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ARIZONA ATTORNEY GENERAL

June 7, 1984

The Honorable Wayne Stump, D.C.
Arizona State Senator
State Capitol, Senate Wing
1700 West Washington
Phoenix, Arizona 85007

Re: I84-079 (R84-083)

Dear Senator Stump:

You have asked for an opinion on the following questions:

1. Is Article I, Section 10 of the United States Constitution binding upon the State of Arizona?

2. Can the State of Arizona extract involuntary contributions from its citizens in anything other than gold and silver coin?

3. Can the State of Arizona force any person living in this State to pay taxes, fines, license fees, etc. in federal reserve notes or in anything other than gold and silver coin?

Article 1, § 10 of the United States Constitution prohibits the individual states from coining their own money. Section 10 states in part as follows:

> No state shall . . . coin Money; . . . make any Thing but gold and silver Coin a Tender in Payment of Debts;

Taken literally, this provision would appear to prohibit the states from treating anything other than gold or silver as legal tender. However, such a literal reading of U.S. Const., Article 1, § 10 ignores the power of Congress to determine what constitutes legal tender. As the court noted in Kauffman v. Citizens State Bank of Loyal, 102 Wis.2d 528, 307 N.W.2d 325 (1981):

> Article 1, sec. 10 prohibits the states from declaring legal tender anything other than gold or silver, but does not limit Congress' power to declare what shall be legal tender for all debts.

307 N.W.2d at 327

Accordingly, Congress enacted 31 U.S.C. § 5103 which makes United States coins and currency, including Federal reserve notes, legal tender:

> United States coins and currency (including Federal reserve notes and circulating notes of Federal reserve banks and national banks) are legal tender for all debts, public charges, taxes, and dues. Foreign gold or silver coins are not legal tender for debts.

(Emphasis added)

The purpose of 31 U.S.C. § 5103 is to maintain a uniform standard of money or "legal tender" throughout the United States for ease in commercial activities among its citizens. Congress' authority to declare legal tender and the policy reasons for vesting such power in Congress were discussed in Norman v. Baltimore & O.R. Co., 294 U.S. 240, 304 (1935):

> The authority to impose requirements of uniformity and parity is an essential feature of this control of the currency. The Congress is authorized to provide "a sound and uniform currency for the country" and to "secure the benefit of it to the people by appropriate legislation.

The Court continued:

> Moreover, by virtue of this national power, there attaches to the ownership of gold and silver those limitations which public policy may require by reason of their quality as legal tender and as a medium of exchange. Ling Su Fan v. United States, 218 U.S. 302, 310, 31 S.Ct. 21, 23, 54 L.Ed. 1049, 30 L.R.A. (N.S.) 1176. Those limitations arise from the fact that the law "gives to such coinage a value which does not attach as a mere consequence of intrinsic value." Their quality as legal tender is attributed by the law, aside from their bullion value.

(Emphasis added)

Acceptance of federal reserve notes by a state for payment of taxes does not constitute a state action in violation of U.S. Const. Art.1, § 10. Chermack v. Bjornson, 223 N.W.2d 659 (Minn. 1974). The state is simply accepting as legal tender what Congress has declared to be legal tender.

Claims that taxes or fines cannot be paid in federal reserve notes because they are not a legal tender as provided for in Article I, Section 10 of the United States Constitution have been dismissed by the courts as specious, frivolous and wholly without merit. United States v. Snow, 670 F.2d 749, 754 (7th Cir. 1982); United States v. Hurd, 549 F.2d 118 (9th Cir. 1977); United States v. Wangrud, 533 F.2d 495 (9th Cir. 1976), cert. denied, 429 U.S. 818 (1976); Horton v. Village of Midlothian, No. 81 C 6375 (D. Ill., June 1, 1982); Kauffman; Radue v. Zanaty, 293 Ala. 585, 308 S.2d 242 (1975); Rush v. Casco Bank & Trust Co., 348 A.2d 237 (Me. 1975).

Consequently, federal reserve notes are legal tender in Arizona, not by any law of this State, but because Congress has made them legal tender throughout these United States. See, Kauffman, 307 N.W. 2d at 328, n. 5, and cases cited therein. Since federal reserve notes are legal tender for the payment of taxes, the State of Arizona may require its citizens to pay involuntary contributions, such as taxes and fines, with United States coins and currency such as Federal Reserve notes. Ariz. Const., Art. 9, § 3.

Finally, the holding by the United States Supreme Court in Hagar v. Reclamation District No. 108, 111 U.S. 701, (1884) does not nullify the body of law set forth above. The Hagar opinion upheld the right of the states in 1884 to collect taxes in "such material as it might deem expedient" since the legal tender act at that time made no reference to taxes imposed by

state authority, but only to debts arising out of contracts. 111 U.S. at 704. Consequently, the Supreme Court in Hagar allowed the state to collect the assessments in gold or silver coin.

However, Hagar was decided prior to the enactment of 31 U.S.C. § 5103 and its predecessors which specifically provide that all coin and currencies of the United States shall be legal tender for taxes, not limiting "taxes" to those due to the United States. Consequently, the holding in Hagar is no longer applicable.

Sincerely,

BOB CORBIN
Attorney General

BC:IAM:mch

Attorney General
1275 WEST WASHINGTON
Phoenix, Arizona 85007
Robert K. Corbin

September 18, 1984

The Honorable Wayne Stump, D.C.
Arizona State Senator
State Capitol, Senate Wing
1700 West Washington
Phoenix, Arizona 85007

Re: I84-079 (R84-130)
(Addendum)

Dear Senator Stump:

You have asked for a clarification of Ariz. Atty. Gen. Op. I84-079. In that opinion, we concluded that Arizona does not violate Art. 1, § 10 of the United States Constitution ("Section 10") by accepting as legal tender what Congress has determined to be legal tender and that the state has the power to require its citizens to pay involuntary contributions, such as taxes or fines, with any form of coins or currency which Congress has designated as "legal tender", including Federal Reserve notes. Section 10, which is binding on the states, restricts the states from coining money and from declaring as legal tender anything other than gold and silver, but Section 10 does not limit the power of Congress to declare what shall be legal tender for all debts. Kauffman v. Citizens State Bank of Loyal, 102 Wis.2d 528, 307 N.W.2d 325 (1981), citing Juilliard v. Greenman, 110 U.S. 421, 446-50(1884).

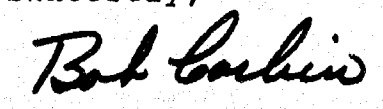
The Constitution grants to Congress the power "To coin Money, regulate the Value thereof, and of foreign Coin." U.S. Const. art. 1,§ 8, par. 5. However, congressional power to declare what is legal tender does not derive from that express grant alone. The United States Supreme Court has consistently found the source of that authority to be in all the related powers conferred upon the Congress by the framers

of the Constitution to achieve the objective of establishing a national government with sovereign powers. Norman v. Baltimore & O.R. Co., 294 U.S. 240, 303-304 (1935), citing M'Culloch v. Maryland, 4 Wheat. 316, 404-407, 4 L.Ed. 579 (1819); Knox v. Lee, 12 Wall. 457, 532, 536, 20 L.Ed. 289 (1871); and Juilliard v. Greenman.

Among the aggregate powers granted to Congress is the added express power to make all laws which shall be necessary and proper for carrying into execution the other enumerated powers. See U.S. Const., art. 1, § 8 ("Section 8"). Section 8 complements Section 10 and does not negate, change or modify the latter provision. The power to regulate the currency was vested in Congress, while the same power was withdrawn from the states. Knox v. Lee, 12 Wall at 545. These two constitutional provisions are in harmony in their statement of the separate powers of the Congress and the states.

Your most recent inquiry questions how the courts can vest the power to declare what constitutes legal tender in the Congress. It is the Constitution, not the United States courts, which has vested such power in the Congress. The courts do, however, have the authority to interpret and apply the Constitution pursuant to the judicial power which is vested by the United States Constitution in the Supreme Court, and in such inferior courts as established by Congress. Art. III, § 1. The Constitution grants to the courts the power to interpret and apply the Constitution in cases arising under the Constitution and the laws of the United States. This grant of authority to the courts is known as the concept of "judicial review" and was first articulated by Chief Justice Marshall in Marbury v. Madison, 1 Cranch 137, 2 L.Ed. 60 (1803). For this reason, the courts have the authority to interpret the Constitution as vesting in Congress the power to declare what constitutes legal tender.

Sincerely,



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Attorney General