

WORKS PROGRESS ADMINISTRATION

HARRY L. HOPKINS, ADMINISTRATOR

CORRINGTON GILL, ASSISTANT ADMINISTRATOR

HOWARD B. MYERS, DIRECTOR  
DIVISION OF SOCIAL RESEARCH

ANALYSIS OF CONSTITUTIONAL PROVISIONS  
AFFECTING PUBLIC WELFARE IN THE STATE OF  
NEW YORK

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PREPARED BY  
ROBERT C. LOWE AND HELEN R. SHERFEY  
LEGAL RESEARCH SECTION

UNDER THE SUPERVISION OF  
A. ROSS ECKLER, COORDINATOR OF SPECIAL INQUIRIES  
DIVISION OF SOCIAL RESEARCH

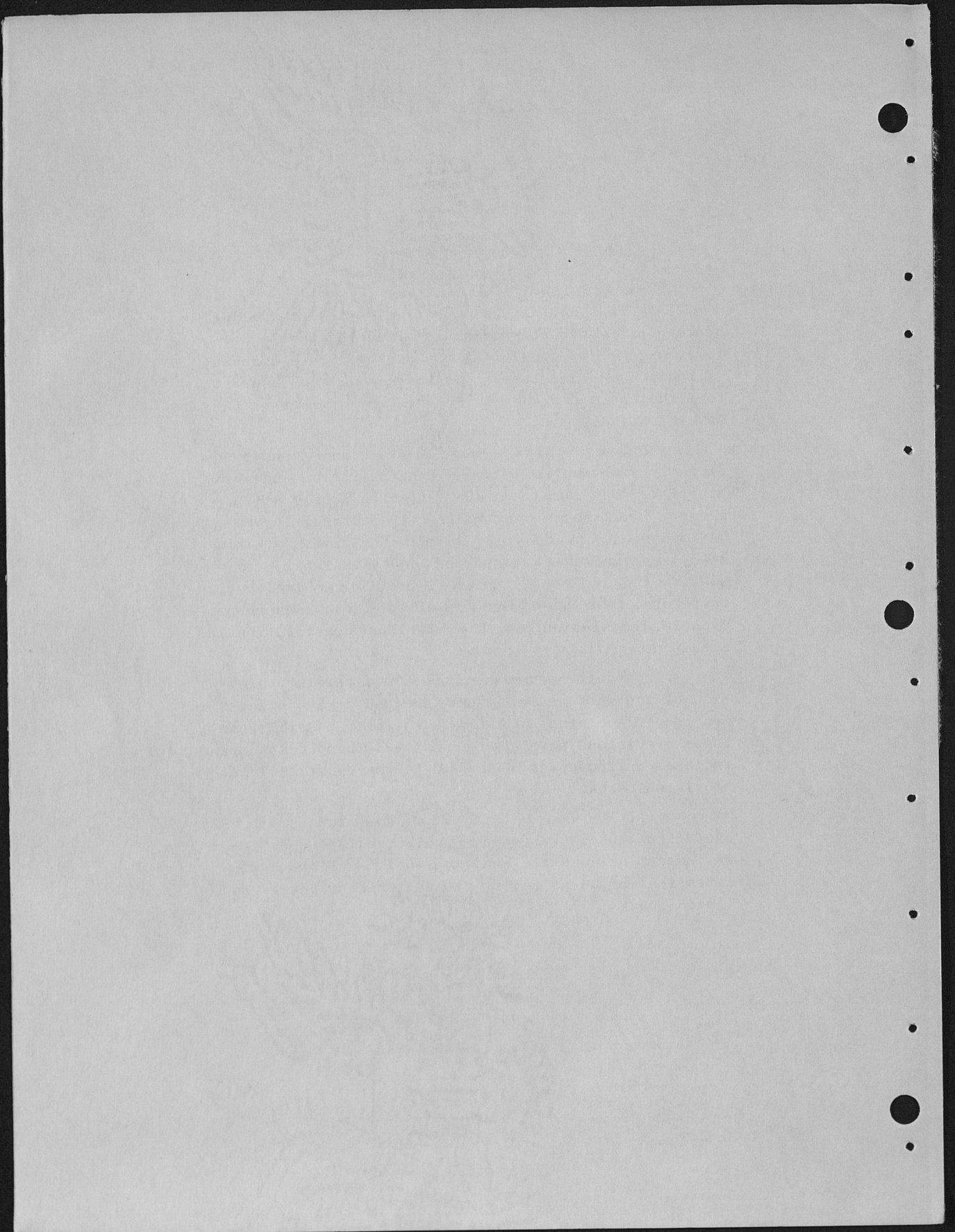
## PREFACE

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.

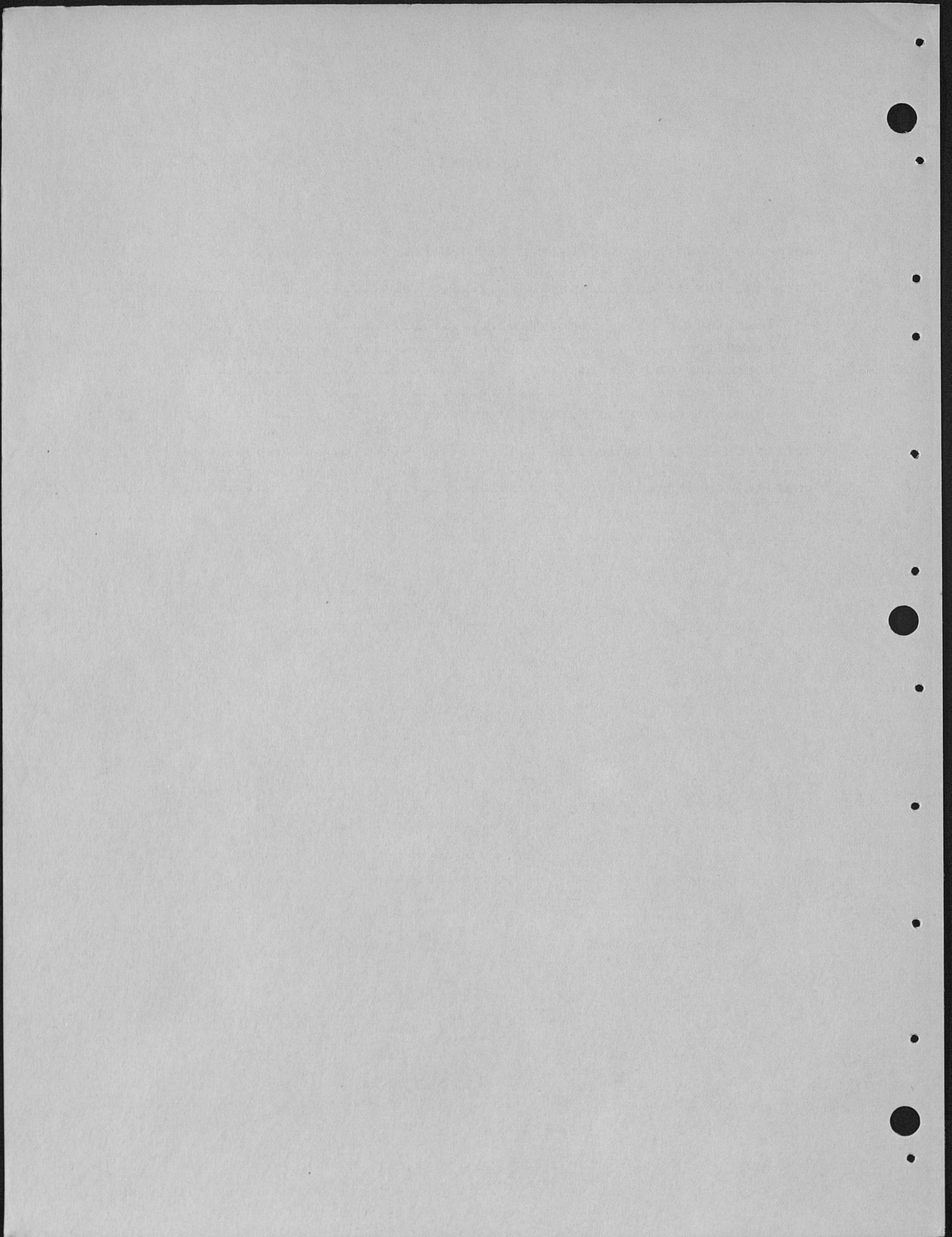
An attempt has been made, by a careful selection of the most recent cases decided by the highest courts of the States, to indicate wherever possible how these provisions have been construed. These cases are included in footnotes appended to the constitutional provisions shown.

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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New York

ANALYSIS OF CONSTITUTIONAL PROVISIONS AFFECTING  
PUBLIC WELFARE IN THE STATE OF NEW YORK<sup>1</sup>

I. Incidence of Responsibility for Welfare Program

A. The legislature shall provide for a state board of social welfare, which shall visit and inspect all institutions, whether state, county, municipal, incorporated or not incorporated, which are of a charitable, eleemosynary, correctional or reformatory character, excepting state institutions for the education and support of the blind and deaf and dumb, and excepting also such institutions as are hereby made subject to the visitation and inspection of either of the authorities hereinafter mentioned, but including all reformatories for juveniles. The head of the department of mental hygiene shall visit and inspect all institutions, either public or private, used for the care and treatment of the insane, epileptics, idiots, feeble-minded or mental defective. There shall be a state commission of correction, of which the head of the department of correction shall be the chairman, which shall visit and inspect all institutions used for the detention of sane adults charged with or convicted of crime, or detained as witnesses or debtors.<sup>2</sup>

B. . . . The legislature may confer upon the state board of social welfare any additional powers that are not inconsistent with other provisions of the constitution.<sup>3</sup>

C. Nothing in this constitution contained shall prevent the legislature from making such provision for the education and support of the blind, the deaf and dumb, and juvenile delinquents, as to it may seem proper; or prevent any county, city, town or village from providing for the care, support, maintenance and secular education of inmates of orphan asylums, homes for dependent children or correctional institutions, whether

<sup>1</sup>Constitution (1894), with all amendments to January 1, 1937.

Amendments approved by a vote of the people become effective on the January first following such approval. Constitution, Art. XIV, Sec. 1.

<sup>2</sup>Constitution, Art. VIII, Sec. 11, as amended 1931.

The Supreme Court has no jurisdiction to review regulations made for institutions within this section, by the administrative officers charged by this section with the supervision thereof. In re Thaw, 158 App. Div. 571, 143 N. Y. S. 854 (1913).

The Supreme Court will not compel a transfer of an inmate from one institution, provided for under this section, to another on grounds of mistreatment, when no appeal has been made to the administrative body charged by this section with the administration thereof. In re Thaw, 138 App. Div. 91, 122 N. Y. S. 970 (1910).

<sup>3</sup>Constitution, Art. VIII, Sec. 15, as amended 1931.

## I. Incidence of Responsibility for Welfare Program—Continued

under public or private control. Payments by counties, cities, towns and villages to charitable, eleemosynary, correctional and reformatory institutions, wholly or partly under private control, for care, support and maintenance, may be authorized, but shall not be required by the legislature. No such payments shall be made for any inmate of such institutions who is not received and retained therein pursuant to rules established by the state board of social welfare. Such rules shall be subject to the control of the legislature by general laws.<sup>4</sup>

D. No county, city, town or village shall hereafter give any money or property, or loan its money or credit to or in aid of any individual, association or corporation . . . . This section shall not prevent such county, city, town or village from making such provision for the aid or support of its poor as may be authorized by law . . . .<sup>5</sup>

<sup>4</sup>Constitution, Art. VIII, Sec. 14, as amended 1931.

"It is thus apparent that the object and purpose of the (this) provision was that there should be some means provided for determining whether the inmates of these asylums were properly a public charge. This duty the Constitution delegated to the State board of charities (now Social Welfare)." In re New York Juvenile Asylum, 172 N. Y. 50, 64 N. E. 764 (1902).

The provision of this section that no payment shall be made to these institutions for any inmate who is not received therein pursuant to the rules established by the State Board of Social Welfare, clearly contemplates that all such payments shall be based on the number of indigent inmates in the institution to which payments are made. Consequently, a grant of real property by a city, to a privately controlled hospital, not based on the number of patients, where the property itself was not subject to the control of the Board of Social Welfare, could not be sustained under this section. Mount Sinai Hospital vs. Hyman, 92 App. Div. 270, 87 N. Y. S. 276 (1904).

<sup>5</sup>Constitution, Art. VIII, Sec. 10, as amended 1927.

"The general scheme of the constitutional provisions referred to (this section and article VIII, Sec. 9, see page 3) seems to be that the general funds of the State shall not be given to local charitable institutions, except in aid of the blind, the deaf and dumb, and juvenile delinquents, and that the poor are to be provided for in their localities; counties, cities, towns and villages being allowed to make any provision for the support of their poor which may be authorized by law. Carrying out the designated charities through the instrumentality of private corporations is not prohibited by the Constitution, but the giving away of the money either of the State or of its counties or other local divisions to individuals or private corporations, except for the designated purposes for which each is authorized to provide, is forbidden." A statute, requiring New York City to pay a certain amount yearly to a private orphanage, organized to care for orphans and friendless children, was held unconstitutional because such children were one class of the poor. The Sheppard's Fold vs. Mayor, etc. of New York, 98 N. Y. 137, 145 (1884).

A civil service law, which provided that veterans of the Civil War who had been employed more than ten years by any governmental unit of the State, might be given a pension on retirement after the age of 70, was held not to contravene this section, since the pension was not a gratuity but a compensation for faithful service. Wright vs. Craig, 202 App. Div. 684, 195 N. Y. S. 391 (1922).

Under this section it was held unconstitutional to grant a pension to a widow of a deceased policeman because the law setting up the pension fund was passed subsequent to the policeman's death, and so this would be the granting of a gratuity to an individual. Glaeser vs. City of Buffalo, 115 Misc. Rep. 88, 187 N. Y. S. 337 (1921).

However, the granting of a pension to a widow of a policeman, killed in the line of duty was held valid. The Constitution was not considered in arriving at the decision. Glaeser vs. City of Buffalo, 115 Misc. Rep. 91, 187 N. Y. S. (1921).



## I. Incidence of Responsibility for Welfare Program—Continued

E. Neither the credit nor the money of the State shall be given or loaned to or in aid of any association, corporation or private undertaking. This section shall not, however, prevent the Legislature from making such provision for the education and support of the blind, the deaf and dumb, and juvenile delinquents, as to it may seem proper. Nor shall it apply to any fund or property now held, or which may hereafter be held, by the State for educational purposes.<sup>6</sup>

F. No person shall . . . be deprived of life, liberty or property without due process of law; . . .<sup>7</sup>

G. . . . the Legislature may regulate and fix the wages or salaries, the hours of work or labor, and make provision for the protection, welfare and safety of persons employed by the State or by any

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Also, the granting of a pension to a retired policeman, under a charter provision granting pensions to all policemen of certain rank who had served ten years or more on the date the provision became effective, was held valid as being a reward for faithful service and not a gratuity. Carr vs. Roesch, 231 App. Div. 19, 246 N. Y. S. 628 (1930), affirmed 255 N. Y. 614, 175 N. E. 336 (1931).

<sup>6</sup>Constitution, Art. VIII, Sec. 9.

A statute authorizing a debt for a soldier's bonus was held to violate this section. People vs. Westchester National Bank of Peekskill, 231 N. Y. 465, 132 N. E. 241 (1921), see page 7, par. (d).

Under this section the Legislature may authorize the payment of a "moral obligation", and the question of what constitutes a moral obligation is within the discretion of the Legislature to determine; but it may not assert this discretionary power as a cloak for the grant of a "gratuity or charity". A claim for the cost of building a bridge used by the public at large was held to be a moral obligation of the State. Ausable Chasm Company vs. State, 228 N. Y. 326, 194 N. E. 843 (1935).

<sup>7</sup>Constitution, Art. I, Sec. 6.

A New York Unemployment Insurance Statute, taxing employers of four or more persons, to provide an unemployment insurance fund, was held constitutional under this section and the Fourteenth Amendment to the Federal Constitution. The Court said: "The courts can take judicial notice of the fact that unemployment for the last five or six years has been a very acute problem for state and federal government . . . . When such a matter becomes general and affects the whole body politic, a situation has arisen which requires the exercise of the reserve power of the state . . . . Unequal protection of the laws and unfair classification are charged against this act because employers who have had no unemployment are obliged to contribute to a fund to help those who have lost positions in failing or bankrupt businesses; . . . . We do not think this narrow view is required by any constitutional provision . . . . The peril to the state arises from unemployment generally, not from any particular class of workers. So likewise, employers generally are not so unrelated to the unemployment problem as to make a moderate tax upon their pay rolls unreasonable or arbitrary . . . . Whether we consider such legislation as we have here a tax measure or an exercise of the police power seems to me to be immaterial . . . . Here we are dealing simply with the power of the Legislature to meet a growing danger and peril to a large number of our fellow citizens, and we can find nothing in the act itself which is so arbitrary or unreasonable as to show that it deprives any employer of his property without due process of law or denies to him the equal protection of the laws." W. H. H. Chamberlin vs. Andrews, 271 N. Y. 1, 2 N. E. (2d) 22 (1936).

On November 23, 1936, this case was affirmed by a four to four decision of the United States Supreme Court, without a written opinion. 57 Supreme Court Rep. 122 (1936).

## I. Incidence of Responsibility for Welfare Program—Continued

county, city, town, village or other civil division of the State, or by any contractor or subcontractor performing work, labor or services for the State, or for any county, city, town, village or other civil division thereof.<sup>8</sup>

## II. Financial Powers and Limitations

### A. Taxation and Assessments

#### (1) State

No provision.<sup>9</sup>

#### (2) Counties and Other Local Units

(a) . . . The amount hereafter to be raised by tax for county or city purposes, in any county containing a city of over one hundred thousand inhabitants, or in any such city in this state, in addition to providing for the principal and interest of the county or city debt, shall not in the aggregate exceed in any one year two per centum of the assessed valuation of the real and personal estate of such county or city, to be ascertained as prescribed in this section in respect to county or city debt.<sup>10</sup>

(b) It shall be the duty of the Legislature to provide for the organization of cities and incorporated villages, and to restrict their power of taxation, assessment, borrowing money, contracting debts, and loaning their credit, so as to prevent abuses in assessments and in contracting debt by such municipal corporations . . .<sup>11</sup>

<sup>8</sup>Constitution, Art. XII, Sec. 1.

A statute requiring an eight hour day for employees of contractors on public works was held valid under this section. *People vs. Metz*, 193 N. Y. 148, 85 N. E. 1070 (1908). Also a statute requiring that contractors on public works pay the rate of wages prevailing in the vicinity was held valid under this section. *Cambell vs. City of New York*, 244 N. Y. 317, 155 N. E. 628 (1927).

<sup>9</sup>The power of taxation is vested in the absolute legitimate discretion of the Legislature. It alone can declare the property which shall be subject to or exempt from taxation. *Elmhurst Fire Company vs. City of New York*, 213 N. Y. 87, 106 N. E. 290 (1914). See page 5, footnote 1E.

<sup>10</sup>Constitution, Art. VIII, Sec. 10, as amended 1927.

Dictum of the Appellate Division states that, the limit on both taxation and indebtedness might be relaxed by a uniform horizontal increase in assessments. The court said: "Overvaluation of all properties in a city, provided the overvaluation is uniform, works no inequity among the property owners, and its only harm, if harm it be, is to increase the limit to which the city can issue its bonds". *Cahill vs. Goes*, 242 App. Div. 423, 275 N. Y. S. 55 (1934). See page 8, par. (a).

"City purposes" here, as in other parts of this section, include governmental or State purposes as well as purely corporate or municipal purposes, and so a tax for school purposes must come within the two percent limit. *Board of Education vs. Van Zandt*, 119 Misc. Rep. 124, affirmed 234 N. Y. 644, 138 N. E. 481 (1923).

<sup>11</sup>Constitution, Art. XII, Sec. 1, as amended 1905.

This section was intended to operate upon the "conscience and judgment" of the Legislature in passing laws, and it does not set forth any rule by which a court can

## II. Financial Powers and Limitations—Continued

B. Exemptions<sup>12</sup>

The Legislature shall not pass a private or local bill in any of the following cases: . . . .

Granting to any person, association, firm or corporation, an exemption from taxation on real or personal property . . . .

The Legislature shall pass general laws providing for the cases enumerated in this section . . . .<sup>13</sup>

## C. Borrowing and Use of Credit

## (1) State

(a) The state may contract debts in anticipation of the receipt of taxes and revenues, direct or indirect, for the purposes and within the amounts of appropriations theretofore made; bonds or other obligations for the moneys so borrowed shall be issued as may be provided by law, and shall with the interest thereon be paid from such taxes and revenues within one year from the date of issue.<sup>14</sup>

(b) In addition to the above limited power to contract debts, the state may contract debts to repel invasion, suppress insurrection or defend the state in war, or to suppress forest fires; but the

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adjudge an act of the Legislature to be void. *Bank of Rome vs. Village of Rome*, 18 N. Y. 38 (1858); *New York Steam Corporation vs. City of New York*, 268 N. Y. 137, 197 N. E. 172 (1935).

A statute, permitting cities of more than 1,000,000 inhabitants (New York City) to impose temporarily any tax which the Legislature could impose, the revenue to be paid into a special fund for unemployment relief, being the first time cities had been authorized to levy an excise or indirect tax, was held valid under this section. *New York Steam Corporation vs. City of New York*, 268 N. Y. 137, 197 N. E. 172 (1935).

<sup>12</sup>The power of taxation is vested in the Legislature and it can determine what property shall be subject to or exempt from taxation. *Elmhurst Fire Company vs. City of New York*, 213 N. Y. 87, 106 N. E. 920 (1914), see page 4, footnote 9.

Property of church board of foreign missions, hired out to persons unconnected with missionary undertaking, from which income was received, was held not exempt from taxation, within the provisions of a statute exempting property used exclusively for religious, charitable, benevolent, and missionary purposes. *Board of Foreign Missions of Methodist Episcopal Church vs. Board of Assessors of City of Yonkers*, 244 N. Y. 42, 154 N. E. 816 (1926).

Property of a Masonic Corporation used for recreation purposes was held not exempt from taxation. *People ex rel. Masonic Hall Association of Saratoga Springs vs. White*, 244 N. Y. 564, 155 N. E. 898 (1927).

Building of B'Nai B'Rith Club, used for rental purposes and profit, was held not exempt from taxation under a statute exempting realty of a corporation used exclusively for benevolent, scientific or literary purposes. *B'Nai B'Rith Club vs. City of New York*, 270 N. Y. 12, 199 N. E. 781 (1936).

A bequest to a cemetery association for perpetual care of a burial lot and graves, was held not exempt from the transfer tax under a statute granting exemption to charitable corporations. *In re Cohen's Estate*, 270 N. Y. 383, 1 N. E. (2d) 474 (1936).

<sup>13</sup>Constitution, Art. III, Sec. 18.

<sup>14</sup>Constitution, Art. VII, Sec. 2, as amended 1920.

## II. Financial Powers and Limitations—Continued

## C. Borrowing and Use of Credit—Continued

## (1) State—Continued

money arising from the contracting of such debts shall be applied for the purpose for which it was raised, or to repay such debts, and for no other purpose whatever.<sup>15</sup>

(c) Except the debts specified in sections two and three of this article, no debt shall be hereafter contracted by or on behalf of this state, unless such debt shall be authorized by law, for some single work or object, to be distinctly specified therein . . . . No such law shall take effect until it shall, at a general election, have been submitted to the people, and have received a majority of all votes cast for and against it at such election nor shall it be submitted to be voted on within three months after its passage nor at any general election when any other law, or any bill shall be submitted to be voted for or against. The legislature may, at any time after the approval of such law by the people, if no debt shall have been contracted in pursuance thereof, repeal the same; and may at any time, by law, forbid the contracting of any further debt or liability under such law.

Except the debts specified in sections two and three of this article, all debts contracted by the state after January first, nineteen hundred and twenty, pursuant to an authorization therefor, heretofore or hereafter made and each portion of any such debt from time to time so contracted irrespective of the terms of such authorization, shall be paid in equal annual installments, the first of which shall be payable not more than one year, and the last of which shall be payable not more than fifty years, after such debt or portion thereof shall have been contracted. No such debt hereafter authorized shall be contracted for a period longer than that of the probable life of the work or object for which the debt is to be contracted, to be determined by the general laws, which determination shall be conclusive.

. . . The money arising from any loan creating such debt or liability shall be applied to the work or object specified in the act authorizing such debt or liability, or for the payment of such debt or liability, and for no other purpose whatever.<sup>16</sup>

<sup>15</sup> Constitution, Art. VII, Sec. 3, as amended 1929.

<sup>16</sup> Constitution, Art. VII, Sec. 4, as amended 1920.

For "sections two and three of this article", see the two paragraphs in the text immediately preceding.

Where a statute is of such nature as to fall within this section so that a vote of the people is necessary for its passage, it cannot later be amended by the Legislature alone, for to allow that would nullify the provisions of this section in regard to submission to a vote of the people. *Halfmoon Bridge Company vs. Canal Board*, 91 Misc. Rep. 600, 155 N. Y. S. 602 (1915).

## II. Financial Powers and Limitations—Continued

## C. Borrowing and Use of Credit—Continued

## (1) State—Continued

(d) The legislature may authorize by law the creation of a debt or debts of the state to provide for the payment of bonuses to honorably discharged soldiers, sailors and marines of the World War . . . . The aggregate of the debts authorized by this section shall not exceed forty-five million dollars. The provisions of this article, not inconsistent with this section, relating to the issuance of bonds for a debt or debts of the state and the maturity and payment thereof, shall apply to a debt or debts created pursuant to this section; except that the law authorizing the contracting of such debt or debts shall take effect without submission to the people pursuant to section four of this article (par. (c) immediately preceding) <sup>17</sup>

(e) The legislature may authorize by law the creation of a debt or debts of the state not exceeding in the aggregate three hundred million dollars, to provide moneys for the elimination, under state supervision, of railroad crossing at grade (grades) within the state, at the expense of the state, railroad companies, counties and cities, as hereinafter provided . . . . The provisions of this article, not inconsistent with this section, relating to the issuance of bonds for a debt or debts of the state and the maturity and payment thereof, shall apply to a state debt or debts created pursuant to this section; except that the law authorizing the contracting of such debt or debts shall take effect without submission to the people pursuant to section four of this article (page 6, par. (c)). The aggregate amount of a state debt or debts which may be created pursuant to this section, as hereby amended, shall not exceed the difference between the amount of the debt or debts heretofore created or authorized by law, under the former provisions of this section, and the sum of three hundred million dollars; . . . .<sup>18</sup>

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However, an act which has been submitted to the people under this section may be amended by the Legislature alone as to matters not affecting the indebtedness authorized. Where a Barge Canal Act was approved by the people it was competent for the Legislature to amend it by eliminating one section of a canal, because the purpose of submitting the act to the people was to authorize an indebtedness for canal purposes, and this amendment would not affect the indebtedness or the main purpose to which it was to be applied. *Kibbee vs. Lyons*, 202 App. Div. 562, 195 N. Y. S. 563, affirmed 235 N. Y. 546, 139 N. E. 729 (1923).

<sup>17</sup>Constitution, Art. VII, Sec. 13, adopted 1923.

For decision (*People vs. Westchester National Bank*, 231 N. Y. 465, 132 N. E. 729 (1921)) holding soldiers' bonus act unconstitutional prior to the adoption of this section see: Page 3, footnote 6.

This section of itself created no rights but is permissive only. In *re Craig*, 210 App. Div. 732, 206 N. Y. S. 403 (1924).

<sup>18</sup>Constitution, Art. VII, Sec. 14, adopted 1925.

## II. Financial Powers and Limitations—Continued

## C. Borrowing and Use of Credit—Continued

## (1) State—Continued

(f) In addition to any other debt, authorized by or pursuant to this article, the legislature, in each of the ten calendar years following the adoption of this section, may authorize by law the creation of a debt or debts, not exceeding in the aggregate in any such year the sum of ten million dollars, to provide moneys for the acquisition by the state of real property and for the construction of buildings, works and improvements for the state, or for any one or more of such objects. The provisions of this article, not inconsistent with this section, relating to the issuance of bonds for a debt or debts of the state and the maturity and payment thereof, shall apply to a state debt or debts created pursuant to this section; except that the law authorizing the contracting of such debt or debts shall take effect without submission to the people pursuant to section four of this article (page 6, par. (c)).<sup>19</sup>

(g) The credit of the State shall not in any manner be given or loaned to or in aid of any individual, association or corporation.<sup>20</sup>

## (2) Counties and Other Local Units

(a) . . . No county or city shall be allowed to become indebted for any purpose or in any manner to an amount which including existing indebtedness, shall exceed ten percent of the assessed valuation of the real estate of such county or city subject to taxation, as it appeared by the assessment rolls of said county or city on the last assessment for state or county taxes prior to the incurring of such indebtedness; and all indebtedness in excess of such limitation, except such as now many (may) exist, shall be absolutely void except as herein otherwise provided. No county or city whose present indebtedness exceeds ten percent of the assessed valuation of its real estate subject to taxation, shall be allowed to become indebted in any further amount until such indebtedness shall be reduced within such limit. This section shall not be construed to prevent the issuing of certificates of indebtedness or revenue bonds issued in anticipation of the collection of taxes for amounts actually contained or to be contained in the taxes for the year when such certificates or revenue bonds are issued and payable out of such taxes . . . . Whenever the boundaries of any city are the same as those of a county, or when any city shall include within its boundaries more than one county, the power of any county wholly included

<sup>19</sup> Constitution, Art. VII, Sec. 15, adopted 1925.

<sup>20</sup> Constitution, Art. VII, Sec. 1.

See page 1, par. C, page 2, par. D, page 3, par. E, and footnotes 4, 5, and 6.

## II. Financial Powers and Limitations—Continued

### C. Borrowing and Use of Credit—Continued

#### (2) Counties and Other Local Units—Continued

within such city to become indebted shall cease, but the debt of the county, heretofore existing, shall not, for the purposes of this section, be reckoned as part of the city debt . . . .<sup>21</sup>

(b) . . . . This section shall not be construed . . . . to prevent the city of New York from issuing bonds to be redeemed out of the tax levy for the year next succeeding the year of their issue, provided that the amount of such bonds which may be issued in any one year in excess of the limitations herein contained shall not exceed one-tenth of one per centum of the assessed valuation of the real estate of said city subject to taxation. All certificates of indebtedness or revenue bonds issued in anticipation of the collection of taxes, which are not retired within five years after their date of issue, and any debt hereafter incurred by any portion or part of a city, if there shall be any such debt, shall be included in ascertaining the power of the city to become otherwise indebted; except that debts hereafter or heretofore incurred by any city to provide for the supply of water, shall not be so included; and except that debts not exceeding in the aggregate the sum of ten million

<sup>21</sup>Constitution, Art. VIII, Sec. 10, as amended 1927.

The constitutional ten percent limitation on indebtedness applies only to cities and counties and does not include towns. The debt limitations of towns are provided for by statute. *Meyer and Meyer Corporation vs. Town of Amherst*, 217 App. Div. 213, 216 N. Y. S. 529 (1928).

Nor does this constitutional limitation apply to villages. *People ex rel. Haight vs. Brown*, 169 App. Div. 695, 155 N. Y. S. 564, affirmed 216 N. Y. 674, 110 N. E. 171 (1915).

When villages and towns are merged to form a city, the legislature may make the city liable for the combined debts of villages and towns comprising it, even though such combined debts exceed the constitutional limit. In such a case, the constitutional provision will prevent additional borrowing until the total debt is brought below the ten percent limit. *Ibid.*

"The debt referred to in the Constitution is one which mortgages the future, and which must be paid by taxation in future years. It does not relate to obligations incurred in the ordinary way, which are to be paid by the current tax levy, or presently charged upon the property owners benefited." So where the cost of a public improvement was financed by bonds, which were payable 25 percent out of the current tax levy and 75 percent out of special assessments against the property benefited, such bonds did not constitute a "debt" to be computed within the ten percent limitation. *O'Reilly vs. City of Kingston*, 175 App. Div. 207, 161 N. Y. S. 632 (1916).

An act creating the Buffalo Sewer Authority and authorizing the issuance of bonds and the creation of other obligations to construct sewers and a sewage disposal plant and specifying that the bonds and obligations were payable solely out of the revenues of the Authority held constitutional. No "debts" were created within the meaning of the Constitution as the city assumed no obligation. *Robertson vs. Zimmermann*, 268 N. Y. 52, 196 N. E. 740 (1935).

An act, insofar as it created in the County of Albany, a district for the furnishing of light, heat and power and providing that money was to be raised by taxation on property of those deemed to be benefited within the district, was held constitutional. The debt limitations of this section were held not to apply since the obligations of the district were payable solely out of assessments for benefits. *Gaynor vs. Marohn*, 268 N. Y. 417, 198 N. E. 13 (1935). See also, *Longken vs. City of Long Beach*, 268 N. Y. 532, 198 N. E. 390 (1935).

## II. Financial Powers and Limitations—Continued

## C. Borrowing and Use of Credit—Continued

## (2) Counties and Other Local Units—Continued

dollars heretofore or hereafter incurred by any city with a population of not less than two hundred and fifty thousand and not more than one million and except that debts not exceeding in the aggregate the sum of five million dollars heretofore or hereafter incurred by any city with a population of not less than one hundred and seventy five thousand and not more than two hundred and fifty thousand, for so much of the cost and expense of any public improvement as may be required by the ordinance of other local legislative law therein assessing the same to be raised by assessment upon local property or territory, shall not be so included; and except further, that any debt hereafter incurred by the city of New York for a public improvement owned or to be owned by the city, which yields to the city current net revenue after making any necessary allowance for repairs and maintenance for which the city is liable, in excess of the interest on said debt and of the annual installments necessary for its amortization may be excluded in ascertaining the power of said city to become otherwise indebted, provided that a sinking fund for its amortization shall have been established and maintained and that the indebtedness shall not be so excluded during any period of time when the revenue aforesaid shall not be sufficient to equal the said interest and amortization installments, and except further, that any indebtedness heretofore incurred by the city of New York for any rapid transit or dock investment may be so excluded proportionately to the extent to which the current net revenue received by said city therefrom shall meet the interest and amortization installments thereof, provided that any increase in the debt incurring power of the city of New York which shall result from the exclusion of debts heretofore incurred shall be available only for the acquisition or construction of properties to be used for rapid transit or dock purposes. The legislature shall prescribe the method by which and the terms and conditions under which the amount of any debt incurred by the city of New York for a revenue producing improvement to be so excluded shall be determined, and no such debt shall be excluded except in accordance with the determination so prescribed. The legislature may in its discretion confer appropriate jurisdiction on the appellate division of the supreme court in the first judicial department for the purpose of determining the amount of any debt to be so excluded. No indebtedness of a city valid at the time of its inception shall thereafter become invalid by reason of the operation of any of the provisions of this section . . . .<sup>22</sup>

<sup>22</sup>Constitution, Art. VIII, Sec. 10, as amended 1927.

See the preceding paragraph in the text and footnote thereunder. (Page 8, par. (a) and page 9, footnote 21).



## II. Financial Powers and Limitations—Continued

## C. Borrowing and Use of Credit—Continued

## (2) Counties and Other Local Units—Continued

(c) Notwithstanding any of the limitations prescribed by the preceding section (page 9, par. (b)), debts may be incurred by the city of New York after January first, nineteen hundred and twenty-eight, for the construction or equipment, or both, of new rapid transit railroads not exceeding the sum of three hundred million dollars, and such debts shall not be included in computing the debt limit of such city for the purpose of ascertaining the power of such city to become otherwise indebted.<sup>23</sup>

(d) No county, city, town or village shall hereafter give any money or property, or loan its money or credit to or in aid of any individual, association or corporation . . . .<sup>24</sup>

## D. Other Income

The Legislature shall not sell, lease or otherwise dispose of the Erie Canal, the Oswego Canal, the Champlain Canal, the Cayuga and Seneca Canal, or the Black River Canal; but they shall remain the property of the state and under its management forever . . . . All funds that may be derived from any lease, sale or other disposition of any canal shall be applied to the improvement, superintendence or repair of the remaining portion of the canals.<sup>25</sup>

## E. Appropriations and Expenditures

(1) The legislature shall annually provide by appropriation for the payment of interest upon and installments of principal of all debts created on behalf of the state, except those contracted under section two of this article (page 5, par. (a)), as the same shall fall due, and for the contribution to all of the sinking funds theretofore

<sup>23</sup>Constitution, Art. VIII, Sec. 10a, adopted 1927.

<sup>24</sup>Constitution, Art. VIII, Sec. 10, as amended 1927.

In 1935 a New York court said that this section, which was originally adopted in 1874, was designed to protect the people from an unwarranted diversion of municipal funds for investment in private enterprise. The act stated: "At that time a railway mania was sweeping the country and many municipalities were prepared to mortgage themselves to the hilt in order to secure the advantages of modern transportation. This provision was inserted for the purpose of protecting the various political subdivisions from the possibly disastrous result of unbridled enthusiasm." *Cook vs. Burtis*, 157 Misc. 140, 283 N. Y. S. 146 (1935).

<sup>25</sup>Constitution, Art. VII, Sec. 8, as amended 1933.

The following two sections provide for forest preserves in the State, and prohibit the removal of timber under certain circumstances. Constitution, Art. VII, Sec. 7 and 16.

## II. Financial Powers and Limitations—Continued

## E. Appropriations and Expenditures—Continued

created by law, of the amounts annually to be contributed under the provisions of section five of this article. If at any time the legislature shall fail to make any such appropriation, the comptroller shall set apart from the first revenues thereafter received, applicable to the general fund of the state, a sum sufficient to pay such interest, installments of principal, or contributions to such sinking fund, as the case may be, and shall so apply the moneys thus set apart. The comptroller may be required to set aside and apply such revenues as aforesaid, at the suit of any holder of such bonds.<sup>26</sup>

(2) The legislature in each of the eleven calendar years immediately following the adoption of this amendment shall appropriate out of any funds in the treasury not otherwise appropriated moneys for the acquisition by the state of land, outside the Adirondacks and Catskill parks, as now fixed by law, best suited for reforestation, for the reforesting of the same and the protection and management of forests thereon; for the acquisition of land for forest tree nurseries, and for the establishment and maintenance of such nurseries, such appropriation to begin in the first year with the sum of one million dollars (\$1,000,000) and increasing annually by the sum of two hundred thousand dollars (\$200,000) to and including the sixth year and in each of the five years immediately following, a sum equal to that appropriated for the sixth year. All such appropriations to be available until expended. A law enacted pursuant to this section shall take effect without submission to the people . . . .<sup>27</sup>

## III. Provisions Affecting Legislation

## A. Regular Sessions of Legislature

. . . the Legislature shall, every year, assemble on the first Wednesday in January.<sup>28</sup>

<sup>26</sup> Constitution, Art. VII, Sec. 11, as amended 1920.

Section five of this article provides for the investment of these sinking funds. The amounts to be contributed to each sinking fund by legislative appropriation must be at least enough per annum which, together with three percent interest thereon, will equal the amount due on the loan at the date of its maturity. The sinking funds must be kept inviolate for the purpose of paying the loans for which they are provided. Constitution, Art. VII, Sec. 5.

<sup>27</sup> Constitution, Art. VII, Sec. 16, adopted 1931.

<sup>28</sup> Constitution, Art. X, Sec. 8.

## III. Provisions Affecting Legislation—Continued

## B. Special Sessions of Legislature

. . . He (the Governor) shall have power to convene the legislature, or the senate only, on extraordinary occasions. At extraordinary sessions no subject shall be acted upon, except such as the governor may recommend for consideration . . . .<sup>29</sup>

## C. Powers of Initiative and Referendum

No provision.<sup>30</sup>

## D. Legislative Enactment

(1) No money shall ever be paid out of the treasury of this State or any of its funds, or any funds under its management, except in pursuance of an appropriation by law; nor unless such payment be made within two years next after the passage of such appropriation act; and every such law making a new appropriation or continuing or reviving an appropriation, shall distinctly specify the sum appropriated, and the object to which it is to be applied; and it shall not be sufficient for such law to refer to any other law to fix such sum.<sup>31</sup>

(2) No provision or enactment shall be embraced in the annual appropriation or supply bill, unless it relates specifically to some particular appropriation in the bill; and any such provision or enactment shall be limited in its operation to such appropriation.<sup>32</sup>

(3) The assent of two-thirds of the members elected to each branch of the Legislature shall be requisite to every bill appropriating the public moneys or property for local or private uses.<sup>33</sup>

(4) On the final passage in either house of the Legislature, of any act which imposes, continues or revives a tax, or creates a debt or charge, or makes, continues or revives any appropriation of public or trust moneys or property, or releases, discharges or commutes any claim or demand of the State, . . . three-fifths of all the members elected to either house shall, in all such cases, be necessary to constitute a quorum therein.<sup>34</sup>

<sup>29</sup>Constitution, Art. IV, Sec. 4, as amended 1927.

<sup>30</sup>Bills authorizing State debts, except for a few purposes specified in Sections 2 and 3 of Article VII, must be submitted to a vote of the people and approved by a majority voting upon the issue. See page 5, pars. (a) and (b), and page 6, par. (c).

<sup>31</sup>Constitution, Art. III, Sec. 21.

<sup>32</sup>Constitution, Art. III, Sec. 22.

<sup>33</sup>Constitution, Art. III, Sec. 20.

<sup>34</sup>Constitution, Art. III, Sec. 20.

## III. Provisions Affecting Legislation—Continued

## D. Legislative Enactment—Continued

(5) Every law which imposes, continues or revives a tax shall distinctly state the tax and the object to which it is to be applied, and it shall not be sufficient to refer to any other law to fix such tax or object.<sup>35</sup>

(6) No bill shall be passed or become a law unless it shall have been printed and upon the desks of the members, in its final form, at least three calendar legislative days prior to its final passage, unless the Governor, or the acting Governor, shall have certified to the necessity of its immediate passage . . . nor shall any bill be passed or become a law, except by the assent of the majority of the members elected to each branch of the Legislature; . . .<sup>36</sup>

(7) No private or local bill, which may be passed by the Legislature, shall embrace more than one subject, and that shall be expressed in the title.<sup>37</sup>

(8) Every bill which shall have passed the Senate and Assembly shall, before it becomes a law, 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 . . .<sup>38</sup>

(9) The legislature shall not pass any law relating to the property, affairs of government of cities, which shall be special or local either in its terms or in its effect, but shall act in relation to the property, affairs or government of any city only by general laws which shall in terms and in effect apply alike to all cities except on message

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<sup>35</sup>Constitution, Art. III, Sec. 24.

This section applies only to "annual recurring taxes known at the time of the adoption of the Constitution and imposed generally upon the entire property of the State", and not to special or permanent taxes, such as gift or inheritance taxes. In re McPherson, 104 N. Y. 306, 10 N. E. 685 (1887). Cited with approval, People ex rel. Broderick vs. Goldfogle, 213 App. Div. 677, 211 N. Y. S. 85, 103 (1925).

<sup>36</sup>Constitution, Art. III, Sec. 15.

Three-fifths of all the members elected to either house are necessary to constitute a quorum upon the final passage of a tax, debt, or appropriation bill. See page 13, par. (4).

<sup>37</sup>Constitution, Art. III, Sec. 16.

<sup>38</sup>Constitution, Art. IV, Sec. 9.

The section further provides that a bill may be passed over the veto of the Governor by a two-thirds vote of each house. A bill becomes a law if not returned by the Governor within ten days, unless the Legislature adjourns during this period. Ibid.

### III. Provisions Affecting Legislation—Continued

#### D. Legislative Enactment—Continued

from the governor declaring that an emergency exists and the concurrent action of two-thirds of the members of each house of the legislature.<sup>39</sup>

### IV. Constitutional Amendment or Revision

#### A. By Proposal of Legislature or People

Any amendment or amendments to this Constitution may be proposed by the Senate and 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 be . . . referred to the Legislature to be chosen at the next general election of senators, and shall be published for three months previous to the time of making such choice; and if in the Legislature so next chosen, as aforesaid, such proposed amendment or

<sup>39</sup>Constitution, Art. XII, Sec. 2, adopted 1923.

The following sections of the Constitution authorize cities to adopt local laws relating to their property, affairs and government. Constitution, Art. XII, Secs. 3, 4, and 5, adopted 1923.

A statute, authorizing any city having 1,000,000 population or more to impose taxes to raise money for unemployment relief, was held valid even though it applied to but one city, New York, and was not passed by a two-thirds majority. The court said that this section applied only to matters of "dominant local significance", and not to those of "paramount State concern", and that it was common knowledge that widespread unemployment had undermined standards of living to a degree which threatened the economic stability of the State and the nation so that it was, undoubtedly, a matter of paramount State concern. *New York Steam Corporation vs. City of New York*, 268 N. Y. 137, 197 N. E. 172 (1935). See page 4, footnote 11.

An act creating the Buffalo Sewer Authority, for the purpose of constructing sewage and sewage disposal plants, was held to be a matter of "paramount State concern" since the untreated sewage of Buffalo was polluting the water of other cities. *Robertson vs. Zimmermann*, 268 N. Y. 52, 196 N. E. 741 (1935).

An act changing the boundary line between the City of New York and the Town of Hempstead, was held not to relate to the "property affairs or government of a city" and so was not subject to this section, since the power to enlarge or restrict the boundaries of cities is an incident of the legislative power to create and abolish municipal corporations. *City of New York vs. Village of Lawrence*, 250 N. Y. 429, 165 N. E. 836 (1929).

The Multiple Dwelling Act, regulating tenements in New York City only, was held not to be a matter "relating to the property affairs or government of cities" under this section, because "the police power of the State has never been questioned when it dealt directly with the hygienic conditions of a community". *Adler vs. Deegan*, 251 N. Y. 467, 167 N. E. 705 (1929).

Whether a law is general or special is determined not by the terms alone but by its effect. "If the class in its formation is so unnatural and wayward that only by the rarest coincidence can the range of its extension include more than one locality, and at best but two or three, the act so hedged and circumscribed is local in its effect. If the same limits are apparent upon the face of the act, unaided by extrinsic evidence, or are so notorious as to be the subject of judicial notice, it is also local in its terms." So an act, that would have revived claims against a city, which, within the past year had been adjudged in a court of law, barred by the statute of limitations, was held a special law, since such an act was obviously directed to one particular case. *In re Elm Street in the City of New York*, 246 N. Y. 72, 158 N. E. 24 (1927).

## IV. Constitutional Amendment or Revision—Continued

## A. By Proposal of Legislature or People—Continued

amendments shall be agreed to by a majority of all the members elected to each house, then it shall be the duty of the Legislature to submit each proposed amendment or amendments to the people for approval in such manner and at such times as the Legislature shall prescribe; and if the people shall approve and ratify such amendment or amendments by a majority of the electors voting thereon, such amendment or amendments shall become a part of the Constitution from and after the first day of January next after such approval.<sup>40</sup>

## B. By Constitutional Convention

(1) At the general election to be held in the year one thousand nine hundred and sixteen, and every twentieth year thereafter, and also at such times as the Legislature may by law provide, the question, "Shall there be a convention to revise the Constitution and amend the same?" shall be decided by the electors of the State; and in case a majority of the electors voting thereon shall decide in favor of a convention for such purpose, the electors of every senate district of the State, as then organized, shall elect three delegates at the next ensuing general election at which members of the Assembly shall be chosen, and the electors of the State voting at the same election shall elect fifteen delegates-at-large. The delegates so elected shall convene at the capitol on the first Tuesday of April next ensuing after their election, and shall continue their session until the business of such convention shall have been completed . . . . Any proposed constitution or constitutional amendment which shall have been adopted by such convention, shall be submitted to a vote of the electors of the State at the time and in the manner provided by such convention . . . . Upon the approval of such constitution or constitutional amendments, in the manner provided in the last preceding section, such constitution or constitutional amendment, shall go into effect on the first day of January next after such approval.<sup>41</sup>

(2) Any amendment proposed by a constitutional convention relating to the same subject as an amendment proposed by the Legislature, coincidentally submitted to the people for approval . . . shall, if approved, be deemed to supersede the amendment so proposed by the Legislature.<sup>42</sup>

<sup>40</sup>Constitution, Art. XIV, Sec. 1.

<sup>41</sup>Constitution, Art. XIV, Sec. 2.

At the general election held November 3, 1936, the question "Shall there be a convention to revise the Constitution and amend the same?" was submitted to the voters, and answered in the affirmative by a majority of those voting upon the question.

<sup>42</sup>Constitution, Art. XIV, Sec. 3.

