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CONSTITUTIONAL LAW: Power of local units to levy a sales tax.

TAXATION: Sales Tax.

LEGISLATURE: Authorization to local units for sales tax.

Cities, villages, townships and counties are prohibited by the Constitution from levying a sales tax.

No. 4694

June 18, 1970.

Honorable John F. Toepp
State Senator
The Capitol
Lansing, Michigan

You have requested my opinion on the following question:

Does the Michigan Constitution prohibit the legislature from granting local units of government the authority to levy a sales tax?

Article VII, Sec. 21 of the Michigan Constitution of 1963 provides as follows:

"The legislature shall provide by general laws for the incorporation of cities and villages. Such laws shall limit their rate of ad valorem property taxation for municipal purposes, and restrict the powers of cities and villages to borrow money and contract debts. *Each city and village is granted power to levy other taxes for public purposes, subject to limitations and prohibitions provided by this constitution or by law.*" [Emphasis supplied]

Among the prohibitions upon the power of a city or village to levy taxes provided by law is Act 243, P.A. 1964, being M.C.L.A. § 141.91; M.S.A. 1970 Cum. Supp. § 7.245. This statute provides:

"Except as otherwise provided by law and notwithstanding any provision of its charter, a city or village shall not impose, levy or collect a tax, other than an ad valorem property tax, on any subject of taxation, unless the tax was being imposed by the city or village on January 1, 1964."

In the concluding clause of Act 243, P.A. 1964, supra, the legislature appears to refer to the levy of an income tax by cities, including that of the city of Detroit. The Michigan Supreme Court upheld the levy of an income tax by the city of Detroit as a valid excise tax. *Dooley v. City of Detroit* (1963), 370 Mich. 194.

The same legislature also enacted Act 284, P.A. 1964, being M.C.L.A. § 141.501 et seq.; M.S.A. 1969 Rev. Vol. § 5.3194(1) et seq., known as the city income tax act. Sec. 2 thereof specifically prohibits villages from imposing and collecting any excise tax levy on or measured by income after January 1, 1964. Sec. 3 of the city income tax act, supra, authorizes the governing body of a city to levy an income tax upon adoption of the uniform ordinance provided in Chapter 2 of the city income tax act, supra.

In Article VII, Sec. 2 of the Michigan Constitution of 1963 the people have granted power to chartered counties to levy other taxes for county

purposes in addition to ad valorem property taxation, subject to limitations and prohibitions set forth in the Constitution or law. Nonchartered counties have powers provided by law in accordance with Article VII, Sec. 1, and organized townships are declared a body corporate with powers provided by law, as set forth in Article VII, Sec. 17 of the Michigan Constitution of 1963.

Turning to constitutional limitation upon the authority of cities, villages, chartered counties, counties and townships to levy taxes other than general ad valorem taxes, it is incumbent that consideration be given to several provisions of the Michigan Constitution of 1963 relating to sales taxes.

Article IX, Sec. 8 of the Michigan Constitution of 1963 provides:

"The legislature shall not impose a sales tax on retailers at a rate of more than four percent of their gross taxable sales of tangible personal property."

In Article IX, Secs. 10 and 11, the people have provided:

"Sec. 10. 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."

"Sec. 11. 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]

The predecessor constitutional limitation upon the power of the legislature in the area of imposition of sales tax was found in Article X, Sec. 23 of the Michigan Constitution of 1908, as amended. In pertinent part the former section read:

"There shall be returned to local governmental units by the method hereinafter set forth, $\frac{1}{2}$ cent of a *state* sales tax levy on each dollar of sales of tangible personal property . . .

"There shall be set aside for the school districts 2 cents of a *state* sales tax levy on each dollar of sales of tangible personal property . . .

". . . At no time shall the legislature levy a sales tax of more than 4%."

[Emphasis supplied]

Article X, Sec. 23 of the Michigan Constitution of 1908 was held to be violated when the legislature imposed a 4 cent tax upon retail sales regardless of the words employed by the legislature to characterize one cent upon transaction as a use tax. *Lockwood v. Commissioner of Revenue* (1959), 357 Mich. 517.

The people have retained the limitation of 4% upon the imposition by the legislature of a tax on retail sales in Article IX, Sec. 8 of the Michigan Constitution of 1963. However, the people have in clear and unambiguous language, adopted in Article IX, Sections 10 and 11, dedicated one-eighth of *all* taxes imposed on retailers on taxable sales at retail of tangible personal property to be used exclusively to assist townships, cities and villages, and one-half of *all* such taxes to be dedicated to the state school aid fund.

It is well settled that the provisions of the Constitution are to be construed together to accomplish the purposes intended by the people. *People v. Barltz* (1920), 212 Mich. 580. A clause or a section of a Constitution must be given the construction that will guard and enforce the purposes generally understood by the people in ratifying it. *Michigan Farm Bureau v. Secretary of State* (1967), 379 Mich. 387.

While it may be contended that the limitation in Article IX, Sec. 8 is applicable only to the legislature, meaning and effect must be given to both Secs. 10 and 11 of Article IX, as in the plain language employed the people have manifested a clear intent to dedicate for local governmental units and school aid fund certain proportions of *all* taxes imposed on retailers on taxable sales at retail of tangible personal property. The intent of the people expressed in Article IX, Secs. 10 and 11 is given full meaning and effect by concluding that through ratification of Article IX, Secs. 8, 10 and 11, the people have preempted the sales tax as a state tax with appropriate dedication of certain proportions thereof to local governmental units and school districts of "all taxes imposed on retailers on taxable sales at retail of tangible personal property," unlike the intent expressed in Article X, Sec. 23 of the 1908 Constitution, where the earmarking thereof was of a certain proportion "of a *state* sales tax levy on each dollar of sales of tangible personal property."

Any other construction of Article IX, Secs. 8, 10 and 11 of the Michigan Constitution of 1963 to permit a tax on retailers on taxable sales at retail of tangible personal property by townships or cities or villages would result in such townships or cities or villages receiving more than "one-eighth of all taxes imposed on retailers on taxable sales at retail of tangible personal property on a population basis as provided by law," contrary to the will of the people as expressed in Article IX, Sec. 10 of the Michigan Constitution of 1963.

Alternatively, if Secs. 8, 10 and 11 of Article IX are construed as not preempting the sales tax as a state tax, so that cities or villages or chartered counties may levy a sales tax, with meaning given to Article IX, Secs. 10 and 11, in that portions of such locally imposed taxes would be made available to other local units of government in accordance with Article IX, Sec. 10, and to the state school aid fund as prescribed in Article IX, Sec. 11, the consequence of such construction would be that such local units of government could levy taxes for the benefit of other local units of government and the state school aid fund.

Article VII, Sec. 21, which empowers cities and villages to levy other taxes for public purposes, and Article VII, Sec. 2, which authorizes charter counties to levy other taxes for county purposes, should be read as con-

ferring the power to tax for public purposes which are the proper concern of villages, cities and charter counties, respectively. Otherwise, cities or villages or charter counties would be levying taxes for the benefit of other governmental units, admittedly for a public purpose but not for the public purposes of the respective city, village or charter county. Such a reading is in accord with the general rule as enunciated in *Cooley, The Law of Taxation*, 4th Ed. Vol. 1 § 178, pages 388-90:

“. . . The purpose must in every instance pertain to the sovereignty with which the tax originates; it must be something within its jurisdiction so as to justify its making provision for it. The rule is applicable to all the subordinate municipalities; they are clothed with powers to accomplish certain objects, and for those objects they may tax, but not for others, however interesting or important, which are the proper concern of any other government or jurisdiction. . . .

“In case of a county, town, municipal corporation, or other local taxing district of the state, the delegated power to tax can be exercised only where the purpose of the tax is (1) a public as distinguished from a private purpose, and also (2) a county, township or corporate purpose as the case may be. If the tax is not for a public purpose, it is beyond the taxing power regardless of whether the tax is imposed by the state or a county or a town or a city or any other district. But a tax imposed by a local subdivision of the state may be for a public rather than a private purpose and yet be beyond the scope of the taxing power because the purpose of the tax is not for a local purpose pertaining to the taxing district. . . .”

It must be concluded that a city or a village or a charter county is without power to levy taxes for the benefit of other local governmental units such as other cities, villages, townships or school districts.

In the case of townships and counties, not chartered, the power of such local governmental units to levy taxes must be conferred by the legislature. It is equally clear that the legislature is prohibited from granting authority to townships and counties without a charter to levy a sales tax.

Therefore, it is my opinion that the legislature is prohibited by the Michigan Constitution of 1963 from granting local units of government the authority to levy a sales tax.

FRANK J. KELLEY,
Attorney General.