

benefits, by Act 166, P.A. 1965. This reasonable interpretation of responsible bidder eliminates any possible conflict between the two statutes in question.

To summarize the effect of the legal conclusions reached above, it is my opinion that the boards of education of primary, fourth and third class school districts, having no discretion regarding competitive bidding, must insert prevailing wage clauses in construction contracts for two thousand dollars or more. Boards of education of second and first class school districts, including Grand Rapids as a second class school district, have discretion in the matter of competitive bidding. If competitive bids are invited, these boards must insert prevailing wage clauses in the contracts. If competitive bids are not invited, these boards may not insert prevailing wage clauses in the contracts.

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**CONSTITUTIONAL LAW:** Power of legislature to require deduction of costs of collection from sales tax.

**TAXATION:** Deduction of costs of collection from sales tax.

The legislature is without authority to require collection costs to be deducted from state sales tax moneys to be paid to townships, cities, villages and school districts in accordance with Article IX, Section 10 and 11 of the Michigan Constitution of 1963. Such statutory provision found in Act 49, P.A. 1964 is unconstitutional.

No. 4501

March 8, 1968.

Hon. Albert Lee  
Auditor General  
567 Hollister Building  
Lansing, Michigan

You request my opinion on the following question:

"Whether Act 49, P.A. 1964 is in conflict with Sections 10 and 11 of Article IX of the Michigan Constitution of 1963.

Act 49, P.A. 1964 amended Section 25 of Act 167, P.A. 1933, as amended. Prior to amendment by Act 49, P.A. 1964, Section 25 of Act 167, P.A. 1933, as amended, being C.L.S. 1961 §205.75; M.S.A. 1960 Rev. Vol. § 7.546, read:

"All sums of money received and collected under the provisions of this act shall be deposited by the department in the state treasury to the credit of the general fund, to be disbursed only on an appropriation or appropriations by the legislature."

As amended by Act 46, P.A. 1964, Section 25 now provides:

"All sums of money received and collected under the provisions of this act shall be deposited by the department in the state treasury to the credit of the general fund. Prior to any division or allocation of the tax, the cost of collection as determined by the department shall be deducted from total collections. The state disbursing authority shall remit quarterly to county treasurers on a county population basis  $\frac{1}{8}$  of the balance of the collections. The county treasurer shall remit to the townships, cities and villages in the county on a per capita basis. Population computation shall be based on the last and each succeeding statewide federal census for purposes of division among counties, and upon the same basis or upon any special federal county-wide census, whichever is later, for purposes of division among local units. Fifty percent of the total number of persons who are wards, patients or convicts committed to or domiciled in a city institution located outside the boundaries of the city or committed to or domiciled in a county, state or federal tax supported institution, if such persons were included in the federal census, shall be excluded from the computation. One-half of the balance of the collections shall be transferred to the school aid fund created by section 11 of article 9 of the state constitution and distributed as provided by law. The balance in the general fund shall be disbursed only on an appropriation or appropriations by legislature."

By such amendment the legislature has imposed a statutory requirement that cost of collection of the state sales tax be deducted before proceeds from the sales tax are distributed to townships, cities, villages and school districts. In addition the legislature has prescribed the formula for determination of the population of townships, cities and villages for distribution of sales tax moneys due such local units of government under Article IX, Section 10.

Article IX, Section 10 of the Michigan Constitution of 1963 provides:

"One-eighth of *all* taxes imposed on retailers on taxable sales at retail of tangible personal property shall be used exclusively for assistance to townships, cities and villages, on a population basis as provided by law. In determining population the legislature may exclude any portion of the total number of persons who are wards, patients or convicts in any tax supported institution." (Emphasis supplied)

Article IX, Section 11 of the Michigan Constitution of 1963 provides:

"There shall be established a state school aid fund which shall be used exclusively for aid to school districts, higher education and school employees' retirement systems, as provided by law. One-half of *all* taxes imposed on retailers on taxable sales at retail of tangible personal property, and other tax revenues provided by law, shall be dedicated to this fund. Payments from this fund shall be made in full on a scheduled basis, as provided by law." (Emphasis supplied)

Article X, Section 23 of the Michigan Constitution of 1908 contained the following specific provision:

"Prior to any division or allocation of the sales tax, the cost of collection as determined by the department of revenue shall be deducted from total collections and credited to the general fund of the state."

Resort may be made to the Constitutional Convention Debates and the Address to the People to determine the meaning of the Constitution. *Burdick v. Secretary of State*, 373 Mich. 578 (1964).

Article IX, Sections 10 and 11 of the Michigan Constitution of 1963, were first considered by the Constitutional Convention as parts of Committee Proposal 39. As proposed on first reading by the Convention, Committee Proposal 39 contained the provision found in Article X, Section 23 of the 1908 Constitution, that prior to any division or allocation of the state sales tax money, the cost of collection shall be deducted from total collections and credited to the general fund of the state. *Official Record, Constitutional Convention*, 1961, Vol. I, page 785. Committee Proposal 39 was approved on first reading without any change. *Official Record, Constitutional Convention*, 1961, Vol. I, page 822.

As reported by the Committee on Style and Drafting and considered by the Convention on second reading, Committee Proposal 39 contained the following provision:

"Prior to any division or allocation of the sales tax, the cost of collection [as determined by the department of revenue] shall be deducted [from total collection and credited to the general fund of the state]."

*Official Record, Constitutional Convention*, 1961 Vol. II, p. 2636.

On second reading, the Convention adopted a substitute proposal which omitted entirely the provision that prior to any division or allocation of the sales tax the cost of collection shall be deducted. No explanation was given for the deletion of the language and no significant debate ensued on such deletion. The substitute proposal without the provision relative to cost of collection was approved by the delegates by vote of 85 to 31. *Official Record, Constitutional Convention*, 1961, Vol. II, page 2640.

Thereafter the Convention adopted Article IX, Sections 10 and 11 without reinserting authority to deduct cost of collection of state sales tax before disbursing sales tax moneys to townships, cities, villages and school districts.

This review of the constitutional history of Article IX, Sections 10 and 11 reveals that it was the clear intent of the framers to pay the sales tax due to townships, cities, villages and school districts in full without deduction of cost of collection.

Construction of Article IX, Sections 10 and 11 barring the legislature from deducting the cost of collection from state sales tax moneys required by the Constitution to be remitted to townships, cities, villages and school districts is also supported by judicial precedent.

In reciting the provisions of Article IX, Sections 10 and 11, the term "all" has been deliberately underscored. The term "all" has been defined to mean the whole, not some or a part. *Joslin, et al. v. Williams*, 107 N.W. 837, affirmed on rehearing, 112 N.W. 343 (Neb. 1907).

It has also been held that the word "all" does not admit of an exception or exclusion not specified. *Cedar Rapids Community School District, Linn County v. City of Cedar Rapids*, 106 N.W. 2d 655 (Iowa 1960). The word "all" has been held to exclude the idea of limitation. *McLean, Widow of Nathaniel H. McLean v. United States*, 226 U.S. 374 (1912).

Therefore, it is my opinion that the legislature is without authority to require collection costs to be deducted from state sales tax moneys to be paid to townships, cities, villages and school districts in accordance with Article IX, Sections 10 and 11 of the Michigan Constitution of 1963.

Act 49, P.A. 1964 amended Section 25 of Act 167, P.A. 1933, as amended, supra, not only to require deduction of collection costs from sales tax moneys to be paid to townships, cities, villages and school districts, but the legislature also prescribed the formula to be employed for determination of the population of townships, cities and villages for distribution of sales tax moneys to such governmental units in accordance with Article IX, Section 10.

A plain reading of Article IX, Section 10 requires the conclusion that the legislature has express authority to determine such a formula.

Section 5 of Chapter 1 of the Revised Statutes of 1846 as added by Act 119, P.A. 1945, being C.L. 1948 § 8.5 M.S.A. 1961 Rev. Vol. § 2.216, expressly makes a statute to be severable unless it would be inconsistent with the manifest intent of the legislature.

Examining each provision of Act 49, P.A. 1964, only the second sentence providing for the deduction of cost of collection prior to division of state sales tax moneys is unconstitutional because it violates Article IX, Sections 10 and 11 of the Michigan Constitution of 1963. The remaining portions of Act 49, P.A. 1964 do not violate any constitutional provision.

So considered, it is my opinion that the legislature would have enacted Act 49, P.A. without the second sentence of Section 25 thereof. *People v. McMurchy*, 249 Mich. 147 (1930).

Thus it is possible for me to sustain the lawful portion of Act 49, P.A. 1964 as complete in itself without the objectionable second sentence.

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