

MAINE STATE LEGISLATURE

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JAMES E. TIERNEY
ATTORNEY GENERAL

STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04333

September 22, 1981

Linwood F. Ross, Deputy
Secretary of State
Motor Vehicles Division
Augusta, Maine 04333

Re: Public Office Money Certificates

Dear Mr. Ross:

This will respond to your letter of September 15, 1981 in which you asked whether a Public Office Money Certificate is an acceptable method of payment for registration, operators license or any other fee payable to the Secretary of State. For the reasons set out below, it is our opinion that this is an unacceptable form of payment.

Congress has foreclosed the issue as to what constitutes the legal tender of the United States.

All coins and currencies of the United States (including Federal Reserve notes and circulating notes of Federal Reserve banks and national banking associations), regardless of when coins are issued shall be legal tender for all debts, public and private, public charges, taxes, duties and dues. 31 U.S.C. §392 (Supp. 1980) (Emphasis supplied).

It has been long settled that although article I, section 10 of the United States Constitution prohibits the state from declaring legal tender anything other than gold or silver, that does not limit Congress' power to declare what shall be the legal tender for all debts. Julliard v. Greenman, (the Legal Tender Case), 110 U.S. 421, 446 (1884). See also, United States v. Rifen, 577 F.2d 1111 (8th Cir. 1978). There can be no doubt that Federal Reserve notes are the nation's legal tender. Mathes v. Commissioner of the Internal Revenue, 576 F.2d 70 (5th Cir. 1978); United States v. Wangrud, 533 F.2d 495 (9th Cir.), cert. den. 429 U.S. 818 (1976); United States v. Benson, 592 F.2d 257 (5th

Cir. 1975). The Congressional power to declare Federal Reserve notes legal tender for all debts supercedes even state constitutional prohibitions to the contrary. See Radue v. Zanaty, 308 So.2d 242, 293 Ala. 585 (1975). States and municipalities, therefore, are required to accept only legal tender as defined by federal law in payment of debts and taxes. See Alan v. Craig, 564 P.2d 552, 1 Kan.App. 2d 301 (1977). Cf. Calafut v. The Commissioner of Internal Revenue, 277 F.Supp. 266 (M.D.Pa. 1967) (IRS need not accept an automobile in payment of taxes).

Since public money certificates are not Federal Reserve notes, they are not an acceptable form of payment of state and municipal taxes. The tendering of public money certificates amounts only to a willingness to pay, and not actual payment. See Alan v. Craig, supra. Since payment of excise taxes is a prerequisite to registration, 29 M.R.S.A. §109, the tendering of a public money certificate does not satisfy this requirement. For the same reason, the certificates should not be accepted as payment for registration and license fees.

Please feel free to contact me if I can be of any further assistance.

Sincerely,

Stephen L. Diamond

STEPHEN L. DIAMOND
Deputy Attorney General

SLD:jg