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ANALYSIS OF CONSTITUTIONAL PROVISIONS
AFFECTING PUBLIC WELFARE IN THE STATE OF
NEBRASKA

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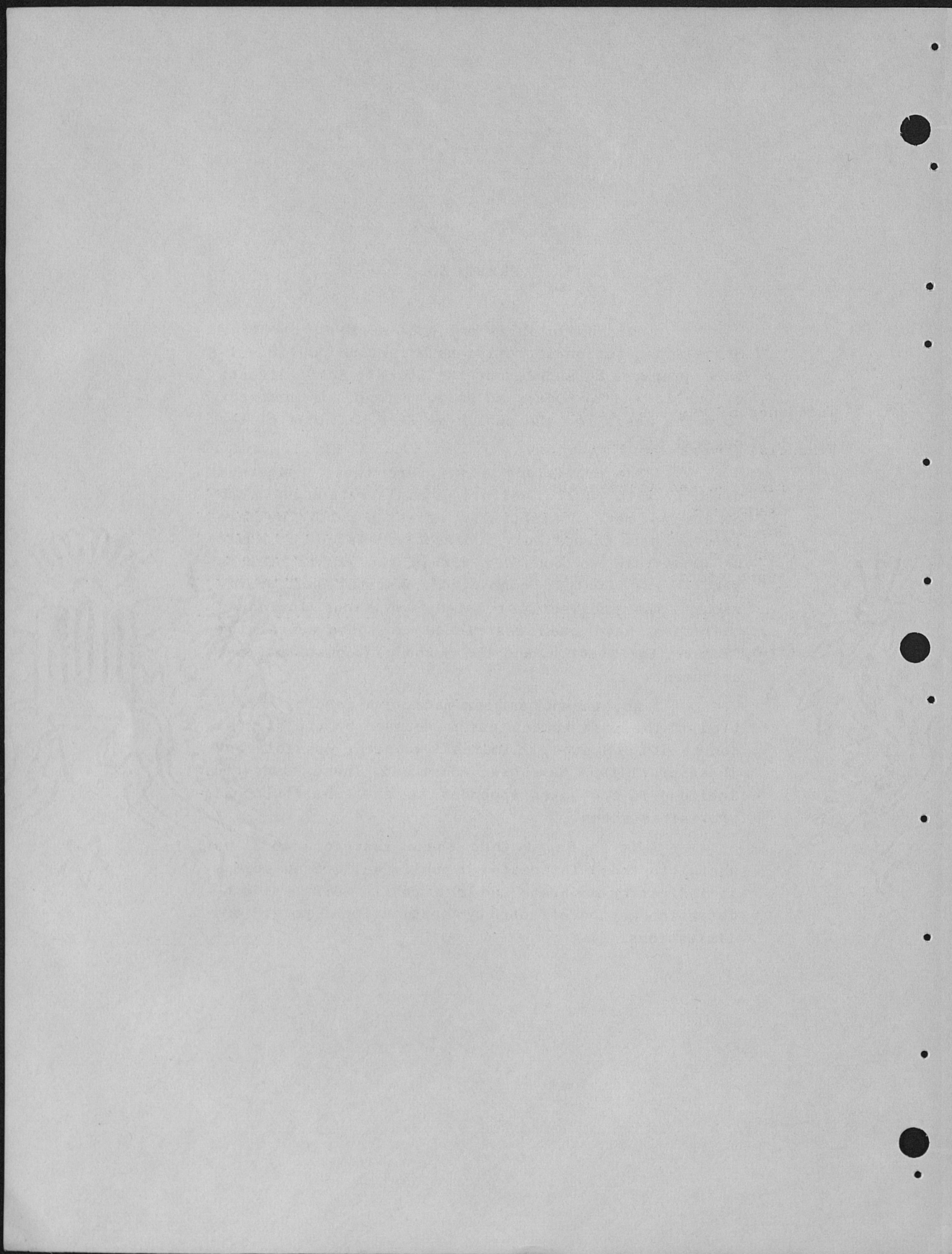
PREFACE

This bulletin is one of a series presenting State constitutional provisions affecting public welfare, prepared to supplement the State by State digests of public welfare laws so as to provide in abstract form the basis for the public welfare services of the several States.

The provisions quoted are those concerned directly with public welfare administration and such others as may substantially affect a public welfare program, even though only indirectly related. It would be impossible to consider within the limits of this study every remotely connected constitutional provision. The indirectly related provisions included, therefore, have been restricted to those concerning finance, legislation, and the methods of constitutional amendment.

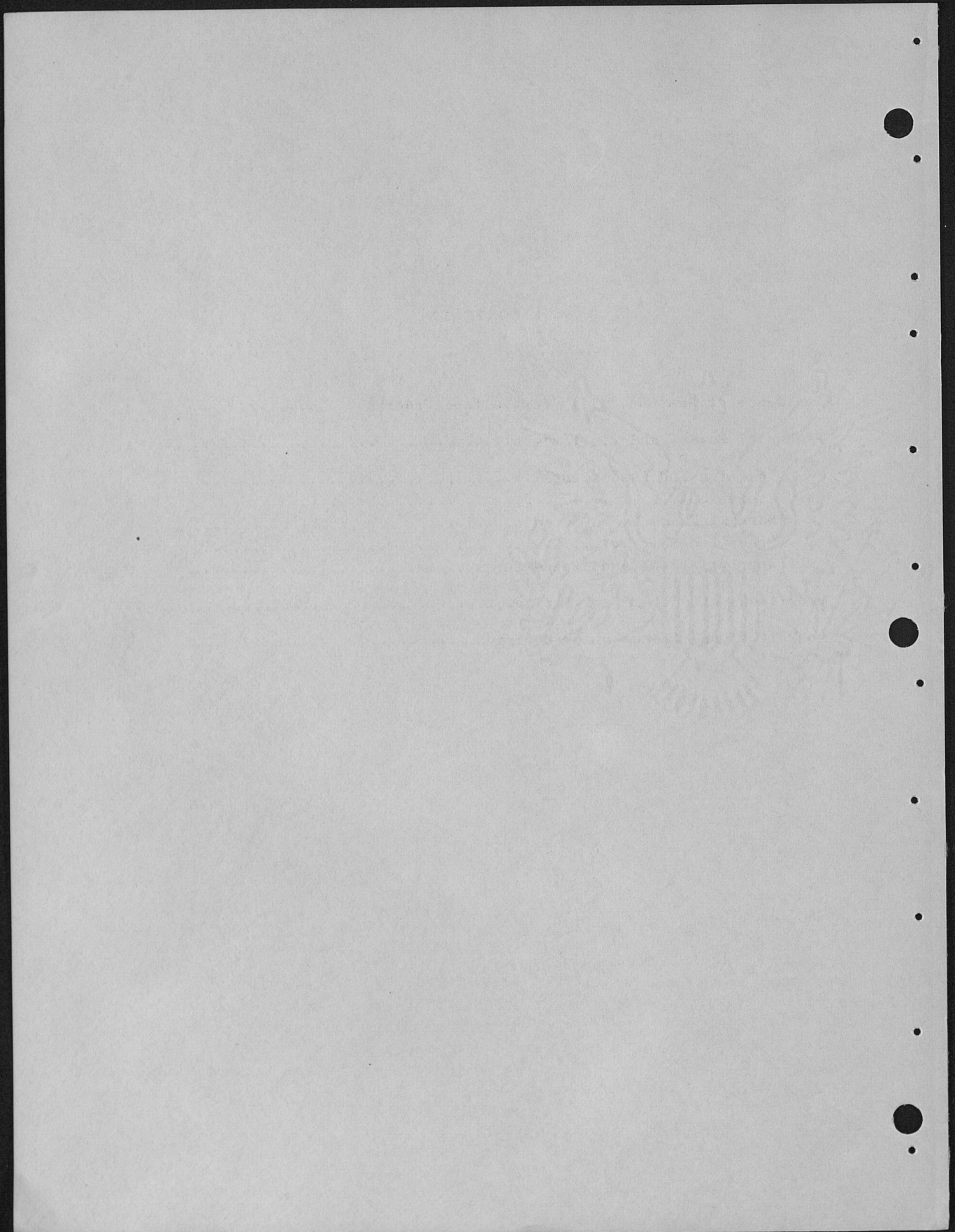
An attempt has been made, by a careful selection of the most recent cases decided by the highest courts of the States, to indicate wherever possible how these provisions have been construed. These cases are included in footnotes appended to the constitutional provisions shown.

It is hoped that these abstracts will be useful to those interested in public welfare questions in indicating how State and local public welfare administration may be affected by constitutional powers and limitations.



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Nebraska

ANALYSIS OF CONSTITUTIONAL PROVISIONS AFFECTING
PUBLIC WELFARE IN NEBRASKA¹

I. Incidence of Responsibility for Welfare Program

A. There shall be a "Board of Control" of state institutions consisting of three members who shall be appointed by the Governor by and with the consent of two-thirds of the members of the Senate. * * * The Board of Control shall have full power to manage, control and govern, subject only to such limitations as may be established by law, all state charitable, reformatory and penal institutions that now are or may hereafter be established * * *.²

B. The Legislature may provide by law for the establishment of a school or schools for the safe keeping, education, employment and reformation of all children under the age of eighteen years, who, for want of proper parental care, or other cause, are growing up in mendicancy or crime.³

C. Laws may be enacted regulating the hours and conditions of employment of women and children, and securing to such employees a proper minimum wage.⁴

II. Financial Powers and Limitations

A. Taxation and Assessments

(1) State

(a) The necessary revenue of the state and its governmental subdivisions shall be raised by taxation in such manner as the

¹Constitution (1875), as published by authority of the Secretary of State of Nebraska, in the Nebraska Blue Book (1936), with all subsequent amendments adopted to March 15, 1937.

The Constitution provides that no legislative act shall be held unconstitutional except by a concurrence of five of the seven judges of the supreme court. Constitution, Art. V, Sec. 2.

²Constitution, Art. IV, Sec. 19, as amended 1920.

The officers of all public institutions of the State must report to the Governor at least ten days preceding each regular session of the Legislature, and the Governor must transmit such reports to the Legislature. Constitution, Art. IV, Sec. 23.

³Constitution, Art. VII, Sec. 12, as amended 1920.

The word "may" cannot be construed to mean "shall" in this section. Under the Constitution involuntary servitude, except for punishment of crime after conviction by due process of law, is not allowed, except insofar as this section is a limitation upon that right of freedom. Consequently, a statute, to the extent that it fixes an age greater than 16 for commitment of a child to the reform school for disobedience, wilfulness, or incorrigibility not amounting to a crime, is unconstitutional. Scott vs. Flowers, 60 Neb. 675, 84 N. W. 81 (1900).

⁴Constitution, Art. XV, Sec. 8, adopted 1920.

II. Financial Powers and Limitations—Continued

A. Taxation and Assessments—Continued

(1) State—Continued

Legislature may direct; but taxes shall be levied by valuation uniformly and proportionately upon all tangible property and franchises, and taxes uniform as to class may be levied by valuation upon all other property. Taxes, other than property taxes, may be authorized by law. Existing revenue laws shall continue in effect until changed by the Legislature.⁵

(b) The Legislature shall have no power to release or discharge any county, city, township, town or district whatever, or the inhabitants thereof, or any corporation, or the property therein, from their or its proportionate share of taxes to be levied for state purposes, or due any municipal corporation, nor shall commutation for such taxes be authorized in any form whatever.⁶

⁵Constitution, Art. VIII, Sec. 1, as amended 1920.

"In this state we are * * * committed to the view that 'the taxing power vested in the legislature is without limit, except such as may be prescribed by the constitution itself'. And the proper construction of these constitutional limitations necessarily requires the due application of the principle that limitations or restrictions upon the exercise of this essential power of sovereignty can never be raised by implication, but the intention to impose them must be expressed in clear, unambiguous language." *State vs. Cheyenne County*, 127 Neb. 619, 256 N. W. 67 (1934).

Pursuant to statutes, property should be assessed at its actual value for purposes of taxation. However, even though property is assessed at its actual value or less, if it is assessed at a higher proportion of its actual value than the average of other property of the State, the assessment should be reduced, since property must be assessed uniformly. The net receipts from land are an important factor in determining its value. *Schmidt vs. Saline County*, 122 Neb. 56, 239 N. W. 203 (1931).

"That provision (this section) relates to revenue required for the general purpose of government, state and municipal, and has no application to taxes or assessments levied for local improvements." So a statute providing for the alfalfa irrigation district, allowing the district authorities to tax, was held valid. *Board of Directors of Alfalfa Irrigation District vs. Collins*, 46 Neb. 441, 64 N. W. 1086, 1090 (1895).

A reasonable license fee for the privilege of trafficking in tobacco, under a regulatory statute, is not a tax on property, and so such license fees may be classified as long as the classification is reasonable. *Nash-Finch Company vs. Beal*, 124 Neb. 835, 248 N. W. 374 (1933).

"Classifications for taxation purposes must be based on a real and substantial difference, having a reasonable relation to the subject of the particular legislation." *Moeller, McPherrin and Judd vs. Smith*, 127 Neb. 424, 255 N. W. 551, 556 (1934).

A statute, attempting to define all property except money as tangible personal property, was held to be an unreasonable classification. *Moeller, McPherrin and Judd vs. Smith*, 127 Neb. 424, 255 N. W. 551, 556 (1934).

A statute, which taxed shares of stock of a banking corporation at a different rate from shares of stock of other corporations, violated the uniformity as to class provisions of this section. *State ex rel. Spillman vs. Ord State Bank*, 117 Neb. 189, 220 N. W. 265 (1928).

⁶Constitution, Art. VIII, Sec. 4.

Under this section the Legislature is prohibited from changing the method of the payment of any tax once levied. It cannot reduce the amount of the tax, extend the

II. Financial Powers and Limitations—Continued

A. Taxation and Assessments—Continued

(1) State—Continued

(c) A Tax Commissioner shall be appointed by the Governor with the advice and consent of the Senate. He shall have jurisdiction over the administration of the revenue laws of the state, and together with the Governor, Secretary of State, State Auditor and State Treasurer shall have power to review and equalize assessments of property for taxation within the state. He shall have such other powers and perform such other duties as the Legislature may provide * * *.⁷

(2) Counties

County authorities shall never assess taxes the aggregate of which shall exceed fifty cents per one hundred dollars actual valuation as determined by the assessment rolls, except for the payment of indebtedness existing at the adoption hereof, unless authorized by a vote of the people of the county.⁸

(3) Other Local Units

(a) The Legislature may vest the corporate authorities of cities, towns and villages, with power to make local improvements by special assessments, or by special taxation of property benefited. For all other corporate purposes, all municipal corporations may be vested with authority to assess and collect taxes, but such taxes shall be uniform in respect to persons and property within the jurisdiction of the body imposing the same.⁹

time of payment, or in any manner change the method of payment. Consequently, a statute insofar as it provided that delinquent real estate taxes could be paid in ten annual installments, and delinquent personal taxes in five annual installments, violated this section. However, penalties including interest and costs are no part of a tax, so this section does not prevent the Legislature from waiving or remitting them. *Steinacher vs. Swanson*, 288 N. W. 317 (1936).

⁷Art. IV, Sec. 28, as amended 1920.

⁸Constitution, Art. VIII, Sec. 5, as amended 1920.

A mothers' pension statute, allowing payments to mothers of dependent children out of the general fund of the counties, did not violate this section, since there was nothing in the statute which required a higher rate of taxation than that allowed by this section. *Rumsey vs. Saline County*, 102 Neb. 302, 167 N. W. 66 (1918).

Under this section as it existed prior to the amendment of 1920, it was held that the valuation of property upon which the tax limitation was computed was the assessed valuation and not the actual valuation. *Beadle vs. Sanders*, 104 Neb. 427, 177 N. W. 789 (1920).

In counties under township organization, the taxes assessed in a township, by the electors of the township at their annual meeting, are not computed in ascertaining the amount of county taxes allowed under the limitations of this section. *Chicago B. & Q. Railroad Company vs. Klein*, 52 Neb. 258, 71 N. W. 1069 (1897).

⁹Constitution, Art. VIII, Sec. 6.

A city may lawfully enact an ordinance, imposing upon telephone companies a business or occupation tax, measured by the gross receipts. *Nebraska Telephone Company*

II. Financial Powers and Limitations—Continued

A. Taxation and Assessments—Continued

(3) Other Local Units—Continued

(b) * * * The Legislature shall not impose taxes upon municipal corporations, or the inhabitants or property thereof, for corporate purposes.¹⁰

(c) Any city having a population of more than five thousand (5,000) inhabitants may frame a charter for its own government, consistent with and subject to the constitution and laws of this state,
* * *.¹¹

vs. City of Lincoln, 82 Neb. 59, 117 N. W. 284 (1908).

Likewise, an ordinance providing for an occupation tax of five percent of the gross receipts each month, upon all street railways operating within a city, was held not to violate this section. Lincoln Traction Company vs. City of Lincoln, 84 Neb. 327, 121 N. W. 435 (1909).

¹⁰Constitution, Art. VIII, Sec. 7.

A statute, imposing a "tax" on cities for the maintenance of water and gas plants, was held to violate this section because it was for a "corporate purpose." The court held that this section applied only to taxes for "corporate purposes", and not to taxes for "governmental purposes"; that "corporate purposes" were such things as "constructing sewers, improving streets, erecting and operating water and light plants."

The court said, "We are of the opinion that the phrase, 'for corporate purposes' as used in the constitutional provision above quoted, does not include purposes and activities designed, in the main, to aid or assist the state in carrying out its governmental activities, functions and policies, but is limited to those municipal activities designed, in the main, for the principal or exclusive benefit of the municipality, or of its citizens and inhabitants." Metropolitan Utilities District vs. City of Omaha, 112 Neb. 93, 198 N. W. 858 (1924).

For a general discussion of the distinction between "corporate purposes" and "governmental purposes" see: State ex rel. Metropolitan Utilities District vs. City of Omaha, 112 Neb. 694, 200 N. W. 871 (1924).

A tax for water hydrants is for a "governmental purpose." Ibid.

A statute, requiring cities to pension firemen, does not violate this section because this is not a "corporate" or "proprietary" purpose, but is a "governmental purpose." State ex rel. Haberlan vs. Love, 89 Neb. 149, 131 N. W. 196 (1911).

A statute, providing for a uniform method of taxing intangible personal property, which classified such property and apportioned one-third of the proceeds of the tax to the general fund of the city or village, was held not to contravene this section, because the "general fund" of a city was used for "governmental purposes." Mehrens vs. Greenleaf, 119 Neb. 82, 227 N. W. 325 (1929).

A statute, imposing a State gasoline tax on counties, did not violate this section since a county is not a "municipal corporation" within the meaning of this section. State vs. Cheyenne County, 127 Neb. 619, 256 N. W. 67 (1934). See footnote 11, below.

¹¹Constitution, Art. XI, Sec. 2, adopted 1912.

The section also provides that the charter shall become operative only upon the approval of a majority of the qualified voters voting upon it. Ibid.

The following sections provide for the amendment of such city charters: Constitution, Art. XI, Secs. 3 and 4, adopted 1912.

"It is the well-established law of this state, that in matters of strictly municipal concern, cities which have adopted a 'home rule' charter under Article XI of the Constitution (this section) are not subject to state legislation. But, in such cities, state legislation is not excluded upon such subjects as pertain to state affairs as distinguished from strictly municipal affairs. * * *. There is no sure test which will enable us to distinguish between matters of strictly municipal

II. Financial Powers and Limitations—Continued

B. Exemptions

The property of the state and its governmental subdivisions shall be exempt from taxation. The Legislature by general law may exempt property owned by and used exclusively for agricultural and horticultural societies, and property owned and used exclusively for educational, religious, charitable or cemetery purposes, when such property is not owned or used for financial gain or profit to either the owner or user. Household goods of the value of two hundred (\$200.00) dollars to each family shall be exempt from taxation. The Legislature by general law may provide that the increased value of land by reason of shade and ornamental trees planted along the highway shall not be taken into account in the assessment of such land. No property shall be exempt from taxation except as provided in this section.¹²

concern and those of State concern. The court must consider each case as it arises and draw the line of demarcation." The provision for an Omaha Municipal University was held to be a matter of State concern rather than municipal concern. *Carlberg vs. Metcalf*, 120 Neb. 481, 234 N. W. 87 (1930).

"The rule adopted by this court concerning an inconsistency between legislative enactment and municipal charters is too well established to justify longer discussion. The purpose of the constitutional provision (this section) is to render cities independent of state legislation as to all subjects which are of strictly municipal concern; therefore, as to such matters general laws applicable to cities yield to the charter." Where the provisions of a city charter in regard to street intersections within the city conflicted with provisions in a State statute, it was held that the charter would prevail because the improvement of streets, alleys, and highways, within the corporate limits was strictly a matter of "municipal concern". *Salsbury vs. City of Lincoln*, 117 Neb. 465, 220 N. W. 827 (1928).

Bus service, and the curtailment thereof, in a municipality, was held not a matter of "municipal concern" but a matter of "state concern" and under the jurisdiction of the State Railway Commission. *In re Curtailment of Bus Service*, 125 Neb. 825, 252, N. W. 407 (1934).

Extension of water mains was held to be a matter of municipal concern. *Pester vs. City of Lincoln*, 127 Neb. 440, 255 N. W. 923 (1934).

The court has stated by way of dictum that matters which affect general welfare notwithstanding that they have no operation beyond the boundaries of the city, are matters of State concern as distinguished from matters of purely municipal concern. *State ex rel. Metropolitan Utilities vs. City of Omaha*, 112 Neb. 694, 200 N. W. 871 (1924).

¹² Constitution, Art. VIII, Sec. 2, as amended 1920.

"It is axiomatic that provisions of a State Constitution in relation to taxation are not grants of power, but are limitations on the taxing power of the state." The exemption from taxation of "the property of the state and its governmental subdivisions" under this section applies only to property taxes. So a county is not exempt from a gasoline tax, imposed upon gasoline imported for use, because a gasoline tax is an excise tax and not a property tax. *State vs. Cheyenne County*, 127 Neb. 619, 256 N. W. 67 (1934).

Bonds and warrants of governmental subdivisions of the State, were held exempt from taxation, even though in the hands of private individuals, because they were "property of the state and its governmental subdivisions". *In re Droll*, 108 Neb. 85, 187 N. W. 876 (1922).

A municipal water plant, owned by a city, was held exempt from taxation, because it was the property of a governmental subdivision of the State. *City of Omaha vs. Douglas County*, 98 Neb. 865, 148 N. W. 938 (1914).

"Exemptions from taxation will never be presumed. The burden of proof * * * is imposed on those seeking to secure an exemption * * *." *North Platte Lodge 985, etc., vs. Board of Equalization of Lincoln County*, 125 Neb. 841, 252 N. W. 313 (1934).

II. Financial Powers and Limitations—Continued

C. Borrowing and Use of Credit

(1) State

(a) The state may, to meet casual deficits, or failures in the revenues, contract debts never to exceed in the aggregate one hundred thousand dollars, and no greater indebtedness shall be incurred except for the purpose of repelling invasion, suppressing insurrection, or defending the state in war, and provisions shall be made for the payment of the interest annually, as it shall accrue, by a tax levied for the purpose, or from other sources of revenue, which law providing for the payment of such interest by such tax shall be irrepealable until such debt be paid.¹³

(b) The credit of the state shall never be given or loaned in aid of any individual, association, or corporation.¹⁴

"The use of property determines whether or not it is entitled to be exempt from taxation. That part of a building owned by a religious, charitable and educational institution, but leased and used by the tenant for business purposes, is not exempt from taxation." A Masonic Lodge is a "religious, charitable or educational" institution within the meaning of the Constitution and the statutes, so that where a Masonic Lodge used the two upper floors of a building, and rented the two lower floors to a retail merchant, the two upper floors were exempted from taxation, but the two lower floors were not. In re Masonic Temple Craft, 129 Neb. 293, 261 N. W. 569 (1935).

"We hold, therefore, that where a building is constructed on a lot used primarily in connection with the building, a part of the building being exempt for taxation purposes, the lot will also be exempt in the same proportion." In re Masonic Temple Craft, 129 Neb. 327, 263 N. W. 150 (1935).

Under the law of this State, the use of the property is the criterion by which to determine whether it is or is not exempt from taxation. Where a home for sub-normal girls operated a laundry as a business and employed the inmates therein and used the income for the home, such laundry property was held exempt. The court said that by the operation of the laundry the girls were being taught a trade and habits of industry and that under such circumstances the laundry might be fairly said to be used for educational and charitable purposes, and the fact that income was derived from it made no difference so long as the income was used for the institution and did not inure to the financial benefit of the corporation or its members. In re House of Good Shepherd of Omaha, 113 Neb. 489, 203 N. W. 632 (1925).

Also, where a college owned farm and dairy property, the income from which went into the general school funds, the property was held exempt from taxation, because agriculture and dairying were subjects of instruction at the college so that the property was used for educational purposes. In re Central Union Conference Association of College View, 109 Neb. 106, 189 N. W. 982 (1922).

A hospital, open alike to charity patients and to those who could pay, all the income of which was used in the upkeep and improvement of the plant, was held exempt from taxation, as used exclusively for "religious and charitable" purposes within the meaning of the Constitution and statutes. In re St. Elizabeth Hospital, 109 Neb. 104, 189 N. W. 981 (1922).

That part of a Y. M. C. A. building, actually and necessarily used for the general purposes of the association, was held exempt from taxation. Y. M. C. A. vs. Lancaster County, 106 Neb. 105, 182 N. W. 593 (1921).

¹³ Constitution, Art. XIII, Sec. 1.

¹⁴ Constitution, Art. XIII, Sec. 3.

A statute, directing that cities pay a pension to retired firemen or their widows and orphans under specified circumstances, held not to violate this section.

II. Financial Powers and Limitations—Continued

C. Borrowing and Use of Credit—Continued

(2) Counties and Other Local Units

No city, county, town, precinct, municipality, or other subdivision of the state, shall ever make donations to any railroad, or other works of internal improvement, unless a proposition so to do shall have been first submitted to the qualified electors thereof, at an election by authority of law. Provided, that such donations of a county with the donations of such subdivisions in the aggregate shall not exceed ten per cent of the assessed valuation of such county. Provided further, that any city or county may, by a two-thirds vote, increase such indebtedness five per cent in addition to such ten per cent; and no bonds or evidences of indebtedness so issued shall be valid, unless the same shall have endorsed thereon a certificate signed by the secretary and auditor of state, showing that the same is issued pursuant to law.¹⁵

The court said this section of the Constitution "was intended to prevent the state from extending its credit to private enterprises". State ex rel. Haberlan vs. Love, 89 Neb. 149, 131 N. W. 196, 198 (1911).

¹⁵Constitution, Art. XIII, Sec. 2.

"We have been unable to find any provision of the constitution which prevents the legislature from authorizing the electors of a county from voting bonds for the relief of the unfortunate within its borders." A statute, authorizing counties to issue bonds, on the approval of the voters of the county, for the purpose of aiding needy farmers by purchasing seed grain and feeding horses, was held valid. In re House Roll No. 284, 31 Neb. 505, 48 N. W. 275 (1891).

"In forbidding subdivisions of the state to 'make donations' to any railroad, or other 'works of internal improvement', without submitting to the electors a proposition to do so, the framers of the Nebraska Constitution of 1875 and the people who adopted it had in mind the evils arising from excessive donations of public funds to enterprises performing public services for private gain. Public buildings used exclusively for governmental purposes, without direct pecuniary profit to any corporation, or individual, are, in a popular sense, internal improvements, but they are obviously not within this constitutional inhibition. * * * 'Where an enumeration of specific things is followed by some more general word or phrase, such general word or phrase is to be held to refer to things of the same kind.' In the Constitution 'railroad', an enterprise performing public services for private gain, is first specifically designated. This is followed by the general term, 'or other works of internal improvement', the word 'railroad' indicating the kind of internal improvement to which the provision applies." Public roads were held not "works of internal improvement" within the meaning of this section. State vs. Bone Creek Township, 109 Neb. 202, 190 N. W. 586 (1922). Affirmed State vs. Bone Creek Township, 109 Neb. 208, 193 N. W. 767 (1923).

Paving by a city is not a "work of internal improvement" requiring submission to the electors. Wookey vs. City of Alma, 118 Neb. 158, 223 N. W. 953 (1929).

Bridges are not works of "internal improvement" within the meaning of the Constitution. DeClerq vs. Hager, 12 Neb. 185, 10 N. W. 697 (1881).

Bonds in the sum of \$1,650,000 to be issued by the City of Omaha, for the purpose of constructing a bridge across the Missouri River, payable solely out of the revenues of the bridge, and not a general obligation of the city, were held valid, without discussing this section. Kirby vs. Omaha Bridge Commission, 127 Neb. 382, 255 N. W. 776 (1934).

II. Financial Powers and Limitations--Continued

D. Other Income

(a) All lands, money or other property granted, or bequeathed, or in any manner conveyed to this state for educational purposes shall be used and expended in accordance with the terms of such grant, bequest, or conveyance.¹⁶

(b) The following are hereby declared to be perpetual funds for common school purposes of which the annual interest or income only can be appropriated, to wit:

First. Such per centum as has been, or may hereafter be, granted by Congress on the sale of lands in this state.

Second. All moneys arising from the sale or leasing of sections number sixteen and thirty-six in each township in this state, and the lands selected, or that may be selected, in lieu thereof.

Third. The proceeds of all lands that have been, or may hereafter be, granted to this state, where by the terms and condition of such grant the same are not to be otherwise appropriated.

Fourth. The net proceeds of lands and other property and effects that may come to this state, by escheat or forfeiture, or from unclaimed dividends, or distributive shares of the estates of deceased persons.

Fifth. All moneys, stocks, bonds, lands, and other property, now belonging to the common school fund.¹⁷

E. Appropriations and Expenditures

(1) Each Legislature shall make appropriations for the expenses of the Government until the expiration of the first fiscal quarter after the adjournment of the next regular session, and all appropriations shall end with such fiscal quarter. And whenever it is deemed necessary to make further appropriations for deficiencies, the same shall require a two-thirds vote of all the members elected to each House, and shall

¹⁶Constitution, Art. VII, Sec. 2.

¹⁷Constitution, Art. VII, Sec. 3.

Fines and penalties are set aside for the use of common schools in the counties. Constitution, Art. VII, Sec. 5.

A statute, which provided that after a permanent injunction had issued for maintaining a nuisance in violation of liquor laws there should be assessed against the building and the owner of the premises a tax of \$300, was held unconstitutional, because if this \$300 were considered a fine or penalty then the statute violated Article VII, Section 5 in not appropriating the proceeds to schools, and if the \$300 were considered a tax it violated the uniformity clause of Article VIII, Section 1. State ex rel. McGuire vs. MacFarland, 104 Neb. 42, 175 N. W. 863 (1919). For Art. VIII, Sec. 1, see page 1, par. (a).

II. Financial Powers and Limitations—Continued

E. Appropriations and Expenditures—Continued

not exceed the amount of revenue authorized by law to be raised in such time * * *.¹⁸

(2) * * * No money shall be drawn from the treasury except in pursuance of a specific appropriation made by law, and on the presentation of a warrant issued by the auditor thereon, and no money shall be diverted from any appropriation made for any purpose, or taken from any fund whatever, either by joint or separate resolution * * *.¹⁹

III. Provisions Affecting Legislation

A. Regular Sessions of the Legislature

(1) The Legislature shall meet in regular session at 12:00 o'clock (noon) on the first Tuesday in January in the year next ensuing the election of the members thereof * * *.²⁰

(2) Members of the Legislature shall be elected for a term of two years beginning at noon on the first Tuesday in January at the year next ensuing the general election at which they were elected * * *.²¹

B. Special Sessions of Legislature

The Governor may, on extraordinary occasions, convene the Legislature by proclamation, stating therein the purpose for which they are convened, and the Legislature shall enter upon no business except that for which they were called together.²²

C. Powers of Initiative and Referendum

(1) * * * The people reserve to themselves, however, the power to propose laws, and amendments to the constitution, and to enact or reject the same at the polls, independent of the Legislature, and also

¹⁸Constitution, Art. III, Sec. 22.

State officials have no power to apply the money appropriated for the present biennium to the payment of debts made in the preceding biennium. Where, however, there is a valid claim for work done in the preceding biennium, and the money appropriated for that purpose in the preceding biennium is exhausted, it is within the power of the Legislature to make a deficiency appropriation for the purpose of paying the claim. State ex rel. Western Bridge and Construction Company vs. Marsh, 111 Neb. 185, 196 N. W. 130 (1923).

¹⁹Constitution, Art. III, Sec. 25.

Funds, produced by the operation of a regulatory statute, providing for inspection of grain and issuance of certificates of storage, when entrusted to the State Treasurer as custodian, become part of the State's funds, for withdrawal of which specific appropriation, and the issuance of a warrant, were necessary in accordance with this section. Bollen vs. Price, 129 Neb. 342, 261 N. W. 689 (1935).

²⁰Constitution, Art. III, Sec. 10, as amended 1934.

²¹Constitution, Art. III, Sec. 7, as amended 1934.

²²Constitution, Art. IV, Sec. 8.

III. Provisions Affecting Legislation—Continued

C. Powers of Initiative and Referendum—Continued

reserve power at their own option to approve or reject at the polls any act, item, section, or part of any act passed by the Legislature * * *.²³

(2) The first power reserved by the people is the initiative whereby laws may be enacted and constitutional amendments adopted by the people independently of the Legislature * * *.²⁴

(3) The second power reserved is the referendum which may be invoked, by petition, against any act or part of an act of the Legislature, except those making appropriations for the expense of the state government or a state institution existing at the time of the passage of such act. Petitions invoking the referendum shall be signed by not less than five per cent of the electors of the state, distributed as required for initiative petitions, * * *. When the referendum is thus invoked, the Secretary of State shall refer the same to the electors for approval or rejection * * *.

When the referendum is invoked, as to any act or part of act, other than emergency acts or those for the immediate preservation of the public peace, health or safety, by petition signed by not less than ten per cent of the electors of the state, distributed as aforesaid, it shall suspend the taking effect of such act or part of an act until the same has been approved by the electors of the state.²⁵

(4) The whole number of votes cast for Governor at the general election next preceding the filing of an initiative or referendum petition shall be the basis on which the number of signatures to such petition shall be computed. The veto power of the Governor shall not extend to measures initiated by or referred to the people * * *.²⁶

D. Legislative Enactment

(1) Commencing with the regular session of the Legislature to be held in January, nineteen hundred and thirty-seven, the legislative authority of the state shall be vested in a Legislature consisting of one chamber * * *. All authority vested by the constitution or laws of the state in the Senate, House of Representatives, or joint session thereof,

²³Constitution, Art. III, Sec. 1, as amended 1934.

²⁴Constitution, Art. III, Sec. 2, as amended 1920.

The section further provides the procedure of the initiative. A petition for enactment of a law must be signed by seven percent of the electors of the State, and a petition for a constitutional amendment by ten percent of the electors of the State. In both cases the electors signing such petitions must be so distributed as to include five percent of the electors of each of two-fifths of the counties of the State. Such initiative measure must be approved by the voters. Ibid.

²⁵Constitution, Art. III, Sec. 3, as amended 1920.

²⁶Constitution, Art. III, Sec. 4, as amended 1920.

III. Provisions Affecting Legislation—Continued

D. Legislative Enactment—Continued

in so far as applicable shall be and hereby is vested in said Legislature of one chamber. All provisions in the constitution and laws of the state relating to the Legislature, the Senate, the House of Representatives, Senator, or member of the House of Representatives, joint sessions of the Senate and House of Representatives, shall, in so far as said provisions are applicable, apply to and mean said Legislature of one chamber hereby created and the members thereof * * *.²⁷

(2) The powers of the government of this state are divided into three distinct departments, the Legislative, Executive and Judicial, and no person or collection of persons being one of these departments, shall exercise any power properly belonging to either of the others except as hereinafter expressly directed or permitted.²⁸

(3) * * * No bill shall be passed by the Legislature unless by the assent of a majority of all members elected to each House of the Legislature, * * *.²⁹

(4) Every bill and resolution shall be read by title when introduced, * * * and the bill and all amendments thereto shall be printed and read at large before the vote is taken upon its final passage. No

²⁷ Constitution, Art. III, Sec. 1, as amended 1934.

Statutes, which appropriated \$4,000,000 out of the proceeds of a gasoline tax, for "work relief, direct relief, old age assistance, assistance to dependent mothers and children, unemployment insurance, health of mothers and children, public health or related matters of security and welfare, and public works, especially roads by the use of work relief labor", to be expended by the Board of Educational Lands and Funds with the advice of the State Assistance Committee, were held unconstitutional under this section. The court held in the first place that these statutes were an unlawful delegation of legislative power to an administrative board. The court said: "Under these acts, the board and committee have the power, if they see fit to do so, to allocate the whole fund to the payment of old age pensions and unemployment insurance * * *. Such provisions amount to a delegation of legislative power. Under Section 1, Art. II, and Section 1, Art. III, of the Nebraska Constitution, the legislative power of the state is vested in the Legislature and cannot lawfully be delegated to any board or committee". In the second place, these statutes were held unconstitutional as an unlawful delegation of legislative power to Congress. One of the statutes in question provided for an additional gasoline tax for the purpose of paying old age pensions. The amount collected under this statute was to be determined by the Governor basing his decision upon the terms of an Act of Congress to be passed at a later date. The court held that since the amount collected under this statute was to be determined by an Act of Congress, not yet passed, that this was an unlawful delegation of legislative power to the Federal Congress. *Smithberger vs. Banning*, 129 Neb. 651, 262 N. W. 492 (1935). For Art. II, Sec. 1, see par. (2), above.

²⁸ Constitution, Art. II, Sec. 1.

See page 10, par. (1), and footnote 27.

²⁹ Constitution, Art. III, Sec. 13, as amended 1920.

"In determining whether an act has been properly passed by the Legislature, the journals of the respective legislative houses are the best evidence, and whatever the journals show may not be impeached, but must be accepted." *Day vs. Walker*, 124 Neb. 500, 247 N. W. 350, 352 (1933).

III. Provisions Affecting Legislation--Continued

D. Legislative Enactment--Continued

such vote upon the final passage of any bill shall be taken, however, until five legislative days after its introduction nor until it has been on file for final reading and passage for at least one legislative day. No bill shall contain more than one subject, and the same shall be clearly expressed in the title * * *.³⁰

(5) The Legislature shall not pass local or special laws in any of the following cases, that is to say: * * *.

* * * changing or amending the Charter of any Town, City or Village.

* * * In all other cases where a general law can be made applicable, no special law shall be enacted.³¹

(6) No act shall take effect until three calendar months after the adjournment of the session at which it passed, unless in case of emergency (to be expressed in the preamble or body of the act) the Legislature shall, by a vote of two-thirds of all the members elected to each House otherwise direct * * *.³²

(7) * * * at the commencement of each regular session (the Governor) shall present, by message, a complete itemized budget * * *. No appropriations shall be made in excess of the recommendation contained in such budget unless by three-fifths vote of each House of the Legislature, and such excess so approved by a three-fifths vote shall not be subject to veto by the Governor.³³

³⁰Constitution, Art. III, Sec. 14, as amended 1934.

Where the title of an act was "An Act to adopt and establish a code of laws for the State of Nebraska relating to the civil government of the State and to provide for their administration and enforcement to be known as the Civil Administrative Code", it was held that the title was broad enough to include provisions for the regulation of the banking business. The court said: "Where the title of an act fairly gives expression to the general subject-matter contained in the act, such act will not be held invalid as being broader than its title". Westbrook vs. State, 120 Neb. 625, 234 N. W. 579, 581 (1931).

³¹Constitution, Art. III, Sec. 18.

A statute, which classified depositors in State Banks for the purpose of determining priority in case of insolvency, was held not to be special or class legislation. The court said: "The rule is well established that the Legislature has power to make reasonable classifications of persons and objects for the purpose of legislation affecting diversely the different classes". State ex rel. Sorenson vs. First State Bank of Alliance, 122 Neb. 502, 240 N. W. 747, 750 (1932).

The Legislature may classify counties, for purposes of legislation, where such classification is reasonable. A statute, however, relating to counties of more than 150,000 where certain road bonds were in existence, there being only one such county, was held invalid, since such a classification was arbitrary and unreasonable and so the statute was a special law within the meaning of this section. State ex rel. Cone vs. Bauman, 120 Neb. 77, 231 N. W. 693 (1930).

³²Constitution, Art. III, Sec. 27.

³³Constitution, Art. IV, Sec. 7, as amended 1920.

An appropriation bill, containing items in excess of the budget recommendation, adopted by a three-fifths vote of each house, but without a separate three-fifths

III. Provisions Affecting Legislation—Continued

D. Legislative Enactment—Continued

(8) * * * After the expiration of twenty days of the session, no bills nor joint resolutions of the nature of bills shall be introduced, unless the Governor shall, by special message call the attention of the Legislature to the necessity of passing a law on the subject matter embraced in the message, and the introduction of bills shall be restricted thereto. Provided, that the general appropriation bills may be introduced up to and including the fortieth day.³⁴

(9) Every bill passed by the Legislature, before it becomes a law, * * * shall be presented to the Governor. If he approves he shall sign it, and thereupon it shall become a law, but if he do not approve, he shall return it with his objections to the House in which it shall have originated, * * *.³⁵

IV. Constitutional Amendment or Revision

A. By Proposal of Legislature or People

Either branch of the Legislature may propose amendments to this constitution, and if the same be agreed to by three-fifths of the members elected to each house, such proposed amendments shall be entered on the journals, with the yeas and nays, and published once each week for four weeks, in at least one newspaper in each county, where a newspaper is published, immediately preceding the next election of members of the Legislature. At such election said amendments shall be submitted to the electors for approval or rejection upon a ballot separate from that upon which the names of candidates appear. If a majority of the electors voting on any such amendment adopt the same, it shall become a part of this constitution, provided the votes cast in favor of such amendment shall not be less than thirty-five per cent of the total votes cast at

vote on each such increased item, was held legally enacted and not subject to the Governor's veto. *Elmen vs. State Board of Equalization and Assessment*, 120 Neb. 141, 231 N. W. 772 (1930).

³⁴Constitution, Art. III, Sec. 7, as amended 1920.

Where a bill has been introduced into the Legislature within the time limit allowed by this section, amendments which are within the general purpose of the bill may be made after that limit has expired. *State ex rel. Martin vs. Ryan*, 92 Neb. 636, 139 N. W. 235 (1912).

³⁵Constitution, Art. IV, Sec. 15.

A bill may be passed over the Governor's veto by three-fifths of the members elected to each house. Any bill not returned by the Governor within five days, Sundays excepted, shall become a law, unless the Legislature by its adjournment prevent such return, in which case the Governor must file it with his objections with the Secretary of State within five days of the adjournment, or it will become a law. The Governor may veto any item of appropriation in a bill, in which case the item shall be treated as other bills vetoed as a whole. *Ibid.*

IV. Constitutional Amendment or Revision—Continued

A. By Proposal of Legislature or People—Continued

such election. When two or more amendments are submitted at the same election, they shall be so submitted as to enable the electors to vote on each amendment separately.³⁶

B. By Constitutional Convention

When three-fifths of the members elected to each branch of the Legislature deem it necessary to call a convention to revise, amend, or change this constitution, they shall recommend to the electors to vote at the next election of members of the Legislature, for or against a convention, and if a majority voting at said election vote for a convention, the Legislature shall, at its next session, provide by law for calling the same. The convention shall consist of as many members as the House of Representatives, who shall be chosen in the same manner, and shall meet within three months after their election, for the purpose aforesaid. No amendment or change of this constitution, agreed upon by such convention, shall take effect until the same has been submitted to the electors of the state, and adopted by a majority of those voting for and against the same.³⁷

³⁶Constitution, Art. XVI, Sec. 1, as amended 1920.

For provision for the proposal of amendments by the initiative, see page 10, par. (2), and footnote 24, thereunder.

³⁷Constitution, Art. XVI, Sec. 2.

