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

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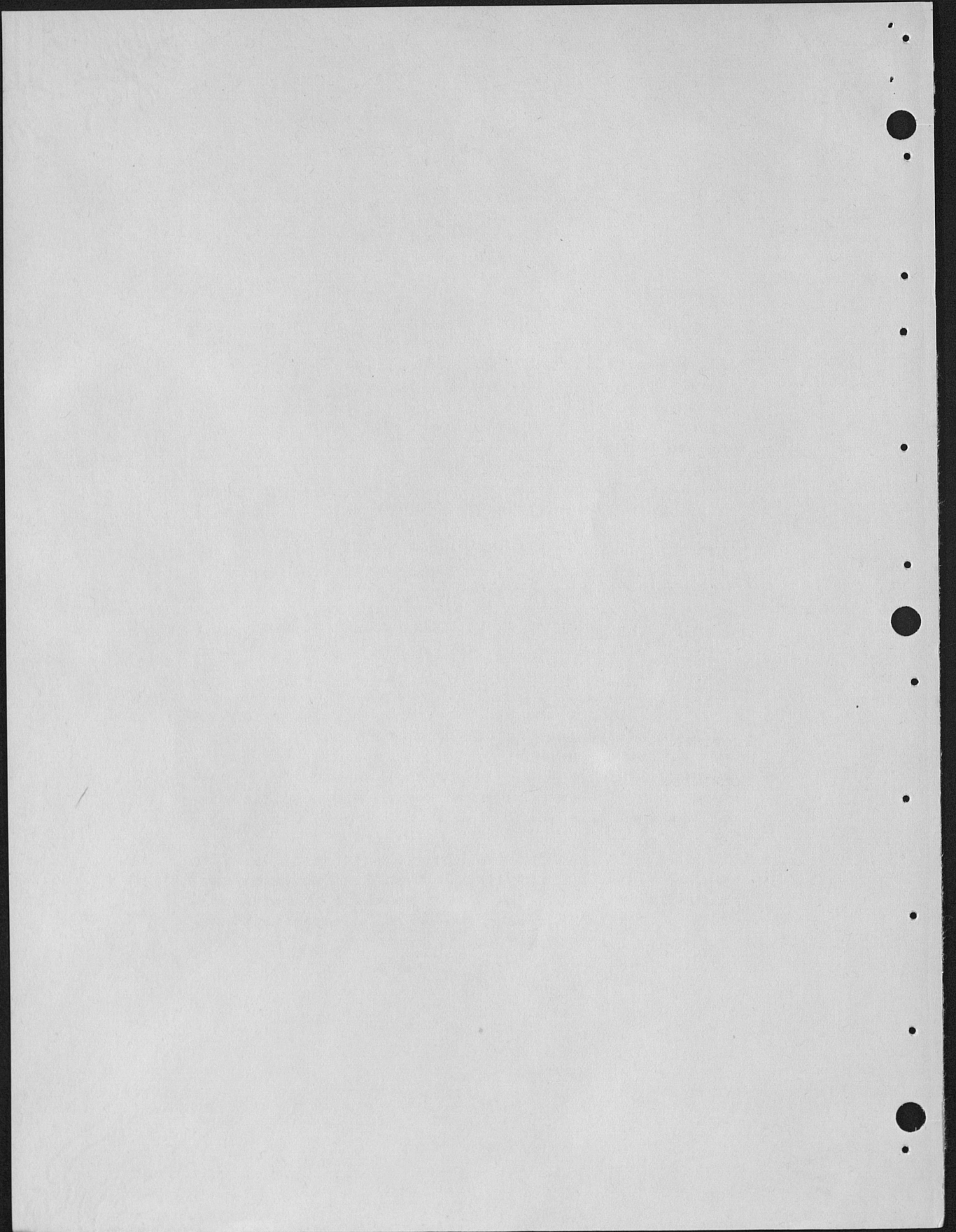
## Preface

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.

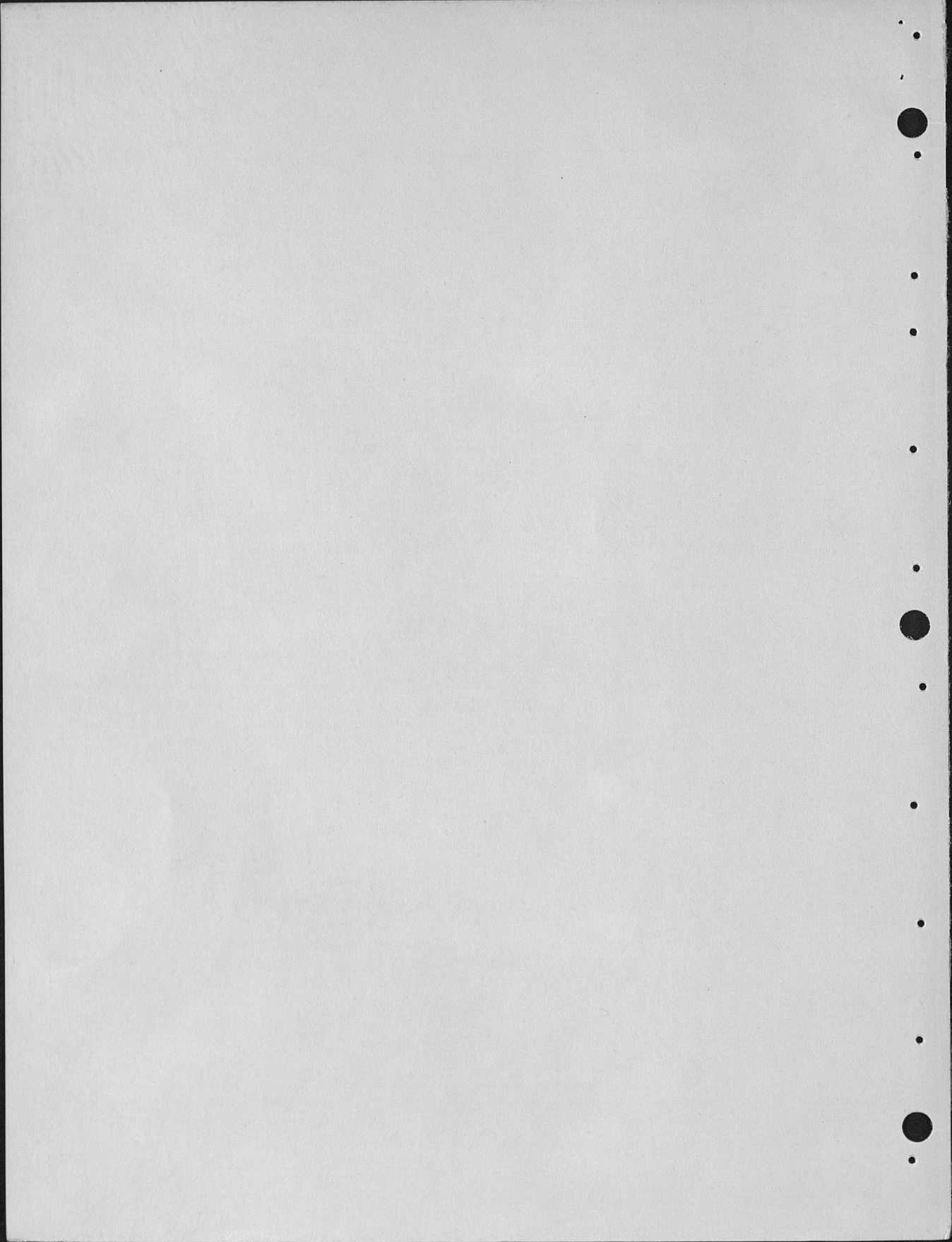




Indiana

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ANALYSIS OF CONSTITUTIONAL PROVISIONS AFFECTING

PUBLIC WELFARE IN INDIANA 1/

I. Incidence of Responsibility for Welfare Program

A. It shall be the duty of the General Assembly to provide, by law, for the support of Institutions for the education of the Deaf and Dumb, and of the Blind; and also, for the treatment of the Insane. 2/

B. The General Assembly shall provide Houses of Refuge, for the correction and reformation of juvenile offenders. 3/

C. The county boards shall have power to provide farms, as an asylum for those persons, who, by reason of age, infirmity, or other misfortune, have claims upon the sympathies and aid of society. 4/

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1. Constitution (1851), with all amendments to December 15, 1936. All citations are to Burns' Indiana Statutes Annotated (1933).

2. Constitution, Art. IX, Sec. 1.

A statute, providing that where parents are financially able, they may be compelled to contribute a fixed amount toward the support of their child confined in a State institution for the feeble-minded, does not violate this section. State vs. Troxler, 202 Ind. 268, 173 N. E. 321 (1930).

3. Constitution, Art. IX, Sec. 2.

4. Constitution, Art. IX, Sec. 3.

Poor relief, other than institutional support, is township business. Meara vs. Brindley, 207 Ind. 657, 194 N. E. 351 (1935).

Under this section, and the statutes, poor relief rests partly on the county and partly on the township. It is the duty of the county to take care of the poor in the county asylum and other charitable institutions in which the poor and indigent are placed, and the duty of the township to care for its poor, who are not in the county asylum. Wayne Township vs. Brown, 205 Ind. 437, 186 N. E. 841 (1933).

Under the system of poor relief as prescribed by statute, it is the duty of the county to loan money to the township for poor relief, and the township must reimburse the county for all loans made. If there is not sufficient money in the general fund of the county for this purpose, then the board of commissioners may borrow money to advance to the townships. Ibid. See page 5, footnote 12.

By the tax laws of 1932 and 1933, the limits of property taxation are established. However, these limits may be exceeded in case of an emergency, and the relief of the poor may be such an emergency. Ibid. See page 3, footnote 7.

(Footnote forwarded)

2. Indiana

II. Financial Powers and Limitations

A. Taxation and Assessments

(1) State

(a) The General Assembly shall provide, by law, for a uniform and equal rate of assessment and taxation; and shall prescribe such regulations as shall secure a just valuation for taxation of all property, both real and personal, excepting such only for municipal, educational, literary, scientific, religious, or charitable purposes, as may specially be exempted by law. 5/

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(Footnote #4 - Continued)

A county board is competent to accept a devise made to a county for the purpose of establishing a home for designated indigent persons, and to act as trustees in executing and carrying out the trust and designs of the testator as indicated and directed by his will. Board of Commissioners of Rush County vs. Dinwiddie, 139 Ind. 128, 37 N. E. 795 (1894).

5. Constitution, Art. X, Sec. 1.

The power of taxation is a sovereign power of the Legislature and is subject only to the limitations specifically imposed by the Constitution. Lutz vs. Arnold, 193 N. E. 840 (1935).

The State may exercise the power of taxation subject only to the limit of the State and Federal Constitutions. Miles vs. Department of Treasury, 199 N. E. 372 (1935).

This section relates to property taxes, and not to excise taxes, and a statute providing for the taxation of "intangibles" including the income from "intangibles", was held an excise and not a property tax. Lutz vs. Arnold, 193 N. E. 840 (1935).

This section applies only to property taxes under a general levy and has no relation to excise taxes. A tax on gross incomes is an excise tax, not a property tax, and is valid under this section although assessing different rates on different persons according to the source of their income. This tax is a tax levied on an individual because of his enjoyment of the privilege of domicile within the State, and the amount of his contribution for this privilege may properly be measured by the extent of his income. Miles vs. Department of Treasury, 199 N. E. 372 (1935).

An inheritance tax law, providing for an increased rate of taxation upon inheritances as the amount of the inheritances increases, does not violate this section, because an inheritance tax is not a tax on property but upon the right to take the property by descent or devise, which is a right owing its existence to the authority of a legislative enactment and so is subject to legislative abrogation or regulation. Crittenberger vs. State Savings and Trust Company, 189 Ind. 411, 127 N. E. 552 (1920).

(Footnote forwarded)



II. Financial Powers and Limitations (Cont'd)

A. Taxation and Assessments (Cont'd)

(1) State (Cont'd)

(b) The general assembly may levy and collect a tax upon income, from whatever source derived, at such rates, in such manner, and with such exemptions as may be prescribed by law. 6/

(2) Counties and Other Local Units

No provision. 7/

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(Footnote #5 - Continued)

A sales tax on gasoline is not a property tax. *Gaffill vs. Bracken*, 195 Ind. 551, 145 N. E. 312 (1924). Nor is a license tax on vehicles a property tax. *Terre Haute vs. Kersey*, 159 Ind. 300, 64 N. E. 469 (1902).

A statute, imposing a tax on motor carriers, was held valid under this section, since it was a license tax and this section refers only to a property tax. *Kelly vs. Finney*, 207 Ind. 557, 194 N. E. 157 (1935). See same case, page 8, footnote 19.

The rule of equality as to excise taxes under this section and the Federal Constitution means only that persons in like circumstances shall be treated alike. The Legislature has full power to tax different classes at different rates. The Constitution of Indiana permits classification for taxation and sets up the same standards for such classification as the Fourteenth Amendment to the Federal Constitution. Excise taxes include all taxes other than property taxes. *Miles vs. Department of Treasury*, 199 N. E. 372 (1935).

A statute providing for an exemption of \$100 in the sale of goods for delinquent taxes, does not violate this section as it in no way changes the basis of assessment fixed for taxation purposes. *Kramer vs. Beebe*, 186 Ind. 349, 115 N. E. 83 (1917).

6. Constitution, Art. X, Sec. 8.

This amendment was submitted twice to a vote of the people in 1926 and 1932 and both times was approved by a majority of those voting upon the amendment, but not by a majority of those voting at the election. Whether or not this amendment is now a part of the Constitution is an open question. See page 10, footnote 24.

Since the court has held that a gross income tax law is valid, even assuming that this amendment is not a part of the Constitution, the question seems academic. *Miles vs. Department of Treasury*, 199 N. E. 372 (1935), see same case, page 2, footnote 5.

7. The power of taxation rests with the State. Cities get their authority to levy taxes from a grant thereof by the State Legislature. *Zoercher vs. Ogler*, 202 Ind. 214, 172 N. E. 186 (1930).

The limitations of taxation of cities and counties are prescribed by statute. *Wayne Township vs. Brown*, 205 Ind. 437, 186 N. E. 841, 846 (1933), see page 1, footnote 4.

4. Indiana

II. Financial Powers and Limitations (Cont'd)

B. Exemptions

The General Assembly shall provide, by law, for a uniform and equal rate of assessment and taxation; and shall prescribe such regulations as shall secure a just valuation for taxation of all property, both real and personal, excepting such only for municipal, educational, literary, scientific, religious, or charitable purposes, as may specially be exempted by law. 8/

C. Borrowing and Use of Credit

(1) State

(a) No law shall authorize any debt to be contracted, on behalf of the State, except in the following cases: To meet casual deficits in the revenue; to pay the interest on the State Debt; to repel invasion, suppress insurrection, or, if hostilities be threatened, provide for the public defense. 9/

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8. Constitution, Art. X, Sec. 1.

The Legislature is without power to exempt from taxation property not included in the excepted classes in this section. Oak Hill Cemetery Company vs. Wells, 38 Ind. App. 479, 78 N. E. 350 (1906); State ex rel. Tieman vs. The City of Indianapolis, 69 Ind. 375 (1879)

A statute exempting property used for cemeteries from taxation was held valid as being property used for a "charitable purpose" under this section. Greenbush Cemetery Association vs. Van Natta, 49 Ind. App. 192, 94 N. E. 899 (1911).

A statute exempting property of fraternities connected with educational institutions does not contravene this section. State ex rel. Daggy vs. Allen, 189 Ind. 369, 127 N. E. 145 (1920).

Lands of a private owner leased and occupied for school purposes are not exempt from taxation, because under this section and the statute exempting property "set apart" for educational purposes, only that property the income of which is used for educational purposes and not property where the income goes to a private owner, is "set apart" for educational purposes. Magel vs. Milligan, 150 Ind. 582, 50 N. E. 564 (1898).

Similarly property leased by a private owner to the Indiana National Guard is not exempt from taxation. Spohn vs. Stark, 197 Ind. 299, 150 N. E. 787 (1926).

9. Constitution, Art. X, Sec. 5.

This section applies only to future debts and a statute authorizing a bond issue to liquidate a debt existing at the time the Constitution was adopted, is valid. Hanley vs. Sims, 175 Ind. 345, 94 N. E. 401 (1911).

A statute authorizing the State to create a debt for the purpose of taking over a fair grounds from the Indiana Board of Agriculture is invalid under this section because such a debt does not come within any of the exceptions of this section. Scott vs. Indiana Board of Agriculture, 192 Ind. 311, 136 N. E. 129 (1922).  
(Footnote forwarded)



II. Financial Powers and Limitations (Cont'd)

C. Borrowing and Use of Credit (Cont'd)

(1) State (Cont'd)

(b) . . . nor shall the General Assembly ever, on behalf of the State, assume the debts of any county, city, or town, or township; nor of any corporation whatever. 10/

(c) The State shall not be a stockholder in any bank, after the expiration of the present bank charter; nor shall the credit of the State ever be given, or loaned, in aid of any person, association or corporation; nor shall the State hereafter become a stockholder in any corporation or association. 11/

(2) Counties and Other Local Units

No political or municipal corporation in this State shall ever become indebted in any manner or for any purpose to an amount in the aggregate exceeding two per centum on the value of the taxable property within such corporation, to be ascertained by the last assessment for State and county taxes, previous to the incurring of such indebtedness; and all bonds or obligations, in excess of such amount, given by such corporations, shall be void: Provided, That in time of war, foreign invasion, or other great public calamity, on a petition of the majority of the property owners, in number and value, within the limits of such corporation, the public authorities, in their discretion, may incur obligations necessary for the public protection and defense, to such an amount as may be requested in such petition. 12/

(Footnote #9 - Continued)

A "casual deficit" means a deficit not incurred intentionally in order to authorize the creation of a debt, but a deficit incurred unintentionally due to the failure of revenue to cover regular appropriations. The Legislature may anticipate such a deficit and authorize a loan to cover it in case it should arise before the next meeting of the Legislature. *Hovey vs. Foster*, 118 Ind. 502, 21 N. E. 39 (1889).

10. Constitution, Art. X, Sec. 6.

In view of this section, the business and financial affairs of political and municipal corporations, insofar as they relate to indebtedness, must be kept independent of the State, and no indebtedness contracted by such corporations can become an obligation of the State. *Bolivar Township Board of Finance vs. Hawkins*, 191 N. E. 158, 172 (1934).

11. Constitution, Art. XI, Sec. 12.

12. Constitution, Art. XIII, Sec. 1, as amended 1881.

A school township and a civil township, although they may be coextensive as to territory, are separate municipal corporations, (Footnote forwarded)

II. Financial Powers and Limitations (Cont'd)

D. Other Income

All the revenues derived from the sale of any of the public works belonging to the State, and from the net annual income thereof, and any surplus that may, at any time, remain in the Treasury, derived from taxation for general State purposes, after the payment of the ordinary expenses of the government, and of the interest on bonds of the State, other than Bank bonds, shall be annually applied, under the direction of the General Assembly, to the payment of the principal of the Public Debt. 13/

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(Footnote #12 - Continued)

and so each of them may become indebted up to two per cent of the taxable value of the property therein. *Follett vs. Sheldon*, 195 Ind. 510, 144 N. E. 867 (1924).

A statute authorizing municipalities, under certain conditions, to acquire water-works plants, to be paid for by bonds payable solely from the income and revenue of the plant, does not violate this section, because such bonds do not create a "debt" within the meaning of this section. *Fox vs. Bicknell*, 193 Ind. 537, 141 N. E. 222 (1923).

Also a contract by a town to purchase engines, pumps, etc., for its light and water plant and to pledge the net revenues of the whole plant for payment, did not create an "indebtedness" within the meaning of this section, because the general credit of the town was not pledged but only the revenues from the light and water plant. *Underwood vs. Fairbanks Morse and Company*, 205 Ind. 316, 185 N. E. 118 (1933).

Bonds, the proceeds of which were used to construct gravel roads, and which were payable out of a special fund raised by special assessments on the property benefited, and which were not a general obligation of the county, (did) not constitute a "debt" within the meaning of this section. *Board of Commissioners of Monroe County vs. Harrell*, 147 Ind. 500, 46 N. E. 124 (1897).

Bonds, the proceeds of which were used to construct city streets, and which were payable out of a special fund raised by special assessments on the abutting property, and which were not a general obligation of the city, (did) not constitute a "debt" within the meaning of this section. *Quill vs. City of Indianapolis*, 124 Ind. 292, 23 N. E. 788 (1890).

13. Constitution, Art. X, Sec. 2.

Other sections of the Constitution provide for a Common School Fund. Certain funds are to be applied to it such as escheats to the State, fines, and proceeds of the sale of public lands. The fund is to be kept as a trust and the income is to be appropriated to the support of the common schools. Constitution, Art. VIII, Sec. 2, 3, 4, 5 and 6. See page 1, footnote 4.



II. Financial Powers and Limitations (Cont'd)

E. Appropriations and Expenditures

(1) State

No money shall be drawn from the Treasury, but in pursuance of appropriations made by law. 14/

(2) Counties and Other Local Units

No provision.

III. Provisions Affecting Legislation

A. Regular Sessions of Legislature

The sessions of the General Assembly shall be held biennially at the capital of the State, commencing on the Thursday next after the first Monday of January, in the year one thousand eight hundred and fifty three, and on the same day of every second year thereafter, unless a different day or place shall have been appointed by law. . . 15/

B. Special Sessions of Legislature

. . . But if, in the opinion of the Governor, the public welfare shall require it, he may, at any time by proclamation, call a special session. 16/

C. Powers of Initiative and Referendum

No provision.

D. Legislative Enactment

(1) Every bill shall be read, by sections, on three several days, in each House; unless, in case of emergency, two-thirds of the House where such bill may be depending (pending), shall, by a vote of yeas and nays, deem it expedient to dispense with this rule; but the reading of a bill, by sections, on its final passage, shall, in no case, be dispensed

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14. Constitution, Art. X, Sec. 3.

15. Constitution, Art. IV, Sec. 9.

16. Constitution, Art. IV, Sec. 9.

\*The power of the General Assembly to legislate on any subject when convened in special session is not limited by the Constitution." Woessner vs. Bullock, 176 Ind. 166, 93 N. E. 1057 (1911).

8. Indiana

III. Provisions Affecting Legislation (Cont'd)

D. Legislative Enactment (Cont'd)

with; and the vote on the passage of every bill or joint resolution shall be taken by yeas and nays. 17/

(2) Every act shall embrace but one subject and matters properly connected therewith; which subject shall be expressed in the title. But if any subject shall be embraced in an act, which shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be expressed in the title. 18/

(3) The General Assembly shall not pass local or special laws, in any of the following enumerated cases, that is to say: . . . (12). For the assessment and collection of taxes for State, county, township, or road purposes; . . . 19/

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17. Constitution, Art. IV, Sec. 18.

18. Constitution, Art. IV, Sec. 19.

If the title of an act covers a general subject, germane matters may be included in the act, although not specifically mentioned in the title. *Wayne Township vs. Brown*, 205 Ind. 437, 186 N. E. 841 (1933).

This section was adopted for the purpose of preventing fraud by the inclusion of provisions in bills of which the title gave no intimation. It should be given a liberal construction and not one which would embarrass legislation by a strictness unnecessary to the accomplishment of this beneficial purpose. *Ule vs. State*, 208 Ind. 255, 194 N. E. 140 (1935).

19. Constitution, Art. IV, Sec. 22.

A general law on subjects specified in this section may be based on classification according to population without thereby becoming a "local" or "special" law. *Wayne Township vs. Brown*, 205 Ind. 437, 186 N. E. 841 (1933).

A revenue statute, which applied a tax to motor carriers used to transport goods for hire, and not to other motor vehicles, was held not to be a local or special law, because it operated uniformly upon all persons throughout the State who fell within this classification. *Kelly vs. Finney*, 207 Ind. 557, 194 N. E. 157 (1935). See same case, page 2, footnote 5.

The fact that, at the time of the enactment of a statute applicable only to counties having a population between 250,000 and 400,000 and having three or more cities each with a population of 50,000 or more, there was only one such county, does not render the statute unconstitutional as a local or special law. *Groves vs. Board of Commissioners of Lake County*, 199 N. E. 137 (1936).



III. Provisions Affecting Legislation (Cont'd)

D. Legislative Enactment (Cont'd)

(4) In all the cases enumerated in the preceding Section, and in all other cases where a general law can be made applicable, all laws shall be general, and of uniform operation throughout the State. 20/

(5) No act shall take effect, until the same shall have been published and circulated in the several counties of this State, by authority, except in case of emergency; which emergency shall be declared in the preamble, or in the body, of the law. 21/

(6) . . . No session of the General Assembly, except the first under this Constitution, shall extend beyond the term of sixty-one days, nor any special session beyond the term of forty days. 22/

(7) Every bill which shall have passed the General Assembly, shall be presented to the Governor; if he approve, he shall sign it; but if not, he shall return it, with his objections, to the House in which it shall have originated; which House shall . . . proceed to reconsider the bill. If, after such reconsideration, a majority of all the members elected to that House shall agree to pass the bill, it shall be sent, with the Governor's objections, to the other House, by which it shall likewise be reconsidered; and, if approved by a majority of all the members elected to that House, it shall be a law. If any bill shall not be returned by the Governor within three days, Sundays excepted, after it shall have been presented to him, it shall be a law, without his signature, unless the general adjournment shall prevent its return; in which case it shall be a law, unless the Governor, within five days next after such adjournment, shall file such bill, with his objections thereto, in the office of the Secretary of State; who shall lay the same before the General Assembly at its next session, in like manner as if it had been returned by the Governor. But no bill shall be presented to the Governor, within two days next previous to the final adjournment of the General Assembly. 23/

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20. Constitution, Art. IV, Sec. 23.

See page 8, footnote 19.

21. Constitution, Art. IV, Sec. 28.

Under this section the Legislature has power to fix the time when an act shall take effect. State ex rel. Driebelbliss vs. Berghoff, 158 Ind. 349, 63 N. E. 717 (1902).

22. Constitution, Art. IV, Sec. 29.

23. Constitution, Art. V, Sec. 14.

A statute duly authenticated by the signatures of the presiding officers of the two houses of the Legislature, will be presumed to have been duly passed, even though the Journal shows that it was passed and sent to the Governor within two days of the adjournment of the session. Western Union Telegraph Company vs. Taggart, 141 Ind. 281, 40 N. E. 1051 (1895).

10. Indiana

IV. Constitutional Amendment or Revision

A. By Proposal of Legislature or People

(1) Any amendment or amendments to this Constitution, may be proposed in either branch of the General Assembly; and, if the same shall be agreed to by a majority of the members elected to each of the two Houses, such proposed amendment or amendments shall, with the yeas and nays thereon, be entered on their journals, and referred to the General Assembly to be chosen at the next general election; and if, in the General Assembly so next chosen, such proposed amendment or amendments shall be agreed to by a majority of all the members elected to each House, then it shall be the duty of the General Assembly to submit such amendment or amendments to the electors of the State; and if a majority of said electors shall ratify the same, such amendment or amendments shall become a part of this Constitution. 24/

(2) If two or more amendments shall be submitted at the same time, they shall be submitted in such manner, that the electors shall vote for or against each of such amendments separately; and while an amendment or amendments, which shall have been agreed upon by

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24. Constitution, Art. XVI, Sec. 1.

The first case construing the phrase "majority of said electors" held that it meant a majority of all the qualified voters. *State vs. Swift*, 69 Ind. 505 (1880).

Two later cases held that the phrase "majority of said electors" meant a majority of all the votes cast at the election. *In re Denny*, 156 Ind. 104, 59 N. E. 359 (1901); *in re Boswell*, 179 Ind. 292, 100 N. E. 833 (1913).

In 1935 the court once more considered the meaning of the phrase "majority of said electors" and expressly overruled these earlier cases and held that it meant a majority of those voting upon the amendment. The court criticized the former decisions principally upon the ground that their effect was to have one rule if the amendment were submitted at a special election, and another rule if it were submitted at a general election. *In re Todd*, 193 N. E. 865 (1935).

This case makes no mention of what effect the decision will have on amendments other than the one directly involved. There have been four proposed amendments which were submitted at general elections and approved by a majority of those voting upon the amendment, but not by a majority of the people voting at the election. Whether or not these four amendments are now a part of the Indiana Constitution is an open question. For a discussion of this question, see 10 *Indiana Law Journal* 510.



IV. Constitutional Amendment or Revision (Cont'd)

A. By Proposal of Legislature or People (Cont'd)

one General Assembly, shall be awaiting the action of a succeeding General Assembly, or of the electors, no additional amendment or amendments shall be proposed. 25/

B. By Constitutional Convention

No provision. 26/

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25. Constitution, Art. XVI, Sec. 2.

26. In the absence of a specific constitutional provision, the Legislature cannot call a Constitutional Convention without first submitting the proposition to a vote of the people. Bennett vs. Jackson, 186 Ind. 533, 116 N. E. 921 (1917).

