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September 29, 1986

Representative John E. Miller
Co-Chairman
Joint Interim Committee on
Revenue & Taxation
State Capitol, Room 315
Little Rock, AR 72201

Senator Ben Allen
Co-Chairman
Joint Interim Committee on
Revenue & Taxation
State Capitol, Room 315
Little Rock, AR 72201

Dear Representative Miller and Senator Allen:

This is in response to your recent request for an opinion regarding the feasibility of challenging the Food Security Act of 1985, P.L. 99-198.

Section 1505, P.L. 99-198 requires that states exempt food stamp purchases from state and local sales taxes in order to participate in the federal Food Stamp Program. P.L. 99-198 thus conditions the receipt of federal benefits upon compliance that food stamp purchases be exempt from sales taxes.

Conditions on receipt of federal funds have been reviewed by the U.S. Supreme Court. In Oklahoma v. U.S. Civil Service Commission, 330 U.S. 127 (1947) the Court upheld an order of the Commission under §12(b) of the Hatch Act. The Commission determined that an officer of the State of Oklahoma, whose employing agency was funded in part by federal funds, at the same time took an active part in political management in violation of §12(a) of the Hatch Act. Section 12(b) required that the employee be terminated or the appropriate federal agency withhold a specific amount of federal funds from grants or loans to the state agency refusing to terminate the offending employee. The Court held the act was

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constitutional and did not violate the Tenth Amendment by invading the sovereignty of the State through forfeitures or penalties.

The Court reasoned that while the U.S. was not concerned with and could not regulate local political activities, it has the power to set the terms for disbursement of federal funds. The State has the option of electing whether to receive the funds on the specified conditions.

The Tenth Amendment does not deprive the federal government of the authority to exercise granted powers through means which are appropriate and plainly adopted to the permitted end. The end sought by the Hatch Act is better public service by requiring those who administer funds for national needs to abstain from certain political activity. The Court more recently upheld the principal of accepting federal funds with attendant conditions in Guardians Association v. Civil Service Commission of the City of New York, 463 U.S. 582, 599 (1983).

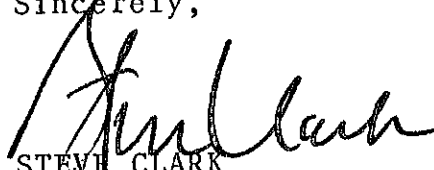
In the amendment to the Food Stamp Act, the states have the option of eliminating sales taxes on foods stamp purchases or not participating in the program. This conditional program does not appear distinguishable from that in the Oklahoma decision. The issue then becomes whether Congress has a legitimate end to accomplish through the amendment and whether the means are appropriate and plainly adapted to that end.

The underlying purpose of the program, to alleviate hunger and malnutrition and to strengthen the agricultural economy, 7 U.S.C. 4011, is within the power of Congress. The purpose of the amendment is to preserve the purchasing power of participants in the program. It also appears that the means employed, eliminating sales taxes on such purchases, is as appropriate and plainly adapted to achieve that end as the provisions of §12(b) of the Hatch Act reviewed in the Oklahoma decision. The choice is for the state to comply with the conditions of the program in order to receive the federal funds. Similar statutes have been upheld by other Courts. State v. Dumler, 559 P.2d 798 (Kan. 1977) upheld conditions requiring states limit speeds to 55 m.p.h. to receive highway funds. It is my opinion therefore that there is little likelihood of success in challenging this amendment to the Food Stamp Act.

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The foregoing opinion which I hereby approve was prepared by
Assistant Attorney General Thomas S. Gay.

Sincerely,



STEVE CLARK
Attorney General

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