

Syllabus

Chief Justice:
Robert P. Young, Jr.

Justices:
Michael F. Cavanagh
Marilyn Kelly
Stephen J. Markman
Diane M. Hathaway
Mary Beth Kelly
Brian K. Zahra

This syllabus was prepared by the Reporter of Decisions.

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John O. Juroszek

In re REQUEST FOR ADVISORY OPINION REGARDING CONSTITUTIONALITY OF
2011 PA 38

Docket No. 143157. Argued September 7, 2011 (Calendar No. 1). Decided November 18, 2011.

The Governor, pursuant to Const 1963, art 3, § 8, requested the opinion of the Supreme Court regarding the constitutionality of amendments of § 30 of the Income Tax Act, MCL 206.30, by 2011 PA 38 that reduce or eliminate the statutory tax exemption for public-pension incomes and base eligibility for income-tax exemptions and deductions on total household resources or age and total household resources. The Supreme Court granted the request and asked the Attorney General to submit separate briefs arguing both for and against the constitutionality of the amendments. 489 Mich 954 (2011).

In an opinion by Justice MARKMAN, joined by Chief Justice YOUNG and Justices MARY BETH KELLY and ZAHRA, the Supreme Court *held*:

Reducing or eliminating the statutory exemption for public-pension incomes as set forth in MCL 206.30 did not violate Const 1963, art 9, § 24; Const 1963, art 1, § 10; or US Const, art I, § 10(1). Determining eligibility for income-tax exemptions on the basis of date of birth as set forth in MCL 206.30(9) did not violate the equal protection of the law under Const 1963, art 1, § 2 or the Fourteenth Amendment of the United States Constitution. Determining eligibility for income-tax exemptions and deductions on the basis of total household resources as set forth in MCL 206.30(7) and (9) created a graduated income tax in violation of Const 1963, art 9, § 7. Those provisions are severable from the remainder of the act, which is constitutional with respect to all the issues raised.

1. Reducing or eliminating the statutory exemption for public-pension incomes as set forth in MCL 206.30 did not violate Const 1963, art 9, § 24, which provides that the accrued financial benefits of each pension plan and retirement system of the state and its political subdivisions is a contractual obligation of the state or political subdivision that it shall not diminish or impair. Const 1963, art 9, § 24 provides that public pensions must be treated as contractual obligations that, once earned, cannot be diminished; however, it says nothing about whether these pension benefits can be taxed. Given the broad authority to tax that Const 1963, art 9, § 1 grants the Legislature and the specific constitutional prohibition in Const 1963, art 9, § 2 against surrendering, suspending, or contracting away this authority, a limitation on the Legislature's authority to tax pensions cannot reasonably be read into Const 1963, art 9, § 24. Furthermore, a tax exemption is not an accrued financial benefit of a pension plan because,

unlike the pension payments that are the subject of article 9, § 24, tax exemptions do not increase or grow over time and cannot be funded in the year that the service was rendered.

2. Reducing or eliminating the statutory exemption for public-pension incomes as set forth in MCL 206.30 did not violate Const 1963, art 1, § 10 or US Const, art I, § 10(1), which prohibit laws that impair contractual obligations. Although Const 1963, art 9, § 24 provides that an accrued public pension is a contractual obligation, this obligation consists of the pension income itself, not the tax exemption for that income. Furthermore, there is a strong presumption that taxation statutes in particular do not create contractual rights unless there is express statutory language to that effect that is plain and susceptible of no other reasonable construction. Because there is no such language in any of the statutory tax-exemption provisions at issue, and because Const 1963, art 9, § 2 prohibits the Legislature from contracting away its taxing authority, the tax-exemption statutes do not create contractual rights that the Legislature cannot alter.

3. Determining eligibility for income-tax exemptions on the basis of date of birth as set forth in MCL 206.30(9) did not violate the equal protection of the law under Const 1963, art 1, § 2 or the Fourteenth Amendment of the United States Constitution. The fact that older taxpayers have relied more on an exemption, will have less time in which to earn additional income to offset the loss of the exemption, and may have diminishing earning capacity provides a rational basis for grounding eligibility for the pension exemption on date of birth.

4. Determining eligibility for income-tax exemptions and deductions on the basis of total household resources as set forth in MCL 206.30(7) and (9), violated Const 1963, art 9, § 7, which provides that no income tax graduated as to rate or base shall be imposed by the state or any of its subdivisions. A taxpayer's base consists of his or her net taxable income, and exemptions and deductions reduce this base by reducing the amount of income that is subject to taxation. MCL 206.30(7) and (9) create a graduated system by conditioning the receipt of all or a portion of income-tax deductions or exemptions for some taxpayers on their level of income. This results in an income tax that is graduated as to base in violation of Const 1963, art 9, § 7 because taxpayers who do not receive the deductions and exemptions will have disproportionately larger bases.

5. The unconstitutional portions of MCL 206.30(7) and (9) could reasonably be severed pursuant to MCL 8.5 because what remained could "be given effect" and was clearly in furtherance of the Legislature's stated goal of addressing deficiencies in state funds.

2011 PA 38 held constitutional but for those portions that determine eligibility for income-tax exemptions and deductions on the basis of total household resources; unconstitutional portions severed.

Justice CAVANAGH, joined by Justice MARILYN KELLY, concurring in part and dissenting in part, concurred in result only with part III(C) of the majority opinion, which held that the amendments of 2011 PA 38 did not violate constitutional equal protection guarantees, and with part III(D), which held that the amendments violated the prohibition against a graduated income tax. Justice CAVANAGH dissented from part III(A) of the majority opinion and would have held instead that the amendments of 2011 PA 38 violated Const 1963, art 9, § 24 with respect to those

pension benefits that will have accrued before January 1, 2012, when 2011 PA 38 goes into effect. He would have held that the right to the statutory tax exemptions before that date was an accrued financial benefit on which public employees had worked in reliance, that it attached to the pension benefits at the time they accrued—that is, when the benefits were earned—and that the right to the deferred exemptions was therefore a contractual obligation under article 9, § 24 that may not be diminished or impaired.

Justice HATHAWAY, dissenting, would have held that reducing or eliminating the statutory deduction for public-pension income impairs accrued financial benefits in violation of Const 1963, art 9, § 24 by effectively imposing a new tax on public-employee pensions that diminishes or reduces vested public-employee pension benefits. Justice HATHAWAY would also have held that reducing or eliminating the statutory deduction for pensions resulted in a law impairing contractual obligations under Const 1963, art 1, § 10 because article 9, § 24 creates an undiminishable, unimpairable contractual obligation with regard to accrued financial benefits of retirement income. Justice HATHAWAY agreed that the income-based criteria for determining tax liability created a graduated income tax, but disagreed with the majority's decision to sever those portions of the statute rather than striking down MCL 206.30(7) and (9) in their entirety because doing so created tax exemptions and deductions that the Legislature did not intend.