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STATE OF MICHIGAN

FRANK J. KELLEY, ATTORNEY GENERAL

Opinion No. 5934

July 15, 1981

CONSTITUTIONAL LAW:

Payment of debts by tender of gold or silver coin

LEGAL TENDER:

Payment of debts in gold and silver coin

US Const, art I, Sec. 10 does not require the State of Michigan to pay its debts or receive the payment for debts exclusively in either gold or silver coin.

The State may not require the payment of private debts exclusively in either gold or silver coin.

Honorable Mat Dunaskiss
State Representative
The Capitol
Lansing, Michigan

Honorable Jack Welborn
State Senator
The Capitol
Lansing, Michigan

You have requested my opinion whether US Const, art I, Sec. 10, requires the State of Michigan to pay its debts or receive payment for debts exclusively in either gold or silver coin.

US Const, art I, Sec. 10, in pertinent part, provides:

'No State shall . . . make any Thing but gold and silver Coin a Tender in Payment of Debts . . .'

It has long been established that the federal government, pursuant to the broad powers delegated to Congress by US Const, art I, Sec. 8, possesses the exclusive power to declare what shall be legal tender for the payment of all debts. Legal tender cases: Knox v Lee and Parker v Davis, 79 US 457; 20 L Ed 287 (1871). Julliard v Greenman, 110 US 421; 4 S Ct 122; 28 L Ed 204 (1884); Norman v Baltimore & Ohio RR Co, 294 US 240; 55 S Ct 407; 79 L Ed 885 (1935); Guarantee Trust Co v Henwood, 307 US 247; 59 S Ct 847; 83 L Ed 1226 (1939). The reason for vesting Congress with this power was stated succinctly by the United States Supreme Court in Knox v Lee, supra;

'[The] Constitution was intended to frame a government as distinguished from a league or compact, a government supreme in some particulars over States and people. It was designed to provide the same currency, having a uniform legal value in all the States. It was for this reason the power to coin money and regulate its value was conferred upon the Federal government, while the same power as well as the power to emit bills of credit was withdrawn from the States. The States can no longer declare what shall be money, or regulate its value. Whatever power there is over the currency is vested in Congress. . . .' 79 US 457, 545

Further explanation was later provided by the Court in Julliard v Greenman, supra, as follows:

'By the Constitution of the United States, the several States are prohibited from coining money, emitting bills of credit, or making anything but gold and silver coin a tender in payment of debts. But no intention can be inferred from this to deny to Congress either of these powers. Most of the powers granted to Congress are described in the eighth section of the first article; the limitations intended to be set to its powers, so as to exclude certain things which might otherwise be taken to be included in the general grant, are defined in the ninth section; the tenth section is addressed to the States only.' 110 US 421, 446

The Court went on to hold, inter alia:

'The power of issuing bills of credit, and making them, at the discretion of the legislature, a tender in payment of private debts, had long been exercised in this country by the several Colonies and States; and during the Revolutionary War the States, upon the recommendation of the Congress of the Confederation, had made the bills issued by Congress a legal tender. See Craig v. Missouri, 4 Pet. 435, 453; Briscoe v. Bank of Kentucky, 11 Pet. 257, 313, 334-336; Legal Tender Cases, 12 Wall. 557, 558, 622; Phillips on American Paper Currency, passim. The exercise of this power not being prohibited to Congress by the Constitution, it is included in the power expressly granted to borrow money on the credit of the United States.

'This position is fortified by the fact that Congress is vested with the exclusive exercise of the analogous power of coining money and regulating the value of domestic and foreign coin, and also with the paramount power of regulating foreign and interstate commerce. Under the power to borrow money on the credit of the United States, and to issue circulating notes for the money borrowed, its power to define the quality and force of those notes as currency is as broad as the like power over a metallic currency under the power to coin money and to regulate the value thereof. Under the two powers, taken together, Congress is authorized to establish a national currency, either in coin or in paper, and to make that currency lawful money for all purposes, as regards the national government or private individuals.' 110 US 421, 447-448

In exercising its power to establish and regulate a national currency, Congress has, pursuant to 48 Stat 113 (1933); 31 USC 463, expressly forbidden the making of obligations payable in gold or any particular kind of coin or currency except that which it has declared legal tender at the time of payment:

'(a) Every provision contained in or made with respect to any obligation which purports to give the obligee a right to require payment in gold or a particular kind of coin or currency, or in an amount in money of the United States measured thereby, is declared to be against public policy; and no such provisions shall be contained in or made with respect to any obligation hereafter incurred. Every obligation, heretofore or hereafter incurred, whether or not any such provision is contained therein or made with respect thereto, shall be discharged upon payment, dollar for dollar, in any coin or currency which at the time of payment is legal tender for public and private debts. Any such provision contained in any law authorizing obligations to be issued by or under authority of the United States, is hereby repealed, but the repeal of any such provision shall not invalidate any other provision or authority contained in such law.

'(b) As used in this section, the term 'obligation' means an obligation (including every obligation of and to the United States, excepting currency) payable in money of the United States; and the term 'coin or

currency' means coin or currency of the United States, including Federal Reserve notes and circulating notes of Federal Reserve banks and national banking associations.'

The constitutionality of 31 USC 463, supra, was upheld in *Norman v Baltimore & Ohio RR Co*, supra.

Presently, legal tender for the payment of all debts, including taxes, is declared in 79 Stat 255 (1965); 31 USC 392 to be:

'All coins and currencies of the United States (including Federal Reserve Notes and circulating notes of Federal Reserve banks and national banking associations), regardless of when coined or issued, shall be legal tender for all debts, public and private, public charges, taxes, duties, and dues.'

In recent years the federal courts have, in numerous instances, reaffirmed Congress' constitutional power to declare what is legal tender for payment of all debts, both public and private. United States v Tissi, 601 F2d 372, 374 (CA 8, 1979); United States v Rifin, 577 F2d 1111, 1112 (CA 8, 1978); United States v Daly, 481 F2d 28, 30 (CA 8, 1973), cert den, 414 US 1064; 94 S Ct 571; 38 L Ed 2d 469 (1973); United States v Whitesel, 543 F2d 1176, 1180-1181 (CA 6, 1976), cert den, 431 US 967; 97 S Ct 2924; 53 L Ed 2d 1062 (1977); United States v Schmitz, 542 F2d 782, 785 (CA 9, 1976), cert den, 429 US 1105; 97 S Ct 1134; 51 L Ed 2d 556 (1977).

While the question has never been considered by Michigan appellate courts in reported cases, the exclusivity of Congress' power has been consistently recognized by the State courts which have had occasion to consider the matter: e.g., Chermack v Bjornson, 302 Minn 213; 223 NW2d 659, 660-661 (1974), cert den, 421 US 915; 95 S Ct 1573; 43 L Ed 2d 780 (1975), where the Minnesota Supreme Court ruled that the state was not required to tender income tax refunds in gold and silver coin; Radue v Zanaty, 293 Ala 585; 308 So 2d 242, 244 (1975), where the Alabama Supreme Court held that it was impermissible for a taxpayer to tender payment of income taxes by checks redeemable only in gold or silver coin; Leitch v State Department of Revenue, 16 Ore App 627; 519 P2d 1045, 1046 (1974), in which the Oregon Court of Appeals described as 'frivolous' the taxpayer's contention that transportation taxes could only be collected by the state in gold and silver; Allen v Craig, 1 Kan App 2d 301; 564 P2d 552, 556-557 (1977), in which the Kansas Court of Appeals rejected a taxpayer's attempt to pay \$4,000 in personal and real property taxes with a check which called for payment in 800 silver dollars, allegedly worth 5 times as much as federal reserve notes; Trohimovich v Director of Department of Labor, 21 Wash App 243; 584 P2d 467, 470 (1978), where the Washington Court of Appeals denied an attempt by the owners of a business to make payment of state industrial insurance premiums with checks reflecting the owners' conversion of the total dollars due into gold based on final daily price-fixings of gold on the London Market; and Middlebrook v Mississippi Tax Commission, 387 So 2d 726, 728 (Miss, 1980) where the Mississippi Supreme Court held that federal reserve notes are taxable dollars for the purposes of paying state income tax assessments.

It is my opinion, therefore, that US Const, art I, Sec. 10 does not require the State of Michigan to pay its debts or receive payment for debts exclusively in either gold or silver coin. It is further my opinion that the State may not require the payment of private debts exclusively in either gold or silver coin since Congress alone possesses and exercises this authority.

Frank J. Kelley

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