

DISCLAIMER

Electronic versions of the exhibits in these minutes may not be complete.

This information is supplied as an informational service only and should not be relied upon as an official record.

Original exhibits are on file at the Legislative Counsel Bureau Research Library in Carson City.

Contact the Library at (775) 684-6827 or library@lcb.state.nv.us.

STATE OF NEVADA
LEGISLATIVE COUNSEL BUREAU

LEGISLATIVE BUILDING
401 S. CARSON STREET
CARSON CITY, NEVADA 89701-4747
Fax No.: (775) 684-6600



LEGISLATIVE COMMISSION (775) 684-6800
RICHARD D. PERKINS, *Assemblyman, Chairman*
Lorne J. Malkiewicz, *Director, Secretary*

INTERIM FINANCE COMMITTEE (775) 684-6821
MORSE ARBERRY, JR., *Assemblyman, Chairman*
Mark W. Stevens, *Fiscal Analyst*
Gary L. Ghiggeri, *Fiscal Analyst*

LORNE J. MALKIEWICH, *Director*
(775) 684-6800

PAUL V. TOWNSEND, *Legislative Auditor* (775) 684-6815
ROBERT E. ERICKSON, *Research Director* (775) 684-6825
BRENDA J. ERDOES, *Legislative Counsel* (775) 684-6830

April 4, 2003

Assemblyman John J. Mortenson
Assembly Chambers

Dear Assemblyman Mortenson:

As Chairman of the Assembly Committee on Constitutional Amendments, you have requested and introduced a bill, Assembly Bill No. 532 (A.B. 532), which will, if enacted, require the State of Nevada to issue coins of the State of Nevada into circulation. Further, A.B. 532, will, if enacted, declare such coins to be legal tender for all debts, public and private, in this state. The legislative findings set forth in A.B. 532 recognize that, pursuant to the United States Constitution, Congress has the power to coin money and regulate its value while the states are prohibited from coining money. *See* U.S. Const. art. I §§ 8 and 10. However, the legislative findings in A.B. 532 assert that the State of Nevada is absolved from its constitutional obligation not to issue money because Congress delegated its power to coin money and issue currency to the Federal Reserve System, and this delegation of power was and is unconstitutional. Below we will discuss the relevant constitutional provisions and the validity of the delegation of authority at issue.

DISCUSSION

The United States Constitution expressly authorizes the Federal Government to coin and regulate money. *See* U.S. Const. art. I § 8 ("[The Congress shall have the power] To coin Money [and] regulate the Value thereof . . ."). Further, the United States Constitution expressly prohibits the states from coining money. *See* U.S. Const. art. I § 10 ("No state shall . . . coin Money . . ."). In interpreting these provisions, the United States Supreme Court has long held that:

The Constitution 'was designed to provide the same currency, having a uniform legal value in all the States.' It was for that reason that the power to regulate the value of money was conferred upon the federal government, while the same power, as well as the power to emit bills

of credit, was withdrawn from the states. The states cannot declare what shall be money, or regulate its value. Whatever power there is over the currency is vested in the Congress.

Norman v. Baltimore & O. R. Co., 55 S. Ct. 407, 414 (1934) (quoting Knox v. Lee, 79 U.S. 457, 545 (1870)). Accordingly, the power to provide a uniform currency is vested solely in the Federal Government and prohibited to the states.

Since the question was presented in the early 1800's, the United States Supreme Court has held that Congress has the authority to delegate its power to coin and regulate money. See M'Culloch v. Maryland, 17 U.S. 316 (1819). More recently, the Ninth Circuit Court of Appeals reaffirmed the state of the law with regard to this question when the Ninth Circuit Court of Appeals upheld Congress's delegation of authority to the Federal Reserve System to issue circulating notes pursuant to the provisions of 12 U.S.C. § 411 of the Federal Reserve Act. Milam v. U.S., 524 F.2d 629, 630 (9th Cir. 1974). According to the Ninth Circuit Court of Appeals:

Congress is authorized to establish a national currency, either in coin or in paper, and to make that currency lawful money for all purposes, as regards the national government or private individuals. . . . The power so precisely described . . . has been delegated to the Federal Reserve System under the provisions of 12 U.S.C. § 411. Appellant's challenge to the validity of this legislation is meritless.

Id. (quotations and citations omitted); See also Walton v. Keim, 694 P.2d 1287, 1289 (Colo. App. 1984).

CONCLUSION

Based on the authorities provided in this letter, it is the opinion of this office that the power to coin money is vested solely with Congress and that Congress has lawfully delegated this power to the Federal Reserve System. Thus, it is the opinion of this office that the provisions of A.B. 532 are not constitutionally defensible because those provisions would require the State of Nevada to coin money in violation of sections 8 and 10 of article I of the Constitution of the United States.


The leadership of both houses has asked to be informed when a bill is introduced which, if enacted, is likely to be held unconstitutional. As A.B. 532 has been introduced, the Majority Leader of the Senate and the Speaker of the Assembly will be notified of the constitutional issues discussed in this letter.

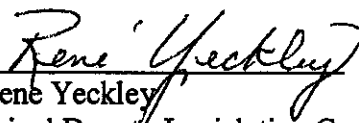
If you have any questions regarding this matter, please do not hesitate to contact this office.

Assemblyman Mortenson
April 4, 2003
Page 3

Very truly yours,

Brenda J. Erdoes
Legislative Counsel

By 
Ann Iverson
Senior Deputy Legislative Counsel

By 
R. Rene Yeckley
Principal Deputy Legislative Counsel

AMI:dtm
Ref No. 0303281031
File No. OP_Mortenson030328162014