

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  
ILLINOIS

MARCH 1, 1937

de 17 '37

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

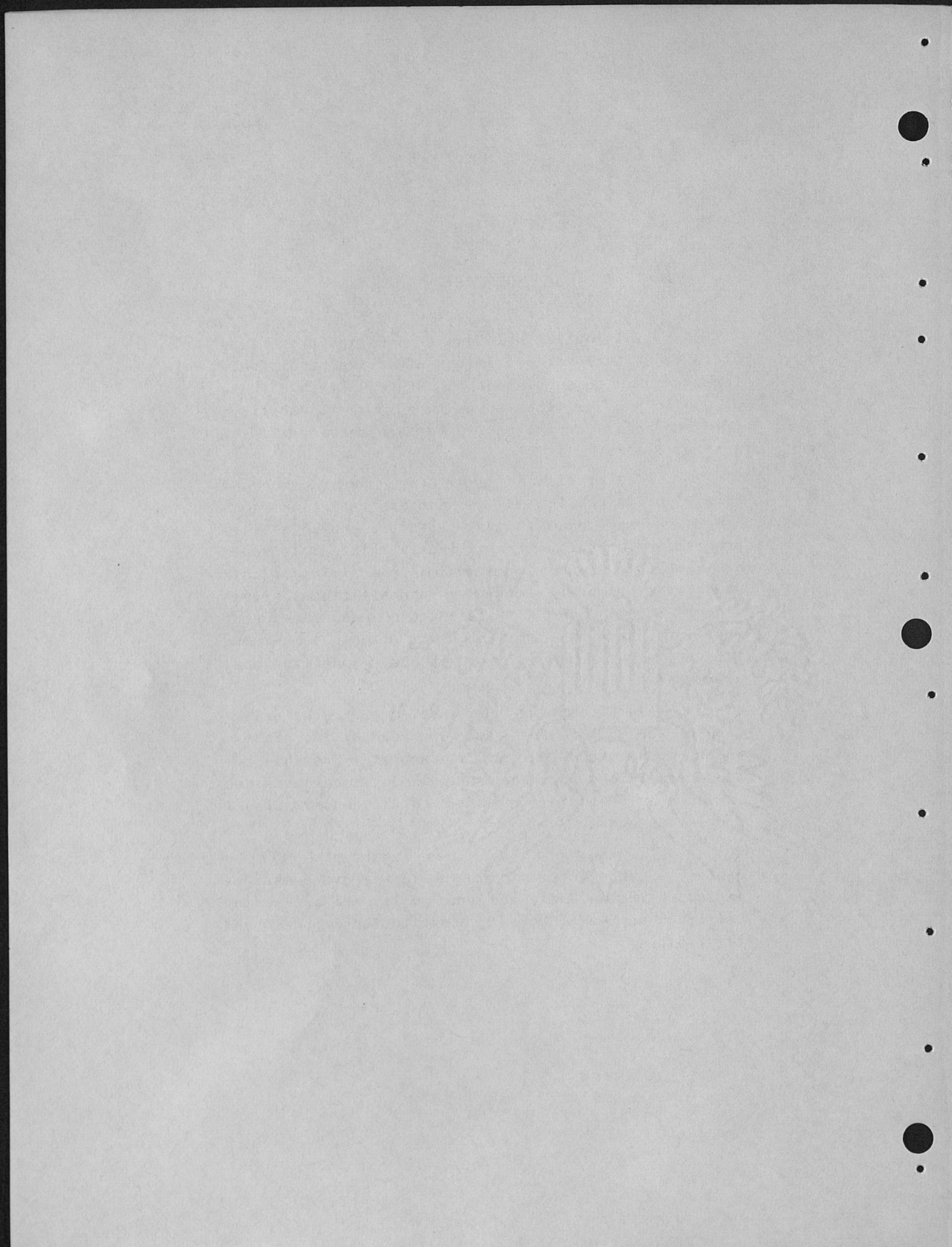
## PREFACE

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.

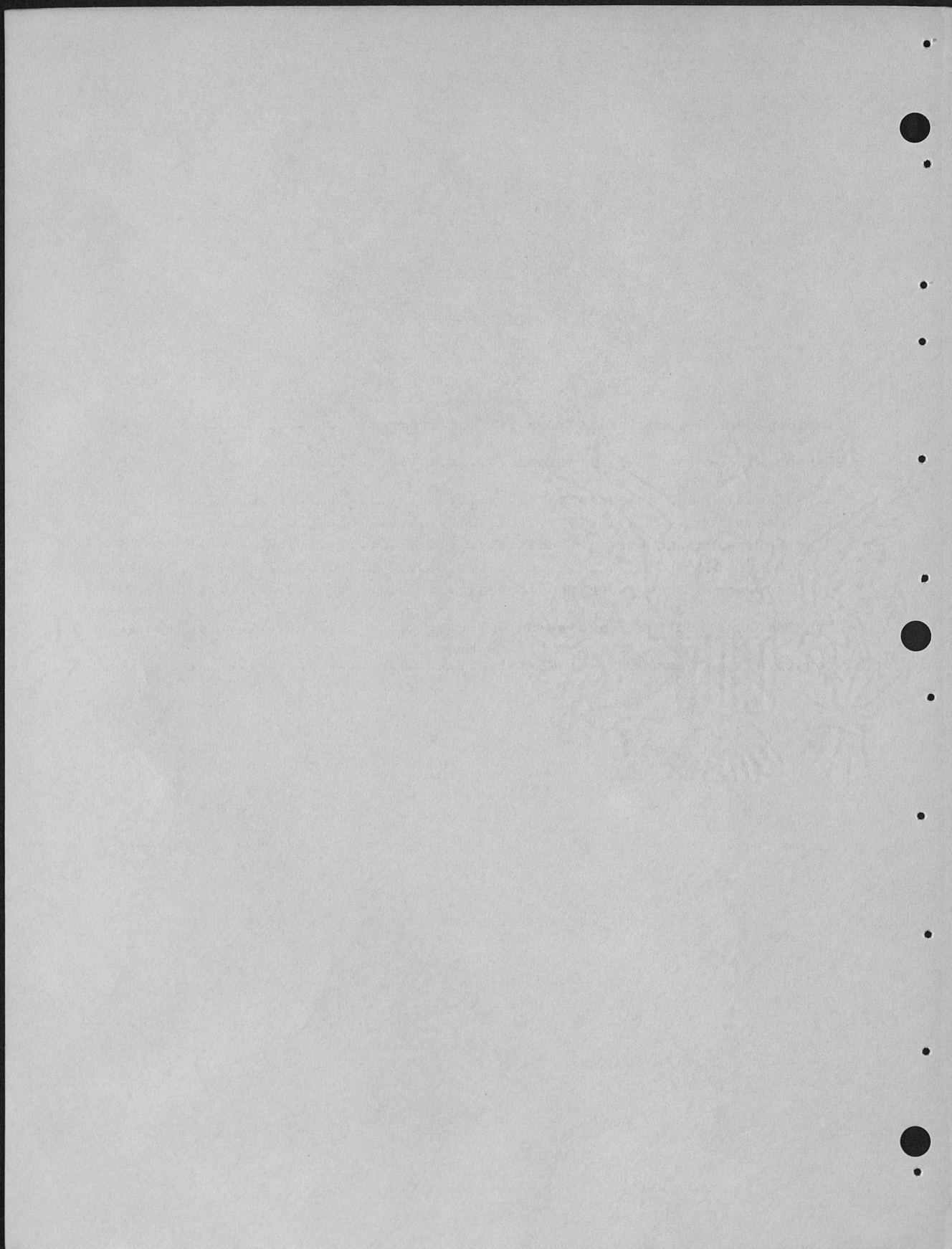
An attempt has been made, by a careful selection of the most recent cases decided by the highest courts of the States, to indicate wherever possible how these provisions have been construed. These cases are included in footnotes appended to the constitutional provisions shown.

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.



CONTENTS

	Page
Incidence of Responsibility for Welfare Program.....	1
Financial Powers and Limitations.....	1
Taxation and Assessments.....	1
Exemptions.....	5
Borrowing and Use of Credit.....	6
Other Income.....	10
Appropriations and Expenditures.....	10
Provisions Affecting Legislation.....	11
Constitutional Amendment or Revision.....	14



Illinois

ANALYSIS OF CONSTITUTIONAL PROVISIONS AFFECTING  
PUBLIC WELFARE IN ILLINOIS<sup>1</sup>

I. Incidence of Responsibility for Welfare Program

No provision.

II. Financial Powers and Limitations

A. Taxation and Assessments

(1) State

(a) No person shall be deprived of life, liberty or property without due process of law.<sup>2</sup>

(b) The General Assembly shall provide such revenue as may be needful by levying a tax, by valuation, so that every person and corporation shall pay a tax in proportion to the value of his, her or its property—such value to be ascertained by some person or persons to be elected or appointed in such manner as the General Assembly shall direct, and not otherwise; but the General Assembly shall have power to tax peddlers, auctioneers, brokers, hawkers, merchants, commission merchants, showmen, jugglers, inn-keepers, grocery keepers, liquor dealers, toll bridges, ferries, insurance, telegraph and express interests or business, vendors of patents, and persons or corporations owning or using

<sup>1</sup>Constitution, (1870), as published in the Blue Book of the State of Illinois, (1935-1936), by authority of the State of Illinois; with all amendments to March 1, 1937.

"No proposition is better settled than that the State Constitution is not a grant of power to the Legislature but is a limitation upon its powers, and that the Legislature possesses every power not delegated to some other department or to the Federal Government or not denied to it by the Constitution of the state or of the United States." *Fenske Bros. vs. Upholsterers' International Union of North America*, 358 Ill. 239, 193 N.E. 112, 117 (1934).

"The physical welfare of the citizen is a subject of so much importance to the state, and has such a direct relation to the general good, as to make laws tending to promote that object proper under the police power \* \* \*. The Legislature is vested with a large discretion to determine what measures are necessary to secure public welfare." It was held proper for the Legislature to require a railroad to build a stairway as a protective device for its employees. *Chicago B. & Q. Ry. Company vs. Illinois Commerce Commission*, 4 N.E. (2d) 96 (1936).

<sup>2</sup>Constitution, Art. II, Sec. 2.

Under this section money cannot be taken from citizens under the guise of taxes for any other than a public purpose. Providing relief to citizens who are destitute and in necessitous circumstances was held to be a public purpose. *Winter vs. Barrett*, 352 Ill. 441, 186 N.E. 113, 125 (1933).

## II. Financial Powers and Limitations—Continued

## A. Taxation and Assessments—Continued

## (1) State—Continued

franchises and privileges, in such manner as it shall from time to time direct by general law, uniform as to the class upon which it operates.<sup>3</sup>

(c) The specification of the objects and subjects of taxation shall not deprive the General Assembly of the power to require other subjects or objects to be taxed, in such manner as may be consistent with the principles of taxation fixed in this Constitution.<sup>4</sup>

<sup>3</sup>Constitution, Art. IX, Sec. 1.

The power to authorize the levy of taxes by the State and the political subdivisions is inherent in the Legislature and is restricted only by the State and Federal Constitutions. *People ex rel. McDonough vs. Mills Novelty Company*, 357 Ill. 285, 192 N. E. 236 (1934).

But the Illinois Constitution limits the power of taxation of all objects and subjects to the ad valorem principle, except in the cases specified in the latter part of this section. In other words this section "is a limitation on the power of the Legislature to raise revenue, confining it to (1) property taxes on a valuation basis; (2) occupation taxes; and (3) franchise or privilege taxes." *Bachrach vs. Nelson*, 349 Ill. 579, 182 N. E. 909, 913 (1932). See par. (c) above and footnote 4 below.

*Property taxes*: The Constitution contemplates that every property owner shall pay a tax in accordance with the value of his property, so that the financial burden of the cost of government may be borne ratably and proportionately. *People ex rel. Wangelin vs. St. Louis Bridge Company*, 357 Ill. 245, 191 N. E. 300 (1934).

All property must be equally and uniformly assessed in proportion to its value. *People ex rel. Wangelin vs. Wiggins Ferry Company*, 357 Ill. 173, 191 N. E. 297 (1934).

*Income Taxes*: An income tax statute, imposing a graduated tax on every resident of the State, was held unconstitutional under this section, because an income tax is a tax on "property" and under this section a tax on property must be levied by valuation. *Bachrach vs. Nelson*, 349 Ill. 579, 182 N. E. 909 (1932).

*Occupation, Franchise and Privilege Taxes*: A retailers occupation tax, of two percent levied on the gross receipts accruing from the sale of tangible personal property, was held constitutional. The court said that this tax was not a "property" tax but was an "occupation" tax upon the privilege of doing business, and as such need not be levied according to valuation, but need only be uniform as to class. The classification set up under this statute was considered reasonable and therefore valid. *Reif vs. Barrett*, 355 Ill. 104, 188 N. E. 889 (1933).

A sales tax statute passed earlier in the same session of the Legislature, was held unconstitutional, because it was not uniform as to class, due to the exclusion from its operation of farm products or farm produce sold by the producer, and other similar exemptions. *Winter vs. Barrett*, 352 Ill. 441, 186 N. E. 113 (1933).

*Inheritance and Estate Taxes*: An inheritance tax statute, dividing the property of decedents' estates into classes, and levying a tax on the right of succession at different rates to different classes, and exempting other classes, was held not to violate this section. The court said that since the right of succession by descent or devise is a right created by statute, upon which the Legislature might impose conditions, and that a tax of this nature was such a condition. *Kochersperger vs. Drake*, 167 Ill. 122, 47 N. E. 321 (1897).

<sup>4</sup>Constitution, Art. IX, Sec. 2.

This section has been construed to mean that the power to tax "other objects or subjects" is limited to the taxation of such other objects and subjects by the ad valorem principle, except in the cases specified in Section 1 of Article IX. The court said that this was the construction intended by the framers of the Constitution of 1870. Consequently a graduated income tax was held unconstitutional. *Bachrach vs. Nelson*, 349 Ill. 579, 182 N. E. 909 (1932). For Section 1 see page 1, par. (b), and footnote 3 above.



## II. Financial Powers and Limitations—Continued

## A. Taxation and Assessments—Continued

## (1) State—Continued

(d) The General Assembly shall have no power to release or discharge any county, city, township, town or district whatever, or the inhabitants thereof, or the property therein, from their or its proportionate share of taxes to be levied for State purposes, nor shall commutation for such taxes ~~be~~<sup>BE</sup> authorized in any form whatsoever.<sup>5</sup>

## (2) Counties

County authorities shall never assess taxes, the aggregate of which shall exceed seventy-five cents per one hundred dollars valuation except for the payment of indebtedness existing at the adoption of this Constitution, unless authorized by a vote of the people of the county.<sup>6</sup>

## (3) Other Local Units

(a) The General Assembly may vest the corporate authorities of cities, towns and villages with power to make local improvements by special assessment or by special taxation of contiguous property or otherwise. For all other corporate purposes, all municipal corporations may be vested with authority to assess and collect taxes; but such taxes shall be uniform in respect to persons and property within the jurisdiction of the body imposing the same.<sup>7</sup>

<sup>5</sup>Constitution, Art. IX, Sec. 6.

This section applies only to State taxes. It does not prevent the Legislature from distributing funds, raised by an occupation tax or some other form of taxation, to school districts, even though the effect of such a distribution is that the general property taxes within those school districts can be lowered. *Winter vs. Barrett*, 352 Ill. 441, 186 N. E. 113 (1933).

<sup>6</sup>Constitution, Art. IX, Sec. 8.

A county has no powers except those expressly granted by statute and such powers as are necessarily incidental to carry out the granted powers \* \* \*. Where under this section a tax levy was voted in excess of the 75 cent limit, it was held that the proceeds therefrom accruing could be used only for the purposes named in the ballot and for no others. *People ex rel. Hudson vs. Cleveland C. C. & St. L. Railway Company*, 360 Ill. 180, 195 N. E. 631 (1935).

A vote, on the proposition of whether a county shall exceed the constitutional tax limitation, may be taken at either a general or a special election. *People ex rel. Gleason vs. Cleveland C. C. & St. L. Railway Company*, 339 Ill. 300, 171 N. E. 126 (1930).

Only a majority of the votes actually cast on the proposition are needed to authorize taxation in excess of the constitutional limit. *People ex rel. Lyerly vs. Missouri Pacific Railway Company*, 328 Ill. 504, 160 N. E. 82 (1927).

If a county tax within the constitutional limit can be separated from the portion in excess of that limit, the portion within the limit is valid. *People ex rel. Bunch vs. Cleveland C. C. & St. L. Railway Company*, 339 Ill. 169, 171 N. E. 175 (1930).

<sup>7</sup>Constitution, Art. IX, Sec. 9.

The powers, duties, and liabilities of municipal corporations, unless restrained by constitutional limitations, are wholly under the control of the Legislature. This section and Section 10 of Article IX (see page 4, par. (b)) withdraw from the Legislature the power to directly impose taxes for "corporate purposes". "Corporate

## II. Financial Powers and Limitations—Continued

## A. Taxation and Assessments—Continued

## (3) Other Local Units—Continued

(b) The General Assembly shall not impose taxes upon municipal corporations, or the inhabitants or property thereof, for corporate purposes, but shall require that all the taxable property within the limits of municipal corporations shall be taxed for the payment of debts contracted under authority of law, such taxes to be uniform in respect to persons and property within the jurisdiction of the body imposing the same. Private property shall not be liable to be taken or sold for the payment of the corporate debts of a municipal corporation.<sup>8</sup>

(c) The General Assembly shall have power, subject to the conditions and limitations hereinafter contained, to pass any law (local, special or general) providing a scheme or charter of local municipal government for the territory now or hereafter embraced within the limits of the city of Chicago. The law or laws so passed; \* \* \* ~~and~~ may provide for the assessment of property and the levy and collection

purposes", however, do not include functions which a municipal corporation performs in its governmental capacity as an agency of the State. The Legislature can compel a municipal corporation, therefore, to perform any duty which relates to the general welfare and security of the State, although local taxation may be required in the performance of the duty. Provision for jury trial is a matter relating to the general welfare of the State rather than a corporate purpose. *People ex rel. City of Chicago vs. Board of Commissioners of Cook County*, 355 Ill. 244, 189 N. E. 26 (1934).

"Corporate purposes for which taxes may be levied by a municipal corporation are only such as are germane to the objects of the creation of the municipality or such as have a legitimate connection with those objects and a manifest relation thereto." The creation and maintenance of parks is such a corporate purpose. *Kocsis vs. Chicago Park District*, 362 Ill. 24, 198 N. E. 847, 854 (1935).

The enumeration in this section of certain types of municipal corporations, which may be vested with power to make local improvements by special assessment, does not by implication prevent the Legislature from vesting other types of public corporations with such power, since the Constitution is a limitation and not a grant of power. A statute, authorizing a sanitary district to construct improvements by special assessments, was held not to violate this section. *Taylorville Sanitary District vs. Winslow*, 317 Ill. 25, 147 N. E. 401 (1925).

A municipal corporation has no power to levy any tax except such as <sup>15</sup> specifically granted to it by the Legislature, and the Legislature may not grant such power except for a public purpose under this section. The building of a community hall is a public purpose. *Robbins vs. Kadyk*, 312 Ill. 290, 143 N. E. 863 (1924).

<sup>8</sup> Constitution, Art. IX, Sec. 10.

"The General Assembly may impose taxes, local in their character against a municipal corporation or the inhabitants thereof, if required for the general good of the state, because such taxes are not merely \* \* \* for corporate purposes \* \* \*. The General Assembly may compel taxation by a municipal corporation for the performance of duties as an agency of the state government \* \* \*. It may compel a municipal corporation to perform duties which relate to the general welfare and security of the state \* \* \*. It may require a county to build a courthouse, a jail, or a bridge, to support paupers, or to establish necessary regulations for public health and safety \* \* \*. The maintenance and care of dependent children falls within the same class of duties and obligations as the support of paupers, the building and maintaining of jails, and the administration of justice." *St. Hedwig's Industrial School for Girls vs. Cook County*, 289 Ill. 432, 124 N. E. 629, 632 (1919). (See page 3, par. (a) and footnote 7.)

## II. Financial Powers and Limitations—Continued

## A. Taxation and Assessments—Continued

## (3) Other Local Units—Continued

of taxes within said city for corporate purposes in accordance with the principles of equality and uniformity prescribed by this Constitution; \* \* \*. No law based upon this amendment to the Constitution, affecting the municipal government of the city of Chicago, shall take effect until such law shall be consented to by a majority of the legal voters of said city voting on the question at any election, general, municipal or special; \* \* \*.<sup>9</sup>

## B. Exemptions

The property of the State, counties, and other municipal corporations, both real and personal, and such other property as may be used exclusively for agricultural and horticultural societies, for school, religious, cemetery and charitable purposes, may be exempted from taxation; but such exemption shall be only by general law. In the assessment of real estate incumbered by public easement, any depreciation occasioned by such easement may be deducted in the valuation of such property.<sup>10</sup>

<sup>9</sup>Constitution, Art. IV, Sec. 34, adopted (1904).

See page 3, footnote 7 for cases defining "corporate purpose".

<sup>10</sup>Constitution, Art. IX, Sec. 3.

"The enumerated class of property exempted by constitutional provision is a limitation on the power of the Legislature to exempt any other property, and all property not within the exemption is subject to taxation." *People ex rel. McDonough vs. Chicago Union Lime Works Company*, 361 Ill. 304, 198 N. E. 1 (1935).

"This constitutional provision is not self-executing, and exemptions, within the limitations prescribed, exist only when created by a general law enacted by the Legislature." *Turnverein "Lincoln" vs. Board of Appeals of Cook County*, 358 Ill. 135, 192 N. E. 780 (1934).

"The Legislature cannot broaden nor enlarge upon the exemptions of property permitted by the Constitution." Where school trustees owned certain property, which was rented to a theatre, the income being used exclusively for school purposes, the property was held not exempt from taxation, because it was not used for school purposes. *People ex rel. Gill vs. Trustees of Schools*, 4 N. E. (2d) 16, 18 (1936).

Farmland, given to the Trustees of the University of Illinois, the income therefrom to be used for deserving students, was held not exempt from taxation. The court said (1) since certain restrictions were put on the use of the property that the State could not be said to own it for purposes of tax exemption; and (2) the property was not used exclusively for school and religious purposes. *People ex rel. Olmstead vs. University of Illinois*, 328 Ill. 377, 159 N. E. 811 (1928).

A city farm, which was by a resolution of the City Council used as a nursery to provide trees and shrubbery for city parks, was held exempt from taxation because it was the property of a municipality. *People ex rel. Sweltzer vs. City of Chicago*, 363 Ill. 409, 2 N. E. (2d) 330 (1936).

A Masonic Temple, used for lodge purposes, was held not to be used exclusively for charitable purposes within the meaning of this section and the statutes, and so was not exempt from taxation. The court said that the primary use to which the property is put determines the question of tax exemption, and where one of several purposes is charitable, as here, this is not sufficient; the chief, if not the sole purpose, must be charitable. *People ex rel. Nelson vs. Rockford Masonic Temple Building Association*, 348 Ill. 567, 181 N. E. 428 (1932).

A 200 acre farm, with buildings thereon, used exclusively for the care and support of dependent Master Masons, was held to be used exclusively for charitable

## II. Financial Powers and Limitations—Continued

## C. Borrowing and Use of Credit

## (1) State

(a) \* \* \* the State may, to meet casual deficits or failures in revenues, contract debts, never to exceed in the aggregate two hundred and fifty thousand dollars; and moneys thus borrowed shall be applied to the purpose for which they were obtained, or to pay the debt thus created, and to no other purpose; and no other debt, except for the purpose of repelling invasion, suppressing insurrection, or defending the State in war (for payment of which the faith of the State shall be pledged), shall be contracted, unless the law authorizing the same shall, at a general election, have been submitted to the people and have received a majority of the votes cast for members of the General Assembly at such election. The General Assembly shall provide for the publication of said law for three months, at least, before the vote of the people shall be taken upon the same; and provision shall be made, at the time, for the payment of the interest annually, as it shall accrue, by a tax levied for the purpose, or from other sources of revenue; which law, providing for the payment of such interest by such tax, shall be irrevocable until such debt be paid: And, provided, further, that the law levying the tax shall be submitted to the people with the law authorizing the debt to be contracted.<sup>11</sup>

purposes and so was exempt from taxation. *Grand Lodge vs. Board of Review*, 281 Ill. 480, 117 N. E. 1016 (1917).

To exempt property as used for a charitable purpose it must be used directly and exclusively for the charitable purpose, not indirectly by appropriating the issues and profits for charity. So where a farm was owned by an old peoples' home, and rented to other persons, the income being used for the home, it was held not exempt from taxation. *People ex rel. Baldwin vs. Jessamine Withers Home*, 312 Ill. 136, 143 N. E. 414 (1924).

<sup>11</sup>Constitution, Art. IV, Sec. 18.

A proposition authorizing the issuance and sale of State bonds to the amount of \$30,000,000 for relief purposes, was approved by a majority of the electors voting for members of the General Assembly in the general election of November 1934. The validity of the bond issue was questioned on the ground that there had not been a sufficient publication of the election notice in accordance with the statute, since the notice had been published for part of the three months period in one newspaper and part in another newspaper. The court held that the publication satisfied this section of the Constitution, and that any additional statutory requirements were not mandatory. *People ex rel. Kerner vs. Martin*, 359 Ill. 408, 194 N. E. 557 (1935).

Where a \$60,000,000 bond issue was authorized by a vote of the people for the purpose of constructing a State-wide system of hard surfaced roads, it was held that the routes of the roads constructed with the proceeds must conform substantially with the routes as described in the Bond Issue Act. *Watts vs. Department of Public Works and Buildings*, 328 Ill. 587, 160 N. E. 201 (1928).

Tax anticipation notes or warrants, payable solely out of taxes already levied but not yet collected, were held not to constitute a "debt" within the meaning of this section, because when the taxes were levied they became an asset of the State and could be considered "constructively in the treasury", and since the amount of taxes levied greatly exceeded the amount of these warrants the State was not incurring any obligation in excess of revenues. *People ex rel. Capron vs. Nelson*, 344 Ill. 46, 176 N. E. 59 (1931).

## II. Financial Powers and Limitations—Continued

## C. Borrowing and Use of Credit—Continued

## (1) State—Continued

(b) The State shall never pay, assume or become responsible for the debts or liabilities of, or in any manner give, loan or extend its credit to, or in aid, of any public or other corporation, association or individual.<sup>12</sup>

(c) The General Assembly shall have no power to release or extinguish, in whole or in part, the indebtedness, liability or obligation of any corporation or individual to this State or to any municipal corporation therein.<sup>13</sup>

(d) \* \* \* The General Assembly shall never loan the credit of the State or make appropriations from the treasury thereof, in aid of railroads or canals: \* \* \*.<sup>14</sup>

## (2) Counties and Other Local Units

(a) No county, city township, school district or other municipal corporation shall be allowed to become indebted in any manner or for any purpose to an amount, including existing indebtedness, in the aggregate exceeding five per centum on the value of the taxable property therein, to be ascertained by the last assessment for State and county taxes previous to the incurring of such indebtedness. Any county, city, school district or other municipal corporation incurring any indebtedness as aforesaid, shall before or at the time of doing so, provide for the collection of a direct annual tax sufficient to pay the interest on such

<sup>12</sup>Constitution, Art. IV, Sec. 20.

A statute, authorizing a gasoline tax refund to persons using gasoline purchased for purposes other than the operation of motor vehicles within the State was held invalid as ~~provided~~ <sup>provided</sup> for gifts on the part of the State to individuals. Chicago Motor Club vs. Kinney, 329 Ill. 120, 160 N. E. 163 (1928).

A bond issue authorized by the voters for the payment of a bonus to World War veterans, was held not to violate this section, since the purposes of the act, to promote a spirit of patriotism, to encourage the defense of the country in future conflicts, and to promote the public welfare, were public purposes, although the manner in which they found expression involved an element of private benefit. Hagler vs. Small, 307 Ill. 460, 138 N. E. 849 (1923).

A statute providing for the payment of pensions to all judges of courts of record was held not to violate this section. The court said that such pensions are not void as being grants to individuals because they serve the public in two ways: (1) By encouraging young and able officers to remain in the service, and; (2) by retiring from public service those who have become incapacitated from performing the duties as well as they might be performed by younger and more vigorous persons. De Wolf vs. Bowley, 355 Ill. 530, 189 N. E. 893 (1934).

<sup>13</sup>Constitution, Art. IV, Sec. 23.

<sup>14</sup>Constitution, Separate Section 3 (Canals), as amended (1908).

The Legislature, however, is authorized to provide for the construction of a canal from Chicago to Utica and issue bonds not to exceed \$20,000,000 for this purpose. Ibid.

## II. Financial Powers and Limitations—Continued

## C. Borrowing and Use of Credit—Continued

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

debt as it falls due, and also to pay and discharge the principal thereof within twenty years from the time of contracting the same \* \* \*.<sup>15</sup>

<sup>15</sup>Constitution, Art. IX, Sec. 12.

This section is mandatory and self-executing. *East St. Louis and Interurban Water Company vs. City of Belleville*, 360 Ill. 490, 196 N. E. 442 (1935).

"The rule of the majority of the states upon this common constitutional prohibition, where annual installments are concerned, is that the aggregate indebtedness is not at once created. Illinois holds to the opposite view by declarations of this court that where a contract calls for the payment of annual installments an indebtedness is at once created for the aggregate of all installments." Consequently, where a city had contracted to pay annual rental on water hydrants over a period of twenty-five years, and the aggregate amount of that rental over the twenty-five year period exceeded the amount of the five percent debt limitation of the city, the contract was invalid. *East St. Louis and Interurban Water Company vs. City of Belleville*, 360 Ill. 490, 196 N. E. 442 (1935).

"The assessment to be resorted to in ascertaining the extent to which a municipality may lawfully become indebted is the last preceding assessment which is complete at the time the liability is incurred \* \* \*. It follows that the validity of a debt is to be determined by the ratio of indebtedness to the assessed valuation in effect when the debt was created. If a debt is valid when created, it will not become invalid thereafter, even if it should exceed five percent of some future assessment." *Kocsis vs. Chicago Park District*, 362 Ill. 24, 198 N. E. 847, 852 (1935).

The interest which will accrue on a proposed issue of bonds by a county is not a part of the indebtedness within the limitation of this section. *Goodwine vs. Vermillion County*, 271 Ill. 128, 110 N. E. 890 (1915).

Warrants issued in anticipation of taxes to be collected, do not constitute a "debt" within the meaning of this section, provided the tax out of which they are payable is actually levied, and the legal effect of the contract between the corporation and the individual is such that there is no liability against the corporation. Such warrants are not a "debt" because they create no liability against the city, and are payable only out of taxes already levied and in the process of collection. *City of Springfield vs. Edwards*, 84 Ill. 628 (1877).

A statute, authorizing the Board of Education of the City of Chicago to issue \$10,000,000 in bonds, payable out of general taxation of the property within the school district, the proceeds to be used for paying off tax anticipation warrants previously issued, was held unconstitutional. The court stated that these tax anticipation warrants were payable only out of taxes already levied and that the only remedy of the holders thereof was against the tax collecting officers. To make the school district or city liable by the issuance of the contemplated bonds was unconstitutional because that would be making the corporation liable for a debt for which it was in no wise responsible. *Berman vs. Board of Education of City of Chicago*, 360 Ill. 535, 196 N. E. 464 (1935).

When such tax anticipation warrants have been issued, payable out of taxes levied, the holders thereof must be paid pro rata out of any of such taxes collected. *Norfolk and Western Railway Company vs. Board of Education of City of Chicago*, District Court N. D. Illinois, 14 F. Supp. 475 (1936).

Certificates in the sum of \$12,000,000, the proceeds to be used to improve and extend the water works system of the City of Chicago, payable solely out of the entire revenue of the water works system of the city, were held not to constitute a "debt" within the meaning of this section. The court held that since these certificates were payable out of the water works revenues only, and the plant itself was not pledged and the general credit of the city was not pledged that they would not constitute an "indebtedness" within the contemplation of this section. *Ward vs. City of Chicago*, 342 Ill. 167, 173 N. E. 810 (1930).

Following the above case the Federal Court of Appeals held that where an Illinois city issued certificates of indebtedness to pay for improvements in its water works system, pledging the revenue of the whole plant, and issuing a trust deed on the

## II. Financial Powers and Limitations—Continued

## C. Borrowing and Use of Credit—Continued

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

(b) No county, city, town, township or other municipality, shall ever become subscriber to the capital stock of any railroad or private corporation, or make donation to or loan its credit in aid of such corporation: \* \* \*.<sup>16</sup>

(c) The General Assembly shall have power, subject to the conditions and limitations hereinafter contained, to pass any law (local, special or general) providing a scheme or charter of local municipal government for the territory now or hereafter embraced within the limits of the city of Chicago. The law or laws so passed may provide, \* \* \* for the assumption by the city of Chicago of the debts and liabilities (in whole or in part) of the governments or corporate authorities whose functions within its territory shall be vested in said city of Chicago, and may authorize said city, in the event of its becoming liable for the indebtedness of two or more of the existing municipal corporations lying wholly within said city of Chicago, to become indebted to an amount (including its existing indebtedness and the indebtedness of all municipal

---

whole plant as security, that such certificates did not constitute a "debt" within the meaning of this section. The court held that under the rule of the above case the revenues of the whole plant could be pledged to finance an improvement, without creating a "debt", and that there was no practical difference in the case where a trust deed or mortgage was also given on the whole plant. *City of Jerseyville vs. Connett*, 49 F. Rep. (2d) 246 (1931).

A later Federal case, however, distinguished the above cases on the ground that different statutes were involved and held that where the revenue of a whole plant was pledged to pay for an improvement that a "debt" was created within the meaning of this section. The opinion contains a discussion of the Illinois cases on this point. *Illinois Power and Light Corporation vs. City of Centralia*, 11 F. Supp. 874 (1935).

Where a school district had boundaries coextensive with the City of Chicago, and where some of the officers of each corporation were the same, it was held that the school district could borrow up to the limit of five percent of the assessed value of the property contained in it, without regard to the amount of the indebtedness of the City of Chicago. The court stated that the power of the Legislature to create public corporations is practically unlimited. It may create any conceivable kind of corporation it sees fit, for the more efficient administration of public affairs. Even though the territorial limits of such corporations are coextensive "each corporation may contract corporate indebtedness up to its constitutional limitation without reference to the indebtedness of any other corporation embraced wholly or in part within its territory." *Board of Education of City of Chicago vs. Upham*, 357 Ill. 283, 191 N. E. 876 (1934).

Municipal bonds may be refunded. *Hoehamer vs. Village of Elmwood Park*, 361 Ill. 423, 198 N. E. 345 (1935).

<sup>16</sup> Constitution, Separate Section 2.

This section applies only to corporations having a capital stock or organized for profit. The vital point is whether the purpose is public; if it is, it does not matter whether the agency through which it is dispensed is public or not. An agreement by the park commissioners to grant control of a public building to a non-profit museum corporation, was held not to violate this section. *Furlong vs. South Park Commissioners*, 340 Ill. 363, 172 N. E. 757 (1930).

## II. Financial Powers and Limitations—Continued

## C. Borrowing and Use of Credit—Continued

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

corporations lying wholly within the limits of said city, and said city's proportionate share of the indebtedness of said county and sanitary district, which share shall be determined in such manner as the General Assembly shall prescribe) in the aggregate not exceeding five per centum of the full value of the taxable property within its limits, as ascertained by the last assessment either for State or municipal purposes previous to the incurring of such indebtedness (but no new bonded indebtedness, other than for refunding purposes, shall be incurred until the proposition therefor shall be consented to by a majority of the legal voters of said city voting on the question at any election, general, municipal or special); \* \* \*.<sup>17</sup>

## D. Other Income

All lands, moneys, or other property donated, granted or received for school, college, seminary or university purposes, and the proceeds thereof shall be faithfully applied to the objects for which such gifts or grants were made.<sup>18</sup>

## E. Appropriations and Expenditures

(1) Neither the General Assembly nor any county, city, town, township, school district or other public corporation shall ever make any appropriation, or pay from any public fund whatever, anything in aid of any church or sectarian purpose, or to help support or sustain any school, academy, seminary, college, university, or other literary or scientific institution, controlled by any church or sectarian denomination whatever; nor shall any grant or donation of land, money or other personal property ever be made by the State or any such public corporation to any church or for any sectarian purpose.<sup>19</sup>

(2) The General Assembly shall make no appropriation of money out of the treasury in any private law. \* \* \*<sup>20</sup>

<sup>17</sup>Constitution, Art. IV, Sec. 34, adopted (1904).  
Constitution, Art. IX, Sec. 13, adopted (1890) authorized the city of Chicago to issue bonds in the amount of \$5,000,000 for the World's Columbian Exposition.

<sup>18</sup>Constitution, Art. VIII, Sec. 2.  
The Constitution authorizes the State to construct a deep waterway canal from Chicago to a point near Utica. All power developed from this waterway may be leased in part or in whole, and the income therefrom must be paid into the State treasury. Constitution, Separate Section 3.

<sup>19</sup>Constitution, Art. VIII, Sec. 3.

<sup>20</sup>Constitution, Art. IV, Sec. 16.  
A soldiers' bonus statute was held not to violate this section, because this section prohibits appropriations for any purpose in a private law, but does not prohibit appropriations to private persons. Hagler vs. Small, 307 Ill. 480, 138 N. E. 849 (1923).



## II. Financial Powers and Limitations—Continued

## E. Appropriations and Expenditures—Continued

(3) No money shall be drawn from the treasury except in pursuance of an appropriation made by law, and on the presentation of a warrant issued by the Auditor thereon; and no money shall be diverted from any appropriation made for any purpose, or taken from any fund whatever, either by joint or separate resolution. \* \* \*<sup>21</sup>

(4) Each General Assembly shall provide for all the appropriations necessary for the ordinary and contingent expenses of the government until the expiration of the first fiscal quarter after the adjournment of the next regular session, the aggregate amount of which shall not be increased without a vote of two-thirds of the members elected to each house, nor exceed the amount of revenue authorized by law to be raised in such time; and all appropriations, general or special, requiring money to be paid out of the State treasury, from funds belonging to the State, shall end with such fiscal quarter: \* \* \*<sup>22</sup>

(5) The General Assembly shall never grant or authorize extra compensation, fee or allowance to any public officer, agent, servant or contractor, after service has been rendered or a contract made, nor authorize the payment of any claim, or part thereof, hereafter created against the State under any agreement or contract made without express authority of law; \* \* \*<sup>23</sup>

## III. Provisions Affecting Legislation

## A. Regular Sessions of the Legislature

The sessions of the General Assembly shall commence at 12:00 o'clock noon, on the Wednesday next after the first Monday in January, in the year next ensuing the election of members thereof, and at no other time, unless as provided by this Constitution. \* \* \*<sup>24</sup>

<sup>21</sup> Constitution, Art. IV, Sec. 17.

A retailers occupational tax statute, which provided that the Governor, Treasurer and Auditor should at the end of each month transfer the money in the occupational tax fund to the common school fund, the blind relief fund and other State funds, was held not to violate this section. The court said that the transfer of money from one State fund to another was merely a ministerial act and was not the transfer or paying of any money out of the State treasury, and so was not an appropriation. Reif vs. Barrett, 355 Ill. 104, 188 N. E. 889 (1933).

<sup>22</sup> Constitution, Art. IV, Sec. 18.

A statute providing for the transfer of the proceeds of a motor fuel tax from road purposes to school purposes was held not an appropriation bill requiring a two-thirds vote of the Legislature, where no authority to pay the money out of the State treasury was granted. Warner vs. Martin, 359 Ill. 213, 194 N. E. 264 (1934).

The General Assembly cannot make a continuing appropriation beyond the first fiscal quarter after the adjournment of the next regular session. People ex rel. Millner vs. Russel, 311 Ill. 96, 142 N. E. 537 (1924).

<sup>23</sup> Constitution, Art. IV, Sec. 19.

<sup>24</sup> Constitution, Art. IV, Sec. 9.

Elections for members of the General Assembly are held in November of the even years. Constitution, Art. IV, Sec. 2.

## III. Provisions Affecting Legislation—Continued

## B. Special Sessions of the Legislature

The Governor may, on extraordinary occasions, convene the General Assembly, by proclamation, stating therein the purpose for which they are convened; and the General Assembly shall enter upon no business except that for which they were called together.<sup>25</sup>

## C. Powers of Initiative and Referendum

No provisions.<sup>26</sup>

## D. Legislative Enactment

(1) Every bill shall be read at large on three different days, in each house; and the bill and all amendments thereto shall be printed before the vote is taken on its final passage; \* \* \*. No act hereafter passed shall embrace more than one subject, and that 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 so expressed; and no law shall be revived or amended by reference to its title only, but the law revived, or the section amended, shall be inserted at length in the new act.<sup>27</sup> And no act of the General Assembly shall take effect until the first day of July next after its passage, unless, in case of emergency (which emergency

<sup>25</sup> Constitution, Art. V, Sec. 8.

<sup>26</sup> Acts of the Legislature authorizing or creating corporations with banking powers must be submitted to a vote of the people. Constitution, Art. XI, Sec. 5.

With the exception of the section noted above and certain local option questions where a vote of the local electors is required, the Constitution has made no provision for a referendum. Except in these cases the General Assembly may not refer an act to a vote of the people, since the legislative power is vested in the General Assembly. *People ex rel. Thomson vs. Barnett*, 344 Ill. 62, 176 N. E. 108 (1931).

<sup>27</sup> "The object of the provision as to titles in this section is to guard against inconsiderate legislation, to give information as to the subject of legislation with which the act deals, and to prevent joining in one act incongruous or unrelated matters. \* \* \* The object is to require the title of the act to express in general terms its purposes, to prevent surprise by the insertion in the act of provisions not related to its subject which have no legitimate tendency to accomplish its purposes as expressed in the title." The title of a medical practice act was held to express in general terms the subject matter of the act. *People vs. Jiras*, 340 Ill. 208, 172 N. E. 47 (1930).

"It was never contemplated by the framers of the Constitution that the title of an act should be a table of its contents. The requirements of Section 13 of Article IV (this section) on that subject is met if the title correctly, explicitly, and clearly states the subject matter of the act so as to inform the members of the General Assembly and the general public of the subject and the interrelated matters pertaining to the subject, even though some of the provisions are diverse, where such provisions are integral parts in the completion of an effective and practical unit of legislation." Where an amendatory act was entitled an act to amend the former act, setting out the former title, and where the former act was quoted in full, it was held that the title to the amendatory act was as broad as the original title. *People ex rel. Sobie vs. Gill*, 358 Ill. 261, 193 N. E. 192 (1934).

## III. Provisions Affecting Legislation—Continued

## D. Legislative Enactment—Continued

shall be expressed in the preamble or body of the act), the General Assembly shall, by a vote of two-thirds of all the members elected to each house, otherwise direct.<sup>28</sup>

(2) \* \* \* no bill shall become a law without the concurrence of the majority of the members elected to each house.<sup>29</sup>

(3) The General Assembly shall not pass local or special laws in any of the following enumerated cases, that is to say, for—

\* \* \* Incorporating cities, towns or villages, or changing or amending the charter of any town, city or village; (see page 4, par. (c)).

\* \* \* Remitting fines, penalties or forfeitures;

\* \* \* In all other cases where a general law can be made applicable, no special law shall be enacted.<sup>30</sup>

(4) \* \* \* Bills making appropriations of money out of the treasury shall specify the objects and purposes for which the same are made, and appropriate to them respectively their several amounts in distinct items and sections, \* \* \*.<sup>31</sup>

---

An act creating an Emergency Relief Commission and defining its powers, was held not invalid as an attempt to amend certain sections of the act relating to paupers without proper reference thereto in the title. The court said that if it should develop that the effect of the provisions of this act was to amend by implication some of the provisions of some other act, such implied amendment would be incidental only and would not violate this section. *Reif vs. Barrett*, 355 Ill. 104, 188 N. E. 889 (1933).

<sup>28</sup> Constitution, Art. IV, Sec. 13.

To merely declare in an act that an emergency exists is not sufficient under this section, but the facts constituting the emergency must be expressed. *Graham vs. Dye*, 308 Ill. 283, 139 N. E. 390 (1923).

<sup>29</sup> Constitution, Art. IV, Sec. 12.

<sup>30</sup> Constitution, Art. IV, Sec. 22.

"An act is not local or special merely because it operates in but one place or upon a particular class of persons or things, provided there is a reasonable basis for the legislative classification." A statute making certain provisions as to jury trial, which applied to counties of 500,000 or more population, Cook County being the only such county in the State, was held not to violate this section, because such a classification was "reasonable", since court conditions in very populous counties required special consideration. *Hunt vs. Rosenbaum Grain Corporation*, 355 Ill. 504, 189 N. E. 907 (1934).

<sup>31</sup> Constitution, Art. V, Sec. 16.

A sales tax act which appropriated money to counties to be used either for educational purposes or for relief or for both, was held to violate this section, because the Legislature itself must determine to what objects and purposes money shall be appropriated and cannot leave this determination to any person or board. *Winter vs. Barrett*, 352 Ill. 441, 186 N. E. 113 (1933).

## III. Provisions Affecting Legislation—Continued

## D. Legislative Enactment—Continued

(5) The General Assembly shall make no appropriation of money out of the treasury in any private law. \* \* \*<sup>32</sup>

(6) The Governor shall, at the commencement of each session, and at the close of his term of office, give to the General Assembly information, by message, of the condition of the State, and shall recommend such measures as he shall deem expedient. He shall \* \* \* present estimates of the amount of money required to be raised by taxation for all purposes.<sup>33</sup>

(7) All judges of courts of record, inferior to the Supreme Court, shall, on or before the first day of June of each year, report in writing to the judges of the Supreme Court such defects and omissions in the laws as their experience may suggest; and the judges of the Supreme Court shall, on or before the first day of January of each year, report in writing to the Governor such defects and omissions in the Constitution and laws as they may find to exist, together with appropriate forms of bills to cure such defects and omissions in the laws. \* \* \*<sup>34</sup>

(8) Every bill passed by the General Assembly shall, before it becomes a law, be presented to the Governor. If he approves, he shall sign it, and thereupon it shall become a law; but if he do not approve, he shall return it with his objections, to the house in which it shall have originated, \* \* \*.<sup>35</sup>

## IV. Constitutional Amendment or Revision

## A. By Proposal of Legislature or People

Amendments to this Constitution may be proposed in either house of the General Assembly, and if the same shall be voted for by two-thirds of all the members elected to each of the two houses, such proposed

<sup>32</sup>Constitution, Art. IV, Sec. 16.

This section does not prohibit an appropriation to a private person, but prohibits appropriations for any purpose in a private law. A soldiers' bonus act was held not to violate this section. Hagler vs. Small, 307 Ill. 460. 138 N. E. 849 (1923).

<sup>33</sup>Constitution, Art. V, Sec. 7.

<sup>34</sup>Constitution, Art. VI, Sec. 31.

<sup>35</sup>Constitution, Art. V, Sec 16, as amended (1884).

The section further provides that a bill may be passed over the Governor's veto by two-thirds of the members elected to each house. Any bill which is not returned by the Governor within ten days, Sundays excepted, shall become a law, unless the Legislature by its adjournment prevents its return, in which case the Governor shall file it with his objections with the Secretary of State, within ten days of the adjournment, or it shall become a law. The Governor may veto a part of any bill, in which case such part shall be treated like a bill vetoed as a whole. Ibid.

## IV. Constitutional Amendment or Revision—Continued

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

amendments, \* \* \* shall be submitted to the electors of this State for adoption or rejection, at the next election of members of the General Assembly, in such manner as may be prescribed by law. The proposed amendments shall be published in full at least three months preceding the election, and if a majority of the electors voting at said election shall vote for the proposed amendments, they shall become a part of this Constitution. But the General Assembly shall have no power to propose amendments to more than one article of this Constitution at the same session, nor to the same article oftener than once in four years.<sup>36</sup>

## B. By Constitutional Convention

Whenever two-thirds of the members of each house of the General Assembly shall, \* \* \* concur that a convention is necessary to revise, alter or amend the Constitution, the question shall be submitted to the electors at the next general election. If a majority voting at the election vote for a convention, the General Assembly shall, at the next session, provide for a convention, to consist of double the numbers of members of the Senate, to be elected in the same manner, at the same places and in the same districts. The General Assembly shall, in the Act calling the convention, designate the day, \* \* \* of its meeting, \* \* \*. Said convention shall meet within three months after such election and prepare such revision, alteration or amendments of the Constitution as shall be deemed necessary, which shall be submitted to the electors for their ratification or rejection, at an election appointed by the convention for that purpose, not less than two nor more than six months after the adjournment thereof; and unless so submitted, and approved by a majority of the electors voting at the election, no such revision, alterations or amendments shall take effect.<sup>37</sup>

---

<sup>36</sup>Constitution, Art. XIV, Sec. 2.

The language of this section in regard to the majority of the votes necessary for the approval of an amendment, was held to be clear and unambiguous, and to mean that a majority of the electors voting at the election must approve the amendment, and not merely, as contended, a majority of the electors voting for members of the General Assembly. *People vs. Stevenson*, 281 Ill. 17, 117 N. E. 747 (1917).

<sup>37</sup>Constitution, Art. XIV, Sec. 1.

A majority of the electors voting at the general election must approve the question of calling a constitutional convention. *People vs. Stevenson*, 281 Ill. 17, 117 N. E. 747 (1917).

