

13. W 892
36
258d



WORKS PROGRESS ADMINISTRATION
HARRY L. HOPKINS, ADMINISTRATOR

CORRINGTON GILL
ASSISTANT ADMINISTRATOR

HOWARD B. MYERS, DIRECTOR
DIVISION OF SOCIAL RESEARCH

LIBRARY
UNIVERSITY of KENTUCKY

ANALYSIS OF CONSTITUTIONAL PROVISIONS
AFFECTING PUBLIC WELFARE IN THE STATE OF
SOUTH DAKOTA

NOVEMBER 15, 1936

PREPARED BY
ROBERT C. LOWE AND DAVID S. LANDER
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.

South Dakota

TABLE OF CONTENTS

	<u>Page</u>
Incidence of Responsibility for Welfare Program	1
Financial Powers and Limitations	
Taxation and Assessments	1
Exemptions	6
Borrowing and Use of Credit	7
Other Income	11
Appropriations and Expenditures	11
Provisions Affecting Legislation	12
Constitutional Amendment or Revision	15

ANALYSIS OF CONSTITUTIONAL PROVISIONS AFFECTING

PUBLIC WELFARE IN SOUTH DAKOTA 1/

I. Incidence of Responsibility for Welfare Program

A. The charitable and penal institutions of the state of South Dakota shall consist of a penitentiary, insane hospital, a school for the deaf and dumb, a school for the blind and a reform school. 2/

B. The state institutions provided for in the preceding section shall be under the control of the state board of charities and corrections, under such rules and restrictions as the legislature shall provide; . . . 3/

II. Financial Powers and Limitations

A. Taxation and Assessments

(1) State

(a) The legislature shall provide for an annual tax, sufficient to defray the estimated ordinary expenses of the state for each year, not to exceed in any one year two mills on each dollar of the assessed valuation of all taxable property in the state, to be ascertained by the last assessment made for state and county purposes.

And whenever it shall appear that such ordinary expenses shall exceed the income of the state for such year, the legislature shall provide for levying a tax for the ensuing year, sufficient, with other sources of income, to pay the deficiency of the preceding year, together with the estimated expenses of such ensuing year. And for the purpose of paying the public debt, the legislature shall provide for levying tax annually, sufficient to pay the annual interest and the principal of such debt within ten years from the final passage of the law creating the

-
1. Constitution, (1889), with all amendments to November 10, 1936.
 2. Constitution, Art. XIV, Sec. 1.
 3. Constitution, Art. XIV, Sec. 2.

Under this section the control of penal and charitable institutions of the State of South Dakota is under one board and its authority covers the construction of a necessary building at a home for the feeble-minded. State vs. Halladay, 62 S. D. 256, 252 N. W. 733 (1934).

2. South Dakota

II. Financial Powers and Limitations (Cont'd)

A. Taxation and Assessments (Cont'd)

(1) State (Cont'd)

debt; provided, that the annual tax for the payment of the interest and principal of the public debt shall not exceed in any one year two mills on each dollar of the assessed valuation of all taxable property in the state, as ascertained by the last assessment made for the state and county purposes . . . 4/

(b) To the end that the burden of taxation may be equitable upon all property, and in order that no property which is made subject to taxation shall escape, the legislature is empowered to divide all property including moneys and credits as well as physical property into classes and to determine what class or classes of property shall be subject to taxation and what property, if any, shall not be subject to taxation. Taxes shall be uniform on all property of the same class, and shall be levied and collected for public purposes only. Taxes may be imposed upon any and all property including privileges, franchises and licenses to do business in the state. Gross earnings and net incomes may be

4. Constitution, Art. XI, Sec. 1.

The portion of this section limiting taxation for ordinary expenses to two mills on each dollar of the assessed valuation relates only to ad valorem property taxes, and does not relate to other sources of State revenue. So this limitation does not apply to a tax imposed on gross receipts. State vs. Welsh, 61 S. D. 593, 251 N. W. 189 (1933).

This section contemplates three distinct items of taxation: (1) The annual tax for "the estimated ordinary expenses of the state"; (2) taxation to pay deficiencies from preceding years; (3) taxation to pay the public debt. The Legislature is limited to a two mill tax for the first and third items mentioned; but when a deficiency is shown to exist, the Legislature has power to levy an assessment sufficient to meet the deficiency without regard to the two mill limitation.

Furthermore the two mill limitation applies only to those appropriations coming within the general appropriation bill as defined by Art. XII, Sec. 2 of the Constitution, and appropriations for extraordinary and emergency cases are not limited by this or other sections. In re Limitation of Taxation, 3 S. D. 456, 54 N. W. 417 (1893), see page 12, footnote 20.

II. Financial Powers and Limitations (Cont'd)

A. Taxation and Assessments (Cont'd)

(1) State (Cont'd)

considered in taxing any and all property, and the valuation of property for taxation purposes shall never exceed the actual value thereof. The legislature is empowered to impose taxes upon incomes and occupations, and taxes upon incomes may be graduated and progressive and reasonable exemptions may be provided. 5/

5. Constitution, Art. XI, Sec. 2, as amended 1918.

This section relates exclusively to the ordinary property tax, and not to an inheritance tax which is a tax upon the transmission of property. In re McKennan's Estate, 25 S. D. 369, 126 N. W. 611 (1910).

The 1918 amendment to this section obliterated the words "all taxes shall be equal and uniform" and the present requirement is only that property of the same class shall be taxed uniformly. Commercial State Bank vs. Wilson, 53 S. D. 82, 220 N. W. 152 (1928).

Classification for taxation must be based on differences which furnish a reasonable ground for distinction between classes. There is no such ground for distinguishing between agricultural land in a school district and other real estate therein. Simmons vs. Ericson, 54 S. D. 429, 223 N. W. 342 (1929), see page 4, footnote 7.

The Governor sought the opinion of the Supreme Court as to whether the Legislature could enact legislation which would enable the State to appropriate money hereafter raised by any form of taxation for furnishing aid in the form of feed or feed loans to the citizens who might need same for carrying their livestock through the winter. The Court held such legislation would be unconstitutional under this section because the tax would not be for a "public purpose", since it was for the benefit of one class or occupation. In re Opinion of Judges, 59 S. D. 469, 240 N. W. 600 (1932).

Yet a statute providing a fund to be used for the State's loaning money to settlers was held to be a "public purpose" under this section since the promotion of land settlement benefits the whole State. Wheelon vs. South Dakota Land Settlement Board, 43 S. D. 551, 181 N. W. 359 (1921).

Also an appropriation for the relief of a militiaman injured at a militia encampment while off duty, was held to be for a "public purpose" and not a gift nor a charity, on the ground that it would tend to create a more efficient State militia. Nancolas vs. Jones, 47 S. D. 157, 196 N. W. 749 (1924).
(Footnote forwarded)

4. South Dakota

II. Financial Powers and Limitations (Cont'd)

A. Taxation and Assessments (Cont'd)

(1) State (Cont'd)

(c) No tax or duty shall be imposed without the consent of the people or their representatives in the legislature, and all taxation shall be equal and uniform. 6/

(d) The Legislature shall make such provision by general taxation and by authorizing the school corporations to levy such additional taxes as with the income from the permanent school fund shall secure a thorough and efficient system of common schools throughout the state. The Legislature is empowered to classify properties within school districts for purposes of school taxation, and may constitute agricultural lands a separate class. Taxes shall be uniform on all properties in the same class. 7/

(2) Counties

No provisions, but see footnote 8, page 5.

(Footnote #5 - Continued)

Under this section as amended in 1918 the entire matter of classification and exemption is left in the hands of the Legislature, and the limitations upon the legislative power of exemption existing formerly under Constitution, Art. XI, Sec. 7, is abrogated. *Dakota Lodge No. I, I.O.O.F. vs. Yankton County*, 54 S. D. 402, 223 N. W. 330 (1929); *State vs. Johns*, 43 S. D. 279, 178 N. W. 945 (1920); see page 7, footnote 13.

6. Constitution, Art. VI, Sec. 17.

The last clause of this section: "and all taxation shall be equal and uniform", has been obliterated from the Constitution by the adoption of Amended Art. XI, Sec. 2, see page 2, Sec. II, par. A, (1), (b). *South Dakota Land Settlement Board*, 43 S. D. 551, 181 N. W. 359 (1921).

7. Constitution, Art. VIII, Sec. 15, as amended 1930.

This section was amended subsequent to a decision stating that classification for taxation must be based on differences which furnish a reasonable ground for distinction between classes, and that there is no such ground for distinguishing between agricultural land in a school district and other real estate therein. *Simmons vs. Ericson*, 54 S. D. 429, 223 N. W. 342 (1929). See page 3, footnote 5.

II. Financial Powers and Limitations (Cont'd)

A. Taxation and Assessments (Cont'd)

(3) Other Local Units

(a) . . . The legislature shall restrict the power of such (municipal) corporations to levy taxes and assessments, borrow money and contract debts, so as to prevent the abuse of such power. 8/

(b) Except as otherwise provided in this constitution, no tax or assessment shall be levied or collected, or debts contracted by municipal corporations, except in pursuance of law, for public purposes specified by law; nor shall money raised by taxation, loan or assessment, for one purpose ever be diverted to any other. 9/

(c) The legislature may vest the corporate authority of cities, towns and villages, with power to make local improvements by special taxation of contiguous property or otherwise. For all corporate purposes, all municipal corporations may be vested with authority to assess and collect taxes; but such tax shall be uniform in respect to persons and property within the jurisdiction of the body levying the same. 10/

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

The term "municipal corporations" in this section is used in its strict and proper sense, and only includes cities, towns, and villages. *Sanders vs. Independent School District of City of Sioux Falls*, 35 S. D. 48, 150 N. W. 473 (1915).

The limit of taxation which counties may levy is nevertheless fixed by statute. Under this statute it was held that the limit does not apply to taxes levied for the purposes of paying interest and principal on bonded indebtedness. *Rowe vs. Stanley County*, 52 S. D. 516, 219 N. W. 122 (1928).

9. Constitution, Art. X, Sec. 2.

The contraction of a debt for a municipal telephone system and the imposition of taxes therefor are for a lawful public purpose. *Spangler vs. City of Mitchell*, 35 S. D. 335, 152 N. W. 339 (1915).

Ordinance transferring revenues derived from the operation of a municipal waterworks system to other municipal funds held not to contravene this section because compensation paid to municipality for water is not a tax. *Travallie vs. City of Sioux Falls*, 59 S. D. 391, 240 N. W. 336 (1932).

10. Constitution, Art. XI, Sec. 10.

The latter clause of the second sentence refers only to taxes levied for general corporate purposes and not to the special taxes or assessments included in the first sentence. *Haggart vs. Alton*, 29 S. D. 509, 137 N. W. 372 (1912).

6. South Dakota

II. Financial Powers and Limitations (Cont'd)

B. Exemptions

(1) State

(a) The property of the United States and of the State, County and Municipal Corporations, both real and personal, shall be exempt from taxation; provided, however that all state owned lands acquired under the provisions of the Rural Credit Act may be taxed by the local taxing districts for county, township and school purposes, in such manner as the Legislature may provide. 11/

(b) The legislature shall, by general law, exempt from taxation, property used exclusively for agricultural and horticultural societies, for school, religious, cemetery and charitable purposes, and personal property to any amount not exceeding in value two hundred dollars for each individual liable for taxation. 12/

11. Constitution, Art. XI, Sec. 5, as amended in 1930.

Special assessments for local improvements are not taxes within the meaning of this section; and property of the State, county or city is subject to such special assessments. *Whittaker vs. City of Deadwood*, 23 S. D. 538, 122 N. W. 590 (1909).

Property to which the State holds mere legal title under circumstances such that the beneficial interest is in a third person is not exempt. *State vs. Board of Commissioners*, 53 S. D. 609, 222 N. W. 583 (1928).

12. Constitution, Art. XI, Sec. 6.

A statute allowing a personal property exemption of \$500 is valid since Art. XI, Sec. 2 of the Constitution as amended in 1918 abrogates this section. *State vs. Johns*, 43 S. D. 279, 178 N. W. 945 (1920), see page 3, footnote 5, and page 7, footnote 13.

Under the present Constitution and existing statutes all property owned by religious, educational, charitable or benevolent societies, regardless of its character, extent or the purposes for which it is used, as well as all property used exclusively for charitable, benevolent, religious, or educational purposes, is exempt from taxation. *In re Dakota Wesleyan University*, 48 S. D. 84, 202 N. W. 284 (1925), see page 3, footnote 5, and page 7, footnote 13.

A hospital which extended treatment free to paupers, charging for its services to others to the extent to which they were able to pay, treating about five percent charity patients and 95 percent pay patients, held a charitable corporation whose property was exempt from taxation. *Lutheran Hospital Association of South Dakota vs. Baker*, 40 S. D. 226, 167 N. W. 148 (1918).

II. Financial Powers and Limitations (Cont'd)

B. Exemptions (Cont'd)

(1) State (Cont'd)

(c) All laws exempting property from taxation other than that enumerated in sections 5 and 6 of this article, shall be void. 13/

(2) Counties and Other Local Units

See page 6, par. II, B, (1), (a).

C. Borrowing and Use of Credit

(1) State

(a) For the purpose of developing the resources and improving the economical facilities of South Dakota, the state may engage in works of internal improvement, may own and conduct proper business enterprises, may loan or give its credit to, or in aid of, any association, or corporation, organized for such purposes . . . The state may also assume or pay any debt or liability incurred in time of war for the defense of the state. The state may establish and maintain a system of rural credits and thereby loan and extend credit to the people of the State upon real estate security in such manner and upon such terms and conditions as may

13. Constitution, Art. XI, Sec. 7.

This section together with sections 5 and 6 relate exclusively to property taxes. The inheritance tax law of 1905 does not contravene this section in providing for exemptions other than those set out in this section because an inheritance tax is not a tax on property, but a tax on the transmission of property. In re McKennan's Estate, 25 S. D. 369, 126 N. W. 611 (1910).

The amendment to Art. XI, Sec. 2, of the Constitution approved in 1918 reading "the Legislature is empowered . . . to determine . . . what property, if any, shall not be subject to taxation", abrogates any limitation upon the legislative power of exemption previously existing by the terms of this section; and leaves the entire matter of classification and exemption in the hands of the Legislature subject of course, to reasonableness of classification and uniformity within the class. In this case a statute allowing a personal exemption of \$500 was held valid. State vs. Johns, 43 S. D. 279, 178 N. W. 945 (1920); cited with approval in Dakota Lodge No. I, I.O.O.F. vs Yankton County, 54 S. D. 402, 223 N. W. 330 (1929), see page 3, footnote 5; and page 6, footnote 12.

8. South Dakota

II. Financial Powers and Limitations (Cont'd)

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

(1) State (Cont'd)

be prescribed by general law. The limit of indebtedness contained in section 2 of this article shall not apply to the provisions of this section, but the indebtedness of the state for the purposes contained in this section shall never exceed one-half of one percent of the assessed valuation of the property of the state, provided however, that nothing contained in this section shall effect the refinancing or refunding of the present outstanding indebtedness of this State. 14/

14. Constitution, Art. XIII, Sec. 1, as amended, November 3, 1936.

There are numerous specific exceptions to the general limitations on borrowing authorized by means of amendments to the Constitution, part of which are set out here and the remainder under footnote 15, page 9.

The State may engage in the manufacture, sale and distribution of electric current, and may pledge its credit for such purposes "any provision in this Constitution to the contrary notwithstanding". Constitution, Art. XIII, Sec. 12 and 13, adopted 1918.

The manufacture of electricity is a work of internal improvement but by the provisions of sections 12 and 13 the State intended to remove this type of internal improvement from the operation of any other section of the Constitution, including the debt limitation of one-half of one percent of this section. In re Opinion of Judges, 43 S. D. 635, 177 N. W. 812 (1920).

Similarly the State may engage in the manufacture, distribution and sale of cement and cement products, and may pledge its credit for such purposes "any provision in this constitution to the contrary notwithstanding". Constitution, Art. XIII, Sec. 10 and 11, adopted 1918.

Sections 10 and 11, above, take the cement business out of the operation of this section so that the limit of one-half of one percent does not apply to borrowing for cement plants. In re Opinion of Judges, 43 S. D. 648, 180 N. W. 957 (1920).

The State may engage in the mining, distribution, and sale of coal, and may pledge its credit for such purposes "any provision in this constitution to the contrary notwithstanding". Constitution, Art. XIII, Sec. 14 and 15, adopted 1918.

The Rural Credits Law authorizing the State to borrow money to be loaned on real estate security and to make up any deficiency by taxation does not create a debt within the meaning of the Constitution since the State's obligations will probably be discharged from money received from the borrowers, and payment by means of a tax levy is not a likely contingency. Consequently (Footnote forwarded)

II. Financial Powers and Limitations (Cont'd)

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

(1) State (Cont'd)

(b) For the purpose of defraying extraordinary expenses and making public improvements, or to meet casual deficits or failure in revenue, the state may contract debts never to exceed with previous debts 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 or the United States in war and provision shall be made by law for the payment of the interest annually, and the principal when due, by tax levied for the purpose or from other sources of revenue; which law providing for the payment of such interest and principal by such tax or otherwise shall be irrevocable until such debt is paid: . . . 15/

(Footnote #14 - Continued)

there are no limitations on the amount of money that may be borrowed by the South Dakota Rural Credit Board on the good faith and credit of the State. In re Opinion of Judges, 38 S. D. 635, 162 N. W. 536 (1917).

The loaning of money by the State to land settlers as provided by Laws of 1919, c. 315 is a "business enterprise" warranted by this section because it tends to the development of the resources of the State. *Wheeler vs. South Dakota Land Settlement Board*, 43 S. D. 551, 181 N. W. 359 (1921).

But the business of retailing gasoline by the State is not a "business enterprise" warranted by this section because it does not develop resources and improve economic facilities of the State. *White Eagle Oil and Refining Company vs. Gunderson*, 48 S. D. 608, 205 N. W. 614 (1925).

15. Constitution, Art. XIII, Sec. 2.

Losses sustained through mismanagement of the permanent school fund may be replaced by selling bonds and such indebtedness shall not be counted as a part of the indebtedness limited in this section. Constitution, Art. VIII, Sec. 13.

The State may borrow up to six million dollars for the purpose of compensating service men of the World War, and such indebtedness shall not be counted within the limits of this section. Constitution, Art. XIII, Sec. 18, adopted 1920.

The State may establish and maintain a system of credits for assisting in the building of homes by the people of this State. The limitations of this section shall not apply to such credits. Constitution, Art. XIII, Sec. 17, adopted 1920.

Also the limitations of this section do not apply to the enterprises undertaken under Art. XIII, Sections 10, 11, 12 and 13. In re Opinion of Judges, 43 S. D. 648, 180 N. W. 957 (1920), and in re Opinion of Judges, 43 S. D. 635, 177 N. W. 812 (1920), see page 8, footnote 14.

(Footnote forwarded)

10. South Dakota

II. Financial Powers and Limitations (Cont'd)

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

(2) Counties and Other Local Units

(a) The debt of any county, city, town, school district, civil townships or other subdivision, shall never exceed five (5) per centum upon the assessed valuation of the taxable property therein, for the year preceding that in which said indebtedness is incurred . . .

Provided, that any county, municipal corporation, civil township, district, or other subdivision may incur an additional indebtedness, not exceeding ten per centum upon the assessed valuation of the taxable property therein, . . ., for the purpose of providing water and sewerage, for irrigation, domestic uses, sewerage and other purposes; and

Provided, further, that in a city where the population is eight thousand or more, such city may incur an indebtedness not exceeding eight per centum upon the assessed valuation of the taxable property therein . . . for the purpose of constructing street railways, electric lights or other lighting plants.

Provided, further, that . . . no such debt shall ever be incurred for any of the purposes in this section provided, unless authorized by a vote in favor thereof by a majority of the electors of such county, municipal corporation, civil township, district or subdivision incurring the same. 16/

(Footnote #15 - Continued)

Appropriations from the assessed but uncollected revenues of the State, and the issuance of warrants in pursuance thereof, to defray current expenses, is not the incurring of an indebtedness within the meaning of this section. Revenues of the State, assessed and in process of collection, are to be considered as constructively in the treasury. In re State Warrants, 6 S. D. 518, 62 N. W. 101 (1895).

16. Constitution, Art. XIII, Sec. 4, as amended 1902.

Warrants for current expenses during any fiscal year may be issued in anticipation of and within the limits of a lawful tax levy for such purposes for such period, even though such levy has not yet been collected, and the issuance of such warrants will not be deemed the incurring of an indebtedness within the meaning of this section. This doctrine is firmly entrenched in the law of South Dakota. Western Surety Company vs. Mellette County, S. D. -, 257 N. W. 461 (1934).

Where a sewer system was financed entirely by special assessments payable in installments, bonds which were payable solely out of these special assessments and were not a general obligation of the city do not constitute a "debt" within the meaning of this section for the reason that these bonds will be paid by the funds to be collected from these special assessments, and not by general taxes. Gross vs. City of Bowdle, 44 S. D. 132, 132 N. W. 629 (1921).

(Footnote forwarded)

II. Financial Powers and Limitations (Cont'd)

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

(2) Counties and Other Local Units (Cont'd)

(b) Any city, county, town, school district or any other subdivision incurring indebtedness shall, at or before the time of so doing, provide for the collection of an annual tax sufficient to pay the interest and also the principal thereof when due, and all laws or ordinances providing for the payment of interest or principal of any debt shall be irrevocable until such debt be paid. 17/

D. Other Income

All proceeds of the sale of public lands that have heretofore been or may hereafter be given by the United States for the use of public schools in the state; all such per centum as may be granted by the United States on the sales of public lands; the proceeds of all property that shall fall to the state by escheat; the proceeds of all gifts or donations to the state for public schools or not otherwise appropriated by the terms of the gift; and all property otherwise acquired for public schools, shall be and remain a perpetual fund for the maintenance of public schools in the state. It shall be deemed a trust fund held by the state. The principal shall forever remain inviolate, and may be increased, but shall never be diminished, and the state shall make good all losses thereof which may in any manner occur. 18/

E. Appropriations and Expenditures

(1) State

(a) All taxes levied and collected for state purposes shall be paid into the state treasury. No indebtedness shall be incurred or money expended by the state, and no warrant shall be drawn upon the state treasurer except in pursuance of an appropriation for the specific purpose first made . . . 19/

(Footnote #16 - Continued)

A majority of those voting is not sufficient under this section; a majority of all the electors is required. *Williamson vs. Aldrich*, 21 S. D. 13, 108 N. W. 1063 (1906).

17. Constitution, Art. XIII, Sec. 5.

18. Constitution, Art. VIII, Sec. 2.

Another section adds that the proceeds of all fines collected from violation of State laws shall be used for school purposes. Constitution, Art. VIII, Sec. 3.

Another section provides that specific gifts and grants shall be set up as trust funds for the purpose given. Constitution, Art. VIII, Sec. 7.

19. Constitution, Art. XI, Sec. 9.

(Footnote forwarded)

12. South Dakota

II. Financial Powers and Limitations (Cont'd)

E. Appropriations and Expenditures (Cont'd)

(1) State (Cont'd)

(b) No money shall be paid out of the treasury except upon appropriation by law and on warrant drawn by the proper officer. 20/

(2) Counties and Other Local Units

No provisions.

III. Provisions Affecting Legislation

A. Regular Sessions of the Legislature

(1) . . . The sessions of the legislature shall be biennial except as otherwise provided in this constitution. 21/

(2) . . . Each regular session of the legislature shall not exceed sixty days, except in cases of impeachment, . . . 22/

B. Special Sessions of the Legislature

. . . He (The Governor) shall have power to convene the legislature on extraordinary occasions . . . 23/

(Footnote #19 - Continued)

The clause "no indebtedness shall be incurred . . . except in pursuance of an appropriation for the specific purpose first made" must be read and construed with Art. XIII, Sec. 1 of the Constitution, see page 7, Sec. II, par. C, (1), (a). In times of emergency, indebtedness may be incurred without first calling together the Legislature to make an appropriation. Thus a statute granting \$75 compensation to each soldier in the Mexican War of 1916-1917 was valid although when the obligation was incurred no appropriation had been made. State vs. Handlin, 38 S. D. 550, 162 N. W. 379 (1917).

20. Constitution, Art. XII, Sec. 1.

21. Constitution, Art. III, Sec. 2.

The Legislature meets on the first Tuesday after the first Monday of January in the year next ensuing after the election of members thereof. Constitution, Art. III, Sec. 7.

22. Constitution, Art. III, Sec. 6.

23. Constitution, Art. IV, Sec. 4.

III. Provisions Affecting Legislation (Cont'd)

C. Powers of Initiative and Referendum

The legislative power of the state shall be vested in a legislature which shall consist of a senate and a house of **representatives**, except that the people expressly reserve to themselves the right to propose measures, which measures the legislature shall enact and submit to a vote of the electors of the state, and also the right to require that any laws which the legislature may have enacted shall be submitted to a vote of the electors of the state before going into effect, except such laws as may be necessary for the immediate preservation of the public peace, health or safety, support of the state government and its existing public institutions: Provided, that not more than five per centum of the qualified electors of the state shall be required to invoke either the initiative or the referendum . . . The veto power of the executive shall not be exercised as to measures referred to a vote of the people. This section shall apply to municipalities . . . 24/

D. Legislative Enactments

(1) Every bill shall be read three several times, but the first and second reading may be on the same day, and the second reading may be by title of the bill, unless the reading at length be demanded. The first and third readings shall be at length. 25/

24. Constitution, Art. III, Sec. 1.

A declaration of the Legislature that a law is "necessary for the immediate preservation of the public peace, health or safety, support of the State Government and its existing public institutions" so as to have it take effect immediately and defeat the referendum is not conclusive on the courts. An act reorganizing and regulating the rural credit board held not such an act although the Legislature had so declared it. *Johnson vs. Jones*, 48 S. D. 260, 204 N. W. 15 (1925).

A law fixing the salary of court reporters is not subject to the referendum because it is for the support of the government, and consequently may be made an emergency measure by the Legislature. *State vs. Taylor*, 43 S. D. 264, 178 N. W. 985 (1920).

The same rule in regard to what measures are excepted from the referendum clause applies to municipal boards as to the State Legislature, and an ordinance vacating an alley and a part of a street could not be given immediate effect by attaching an emergency clause to it. *City of Colome vs. Von Seggern Brothers and Ludden*, 56 S. D. 390, 228 N. W. 800 (1930).

25. Constitution, Art. III, Sec. 17.

14. South Dakota

III. Provisions Affecting Legislation (Cont'd)

D. Legislative Enactments (Cont'd)

(2) No act shall take effect until ninety days 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 of each house, otherwise direct. 26/

(3) The legislature is prohibited from enacting any private or special laws in the following cases: . . .

In all other cases where a general law can be applicable no special law shall be enacted. 27/

(4) No law shall embrace more than one subject, which shall be expressed in its title. 28/

(5) The general appropriation bill shall embrace nothing but appropriations for ordinary expenses of the executive, legislative, and judicial departments of the state, the current expenses of state

26. Constitution, Art. III, Sec. 22.

What is an emergency law is a question for the courts. This section must be read together with section 1 of Article III, and a law cannot be an emergency law unless it is one within a class excepted from the referendum. Johnson vs. Jones, 48 S. D. 260, 204 N. W. 15 (1925), see page 13, footnote 24.

A statute providing for entry of judgment notwithstanding the verdict in certain cases did not go into effect immediately, notwithstanding the emergency clause, because by attaching an emergency clause to such a measure the Legislature clearly violated the section in regard to referendum, Art. III, Sec. 1. Warwick vs. Bliss, 45 S. D. 388, 187 N. W. 715 (1922), see page 13, footnote 24.

27. Constitution, Art. III, Sec. 23.

This section lists 11 subjects upon which the Legislature may not pass private or special laws. Ibid.

A statute making the expenses incurred by a county in caring for an insane person, in certain cases, a charge against his estate is not special but general legislation since it applies to all persons within a designated class. Bonhomme County vs. Berndt, 13 S. D. 309, 83 N. W. 333 (1900).

28. Constitution, Art. III, Sec. 21.

There is no constitutional restriction as to the scope or magnitude of the single subject of a legislative act. The subject of the act in question was the establishment of a civil administrative code and contained 61 sections. It was held that the act did not violate this section because it created a department of finance and also a department of agriculture. Kirby vs. Berdahl, 50 S. D. 293, 209 N. W. 545 (1926).

III. Provisions Affecting Legislation (Cont'd)

D. Legislative Enactments (Cont'd)

institutions, interest on the public debt, and for common schools. All other appropriations shall be made by separate bills, each embracing but one object, and shall require a two-thirds vote of all the members of each branch of the legislature. 29/

IV. Constitutional Amendment or Revision

A. By Proposal of Legislature or People

Any amendment or amendments to this constitution may be proposed in either house of the legislature, 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 entered on their journals, with the yeas and nays taken thereon, and it shall be the duty of the legislature to submit such proposed amendment or amendments to a vote of the people at the next general election. 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 this constitution: . . . 30/

B. By Constitutional Convention

Whenever two-thirds of the members elected to each branch of the legislature shall think it necessary to call a convention to revise this constitution they shall recommend to the electors to vote at the next election for members of the legislature, for or against a convention; and if a majority of all the electors voting at said election shall have voted for a convention, the legislature shall, at their next session, provide by law for calling the same . . . 31/

29. Constitution, Art. XII, Sec. 2.

The taxation limitation of two mills for ordinary expenses set out in Art. XI, Sec. 1, of the Constitution applies only to the items embraced within the "general appropriation bill", under this section, which items constitute the "ordinary expenses" within the meaning of Art. XI, Sec. 1, but as to "all other appropriations" under this section the tax limit of two mills does not apply and the Legislature is limited only by its own sense of justice. Thus taxation for emergency and extraordinary cases is not limited by the Constitution, the only limitation being that a two-thirds vote of the Legislature is required. In re Limitation of Taxation, 3 S. D. 456, 54 N. W. 417 (1893), see page 2, footnote 4.

30. Constitution, Art. XXIII, Sec. 1.

The section also provides that the amendment shall be published before being voted upon by the people, and if more than one amendment is proposed that each amendment shall be voted upon separately. Ibid.

31. Constitution, Art. XXIII, Sec. 2.

