



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 83- 91

The Honorable David L. Webb
State Representative, Twenty-Seventh District
P. O. Box 163
Stilwell, Kansas 66085

Re: Constitutional Law -- Currency -- Regulation Vested
in Congress

Synopsis: The United States Congress has the constitutional
power to establish and control legal currency and
specifically has determined that Federal reserve
notes are legal tender for all debts, public
charges, taxes and dues. Cited herein: 31 U.S.C.
371 (repealed), 31 U.S.C. §§5101, 5103, U.S. Const.
Art. 1, §§8, 10.

* * *

Dear Representative Webb:

You have inquired in behalf of one of your constituents re-
garding issues relative to the currency system of the United
States. Your opinion request is accompanied by correspondence
from your constituent wherein he raises the following speci-
fic questions which we address separately:

"1) Is Article 1, Section 10 of the U.S. Con-
stitution still binding on the State of Kansas?

"2) Is 31 U.S.C. §371 still in effect today?

"3) What is the substance of the money of
account of the United States in which all
accounts must be kept and had (see 31 U.S.C.
§371)?

"4) Can the State of Kansas compel a citizen
to violate the U.S. Constitution and Federal
law?

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"5) Has Congress ever declared Federal Reserve Notes to be the 'money of account of the United States'?"

"6) Have Federal Reserve Notes ever been declared legal tender for state debts?"

The obvious answer to your constituent's first inquiry is, of course, that the State of Kansas is subject to the provisions of Article 1, Section 10 of the Constitution of the United States.

Your constituent's second inquiry concerns whether 31 U.S.C. §371 is still currently effective. 31 U.S.C. §371 was amended and recodified September 13, 1982, in Public Law 97-258, §1, 96 Stat. 980 and may now be found at 31 U.S.C. §5101. 31 U.S.C. §5101 provides as follows:

"United States money is expressed in dollars, dimes or tenths, cents or hundredths, and mills or thousandths. A dime is a tenth of a dollar, a cent is a hundredth of a dollar, and a mill is a thousandth of a dollar."

Your constituent's quotation of 31 U.S.C. §371 reflects the statute prior to amendment by P.L. 97-258, §1. Thus, §371 is no longer in effect, although the substance of that statute may now be found elsewhere in federal law.

Your constituent's third inquiry cites 31 U.S.C. §371 (amended and recodified at 31 U.S.C. §5101, see preceding discussion) and asks "what is the substance of the money of account of the United States in which all accounts must be kept and had?" The constituent's citation to 31 U.S.C. §371 is meaningless vis a vis the substance of our nation's money. We direct your constituent's attention to 31 U.S.C. §5103 which provides:

"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."

31 U.S.C. §5103, in our judgment, specifies the only forms that may be utilized as legal tender in our nation and is dispositive of your constituent's third inquiry. See also Radue v. Zanaty, 308 So.2d 242 (Ala. 1975); United States v. Moon, 616 F.2d 1043, 1047, 1048 (8th Cir. 1980) and cases cited therein; and Allen v. Craig, 1 Kan. App.2d 301, 306-308 (1977).

Your constituent's fourth inquiry states:

"4) Can the State of Kansas compel a citizen to violate the U.S. Constitution and Federal law?"

It is axiomatic that actions of state and local governments must be consistent with the Constitution of the United States as those standards are enunciated by the judicial branch of our nation's government. We know of nothing to suggest that the payment of Kansas taxes in dollars and cents is violative of the United States Constitution.

Your constituent's fifth inquiry states:

"5) Has Congress ever declared Federal Reserve Notes to be the 'money of account of the United States'?"

Again, attention is directed to 31 U.S.C. §5103 which specifically provides that Federal reserve notes are "legal tender for all debts, public charges, taxes, and dues." See also United States v. Rifen, 577 F.2d 1111 (8th Cir. 1978) and United States v. Anderson, 584 F.2d 369 (10th Cir. 1978). We note that your constituent's continued use of the term "money of account" reflects a dated and improper use of legal terminology. The predecessor of 31 U.S.C. §5101 (31 U.S.C. §371) utilized the term "money of account," however such term does not appear in the amended and recodified version.

Your constituent's sixth inquiry asks whether Federal reserve notes have ever been declared legal tender for state debts. While this is, at best, an ambiguous inquiry, we believe such is controlled by the provisions of 31 U.S.C. §5103 which makes inter alia, Federal reserve notes "legal tender for all debts, public charges, taxes and dues."

The congressional designation of federal reserve notes as "legal tender for all debts, public charges, taxes and dues" is consistent with the Constitution's grant of authority in Article 1, Section 8, clause 5. Pursuant to these expressed powers, Congress is authorized to establish and control the nation's currency and to specify legal tender for all purposes. See Guaranty Trust Co. v. Henwood, 307 U.S. 247, 259, 83 L. Ed. 1266, 59 S.Ct. 847 (1939) and Antieau, Modern Constitutional Law, §12:60, pp. 312, 313 (1969).

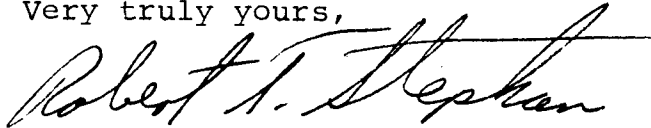
Finally, we feel compelled to offer the following comments: apparently, your constituent is laboring under the mistaken belief that the State of Kansas is in violation of the United States Constitution by requiring payment of taxes and other involuntary exactitudes by means other than gold or silver.

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Of course, the State of Kansas has done nothing to determine the proper currency. See: Van Husan v. Kanouse, 13 Mich. 303, 312 (1865) and Morrow v. Henneford, 47 P.2d 1016, 1019 (Wash. 1935). Rather, it is action of the United States Congress, pursuant to U.S. Constitution, Art. I, Sec. 8 which makes federal reserve notes, United States coins and currency, legal tender for payment of debts, public charges, taxes and dues. See Allen v. Craig, *supra*. Hence, the action of the State of Kansas in collecting taxes in U.S. currency is absolutely legal and proper. Indeed, no state would do otherwise.

In conclusion, the United States Congress has the constitutional power to establish and control legal currency and specifically has determined that Federal reserve notes are legal tender for all debts, public charges, taxes and dues.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Robert Vinson Eye
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RTS:BJS:RVE:hle