(Last update: April 29, 2000)

THE MEANING OF ART. 1, §9, CL. 7, AND ITS APPLICATION TO SOCIAL SECURITY

> **"[T]hese documents revealed the Conspiracy to cover up the legislative intent regarding Social Security, in order to exploit the confusion long enough to fraudulently induce America into a pension contract to justify the tax...We at NITE are laboring to present an exciting and comprehensive legal strategy with this information uncovered by Mr. Fitzgerald [sic], to carry a two pronged assault, which incorporates and embraces this ground-breaking research into the most direct[,] on point[,] approach ever conceived within the tax resistance movement."**

Thurston Bell, in a note dated July 25, 1999. Both he and Steve "Fitzgerald" DeLuca are wrong.

Certain factions within the freedom movement today are asserting that social security is a contract. According to this argument, people sign up for social security (they obtain a number), and such act is similar to submitting an application for insurance such as an annuity. Thereafter "payments" for this "insurance" are made, similar to insurance premiums. At a certain specified time, the insurance company, Uncle Sam, makes pension payments. By making this analogy to insurance, these proponents contend that social security is really contractual in nature.

There is a constitutional reason why social security cannot be a contract and that reason is based upon Art 1, §9, cl. 7 of the U.S. Constitution. Government contracts are governed by this provision, and unless Congress has enacted a law to actually pay some debt, there is no contract. To understand how this provision operates, it is necessary to first review similar provisions in state constitutions which limit the authority of state governments to issue government debt obligations. With this background in mind, the operation of this federal constitutional provision then becomes clear. Below is a part of one of my briefs which explains this provision:

It is an obvious principle of both law and political science that governments should at all times be able to determine and compute their maximum liability on governmental obligations simply by referring to all the statutes authorizing their issuance. The product determined by adding the amounts authorized by every statute reveals the maximum exposure of the government to its contractual obligations. Any legislative body can by this simple addition process determine the amount of obligations which have been authorized to be issued. If a more definite statement of the financial condition of the government is needed, a legislative body can merely request an officer such as the treasurer to submit a financial statement showing the precise amount of such obligations which are outstanding. In any event, the treasurer's report should reveal that outstanding and actually issued obligations do not exceed the maximum amount authorized by law.

The issuance of governmental obligations, be they contract or debt obligations, is completely controlled by law, either constitutional or statutory. No government is at liberty to issue endless and limitless amounts of debt instruments which will ultimately become burdens upon the very people which formed the government. To prevent such destructive and unlawful activities of government, many states have either constitutional or statutory provisions which limit the amount of obligations which can be issued. For example, in Alabama, Art. XI, § 213 of the Constitution of 1901 prevents the state in most circumstances from creating any debt obligations. This provision was amended in certain respects by Amendment No. 26, but still Alabama operates on a "pay as you go" basis. In reference to county obligations, the Alabama Constitution in Art. XII, § 224, and Amendment No. 342, limits the amount of debt obligations which can be issued by county governments. In Art. XII, § 225, as amended by Amendment No. 268, the Alabama Constitution limits the amount of debt obligations which can be created by municipalities. Without conducting a survey of every state, which is needless for

presentation of this issue, it is suggested that every state has either constitutional or statutory prohibitions which limit the amount of obligations which can be issued by state and local governments.

It is an established principle of law that obligations of state or local governments issued in excess of the amount permitted by law are void, and this rule is aptly demonstrated by many state cases. In Alabama, state obligations issued in excess of the amount authorized by law are void; see *Hall v. Blan*, 227 Ala. 64, 148 So. 601 (1933). The same principle applies to county obligations; see *Hagan v. Commissioners' Court of Limestone County*, 160 Ala. 544, 49 So. 417 (1909). It also applies to municipal obligations; see *Town of Opp v. Donaldson*, 230 Ala. 689, 163 So. 332 (1935), and *Browder v. City of Montgomery*, 207 Ala. 589, 93 So. 507 (1922).

The operation of this principle of law was clearly shown in the California case of *Sutro v. Petit*, 74 Cal. 332, 16 P. 7 (1887). Here, the state legislature enacted a law permitting the county to issue $40,000 in bonds for the purpose of constructing a courthouse. Bonds in the face amount of $100 each were issued and serially numbered 1 through 400. However, an additional 20 bonds, numbered 401 through 420, were also issued and the holder of these bonds sued when payment was refused. The bonds were determined to be void for the reason that they were issued in excess of the amount permitted by law.

The same rule applies in Colorado; see *Shover v. Buford*, 71 Colo. 562, 208 P. 470 (1922). Municipal bonds were declared invalid for this reason in the Florida case of *Munroe v. Reeves*, 71 Fla. 612, 71 So. 922 (1916). Certain bonds proposed to be issued by a county were invalidated by the Georgia Supreme Court in *Berrien County v. Paulk*, 150 Ga. 829, 105 S.E. 491 (1921).

This rule is demonstrated in the Illinois case of *Culbertson v. City of Fulton*, 127 Ill. 30, 18 N.E. 781 (1888), where bonds in excess of the constitutional limit were declared void. The rule likewise applies in Iowa where the Supreme Court of that state, in *First National Bank of Decorah v. District Township of Doon*, 86 Iowa 330, 53 N.W. 301, 303-04 (1892), held as follows:

> **"This Court is committed to the doctrine that the purchaser of negotiable bonds issued by a municipal corporation is charged with notice that the indebtedness of the corporation is in excess of the amount limited by the Constitution. In *French v. Burlington*, 42 Iowa 617, it was said that 'he who contracts with a city, whereby an indebtedness is created, must, at his peril, take notice of the financial standing and condition of the city, and whether the proposed indebtedness is in excess of the constitutional limitation.' True, that case does not involve the rights of an innocent purchaser of negotiable bonds, but it is authority for the conclusion that bonds issued on a contract which created a debt in excess of the constitutional limitations would be invalid. In *McPherson v. Foster*, 43 Iowa 59, the validity of bonds issued by an independent district for the building of a schoolhouse in excess of the amount permitted by the Constitution was considered, and they were held to be void in the hands of purchasers without actual notice of the fact. In *Mosher v. School Dist.*, 44 Iowa 124, it was said of bonds of a municipal corporation, issued in excess of the constitutional limitation: 'The bonds and coupons attached are void, without regard to the good faith with which they are purchased, and the want of notice of their invalidity by the holders'."**

In this case, the court voided the bonds and allowed no recovery.

This rule is followed in Kansas; see *Chicago K. & W. Ry. Co. v. Freeman*, 38 Kan. 597, 16 P. 828 (1888). In *McKinney v. Cadiz Graded Common School District*, 144 Ky. 85, 137 S.W. 839 (1911), the Kentucky Court of Appeals held that bonds issued in excess of the amount permitted by law would be void; see also *Pulaski County v. Ben Hur Life Assoc.*, 286 Ky. 119, 149 S.W.2d 738 (1941). This rule is applied in Louisiana; see *Kansas City S.R. Co. v. Hendricks*, 150 La. 134, 90 So. 545 (1922).

This proposition of law is also followed by the courts in Maine, Michigan and Missouri. In *Leavitt v.*

***Town of Somerville*, 105 Me. 517, 75 A. 54 (1909), an entire issue of bonds was determined to be void. In *Stockdale v. School District No. 2 of Wayland*, 47 Mich. 226, 10 N.W. 349 (1881), the court held that bonds issued in excess of the amount permitted by law would be void. In *Thornburgh v. School District No. 3*, 175 Mo. 12, 75 S.W. 81 (1903), the court invalidated an entire issue of bonds a part of which exceeded the debt limit.**

The same rule applies in Nebraska and North Carolina. In *Warren v. Stanton County*, 145 Neb. 220, 15 N.W.2d 757, 761 (1944), the court voided the county's liability on certain outstanding warrants and held:

> **"It is within the general powers of a county to contract for the construction and repair of bridges, hence it cannot be said that the contracts are strictly speaking ultra vires although absolutely void because issued in excess of limitations imposed by constitutional and statutory law ... We necessarily conclude that the warrants in suit are absolutely void, whether the liability was incurred under the emergency powers of the county board or otherwise, and being non-negotiable instruments, an assignee acquires them subject to all defenses which were available against the original payee."**

In *Union Bank of Richmond v. Commissioners of Town of Oxford*, 199 N.C. 214, 25 S.E. 966 (1896), the Supreme Court of North Carolina voided some bonds in a case where it was shown that the statute which authorized their issue had not been properly enacted.

This rule is followed in Oklahoma; see *Board of Education v. Short*, 89 Okl. 2, 213 P. 857 (1923), and *Kansas City S.R. Co. v. Board of Education*, 158 Okl. 274, 13 P.2d 115 (1932). In Pennsylvania, an entire bond issue is invalid even if only a part of the issue results in a debt in excess of the amount determined by law; see *Millerstown v. Frederick*, 114 Pa.St. 435, 7 A. 156 (1886).

In Texas, the cases of *Citizens Bank v. City of Terrell*, 78 Tex. 450, 14 S.W. 1003 (1890), and *Nolan County v. State*, 83 Tex. 182, 17 S.W. 823 (1891), show that Texas courts will void bonds issued in excess of the amount permitted by law. Similarly, this rule applies in Washington and Wisconsin; see *Seymour v. City of Tacoma*, 6 Wash. 427, 33 P. 1059 (1893); *State ex rel Zylstra v. Clausen*, 66 Wash. 324, 119 P. 797 (1911); and *Crogster v. Bayfield County*, 99 Wis. 1, 74 N.W. 635 (1898).

The above cases demonstrate the principle of law that state governmental obligations issued in excess of the amount permitted by law are void and unenforceable. Not only is this principle accepted by state appellate courts, it is also recognized by the U.S. Supreme Court, and there are many such cases affirming this proposition, typical of which are *Township of East Oakland v. Skinner*, 94 U.S. 255 (1877), *Town of South Ottawa v. Perkins*, 94 U.S. 260 (1877), *McClure v. Township of Oxford*, 94 U.S. 429 (1877), *Williams v. Louisiana*, 103 U.S. 637 (1881), *Norton v. Taxing District of Brownsville*, 129 U.S. 479, 9 S.Ct. 322 (1889), and *Taxing District of Brownsville v. Loague*, 129 U.S. 493, 9 S.Ct. 327 (1889). In *Lake County v. Rollins*, 130 U.S. 622, 9 S.Ct. 651 (1889), and *Lake County v. Graham*, 130 U.S. 674, 9 S.Ct. 654 (1889), the Court held county bonds issued in excess of the amount permitted by law void. In *District Township of Doon v. Cummins*, 142 U.S. 366, 371, 12 S.Ct. 220 (1892), the Court stated as follows in holding bonds void:

> **"The prohibition is addressed to the legislature as well as to all municipal boards and officers, and to the people, and forbids any and all of them to create, or to give binding force to, any debts of the corporation in excess of the limit prescribed. The prohibition extending to debts contracted 'in any manner, or for any purpose,' it matters not whether they are in every sense new debts, or are debts contracted for the purpose of paying old ones, so long as the aggregate of all debts, old and new, outstanding at one time, and on which the corporation is liable to be sued, exceeds the constitutional limit. The power of the legislature in this respect being restricted and controlled by the constitution, any statute**

> **which purports to authorize a municipal corporation to contract debts in any manner or for any purpose whatever in excess of that limit is to that extent unconstitutional and void."**

See also *Hedges v. Dixon County*, 150 U.S. 182, 14 S.Ct. 71 (1893), and *Lee v. Robinson*, 196 U.S. 64, 25 S.Ct. 180 (1904).

Not only is this principle of law applicable to state and local governments, it applies to the federal government as well. Art. 1, § 9, cl. 7 of the U.S. Constitution reads as follows:

"No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law."

While this constitutional provision does not of itself place a maximum ceiling upon the amount of debt which can be issued by Congress, it does hold that appropriating legislation is required in order to issue debt instruments. This is aptly demonstrated by several cases which have construed this part of the Constitution. In *Cummings v. Hardee*, 102 F.2d 622 (D.C.Cir. 1939), and *Maryland Casualty Co. v. United States*, 155 F.2d 823 (4th Cir. 1946), it was held that federal officers lacked all power to pay any claim against the United States in the absence of an appropriation from Congress to pay such claim. This was succinctly restated in *Hughes Aircraft Co. v. United States*, 534 F.2d 889, 906 (Ct.Cl. 1976), wherein that court held:

> **"The second principle is that before any expenditure of public funds can be made, there must be an act of Congress appropriating the funds and defining the purpose for such appropriation. Thus, no officer of the Federal Government is authorized to pay a debt due from the U.S., whether or not reduced to a judgment, unless an appropriation has been made for that purpose."**

See also *Reeside v. Walker*, 52 U.S. (11 How.) 272 (1850); *Cincinnati Soap Co. v. United States*, 301 U.S. 308, 57 S.Ct. 764 (1937); and *Office of Personnel Management v. Richmond*, 496 U.S. 414, 110 S.Ct. 2465, 2471 (1990).

This constitutional provision has clear application to debt instruments. In *National Association of Regional Councils v. Costle*, 564 F.2d 583, 586 (D.C.Cir. 1977), that court demonstrated this principle by declaring:

> **"Government agencies may only enter into obligations to pay money if they have been granted such authority by Congress. Amounts so authorized by Congress are termed collectively 'budget authority' and can be subdivided into three conceptually distinct categories -- appropriations, contract authority, and borrowing authority. Appropriations permit an agency to incur obligations and to make payments on obligations. Contract authority is legislative authorization for an agency to create obligations in advance of an appropriation. It requires a subsequent appropriation or some other source of funds before the obligation incurred may actually be liquidated by the outlay of monies. Borrowing authority permits an agency to spend debt receipts."**

Thus, it is quite apparent that in order for the federal government to incur debt, it must adopt legislation authorizing a specific amount of federal obligations to be issued.

The operation of this principle can be clearly seen merely by viewing the actions of Congress, as well as its legislation. Congress has established a debt ceiling which sets the maximum amount of federal bonds, bills and notes which can be issued. The Department of the Treasury keeps Congress appraised of the rate at which federal debt is accruing and every time, typically toward the last of September of every year, the outstanding debt approaches the ceiling, Congress must raise that ceiling or the federal government will be forced to cease operations. It is needless to say that if debt

instruments were issued after the debt ceiling was reached, those instruments would be null and void.

NOTE: An excellent annotation on this point may be found at 175 A.L.R. 823, entitled, "Validity, within authorized debt, tax, or voted limit, of bond issue in excess of amount permitted by law."

END OF EXCERPT FROM BRIEF

As explained above, federal government contracts are very different from private contracts. A valid and binding contract with the federal government requires a law which provides payment for the contract either now or in the future. In reference to the argument that social security is a contract, presume that there are at least 150 million people in this country who are "entitled" to social security retirement benefits. Benefits for this large number of people surely must exceed several trillion bux (feel free to make the calculation yourself). Precisely where is the law making the United States liable or obligated to pay this amount? The simple fact of the matter is that such law does not exist, beyond the current law which appropriates benefits for those now "entitled."

Social security could be cut off the day after next and nobody would have a valid legal claim against the United States for any retirement benefits. You may declare that social security is thus a fraud, scam or giant Ponzi scheme, but please don't be fooled into thinking that it is a contract.

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