of revenue, and not intended to mean all revenue. *See* Black's Law Dictionary (11th ed. 2019) (distinguishing general revenue from revenue in a special fund). The plain understanding of general revenue is not synonymous with that of revenue, and assertions that general revenue must mean all revenue run contrary to the plain meaning of these terms.

¶ 17 Second, general revenue's definition implies the existence of another separate and distinct subcategory of revenue. *See* Black's Law Dictionary (11th ed. 2019) (defining general revenue as "the income stream from which a state or municipality pays its obligations unless a law calls for payment from a *special fund*." (emphasis added)). The lexicon of related terms, such as "general fund," confirms the existence of these revenues, and, further, that these revenues are used for particular purposes. *See* Black's Law Dictionary 615 (5th ed. 1979) (defining general fund as "[a]ssets and liabilities of a nonprofit entity *not specifically earmarked for other purposes*." (emphasis added)).[6] The plain and ordinary meaning of general revenue and general fund requires the existence of another subcategory of revenue, defined as having a particular purpose and understood as "special revenue." *Compare General*, Merriam-Webster (2019) (defining general as "not confined by specialization or careful limitation"), *with Special*, Merriam-Webster (2019) (defining special as "designed for a particular purpose or occasion").

¶ 18 The distinction between revenue, general revenue, and special revenue is documented in other jurisdictions. In *State ex rel. Spink v. Kemp*, 283 S.W.2d

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[5] Relevant editions of Black's Law Dictionary include the Fourth Edition, in existence when the original NMI Constitution was ratified; the Fifth Edition, published in 1979 and prior to when the 1985 Second Constitutional Convention gathered; and the current Eleventh Edition, published in 2019.

[6] Our review of the ordinary meanings of these terms reveals that general revenue and general fund are distinguishable. "Revenue" concerns the source or stream of monies, whereas "funds" refer to or describe where those monies are deposited. When read in conjunction with one another, however, the terms' definitions illustrate the two observations we discuss.

502 (Mo. 1955), the Missouri Supreme Court addressed whether Kansas City could "devote funds otherwise constituting general revenue to special uses." *Id.* at 507. As we do here, the *Kemp* court found that "revenue" meant all revenue, but "general revenue" was distinguishable in that it constituted "all current income of the city, however derived, which is subject to appropriation for general public uses, *as distinguished from special uses*." *Id*. (emphasis added). Although the exact phrase "special revenue" was not used, the *Kemp* court distinguished general revenue from other revenues that were constitutionally or statutorily "devoted to *special purposes* or [to] be paid into a special fund." *Id*. (emphasis added); *Cf. Des Moines Metro. Area Solid Waste Agency v. Branstad*, 504 N.W.2d 888, 889 n.2 (Iowa 1993) (defining "special fund" as "any and all moneys appropriated by the legislature, or moneys collected by or for the state, or an agency thereof, pursuant to which no general fund appropriation is made by the state"). General revenue was found to be a wholly distinct subcategory of revenue, distinguishable from revenues used for particular purposes.

¶ 19 The ordinary understanding of revenue and general revenue, as illustrated by various definitions and *Kemp*, reveal that the two concepts are not analogous. Rather, the plain and ordinary meaning of general revenue suggests that it falls under the broader and all-inclusive category of revenue. Additionally, the existence of general revenue implies a second subcategory of revenue delineated for particular purposes, understood as "special revenue." Contrary interpretations ignore the plain and ordinary understanding of these concepts.

¶ 20 We must be mindful of the ordinary meaning of the language in Section 1(e), particularly where the drafting history on particular constitutional provisions is sparse. PSS concedes that the aforementioned definitions are not erroneous. *See* Reply. Br. 4 ("[The Board] does not contend that Black's Law Dictionary's is wrong . . . ."). Rather, PSS argues that history stands in favor of its own interpretation that general revenue must mean all revenue: "the definitions offered do not comport with the Second Constitutional Convention's understanding of the terms, the legislative interpretation for the preceding two decades, nor the intended functionality of this constitutional amendment." *Id.* But, the drafting history is silent on what the drafters meant by general revenue, and the Board provides no authenticated documentation to find otherwise. Even Briefing Paper No. 13 provides limited guidance as to what may be gleaned from these terms and phrases. There is nothing to suggest a contrary interpretation of the phrase's plain meaning and we may give effect to the ordinary understanding of revenue and general revenue. *See Camacho*, 1 NMI at 368 ("We will apply the plain, commonly understood meaning of constitutional language 'unless there is evidence that a contrary meaning was intended.'" (quoting *Pangelinan v. Commonwealth*, 2 CR 1148, 1161 (Dist. Ct. App. Div. 1987))). We thus find that: (1) revenue encompasses all revenue; (2) general revenue is not synonymous with revenue, but is rather a subcategory of revenue; and (3) the ordinary understanding of general revenue implicate the existence of special revenue.

¶ 21 Because general revenue is not synonymous with all revenue, we must determine what general revenue does encompass. To do this, we look to the more particularized category of special revenue. Although the drafting papers do not mention "special revenue," as discussed above, our review of general revenue as a concept implies the existence of special revenue. Demarcating between general and special revenue will answer the core issue underlying petitioners' questions: what monies must be part of general revenue, of which PSS is entitled to a guaranteed percentage? Or put differently, what may be appropriated as special revenue while ensuring PSS receives its constitutionally guaranteed share? Resolving these issues is a more difficult task, but it is this complexity which we set out to unravel next.

ii. Special Revenues

¶ 22 Special revenues are revenues generated for a particular purpose. *See Queen v. Moore*, 340 S.E.2d 838, 839 (W. Va. 1986) (discussing legislation that restricts imposition of fees for *specific purposes* and maintains them "as 'special revenue funds' [that] do not become part of the general revenue of the state." (emphasis added)) (citing W. VA. CODE § 12-2-2); *In re County Collector*, 774 N.E.2d 832, 835 (Ill. App. Ct. 2002) (discussing special revenue funds that "are used to account for revenues from specific taxes or other earmarked revenue sources which by law are designated to finance *particular functions* of government," which require "separate accounting because of legal or regulatory provisions or administrative action.") (emphasis added); Statement No. 54 of the Government Accounting Standards Board, No. 287-B at 13 (February 2009) (defining "special revenue funds" as funds "used to account for and report the proceeds of specific revenue sources that are restricted or committed to expenditure for *specified purposes* other than debt service or capital projects.") (emphasis added). Clearly, "special revenue" connotes revenues generated for a particular purpose. We do not stop there, however, but discuss a more complicated issue: whether the revenue's purpose must be related to the revenue's source.

¶ 23 Courts have used a relationship or nexus test in the context of other government finance circumstances.[7] California courts have created what is known as the special fund doctrine. The California Constitution requires balanced budgets and prohibits incurring debts without the approval of two-thirds of the voters. The special fund doctrine is "a judicially created exception to the voter approval requirement." *City of Bakersfield v. West Park Home Owners Ass'n & Friends*, 209 Cal. Rptr. 3d 346, 350 (Cal. Ct. App. 2016). Where obligations are paid from a special fund, the constitutional debt limitation is not violated. In *City of Bakersfield*, the court explicitly held "there *must be a reasonable connection or nexus* between the special fund revenues and the project to be financed with those revenues." *Id*. at 351 (emphasis added). At issue

[7] We do not use *City of Bakersfield* to propose that the drafters intended to follow California; rather, we use *City of Bakersfield* to elucidate the existence of nexus tests concerning government finance in other jurisdictions.

was whether there was a reasonable nexus between taxes and fees collected by the City and the improvements sought to be made out of these revenues. Specifically, the City proposed to fund road improvement projects via gas tax revenues, transportation impact fees, and restricted utility franchise and surcharge fees.[8] Because "[t]he Projects are improvements to the City's streets and highways," there was a reasonable nexus between the revenues and projects financed by those revenues. *Id*. at 353.

¶ 24 Similar sentiments have been expressed by other courts. For instance, certain revenues derived from special taxes are often designated for particular purposes and excluded from appropriation for a government's more general fiscal obligations. *See Building Industry Ass'n. of Bay Area v. City of San Ramon*, 208 Cal. Rptr. 3d 320, 338 (Cal. Ct. App. 2016) (acknowledging as undisputed tax revenues "to be placed in a special fund, distinct from the City's General Fund," and that such revenues are to be used for specific purposes rather than "for all governmental purposes"). West Virginia's state constitution had at one point a fund in which fees and taxes on motor vehicles and fuel were deposited and then appropriated for expressly related purposes, such as highway construction. *See State ex rel. State Rd. Commission v. O'Brien*, 82 S.E.2d 903, 908 (W. Va. 1954) (finding that revenue from motor vehicle or fuel taxes and fees will be used for the express purpose of "construction, reconstruction or improvement of public highways, and the payment of obligations incurred in the construction," and "may not go into any other fund or be used for any other purpose" since they "do not constitute a part of the general revenues of the State"). Indeed, it is unsurprising that courts have also found that merely designating *any* purpose is insufficient to establish revenues as special. *See Mich. Sheriffs' Ass'n v. Dep't of Treasury*, 255 N.W.2d 666, 672 (Mich. App. 1977) ("In our opinion a fund is not made 'special' merely by designating a purpose for which it may be expended."). These determinations parallel the findings of *City of Bakersfield*, requiring the legislature to articulate a purpose related to the revenue's source when establishing special revenues.

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[8] The court laid out the particular details of the fees:

> The gas tax revenues constitute all amounts received by the City related to the purchase of motor vehicle fuels, including amounts received under Streets and Highways Code sections 2103, 2105, 2106, and 2107. The transportation impact fees are fees paid to the City by developers to mitigate the regional traffic impacts of development projects. The restricted utility franchise and surcharge fees are a surcharge on the franchise fees imposed on Pacific Gas and Electric Company and Southern California Gas Company related to their use of the City's streets for transmitting and distributing electricity and gas. These funds are segregated from all other revenues and general funds and are not maintained from the City's general funds.

City of Bakersfield, 209 Cal. Rptr. 3d at 352.

¶ 25 Requiring a nexus between a revenue's source and purpose balances the NMI Constitution's plain meaning with the very explicit guarantee of funding to PSS: "The public elementary and secondary education system *shall be guaranteed* an annual budget of not less than fifteen percent of the general revenues of the Commonwealth . . . ." NMI CONST. art. XV, § 1(e) (prior to 2014 amendment) (emphasis added). The drafters' decision to amend the NMI Constitution by constitutionally guaranteeing funding for PSS—and the people's decision to later increase that guaranteed funding—is especially telling. By mandating a guaranteed percentage of funding, the drafters sought financial stability for PSS. Even if actual general revenues fluctuated, the drafters envisioned that PSS would be guaranteed a degree of funding each year. Focusing our inquiry on the definition of general revenues in isolation, as the dissent does, would be misguided. In fact, the dissent's approach contributes nothing to the guarantee explicitly laid out in the NMI Constitution. Rather, we must look at Section 1(e) in its totality, giving effect to every word in the constitutional provision. The explicit constitutional guarantee weighs as much in our considerations as the explicit use of "general revenues." These considerations reveal that any revenue stream may not be rendered special merely by enunciating a purpose. Permitting this would render the constitutional guarantee vulnerable, transforming general revenue into special revenue without restraint. It would eviscerate the financial stability the drafters sought to accomplish for the school system. Thus, while the Governor and the Board's interpretations are plausible, neither fully capture's the drafters' intent. We find that a required nexus between the revenue's source and purpose accomplishes the need to ensure PSS receives its constitutionally guaranteed percentage. We now turn to developing that test.

¶ 26 *Childree v. Hubbert*, 524 So.2d 336 (Ala. 1988) provides some guidance on how attenuated the relationship may be. There, the Alabama Supreme Court set out to define what constituted "educational purposes" for appropriations made out of the Alabama Special Education Trust Fund ("ASETF"). The government sought a broad construction of "educational purposes," noting that the ASETF could pay for the government's "ordinary expenses." *See id.* at 338–39. For instance, "it could be [argued] that highway construction is both an ordinary expense . . . and an expenditure for educational purposes because it allows transportation of children to school." *Id.* at 341. The court disagreed and opined that "educational purposes" must be narrowly construed to avoid a meaningless construction of the phrase. So, while highway construction allows for the transportation of children to school, this interpretation was far too attenuated to qualify as an "educational purpose." *Id.* It was so much so, in fact, that the interpretation would render the provision requiring ASETF monies to be used for educational purposes "meaningless." *Id.* The Alabama Supreme Court determined that not only must there be a relationship, but that the relationship must not to be too attenuated.

¶ 27 We do not elaborate on how stringent the relationship between the revenue's source and purpose must be to qualify it as special revenues such that

PSS is not entitled to it. Nor do we definitively determine what revenues may qualify as special and what revenues may qualify as general. Rather, this relationship must be evaluated on a case-by-case basis because the particulars of a revenue's source and purpose turns on the unique circumstances of each fund. But, in an effort to avoid the very unrestraint in categorizing any revenue as special, we take this opportunity, by way of illustration, to suggest certain revenues that may or may not qualify as special.

¶ 28 A revenue likely qualifying as special revenue is revenue appropriated for the Tobacco Control Fund, a fund created in 2002 under Public Law 13-38. The Tobacco Control Fund contains revenues derived from the excise tax on tobacco products, codified in 4 CMC § 1402(a)(16). Specifically, "[t]here shall be established a separate fund to be known as the Tobacco Control Fund. There shall be credited to said fund 30% of the increase in the cigarette tax authorized under Section 2 of this Act . . . ." PL 13-38, § 3. Articulating significant public health concerns associated with using tobacco products, the legislature determined it to be "in the best interest of the CNMI to increase taxes on alcohol and tobacco products. This increase in revenue would be reserved for funding tobacco control programs." PL 13-38, § 1. The monies collected from taxes on tobacco products would in turn be used to combat the disease-causing effects of such products. This is a revenue source restricted to expenditure for a specified purpose, related to the revenue source, and therefore likely qualifying as special revenue.

¶ 29 Monies collected by Department of Public Lands ("DPL") may also constitute special revenue. In accordance with Article XI of the NMI Constitution, DPL was established to manage and administer the CNMI's public lands. *See* 1 CMC § 2801. Under 1 CMC § 2803(c)(3), revenues received by DPL are used for "[a]ll debts, liabilities, obligations and operational expenses of [DPL] including land compensation judgments . . . ." These revenues are derived from public lands and are in turn used to fund the operations of DPL. Here, the cyclical nature of the revenues likely qualifies them as special revenues. That is, the monies collected are derived from revenues associated with public lands, and in turn, used for the express purpose of funding the operations of DPL, which administers public lands. This is revenue used for a particular purpose relating to the revenue source, thereby likely qualifying it as special revenue.

¶ 30 While the aforementioned revenues will likely constitute special revenue, there are other revenues which will likely be found to qualify as general revenue in which PSS would be entitled a percentage. We provide two examples that likely qualify as general revenues. First, 4 CMC § 2306 requires applicants applying for a gaming license to pay certain fees. The monies collected from these fees are in turn allocated for various appropriations under 4 CMC § 2307, such as the local legislative delegations, who may appropriate the monies as they see fit. *See* 4 CMC § 2307(a)–(c). Here, no particular purpose is articulated at all, with the exception of 4 CMC § 2307(c)(1). Consequently, because there is no defined purpose, these revenues would likely be construed as general revenue rather than special revenue. Therefore, PSS would be entitled to a percentage of

those revenues. Second, 4 CMC § 1511(c) creates a special account for the third senatorial district, in which fees collected from "poker amusement machines, electronic gaming machines, or electronic table games," *see* 4 CMC § 1503(a)(6), may be appropriated by the senatorial district. While there is a defined purpose, there does not appear to be any relationship between gaming machines and the senatorial district. The lack of a relationship would likely render these revenues general, not special. PSS would be entitled to a percentage of these revenues because they are a part of general revenues.

¶ 31 The dissent cautions against "tying the hands of policymakers or limiting their ability to conduct fiscal policy with the requisite flexibility," and cites a South Dakota Supreme Court decision standing for the proposition that "if the Constitution does not place any restriction upon its power in this respect, the court cannot." *Infra*. ¶ 44 (quoting *Apa v. Butler*, 638 N.W.2d 57, 62 (S.D. 2001)). The NMI Constitution does in fact tie the legislature's hands—it may not circumvent the constitutional guarantee provided to the Public School System. Adopting the dissent's approach would significantly curtail the drafters' intent to preserve PSS's constitutionally guaranteed share. In fact, the dissent's approach would effectively render the constitutional guarantee meaningless. Revenues may be generated as special by having any purpose, thereby inhibiting PSS from receiving a constitutionally prescribed share of those revenues that may otherwise qualify as general revenue. Instead, we find that the nexus test accomplishes the drafters' intent to constitutionally guarantee funding while simultaneously effectuating the ordinary meaning of relevant terms. General and special revenues are subcategories of revenue, and special revenues are revenues which bear a relationship between the revenue's source and purpose. PSS is not entitled to revenues that are special; rather, PSS is only entitled to general revenues.[9]

B. Supplemental Budgets

¶ 32 Regarding the third certified question, the timing of budgetary appropriations is the crux of the petitioners' respective glosses on Section 1(e). The third certified question asks: "In the case of supplemental budgets, is PSS entitled to twenty-five percent of each supplemental budget during the course of a fiscal year or is PSS entitled to twenty-five percent of the total 'general revenues' generated annually?" Pet. 4. The Board argues PSS is constitutionally entitled to twenty-five percent of actual general revenues collected by the CNMI. The Governor argues that additional general revenues should be proportionally allocated to PSS per the Planning and Budget Act. *See* 1 CMC § 7201 et seq. He asserts that supplementary revenues should increase the appropriations to PSS under certain circumstances, namely, when PSS's share of general revenues for

[9] Our decision today, made more difficult due to the limited guidance in the imprecise drafting history, has significant consequences for the Commonwealth's fiscal affairs. The people of the Commonwealth, however, possess the power, subject to limitations, to amend the Constitution. Until the people decide to exercise this right, we are to interpret the law in accordance with the text of the NMI Constitution and the drafters' intent.

the fiscal year falls below the twenty-five percent guarantee. Importantly, however, the Governor maintains this proportional increase is not "constitutionally required." Resp. Br. 24.[10]

¶ 33 We begin by summarizing the procedure required to formulate the budget and the procedure required when the legislature anticipates an increase or decrease in revenues. Article III, Section 9 of the NMI Constitution mandates the governor submit an annual budget to the legislature.[11] This budget must contain "[a] detailed, current estimate of the total anticipated financial resources of the Commonwealth for the fiscal year." 1 CMC § 7202(a). Once approved and made effective, the budget allotments are to be distributed quarterly. 1 CMC § 7204(e). "[T]o be consistent with projected changes in estimated revenue collections," quarterly allotments will be revised. *Id*. "Increases in estimated revenues may be appropriated by amendments to the annual appropriation acts. Decreases in estimated revenues may be absorbed proportionately by all branches, offices, departments, and agencies of the Commonwealth." *Id*. 1 CMC § 7604 details the procedure when such changes in revenue estimates occur. When "the Director of Finance determines with reasonable certainty that actual revenues . . . will differ by more than $200,000 or by more than three percent from the revenue estimates," the director is to inform the governor. 1 CMC § 7604(a). Once informed of a revenue increase, the governor is to propose an "[i]ncrease [in] the reserve for the fiscal year; or [p]rovide additional budget authority for the fiscal year." 1 CMC § 7604(b)(1)–(2). If there is a revenue decrease, the governor must either "reduce the reserve for the fiscal year," "propos[e] the rescission of budget authority for such year," "propos[e] a deferral of budget authority until the close of the fiscal year," or "mandat[e] an immediate proportionate reduction in the allotment authority of all branches, offices, departments, agencies, and instrumentalities of the Commonwealth which are subject to appropriations." 1 CMC § 7604(c)(1)–(4).

¶ 34 Although the Planning and Budget Act provides for procedures to adjust appropriations when actual collected revenue differs from projected revenue, we agree with the Board that in the event of a surplus, it is constitutionally mandated that PSS receive its proportional share of any supplemental appropriations. If the legislature passes supplemental budgets, PSS is entitled to a proportionate increase commensurate with its twenty-five percent share of general revenue.

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[10] The Governor agreed with the Board in the Petition for Certified Question "that PSS is entitled to 25% of the total general revenues appropriated in a particular year, rather than only 25% of the primary balanced budget bill." Pet. 3. In his Opening Brief, he argued that Section 1(e) did not require twenty-five percent of "every supplemental appropriation" because this would "ignore[] 'an' and the singular form of the noun 'appropriation'" in the clause "through an annual appropriation." Opening Br. 18–19.

[11] 1 CMC § 7205 sets forth the relevant dates. On April 1, the Governor submits the proposed annual budget. By July 1, the legislature must set limits on expenditures by House concurrent resolution. The legislature completes action upon annual appropriation acts by September 1. Finally, on October 1, the fiscal year begins.

Where there is a revenue deficit, PSS's share may be proportionately decreased if the Governor transmits a special message mandating reduction per the procedures laid out at 1 CMC § 7604(c) and 1 CMC § 7204(e).[12] However, this decrease must still ensure that PSS receives its twenty-five percent share of guaranteed funding. We find this best comports with the drafters' intent to constitutionally guarantee PSS twenty-five percent of general revenues. PSS is not limited to a single appropriations bill, and it is constitutionally, not merely statutorily, entitled to a proportionate increase from supplemental budgets when actual general revenue exceeds projected general revenue.

C. Suspension of Earmarks

¶ 35 After further briefing, the Governor and the Board concede as to the second certified question, which asks: "[c]an the legislature properly suspend an earmark in an annual appropriations bill? If so, does the suspension transform the income source into 'general revenue'"? Pet. 4. The Board concludes "that the Legislature has the legal authority to suspend an earmark and divert revenue as it sees fit." Reply Br. 8. The Governor concedes "that when the Legislature suspends an earmark in whole or in part, the revenue becomes general revenue." Resp. Br. 17–18. In light of this convergence of the petitioners' positions, we must determine whether addressing the second certified question is appropriate.

¶ 36 Article IV, Section 11 of the NMI Constitution provides four prerequisites for our review of certified legal questions. First, a dispute must exist between or among Commonwealth elected or appointed officials. Second, the dispute must implicate these officials' constitutional or statutory powers or responsibilities. Third, the parties must provide stipulated facts from which the issue arises. Finally, the officials must submit certified legal questions arising from their dispute. *See* NMI CONST. art. IV, § 11. We have discretion to deny the request for answers to the certified questions.

¶ 37 We previously discussed these prerequisites in *In re Benavente*, 2008 MP 4. There, we denied the petition for certified question because the petitioners failed to satisfy the first three prerequisites. Of particular import is our discussion on what is meant by "dispute." Relying on the constitutional text's plain language, we determined that "[a] dispute is often characterized as a conflict or controversy, or an assertion of a right, claim, or demand on one side, met by contrary claims or allegations on the other." *Id.* ¶ 6 (internal quotation marks omitted). We further indicated that "[t]he word connotes the existence of at least two adversarial parties espousing contrary positions on a particular issue." *Id.* In *In re Benavente*, the petitioners did not satisfy the dispute requirement "because there is no conflict or demonstrable disagreement between" them. *Id.* ¶ 7. They

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[12] When the Governor invoked Section 7204(e) in 2002, the Attorney General concluded that requiring proportionate reduction of PSS's budget was permissible under the NMI Constitution. There is currently no dispute on the constitutionality of requiring a reduction of allotments to PSS under these circumstances. Op. of the Att'y Gen. No. 02-3, 26 Com. Reg. 021904 (Feb. 23, 2004).

did not demonstrate "that they are at odds with one another," or "reference a single issue or instance where they argue contrary positions." *Id.* As a result, the petitioners failed to demonstrate there was any dispute.

¶ 38 Throughout briefing, the Governor and the Board have conceded any real disagreement as to the second issue, thereby extinguishing the basis for a dispute. Our review of certified questions requires addressing an existing dispute. Since the petitioners do not genuinely dispute the second certified question, we are precluded by the NMI Constitution from addressing the merits. However, because the petitioners do not genuinely dispute this second issue, the status quo remains—the legislature may suspend earmarks. We write to clarify that where a legislative earmark has been suspended, the purpose of that earmark's revenue extinguishes and no longer qualifies it as special revenue, if it is determined to have been special revenue in the first place. We do not find that these suspended revenues qualify as special without any purpose, and therefore we construe them as general revenues, of which PSS is entitled a percentage.[13]

V. CONCLUSION

¶ 39 When the NMI Constitution first took effect in 1978, Article XV provided the right to public elementary, secondary, and higher adult education. The Briefing Papers discussed a number of options to finance education, but none were adopted. Ten years later, the Second Constitutional Convention amended Article XV to "guarantee[] an annual budget of not less than fifteen percent of the general revenues of the Commonwealth" to the PSS. In 2014, this percentage was increased to twenty-five percent of general revenue by House Legislative Initiative 18-12. In defining the contours of the constitutional mandate, the critical issue is determining what is meant by "general revenue." Examining the ordinary language of constitutional terms and giving effect to the constitutional guarantee embodied in Section 1(e), we conclude that general and special revenue are subcategories of the broader category of revenue. PSS is entitled to general revenue, not special revenue. The legislature has the authority to suspend an earmark in an appropriations bill, and in doing so, those revenues transform into general revenue, to which PSS is entitled a percentage. Finally, when the CNMI government passes supplemental budgets in the event of a revenue surplus, PSS is constitutionally entitled to supplemental revenues commensurate with its twenty-five percent share of total general revenue. However, when there is a revenue shortfall, the legislature may reduce PSS's budget proportionately so long as the constitutionally mandated twenty-five percent share is preserved.

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[13] "Earmark" is defined as "a provision in Congressional legislation that allocates a specified amount of money for a specific project, program, or organization." *Earmark*, MERRIAM WEBSTER Dictionary, https://www.merriam-webster.com/dictionary/earmark (last visited Dec. 26, 2021). Throughout our decision in this certified question, we have used "revenue" rather than "earmark." Our use of "revenue" comports with the NMI Constitution's use of it insofar as some monies are constitutionally, rather than statutorily, defined. Earmarks, in contrast, are ordinarily understood as creatures of legislation.

SO ORDERED this 14th day of January, 2020.

/s/
ALEXANDRO C. CASTRO
Chief Justice

/s/
JOHN A. MANGLOÑA
Associate Justice

INOS, J., concurring in part and dissenting in part:

¶ 40 I respectfully dissent as to Part IV.A.ii (¶¶ 22–31) but join the majority as to the remainder of the opinion. Like the majority, I would hold that "general revenue" within the meaning of Section 1(e) is a subset of the Commonwealth's revenues distinct from special revenue. I likewise define special revenue as revenue created for a particular purpose. I would not, however, interpose a relationship requirement between the revenue's source and purpose. I find no constitutional or statutory support for such a requirement. A relationship element, if any, is a policy matter for the legislature to decide, not the courts. The general revenues, of which PSS is entitled to twenty-five percent, are what remains after deducting the special revenues.

¶ 41 Briefing Paper No. 13 presented the framers of our Constitution with three options to guide the structure of school finance. Briefing Paper No. 13 at 26–27. These included, first, omitting any provision for school finance and leaving the matter to legislative determination; second, "a constitutional mandate that the educational system be funded out of general revenues. . . . allowing school finance to respond to the current fiscal status of the Commonwealth"; and third, providing for a special fund dedicated to education. *Id*. at 26. The original NMI Constitution implemented the first option, providing for no specific mechanism for school finance.

¶ 42 However, after ten years of the legislature dictating school finance, the delegates to the Second Constitutional Convention proposed a major change in the methodology of funding public education. This time, not only did the delegates identify general revenues as the revenue source to fund the education system's annual budget, they went one step further and guaranteed a percentage of that revenue source. Effectively, they adopted the "general revenues" language of Briefing Paper No. 13's second option. In conjunction with the Briefing Papers, the choice of this language suggests the delegates intended to fund education through ordinary revenues subject to appropriation for the general expenses of government. This is distinct from revenues created for a particular purpose and deposited in a separate account from the Commonwealth's General Fund, as Briefing Paper No. 13 contemplated in option three. Caselaw in other jurisdictions, like *Kemp, supra* ¶ 18, supports this view.

¶ 43 Thus far, I agree with the analysis in distinguishing general revenue from special revenue as subsets of all Commonwealth revenues. But the majority imposes an extra characteristic on a revenue source for it to constitute special revenue—the source must bear a relationship to its purpose. To illustrate the consequences of this point, Public Law 18-38 appropriated $8.9 million from the annual casino license fee to pay "for the 25% reduction of the retirees and the beneficiaries' pension", $1 million "to the Commonwealth Healthcare Corporation to address the CMS requirement," and $1.1 million "into a land compensation account for the payment of land compensation judgments." PL 18-38, § 107(c). Notwithstanding that the casino license fee was established in part to generate revenue to retire the Commonwealth's debts and for other specified

purposes,[14] the apparent lack of relation between the casino license fee (*the revenue source*) and retiring employee pension debts, fulfilling a healthcare requirement, or extinguishing judgments owed to land owners (*the revenue's stated purpose*) would likely qualify it as general revenue and not special revenue under the relationship test. *See supra* ¶ 26. I view the extra characteristic as unnecessary policymaking.

¶ 44 The courts should be wary of tying the hands of policymakers or limiting their ability to conduct fiscal policy with the requisite flexibility. The legislature has plenary power of the purse, subject only to constitutional restrictions. "[I]f the Constitution does not place any restriction upon its power in this respect, the court cannot." *Apa v. Butler*, 638 N.W.2d 57, 62 (S.D. 2001) (quoting *State v. Anderson*, 146 N.W. 703, 705 (S.D. 1914)). Article X confers on the legislature broad authority to generate and appropriate revenue: "A tax may not be levied and an appropriation of public money may not be made, directly or indirectly, except for a public purpose. The legislature shall provide the definition of public purpose." NMI CONST. art. X, § 1. It is not for this Court to create restrictions on the legislature's spending power where the Constitution does not.

¶ 45 The only restriction that our Constitution's text places on the legislature in this respect is that spending on public education must not fall below "twenty-five percent of the general revenues of the Commonwealth." NMI CONST. art. XV, § 1(e). PSS's guaranteed budget under Section 1(e) has the character of a constitutionally protected interest, roughly analogous to the revenues from the Marianas Public Land Corporation, which the legislature cannot redirect from their constitutional allocation to the Marianas Public Land Trust. NMI CONST. art. XI, § 5(g). "The legislature cannot . . . pass a law that infringes upon the functions of another constitutional entity." *Dep't of Pub. Lands v. Commonwealth of the Northern Mariana Islands*, 2010 MP 14 ¶ 2. Beyond this limitation, the legislature is free to fund programs as it sees fit. Thus, because our Constitution does not restrict special revenues to those sources which have a relation to their purpose, I would not impose such a restriction. It is for the legislature to decide whether there must be a nexus between the origin of revenues and their purpose. To further illustrate this, 4 CMC § 1804(b) mandates the annual appropriation of up to $2 million collected from the liquid fuel tax under 4 CMC § 1403(a)[15] to the Public School System Building Fund created under 1 CMC § 2281. This fund's sole purpose is to pay the principal and interest on any financing entered into by PSS for capital improvement projects pursuant

[14] For instance, Section 1 of Public Law 18-38, which indicates the law's findings and purposes, states: "[p]resently, the Commonwealth has obligations to the Commonwealth's retirees. A great deal of money is owed to the Northern Mariana Islands Retirement Fund . . . . The Commonwealth is in dire need of revenues to honor its obligations." PL 18-38, § 1.

[15] 4 CMC § 1403(a), which governs liquid fuel taxes, states: "for the privilege of first selling or distributing fuel in the Commonwealth, there is imposed an excise tax at the rate of 15 cents per gallon."

to House Joint Resolution 10-36. Under the majority's holding, this revenue would likely qualify as general revenue because the liquid fuel tax (*revenue's source*) bears no relation to paying off PSS's debt (*revenue's purpose*). I would also determine that this liquid fuel tax revenue is general revenue, but only because the legislature did not establish this tax to pay PSS's financing debt. The liquid fuel tax was not established for any particular purpose.

¶ 46 To be clear, say the legislature statutorily earmarks money from the liquid fuel tax under 4 CMC § 1403(a) to construct fuel tanks to store the Commonwealth's fuel for its fleet of vehicles and machinery. In this scenario, the revenue would still qualify as general revenue because at the time that the liquid fuel tax was established, it had no stated purpose. The absence of a particular purpose leads to only one conclusion—that the fuel liquid tax was established to pay the ordinary expenses of running the Commonwealth. The relationship between the fuel tax and the fuel tanks is immaterial. This conclusion comports with the intent of the Second Constitutional Convention's delegates to provide PSS with a stable source of revenue, allowing school finance to respond to the current fiscal status of the Commonwealth. It affords "general revenue" protection from the peril of legislative determination as presented in option one of Briefing Paper No. 13 and which PSS's guarantee was created to constrain.

¶ 47 For the foregoing reasons, I would hold that special revenues are revenues created for a particular purpose, without requiring a relation between the revenue's source and its purpose. General revenues are what remain after deducting special revenues. Earmarking from general revenues cannot deprive PSS of its constitutionally guaranteed budget.

/s/
PERRY B. INOS
Associate Justice

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