

681010-2

TAXATION: Graduated income tax.

No municipal corporation or political subdivision of the state is authorized to adopt an income tax, graduated as to rate or base. The legislature is prohibited by Article IX, Section 7 of the Michigan Constitution, from authorizing any local unit of government to adopt such a tax. Were such restriction upon the legislature removed by adoption of the proposed amendment to that section at the 1968 general November election, no local unit could impose such a tax without prior authorization by act of the legislature.

No. 4654

October 10, 1968.

Hon. George Romney
Governor of Michigan
Capitol Building
Lansing, Michigan

Your recent request for opinion refers to the proposed amendment to Article IX, Section 7 of the Michigan Constitution, to remove the present constitutional restriction against the imposition of a graduated income tax by either the state or a local unit of government, which amendment is among the proposals to be voted on at the ensuing general November election. You presented two specific questions.

Representative William P. Hampton also submitted a request for opinion relative to the same amendment. The questions submitted by the two requests, while not identical, nevertheless, overlap. Under those circumstances, the questions included in the two requests will be answered in this opinion. As presently in effect, Section 7 reads:

"No income tax graduated as to rate or base shall be imposed by the state or any of its subdivisions."

As amended under this proposal, the section would read:

"An income tax at flat rates or graduated as to rate or base may be imposed by the state or any of its subdivisions."

The first two questions will be considered and answered together.

1. If the proposed amendment is approved by the voters and considered with the language of Article 7, Section 21 wherein a city or village is granted power to levy taxes for public purposes, subject only to prohibitions of the constitution and the legislature, could a political subdivision of the state of Michigan, including cities, villages, counties, school districts, etc. levy an income tax, graduated or otherwise, without prior authorization by the state legislature?

2. Is it possible for a political subdivision of the state to ignore the legislative prohibition against an income tax, graduated or otherwise, and proceed under the proposed amendment, if approved, to enact such a tax?

Answer to your questions necessitates that reference first be made to Article IX, Section 7, as presently in effect, and Article VII, Section 21,

cited by you. Reference will also be made to both the address to the people pertinent to those sections, as well as the Official Record of the 1961 constitutional convention.¹

Article IX, Section 7, originated as part of committee proposal 51a reported to the convention in the majority report of the committee on finance and taxation.² That proposal included the following provision:

“ . . . NO INCOME TAX GRADUATED AS TO RATE OR BASE SHALL BE IMPOSED BY THE STATE OR ANY OF ITS SUBDIVISIONS.”

Amendments to either qualify or entirely delete such prohibition were offered but defeated during consideration of the proposal in the committee of the whole.³ After the committee of the whole had reported the proposal back to the convention, an amendment to delete such provision was again offered by Delegate Austin.⁴ With respect thereto, he then stated:

“Mr. President, I would like to remind the delegates that we are not voting on an income tax nor are we voting on a graduated income tax. We are merely voting to determine whether the legislature shall be prohibited at any time from levying such a tax.”

Such provision was never amended or deleted.

That the convention recognized and the people when they ratified the constitution were informed that this provision constituted a restriction upon the authority which would otherwise have been vested in the legislature is further evidenced by the address to the people pertaining to Section 7:

“This is a new section making it clear that neither the state nor any local unit of government may impose a graduated income tax. The words ‘or base’ are necessary to prevent ‘piggyback’ taxation based on the federal tax liability. Without such language, a tax nominally imposed at a flat rate might actually adopt all of the graduation of the federal tax.

“A flat rate income tax is clearly permitted, and could be imposed on a ‘piggyback’ basis on income computed for federal tax purposes. The legislature could prescribe reasonable exemptions for a flat rate tax.”

However, it should be noted that such provision also serves as a restriction upon the grant of power to cities and villages by Article VII, Section 1, which expressly provides that the authority therein conferred to levy any such tax is “subject to limitations and prohibitions provided by this constitution or by law.”

Before reviewing the convention history of the provisions of Article VII, Section 21, we point out that Act 279, P.A. 1909, the so-called home rule

¹ *Burdick v. Secretary of State*, 373 Mich. 578 (1964).

² Official Record, 1961 Constitutional Convention, Vol. 1, p. 853.

³ *Idem*, pp. 883-91.

⁴ *Idem*, p. 908.

cities act,⁵ implemented Article VIII, Section 20 of the 1908 Constitution. Among the permissible provisions of a city charter authorized by subsection 1 of Section 4i of Act 279 is:

"For laying and collecting rents, tolls and excises."

In *Dooley v. City of Detroit*, 370 Mich. 194 (1963), the Supreme Court held income tax to be an "excise," adoption of which was authorized by this provision of Act 279.

Article VII, Section 21 of the present constitution originated as committee proposal 83a which was reported to the convention by the committee on local government at a date later than that at which the convention considered committee proposal 51a on first reading.⁶ As reported, the proposal contained the following:

" . . . EACH CITY AND VILLAGE IS HEREBY GRANTED POWER TO LEVY TAXES FOR PUBLIC PURPOSES SUBJECT TO LIMITATIONS AND PROHIBITIONS SET FORTH IN THIS CONSTITUTION OR LAW."

The committee comment with respect thereto, as revised, stated:

" . . . The grant of power for nonproperty taxes is added to permit cities and villages that wish to ease the burden on the property tax to act on the basis of clear constitutional authority, for legal opinion as to current taxing powers of cities and villages is conflicting. The committee proposal does not attempt to specify the taxes a municipality might or should adopt, but to make possible a local decision on such matters, subject to limitations and prohibitions contained in this constitution or general law now existing or that might be adopted by a future legislature. . . ." *Idem*, p. 1007.

Attempts were made to limit the authority of the cities under this grant during consideration of the proposal both in the committee of the whole, *idem* p. 1008-17, and also before the convention, *idem* p. 1069-71. The committee on style and drafting reported this proposal with certain changes therein.⁷ However, aside from deletion of the word "hereby," the original language was reinstated by amendment adopted during second reading.⁸ No subsequent changes were thereafter made in the quoted provision. The address to the people pertinent to Article VII, Section 21, stated:

"This is a revision of Sec. 20, Article VIII, of the present constitution. The only substantive change is to spell out clearly that cities and villages may levy both general property taxes and other taxes, subject to the limitations and prohibitions of this constitution. Legal opinion as to current taxing powers of these local units has been conflicting. The section is intended in no way to approve or disapprove income taxes."

⁵ M.C.L.A. § 117.1, et seq.; M.S.A. 1949 Rev. Vol. and M.S.A. 1968 Cum. Supp. § 5.2071, et seq.

⁶ Official Record, 1961 Constitutional Convention, Vol. 1, p. 1005.

⁷ Official Record, 1961 Constitutional Convention, Vol. 2, p. 2516.

⁸ *Idem*, pp. 2516-17.

Reference should also be made to two acts adopted since the present Michigan constitution became effective. Chapter 2 of Act 284, P.A. 1964, the city income tax act,⁹ is the "uniform city income tax ordinance," which the legislative body of any city is authorized to adopt by reference, subject to referendum.¹⁰ While the same may likewise be rescinded, it is not subject to amendment, except as provided by the legislature. Section 2, Chapter 1 of that act specifies:

"No village shall impose and collect any excise tax levied on or measured by income after January 1, 1964. Except as otherwise provided in this section, no city shall impose an excise tax levied on or measured by income until the lawful adoption by the city of the entire uniform city income tax ordinance as hereinafter set forth. No city shall impose and collect such an excise tax prior to January 1, 1965, except that a city which on January 1, 1964 had in effect a valid ordinance levying and imposing such an excise tax may continue to levy and impose the tax under such ordinance until the uniform city income tax ordinance becomes effective in such city, but in no case shall such ordinance or any other income tax ordinance, in effect in such city prior to the effective date of the uniform city income tax ordinance, continue in effect later than December 31, 1964. . . ."

Thus, any authority which cities and villages would otherwise have pursuant to Article VII, Section 21 of the constitution, to adopt an income tax is effectively limited by Act 284.

Act 293, P.A. 1966,¹¹ implements Article VII, Section 2 of the constitution, which section states:

". . . Each charter county is hereby granted power to levy other taxes for county purposes subject to limitations and prohibitions set forth in this constitution or law. . . ."

Act 293 authorizes any county to adopt a county charter drafted pursuant to that act. Among the permissible provisions of a charter is provision:

"For the power and authority to levy and collect any taxes, fees, rents, tolls or excises, the levy and collection of which is authorized by law; a tax on income may not be levied unless authorized by law." Sec. 15(e).

Thus, no authority is conferred on a charter county absent further legislative implementation to adopt an income tax. Nor, does either the constitution as presently in effect or any statute authorize any political subdivision of the state or any municipal corporation, aside from a city as provided in Act 284, P.A. 1964, to adopt an income tax. As above set forth, the authority of a city in that regard is limited to adoption by reference to the uniform city income tax ordinance prescribed by said Act 284.

⁹ M.C.L.A. § 141.501, et seq.; M.S.A. 1968 Cum. Supp. § 5.3194(1), et seq.

¹⁰ The validity of the provisions of such an ordinance was upheld against objections based on constitutional grounds in O.A.G. 1963-64, No. 4295, p. 393. That opinion also reviews the history of the committee proposal by which Section 7 originated in the constitutional convention.

¹¹ M.C.L.A. § 45.501, et seq.; M.S.A. 1968 Cum. Supp. § 5.302(1), et seq.

Both townships and counties, other than charter counties, have only such powers or authority as is prescribed by law.¹² Thus, absent further legislation, neither would have any authority to adopt an income tax. The same would also be true of a school district,¹³ as well as of any other "subdivision" of the state.

With that background in mind, consideration will be given to the proposed amendment to Article IX, Section 7. We reiterate Section 7 as presently in effect prohibits the legislature from either adopting a state income tax graduated as to rate or base or authorizing a municipal corporation or political subdivision to adopt such an income tax. The changes in Section 7 proposed by this amendment pursuant to the joint resolution of the legislature are apparent by reference to the proposed amendment as printed in the joint resolution as introduced in which the words proposed to be deleted by the amendment are printed in stricken type and those proposed to be inserted are printed in upper case:

~~“No~~ AN income tax AT FLAT RATES OR graduated as to rate or base shall MAY be imposed by the state or any of its subdivisions.”

The joint resolution was adopted by the House of Representatives and the Senate without amendment.

Clearly, the intent was to permit the imposition by either:

1. The state; or
2. Any of its subdivisions

of an income tax which is either:

1. At flat rates; or
2. Graduated as to rate or base.

To that extent the present restriction upon the authority which would otherwise be vested in the legislature to either adopt an income tax graduated as to rate or base or to authorize a local municipal corporation or political subdivision to adopt such a tax would be removed by adoption of this amendment. However, it does not follow that it was intended that either a municipal corporation or political subdivision would have the power, absent legislative authorization, to levy such a tax.

The state constitution as adopted in 1963 authorizes cities and villages to levy taxes, including an income tax "subject to limitations and prohibitions provided by this constitution or by law." By Act 284, P.A. 1964, the legislature has prohibited levy of an income tax by villages and prescribed a flat rate income tax which may be adopted by any city only as therein provided. No other "subdivision" of the state is presently authorized to adopt any income tax.

The amendment proposed to Article IX, Section 7, does not in my opinion evidence any intent to amend by implication the grant of power

¹² Art. VII, Secs. 1 and 17; *Hanslovsky v. Township of Leland*, 281 Mich. 652, 655 (1937); *Bond v. Cowan*, 272 Mich. 296, 298 (1935).

¹³ *Jacox v. Board of Education of Van Buren Consolidated School District*, 293 Mich. 126, 128 (1940).

to cities and villages in Article VII, Section 21 so as to relieve that grant of the qualification "subject to limitations and prohibitions provided by this constitution and by law." Nor, do I read such amendment as evidencing an intent to authorize either cities and villages or political subdivisions to enact without legislative authorization an income tax.

On the contrary, for the foregoing reasons, I construe the intent to merely qualify the present prohibition in Article IX, Section 7, against enactment of a graduated income tax so as to permit the legislature to impose a state income tax graduated as to rate or base, as well as at a flat rate or to authorize a local subdivision of the state to impose such a tax. Accordingly, both of the questions are answered, "No."

3. What local units of government are encompassed within the term "subdivision" of the state as used in Article IX, Section 7?

Before attempting to give a definitive answer to this question, the following general observations are in order.

Frequently, the term "political subdivision" is used to refer to a local subdivision of the state to which has been delegated a portion of the powers and functions of government. In that sense, reference is ordinarily made to either a county or township.

Cities and villages are normally referred to as "municipal corporation." However, the latter term, as used in various constitutional and statutory enactments, has been used in reference to counties and townships, as well as school districts.¹⁴

Again, the term "political subdivision" as used in another statute has been construed to refer to each of those units.¹⁵

During recent years acts establishing various authorities have been passed. Whether they would also be included among the local units referred to by either of those terms depends on the legislative intent, as evidenced by each particular act.

Thus, the local units referred to by either of those terms varies according to the context in which the same is used in the different constitutional and legislative enactments.

The question here presented is which local units of government are encompassed within the phrase, "the state or *any of its subdivisions*" as used in Section 7.

As above demonstrated, this provision was inserted as a restriction upon the authority of the legislature to impose a graduated state income tax or to authorize a local unit of government to adopt such a tax. The address to the people under Section 7 stated in part:

¹⁴ *Bacon v. Kent-Ottawa Metropolitan Water Authority*, 354 Mich. 159, 171-72 (1958); *Wright v. Bartz*, 339 Mich. 55, 60 (1954); *Hanslovsky v. Township of Leland*, 281 Mich. 652, 655 (1937).

¹⁵ O.A.G. 1955-56, Vol. II, No. 2698, pp. 523, 525, and the legal authorities there cited.

"This is a new section making it clear that neither the state nor any local unit of government may impose a graduated income tax. . . ."¹⁶

Obviously, the convention in drafting that proposal intended to make such limitation all inclusive. Thus, it extended such prohibition not only to the state but also to "any of its subdivisions." This would include any local unit of government whether the same were a political subdivision, municipal corporation or any other conceivable type of entity.

As long as this provision remains in effect, the legislature is prohibited from authorizing the adoption of a graduated income tax by any local unit of government of whatever type or nature. However, as above pointed out, were the proposed amendment adopted at the ensuing election, no local unit of government could without prior authorization of the state legislature adopt a graduated income tax.

FRANK J. KELLEY,
Attorney General.

¹⁶ The statement of reasons submitted by the committee on finance and taxation in support of committee proposal 51a, by which Section 7 originated in the constitutional convention, included a substantially identical statement. Official Record, 1961 Constitutional Convention, Vol. 1, p. 854.