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

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PREFACE

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

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

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

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

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Washington

ANALYSIS OF CONSTITUTIONAL PROVISIONS
AFFECTING PUBLIC WELFARE IN WASHINGTON¹

I. Incidence of Responsibility for Welfare Program

A. Educational, reformatory and penal institutions; those for the benefit of blind, deaf, dumb, or otherwise defective youth; for the insane and idiotic; and such other institutions as the public good may require, shall be fostered and supported by the state, subject to such regulations as may be provided by law.² * * *

B. The Legislature shall provide by law for the maintenance of a Soldiers' Home for honorably discharged Union soldiers, sailors, marines and members of the state militia disabled while in the line of duty and who are bona fide citizens of the state.³

C. No county, city, town or other municipal corporation shall hereafter give any money, or property, or loan its money, or credit to or in aid of any individual, association, company or corporation, except for the necessary support of the poor and infirm,⁴ * * *.

D. It is the paramount duty of the state to make ample provision for the education of all children residing within its borders, without distinction or preference on account of race, color, caste, or sex.⁵

¹Constitution (1889), as published in the Washington Legislative Manual (1935), by authority; with all amendments to May 1, 1937.

"The provisions of this constitution are mandatory, unless by express words they are declared to be otherwise." Art. I, Sec. 29.

²Constitution, Art. XIII, Sec. 1.

A statute provided that the expenses of indigent persons dangerously insane confined in the State hospital should be paid by the State, and that the expenses of those indigent persons not dangerously insane so confined should be paid by the counties from which such persons were committed. The act was held constitutional on the ground, among others, that this section granted to the Legislature discretion to classify such persons and to declare the maintenance of the dangerously insane persons a concern of the State, and the treatment of the harmless insane a responsibility of the community from which they were committed. State vs. Pierce County, 132 Wash. 155, 231 Pac. 801 (1925).

³Constitution, Art. X, Sec. 3.

⁴Constitution, Art. VIII, Sec. 7.

When by statute the county commissioners are vested with the entire and exclusive superintendence of the poor within their respective counties, it is their absolute duty to provide for poor persons actually and in good faith in need of help regardless of whether or not they come under the classification of paupers. Sweet Clinic, Incorporated vs. Lewis County, 154 Wash. 416, 282 Pac. 832 (1929).

⁵Constitution, Art. IX, Sec. 1.

II. Financial Powers and Limitations

A. Taxation and Assessments

(1) State

(a) The power of taxation shall never be suspended, surrendered or contracted away. All taxes shall be uniform upon the same class of property within the territorial limits of the authority levying the tax and shall be levied and collected for public purposes only.⁶ The word "property" as used herein shall mean and include everything, whether tangible or intangible, subject to ownership. All real estate shall constitute one class: Provided, That the legislature may tax mines and mineral resources and lands devoted to reforestation by either a yield tax or an ad valorem tax at such rate as it may fix, or by both.⁷ * * *

(b) Whenever the expenses of any fiscal year shall exceed the income, the Legislature may provide for levying a tax for the ensuing fiscal year, sufficient, with other sources of income, to pay the deficiency, as well as the estimated expenses of the ensuing fiscal year.⁸

⁶Taxes levied for the relief of State-wide unemployment and poverty are for a public purpose within the meaning of this section. State ex rel. Hamilton vs. Martin, 173 Wash. 249, 23 P. (2d) 1 (1933).

The levy of a tax to retire bonds issued for the purpose of paying compensation to World War veterans was held to be for a public purpose. State ex rel. Hart vs. Clausen, 113 Wash. 570, 194 Pac. 793 (1921).

⁷Constitution, Art. VII, Sec. 1, adopted 1930.

The proviso in this section lifts out of the single class of real estate all mines, mineral resources, and reforestation lands, and allows for their treatment as a distinct subclass. It gives the Legislature the fullest power of taxation with reference to them. The Legislature may adopt either or both of two possible methods, which includes either a tax upon yield, or upon value, at such rate—expressed in terms of valuation or percentage—as it may fix. Thus, the Reforestation Act, levying an ad valorem tax on reforestation lands, and assessing for purposes of the tax all such lands lying west of the Cascade Mountains at the value of \$1 per acre and all such lands lying east of the Cascade Mountains at the value of 50 cents per acre, was held within the Legislature's power as limited by this section. State ex rel. Mason County Logging Company vs. Wiley, 177 Wash. 65, 31 P. (2d) 539 (1934).

Income, being "subject to ownership," is included within the definition of "property" in this section. An income tax is, therefore, a property tax, and a system of rates that become greater as the amount of taxable income increases violates the requirement of this section that "all taxes shall be uniform upon the same class of property." Culliton vs. Chase, 174 Wash. 363, 25 P. (2d) 81 (1933).

An inheritance tax is not a tax on property, but is a charge upon the right of transmission of property. It may be graduated and in an amount as large as the State sees fit to impose. Culliton vs. Chase, 174 Wash. 363, 25 P. (2d) 81 (1933).

A poll or capitation tax is not a tax upon property. Since the Constitution does not prohibit the levy of a poll tax, and as that instrument is not a grant of power but a limitation on the power inherent in the State, such a tax is a valid revenue measure. Nipges vs. Thornton, 119 Wash. 464, 206 Pac. 17 (1922).

An occupation tax is not a property tax, but a tax upon the privilege of engaging in business within the State. It is not, therefore, subject to the uniformity rule of this section. State ex rel. Stiner vs. Yelle, 174 Wash. 402, 25 P. (2d) 91 (1933). See City of Tacoma vs. Tax Commission, 177 Wash. 604, 33 P. (2d) 899 (1934).

See p. 3, footnote 12.

⁸Constitution, Art. VII, Sec. 8.

This section applies only to matters of State revenue and expenses and not to those of counties. Mason vs. Purdy, 11 Wash. 591, 40 Pac. 130 (1895).

II. Financial Powers and Limitations—Continued

A. Taxation and Assessments—Continued

(1) State—Continued

(c) The rolling stock and other movable property belonging to any railroad company or corporation in this state, shall be considered personal property, and shall be liable to taxation * * * in the same manner as the personal property of individuals⁹ * * *.

(d) No county, nor the inhabitants thereof, nor the property therein, shall be released or discharged from its or their proportionate share of taxes to be levied for state purposes, nor shall commutation for such taxes be authorized in any form whatever.¹⁰

(2) Counties and Other Local Units¹¹

(a) The Legislature shall have no power to impose taxes upon counties, cities, towns or other municipal corporations, or upon the inhabitants or property thereof, for county, city, town, or other municipal purposes, but may, by general laws, vest in the corporate authorities thereof, the power to assess and collect taxes for such purposes.¹²

⁹Constitution, Art. XII, Sec. 17.

¹⁰Constitution, Art. XI, Sec. 9.

¹¹Art. XI, Sec. 4 of the Constitution relates to the establishment of county and township government and organization, and provides that the system of county government to be established by the Legislature shall be uniform, and that the mode of transacting and managing the affairs of same shall be prescribed by general laws.

In the performance of its general duties and purposes, the State calls upon and utilizes its constituent political agencies and for such purposes confers upon them such powers and imposes such duties as it deems necessary. These local subdivisions are created by the State, not only for the purpose of having them administer their own local and internal affairs, but also for the purpose of having them carry out the policies of the State at large, and assist in the accomplishment of the general purposes of the State. State ex rel. Board of County Commissioners, etc., vs. Clausen, 95 Wash. 214, 163 Pac. 744 (1917).

¹²Constitution, Art. XI, Sec. 12.

Power is given to any county to make and enforce within its limits all such local police, sanitary, and other regulations as are not in conflict with general laws. Art. XI, Sec. 11.

County governing bodies must have express authority, either under the Constitution or an act of the Legislature, to levy taxes. They have no right to levy taxes for county purposes at a rate exceeding the limitation fixed by the Legislature, nor for purposes not allowed by the Constitution. State ex rel. School District 37, etc., vs. Clark County, 177 Wash. 314, 31 P. (2d) 897 (1934).

Constitutional sections providing that the power to assess and collect taxes may be vested in the authorities of counties, municipal corporations, etc., do not grant to these political units the power of taxation. This power is derived only from the State by legislative enactment and no implications are indulged in to expand the power granted. State ex rel. Tacoma School District No. 10 vs. Kelly, 176 Wash. 689, 30 P. (2d) 638 (1934). See p. 4, par. (b).

Delegation of the taxing power for local purposes to the counties and other municipal corporations is subject to the restriction that such taxes may be levied only for public purposes. State ex rel. Tax Commission vs. Redd, 166 Wash. 132, 6 P. (2d) 619 (1932).

II. Financial Powers and Limitations—Continued

A. Taxation and Assessments—Continued

(2) Counties and Other Local Units—Continued

(b) The Legislature may vest the corporate authorities of cities, towns and villages with power to make local improvements by special assessment, or by special taxation of property benefited.¹³ For all corporate purposes, all municipal corporations may be vested with authority to assess and collect taxes and such taxes shall be uniform in respect to persons and property within the jurisdiction of the body levying the same.¹⁴

It is a duty mandatory upon the county to provide for its indigent poor. A county, however, may not make a present tax levy to create a special fund for the purpose of anticipating future expenditures for indigent relief. The necessity for relief varies from time to time, and such care and support should be provided as emergencies arise. *Palmquist vs. Taylor*, 177 Wash. 306, 31 P. (2d) 894 (1934).

This section was held not violated by an act requiring that the expenses of indigent persons dangerously insane confined in the State hospital should be borne by the State, and that the expenses of those indigent persons not dangerously insane similarly confined should be paid by the several counties from which such persons were committed. *State vs. Pierce County*, 132 Wash. 155, 231 Pac. 801 (1925).

The establishment and maintenance of public schools is not merely a county purpose, but rather a State purpose with local benefits accruing to the county; therefore, a statute imposing a tax upon the counties for such purpose does not violate this section of the Constitution. *Newman vs. Schlarb*, 184 Wash. 147, 50 P. (2d) 36 (1935).

A statute requiring the counties to levy a tax for a State purpose may vary in rate between the counties. So long as the rate is uniform within each county levying the tax, the uniformity requirement is met. *Newman vs. Schlarb*, 184 Wash. 147, 50 P. (2d) 36 (1935). See p. 2, par. (a).

In view of this section, neither the Legislature nor its agency, the State Tax Commission, may assess or reassess the property within a county for county purposes. *State ex rel. Tax Commission vs. Redd*, 166 Wash. 132, 6 P. (2d) 619 (1932).

Where a city had levied a tax for local purposes in excess of the statutory authority, a later curative statute was held not to be the imposition of a tax by the Legislature in violation of this section, but merely a ratification of a levy already imposed by the city. *Owings vs. City of Olympia*, 88 Wash. 289, 152 Pac. 1019 (1915).

¹³This section does not prohibit the Legislature from creating other corporate authorities, such as a diking district, with power to make local improvements by special assessment upon the property benefited. *Foster vs. Commissioners of Cowlitz County*, 100 Wash. 502, 171 Pac. 539 (1918).

¹⁴Constitution, Art. VII, Sec. 9.

Power is given to any city, town, or township to make and enforce within its limits all such local police, sanitary, and other regulations as are not in conflict with general laws. Art. XI, Sec. 11.

This section has no application to counties. *Bilger vs. State*, 63 Wash. 457, 116 Pac. 19 (1911).

Municipalities may levy taxes for corporate purposes only. Maintenance and operating costs, and those objects which are germane to the welfare of the municipality are proper corporate purposes. *Denman vs. City of Tacoma*, 170 Wash. 406, 16 P. (2d) 596 (1932).

Where a city was operating an electric light plant in competition with other companies, an ordinance prescribing an excise tax upon such companies but exempting the city from payment was held a reasonable classification of occupations and valid under this section on the ground that the tax was levied in proportion to the peculiar privileges enjoyed by the companies, and the city's exemption from the tax was only an incident and not the purpose of the ordinance. *Puget Sound Power & Light Company vs. City of Seattle*, 172 Wash. 668, 21 P. (2d) 727 (1933), affirmed 291 U. S. 619, 54 Sup. Ct. 542, 78 L. Ed. 1025 (1934).

II. Financial Powers and Limitations—Continued

B. Exemptions

* * * Such property as the legislature may by general laws provide shall be exempt from taxation.¹⁵ Property of the United States and of the state, counties, school districts and other municipal corporations, and credits secured by property actually taxed in this state, not exceeding in value the value of such property, shall be exempt from taxation. The legislature shall have power, by appropriate legislation, to exempt personal property to the amount of three hundred (\$300.00) dollars for each head of a family liable to assessment and taxation under the provisions of the laws of this state of which the individual is the actual bona fide owner.¹⁶

C. Borrowing and Use of Credit

(1) State

(a) The state may to meet casual deficits or failures in revenues, or for expenses not provided for, contract debts, but such debts, direct and contingent, singly or in the aggregate, shall not at any time exceed four hundred thousand dollars (\$400,000), and the moneys arising from the loans creating such debts shall be applied to the purpose for which they were obtained or to repay the debts so contracted, and to no other purpose whatever.¹⁷

¹⁵Under a statute exempting from taxation public schoolhouses "and the grounds attached." county buildings "with the ground on which such buildings are erected," and all "hospitals for the care of the sick whether supported in whole or in part by charity," it was held that the land adjoining a hospital and owned by it was subject to taxation, since it was not expressly exempted by the statute. The court stated that statutes exempting persons or property from taxation are to be strictly construed, and exemptions are not to be extended by judicial construction to property other than that which is expressly designated by law. *Thurston County vs. Sisters of Charity of House of Providence*, 14 Wash. 264, 44 Pac. 252 (1896).

¹⁶Constitution, Art. VII, Sec. 1.

A statute imposing a tax upon the privilege of engaging in business in the State was held applicable to municipalities engaged in the operation of street railways, electric light plants, water systems, etc., on the ground that the act was an excise tax and not a tax upon the property of municipal corporations which the Constitution declares to be exempt; therefore, the act did not violate the exemption provision of this section relative to municipal property. *City of Tacoma vs. Tax Commission*, 177 Wash. 604, 33 P. (2d) 899 (1934). Compare *Puget Sound Power & Light Company vs. City of Seattle*, (p. 4, footnote 14).

Irrigation districts are not "municipal corporations" within the meaning of this section providing that the property of "other municipal corporations" shall be exempt from taxation. *Inland Empire Land Company vs. Douglas County*, 149 Wash. 253, 270 Pac. 812 (1928).

The exemption from taxation of personal property permits the exemption of \$300 only from the actual value of the property, not from the value placed on the property for purposes of assessment. *State ex rel. State Board of Tax Commissioners vs. Cameron*, 90 Wash. 407, 156 Pac. 537 (1916).

¹⁷Constitution, Art. VIII, Sec. 1.

A statute authorized a bond issue for the erection of State capitol buildings, the principal and interest on such bonds to be payable solely from revenues thereafter received from the lease and sale of lands granted by the Federal Government

II. Financial Powers and Limitations—Continued

C. Borrowing and Use of Credit—Continued

(1) State—Continued

(b) In addition to the above limited power to contract debts the state may contract debts to repel invasion, suppress insurrection,¹⁸ or to defend the state in war, but the money arising from the contracting of such debts shall be applied to the purpose for which it was raised and to no other purpose whatever.¹⁹

(c) Except the debt specified in sections one and two of this article [p. 5, par. (a), and par. (b) above], no debt shall hereafter be 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, which law shall provide ways and means, exclusive of loans, for the payment of the interest on such debt as it falls due, and also to pay and discharge the principal of such debt within twenty years from the time of the contracting thereof. 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 the votes cast for and against it at such election, and all moneys raised by authority of such law shall be applied only to the specific object therein stated, or to the payment of

to the State for the purpose of erecting such buildings. The act was held not to create a State debt within the meaning of the Constitution since the general revenues and property of the State were not pledged to the payment of the bonds. State ex rel. State Capitol Committee vs. Clausen, 134 Wash. 196, 235 Pac. 364 (1925).

See State ex rel. State Capitol Commission vs. Lister, 91 Wash. 9, 156 Pac. 858 (1916), p. 7, footnote 20.

An act authorizing the issuance and sale of funding bonds, the proceeds of which were to be used to discharge outstanding indebtedness of the State, was held to be in conflict with this section on the ground that after the sale of the bonds and before the proceeds were applied to the purpose named, however brief the period intervening, the State indebtedness would be increased beyond the constitutional limit. State ex rel. Jones vs. McGraw, 12 Wash. 541, 41 Pac. 893 (1895). Compare Dearling vs. Funk, p. 9, footnote 25.

See footnote 19, below.

¹⁸An emergency act authorizing the creation of a State debt and the issuance of bonds to the amount of \$10,000,000, for the purpose of appropriating money to relieve State-wide poverty and unemployment, was held valid without the approval of the voters where it was found that "discontent, social unrest and incipient insurrection" existed and acts of insurrection were occurring. The court declared that: "It is far better to cure insurrection or incipient insurrection by promoting prosperity than by the use of bullets. * * * The greatest menace to the well-being and safety of the state is to have * * * citizens suffering with their families * * * because work is unobtainable. An appropriation * * * to relieve this suffering is no more a 'charitable' appropriation than an appropriation made to suppress an uprising, repel an invasion, or to combat a pestilence. * * * It cannot be doubted that the indebtedness and tax appropriated to its payment, being for the relief of State-wide unemployment and poverty, are for a public purpose." State ex rel. Hamilton vs. Martin, 173 Wash. 249, 23 P. (2d) 1 (1933).

¹⁹Constitution, Art. VIII, Sec. 2.

There is no limitation imposed upon the amount of debt that may be contracted for the purposes contemplated by this section. State ex rel. Hart vs. Clausen, 117 Wash. 260, 201 Pac. 30 (1921).

II. Financial Powers and Limitations—Continued

C. Borrowing and Use of Credit—Continued

(1) State—Continued

the debt thereby created, and such law shall be published in at least one newspaper in each county, if one be published therein, throughout the state, for three months next preceding the election at which it is submitted to the people.²⁰

(d) The credit of the state shall not, in any manner be given or loaned to, or in aid of, any individual, association, company or corporation.²¹

(e) The state shall not in any manner loan its credit, nor shall it subscribe to, or be interested in the stock of any company, association or corporation.²²

(2) Counties

(a) No county, city, town or other municipal corporation shall hereafter give any money, or property, or loan its money, or

²⁰Constitution, Art. VIII, Sec. 3.

An act creating a veterans compensation fund, and providing for the issuance of \$11,000,000 of bonds and a general tax levy to retire same, without a vote of the people, the money to be used for making payments to veterans as compensation for services rendered, was held constitutional on the theory that if there is a moral and honorable claim on the public treasury of the State, though no obligation which could attain recognition in a court of law or equity, a basis for the exercise of the taxing power is furnished. State ex rel. Hart vs. Clausen, 113 Wash. 570, 194 Pac. 793 (1921).

In a later case involving the same act, the question presented was the validity of a proviso in the act authorizing the issuance of additional bonds, if the \$11,000,000 initially authorized proved insufficient to provide adequately for the purposes of the act. The court stated that the act was valid in that it was for a public purpose; that Sec. 1 of Art. VIII had nothing to do with the question involved, (see p. 5, par. (a)); that the creation of the debt was valid under this section as being for the defense of the State in time of war; and that the board created under the act to ascertain the deficiency and issue the additional needed bonds was not vested with legislative powers in contravention of Sec. 1 of Art. II (see p. 11, A, par. (1)). State ex rel. Hart vs. Clausen, 117 Wash. 260, 201 Pac. 30 (1921).

See p. 6, par. (b), for the section relating to debts for the defense of the State in time of war.

An act authorized the issuance of bonds for the erection of State capitol buildings, the principal of the debt to be paid from revenues thereafter received from the lease and sale of lands granted by the Federal Government to the State for such purposes, and the interest on such bonds to be paid by an annual State tax levied in the same manner as other taxes were levied. It was held, without reference to the principal of the debt, that the State pledged itself to the payment of the interest on the bonds, and the act, not having been submitted to a vote of the people, was unconstitutional under this section. State ex rel. State Capitol Commission vs. Lister, 91 Wash. 9, 156 Pac. 858 (1916). See p. 5, footnote 17.

²¹Constitution, Art. VIII, Sec. 5.

See footnote 20, above.

Bonds issued by a county for the purpose of building a courthouse and sold to the State were held valid. State ex rel. Clallam County vs. Clausen, 82 Wash. 137, 143 Pac. 876 (1914).

²²Constitution, Art. XII, Sec. 9.

II. Financial Powers and Limitations—Continued

C. Borrowing and Use of Credit—Continued

(2) Counties—Continued

credit to or in aid of any individual, association, company or corporation, except for the necessary support of the poor and infirm, or become directly or indirectly the owner of any stock in or bonds of any association, company or corporation.²³

(b) No county, city, town, school district or other municipal corporation, shall for any purpose become indebted in any manner to an amount exceeding one and one-half per centum of the taxable property in such county, city, town, school district or other municipal corporation, without the assent of three-fifths of the voters therein, voting at an election to be held for that purpose,²⁴ nor incases requiring such assent shall the total indebtedness at any time exceed five per centum on the value of the taxable property therein, to be ascertained by the last assessment for state, and county purposes previous to the incurring of such indebtedness; * * * Provided, That no part of the indebtedness allowed in this section, shall be incurred for any purpose other than

²³Constitution, Art. VIII, Sec. 7.

An act authorizing any county to construct a bridge, and issue bonds therefor, jointly with an adjoining county in another State was upheld over the contention that the act amounted to a giving of county money "to or in aid of a corporation" in violation of this section. The court stated that this section allows financial aid to enterprises whose functions are *wholly public*, such as the Federal or State Governments or some branch thereof, and prohibits only such aid to purely private or quasi-public enterprises. But the ground upon which the decision rested was that the county was not aiding another county to construct a bridge, but that it was jointly involved in the undertaking and that the county would retain an interest in the bridge proportionate to its contribution thereto. *Rands vs. Clarke County*, 79 Wash. 152, 139 Pac. 1090 (1914).

A district, incorporated for the purpose of constructing a diking improvement, exercises a purely public function, and therefore a county was held authorized to lend its aid to such a corporation without violating this section. *Foster vs. Commissioners of Cowlitz County*, 100 Wash. 502, 171 Pac. 539 (1918).

An act authorizing appropriations by any county to pay for the expenses and prizes awarded by an agricultural fair association, incorporated for the purpose of holding an exhibition of livestock, cereals, and agricultural and dairy products produced in such county, was held unconstitutional under this section as a gift to a private corporation, notwithstanding its worthy educational purposes. *Johns vs. Wadsworth*, 80 Wash. 352, 141 Pac. 892 (1914).

See p. 1, par. C, and footnote 4.

²⁴Under this section the Legislature may not fix the number of votes necessary to validate a bond issue at less than a three-fifths majority, but may require a greater majority. *Robb vs. City of Tacoma*, 175 Wash. 580, 28 P. (2d) 327 (1933).

Similarly, the Legislature may require the assent of the voters to the creation of an indebtedness even within the limit of 1.5 percent of the taxable property. The right of the Legislature to grant the power to incur indebtedness for a specific purpose carries with it the right to prescribe how the power may be exercised for that specific purpose, provided it does not exceed the limit set by this section. *State ex rel. Craig vs. Town of Newport*, 70 Wash. 286, 126 Pac. 637 (1912).

II. Financial Powers and Limitations—Continued

C. Borrowing and Use of Credit—Continued

(2) Counties—Continued

strictly county, city, town, school district, or other municipal purposes.²⁵ * * *

(3) Other Local Units

See page 7, paragraph (a); page 8, paragraph (b) and footnotes 23 and 24; and footnote 25, below.

²⁵Constitution, Art. VIII, Sec. 6.

This section further permits cities and towns to create a larger indebtedness, upon the assent of the voters, for the supplying of municipally owned water, artificial light, and sewer works.

This section creates two separate classes of limitations: the first prohibits the city authorities from incurring indebtedness, without the assent of the voters, in excess of 1.5 percent, of the city's taxable property; the second prohibits the city authorities with the assent of the voters from exceeding the 5-percent limitation. Where the city undertakes to incur a debt within the class requiring the approval of the three-fifths popular vote, and it can be shown that the intent of the voters was to create this class of indebtedness, such a debt will be valid provided that the amount thereof, together with all other present indebtedness including that indebtedness not requiring the assent of the voters, does not exceed the 5-percent debt limit. At any time thereafter it is the right of the city authorities to create obligations within the 1.5-percent limit. *State ex rel. City of Olympia vs. Holmes*, 81 Wash. 403, 142 Pac. 1148 (1914).

The words "five per centum on the value of the taxable property therein to be ascertained by the last assessment" mean 5 percent of the *actual value* of the property as determined by the assessing officers, and not 5 percent of the *assessed value* fixed by them as the basis for computing the amount of taxes to be collected. *Hansen vs. City of Hoquiam*, 95 Wash. 132, 163 Pac. 391 (1917).

It was held that the maintenance of a fire department was a necessary governmental function for which city authorities might exceed both the 12-percent and 5-percent constitutional limitations. The Supreme Court stated, "The court early laid down * * * the rule that the limitation on indebtedness of municipalities imposed by the Constitution was inapplicable to such obligations as were made mandatory by that instrument or were necessary to maintain the existence of the corporation. It was recognized that the maintenance of city government was essential to the health, safety, and general welfare of the people of the city, and consequently the limitation of indebtedness could not have been intended to be so far exclusive as to necessitate the suspension of government." *Weisfield vs. City of Seattle*, 180 Wash. 288, 40 P. (2d) 149 (1935).

It being a positive governmental function and mandatory duty of the county to care for its indigent poor, the county may for this purpose incur an indebtedness beyond the constitutional debt limitation. *Sainer vs. Thurston County*, 181 Wash. 552, 44 P. (2d) 179 (1935).

It was held that a city could exceed its constitutional debt limit for the construction of a water filtration plant where the State board of health ordered the discontinuance of the use of the water then available because of its impurity, and where it was found that there was no other method by which wholesome water could be supplied. *McCarthy vs. City of Kelso*, 129 Wash. 211, 223 Pac. 151 (1924).

Whether a certain indebtedness is in fact for a "strictly" county purpose within the meaning of this section is a judicial question. The construction, repair, and improvement of roads is a public purpose and a State function; it is also a "strictly county purpose" insofar as the State delegates power to the counties to engage in such works. *Rust vs. Kitsap County*, 111 Wash. 170, 189 Pac. 994 (1920).

Where a municipality issues funding bonds and exchanges them directly for matured bonds constituting a valid existing indebtedness, the transaction does not constitute an increase in the amount of the municipal indebtedness within the meaning of constitutional and statutory provisions, since the new securities, as soon as issued, extinguish the old debt, and therefore the aggregate outstanding indebtedness is the same at all times. *Dearling vs. Funk*, 177 Wash. 349, 32 P. (2d) 548 (1934). See *State ex rel. Jones vs. McGraw*, p. 5, footnote 17.

II. Financial Powers and Limitations—Continued

D. Other Income

(a) The principal of the common school fund shall remain permanent and irreducible. The said fund shall be derived from the following named sources, to-wit: Appropriations and donations by the state to this fund; donations and bequests by individuals to the state or public for common schools; the proceeds of lands and other property which revert to the state by escheat and forfeiture: the proceeds of all property granted to the state when the purpose of the grant is not specified, or is uncertain; funds accumulated in the treasury of the state for the disbursement of which provision has not been made by law; the proceeds of the sale of timber, stone, minerals, or other property from school and state lands, other than those granted for specific purposes; * * *. The Legislature may make further provisions for enlarging said fund. The interest accruing on said fund together with all rentals and other revenues derived therefrom and from lands and other property devoted to the common school fund shall be exclusively applied to the current use of the common schools.²⁶

(b) None of the permanent school fund of this state shall ever be loaned to private persons or corporations, but it may be invested in national, state, county, municipal or school district bonds.²⁷

E. Appropriations and Expenditures

State

No moneys shall ever be paid out of the treasury of this state, or any of its funds, or any of the funds under its management, except in pursuance of an appropriation by law; nor unless such payment be made within one calendar month after the end of the next ensuing fiscal biennium, 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.²⁸

²⁶ Constitution, Art. IX, Sec. 3.

²⁷ Constitution, Art. XVI, Sec. 5.

An investment of the school fund in bonds issued under the direction of a municipality for the purpose of building a waterworks system was held unconstitutional under this section, since under the act authorizing their issuance the bonds were payable solely from the revenues to be derived from the operation of the system, and not from the general revenues of the municipality. The court stated that this section does not contemplate bonds payable from a special fund, but only such bonds as constitute municipal obligations pledging the general faith and credit of the municipality for their payment. State ex rel. City of Port Townsend vs. Clausen, 40 Wash. 95, 82 Pac. 187 (1905).

²⁸ Constitution, Art. VIII, Sec. 4.

An act creating an office, fixing the monthly salary, and directing that the officer be paid his salary from funds in the State treasury not otherwise appropriated was held to show a legislative intent to make an appropriation sufficient to comply with the requirements of this section. State ex rel. Brainerd vs. Grimes, 7 Wash. 191, 34 Pac. 833 (1893).

III. Provisions Affecting Legislation

A. Regular Sessions of Legislature

(1) The legislative authority of the State of Washington shall be vested in the Legislature, consisting of a Senate and House of Representatives, which shall be called the Legislature of the State of Washington,²⁹ * * *.

(2) * * * sessions of the Legislature shall be held biennially * * * unless specially convened by the Governor, but the times of meeting of * * * sessions may be changed by the Legislature. * * * the sessions shall not be more than sixty days.³⁰

(3) He (the Governor) shall communicate at every session by message to the Legislature the condition of the affairs of the state, and recommend such measures as he shall deem expedient for their action.³¹

B. Special Sessions of Legislature

He (the Governor) may, on extraordinary occasions, convene the Legislature by proclamation, in which shall be stated the purposes for which the Legislature is convened.³²

C. Powers of Initiative and Referendum

(1) The legislative authority of the State * * * shall be vested in the Legislature, * * * but the people reserve to themselves the power to propose bills, laws, and to enact or reject the same at the polls, independent of the Legislature, and also reserve power, at their own option, to approve or reject at the polls any act, item, section or part of any bill, act or law passed by the Legislature.³³

²⁹Constitution, Art. II, Sec. 1.

The Legislature has power to enact any and all laws that are not expressly or by necessary implication prohibited either by the Federal Constitution or by the Constitution of the State. *State vs. Fair*, 35 Wash. 127, 76 Pac. 731 (1904).
See C, par. (1), above.

³⁰Constitution, Art. II, Sec. 12.
Sessions shall commence in the odd years. *Ibid.*

³¹Constitution, Art. III, Sec. 6.

³²Constitution, Art. III, Sec. 7.

While this section empowers the Governor to call extra sessions and defines his duty respecting the same, it does not authorize him to confine legislative action within channels relating only to purposes stated by him as his reasons for convening the Legislature; therefore, at its extra session the Legislature may enact any and all laws within its recognized sphere. *State vs. Fair*, 35 Wash. 127, 76 Pac. 731 (1904).

³³Constitution, Art. II, Sec. 1.

III. Provisions Affecting Legislation—Continued

C. Powers of Initiative and Referendum—Continued

(2) *Initiative*: The first power reserved by the people is the initiative. Ten per centum, but in no case more than fifty thousand, of the legal voters shall be required to propose any measure by such petition, and every such petition shall include the full text of the measure so proposed.³⁴ * * *

(3) *Referendum*: The second power reserved by the people is the referendum, and it may be ordered on any act, bill, law, or part thereof passed by the Legislature, 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,³⁵ either by petition signed by the required percentage of the legal voters,

³⁴Constitution, Art. II, Sec. 1a.

This section of the Constitution further provides that initiative petitions submitted at least 4 months prior to an election will be voted upon by the electors without legislative action. Petitions filed at least 10 days before any regular session of the Legislature will be given precedence over all other measures in the Legislature except appropriation bills, and must be voted upon without change. Regardless of whether an initiative petition be enacted or rejected by the Legislature, it shall be subject to the referendum at the next regular general election. Further procedural requirements, provided for in this section, are here omitted.

³⁵The word "immediate" qualifies the words "public peace, health, and safety," but has no reference to the words "support of the state government and its existing institutions." State ex rel. Blakeslee vs. Clausen, 85 Wash. 260, 148 Pac. 28 (1915).

The phrase "public institutions" as here used means not only those institutions of a physical character, but also all branches and departments created by law or public authority, exercising any activity or function defined by the Legislature and existing at the time this section was adopted; or which, if newly created by the Legislature, have not been rejected by a referendum. It would not include a new activity or a new function which did not pertain to the support of an existing institution or to the government as then organized. State ex rel. Blakeslee vs. Clausen, 85 Wash. 260, 148 Pac. 28 (1915).

A statute provided in part for revenues to be devoted to the Old Age Pension Fund, and contained an emergency clause declaring the act to be for the "support of an existing public institution." The pension fund had been set up by an earlier statute, the Old Age Pension Fund Act, the operation of which was still suspended pending referendum action within the 90-day period after the adjournment of the Legislature. (See p. 13, par. (4)). The court held that the pension fund would not be an "existing public institution" until it formally took effect after the lapse of the 90 days, and that therefore this statute at the time of its passage could not be declared to be in support of an "existing public institution"; the emergency clause appended to it was therefore of no effect. State ex rel. Burt vs. Hutchinson, 173 Wash. 72, 21 P. (2d) 514 (1933).

In interpreting the words "support of the state government and its existing public institutions" as a class of legislation to which the referendum does not attach, the framers "intended to use the word 'support' in its fullest sense. When so considered, 'support' includes appropriations for current expenses, maintenance, upkeep, continuation of existing functions, as well as appropriations for such new buildings and conveniences as may be necessary to meet the needs and requirements of the state in relation to its existing institutions. * * * Statutes levying taxes are laws for the 'support of the state government and its existing public institutions' to the same or even a greater extent than are appropriation bills. Tax laws provide the funds from which the moneys appropriated are drawn." State ex rel. Reiter vs. Hinkle, 161 Wash. 652, 297 Pac. 1071 (1931).

III. Provisions Affecting Legislation—Continued

C. Powers of Initiative and Referendum—Continued

or by the Legislature as other bills are enacted. Six per centum, but in no case more than thirty thousand, of the legal voters shall be required to sign and make a valid referendum petition.³⁶

(4) No act, law, or bill subject to referendum shall take effect until ninety days after the adjournment of the session at which it was enacted. No act, law, or bill approved by a majority of the electors voting thereon shall be amended or repealed by the Legislature within a period of two years following such enactment. But such enactment may be amended or repealed at any general regular or special election by direct vote of the people thereon.³⁷

(5) * * * Any measure initiated by * * * or referred to the people * * * shall be in operation on and after the thirtieth day after the election at which it is approved.³⁸ * * *

(6) See page 6, paragraph (c).

D. Legislative Enactment

(1) Any bill may originate in either house of the Legislature, and a bill passed by one house may be amended in the other.³⁹

Whether an emergency measure passed by the Legislature as "necessary for the immediate preservation of the public peace, health or safety, or for support of the state government and its existing public institutions," is in fact of such an emergency character is a judicial question. State ex rel. Brislawn vs. Meath, 84 Wash. 302, 147 Pac. 11 (1915).

However, the legislative declaration of the facts constituting an emergency is conclusive, unless, without entering upon any inquiry, and indulging every presumption in its favor, the court can determine from the face of the act with the aid of judicial knowledge that such legislative declaration is obviously false. State ex rel. Hamilton vs. Martin, 173 Wash. 249, 23 P. (2d) 1 (1933).

³⁶ Constitution, Art. II, Sec. 1b.

Referendum petitions against a measure passed by the Legislature must be filed with the Secretary of State within 90 days after the final adjournment of the Legislature at which said measure was passed. The referendum vote takes place at the biennial election next succeeding the filing of the referendum petition, unless the Legislature calls a special election for the purpose. Art. II, Sec. 1d.

³⁷ Constitution, Art. II, Sec. 1c.

The "two years following such enactment" is computed from the time the law is brought into existence, i. e., not later than the date of the Governor's proclamation evidencing the vote of the people. It is not measured from the time when such an act by its own terms is to take effect. State vs. Gibbons, 118 Wash. 171, 203 Pac. 390 (1922).

³⁸ Constitution, Art. II, Sec. 1d.

"The veto power of the Governor shall not extend to measures initiated by or referred to the people." Ibid.

³⁹ Constitution, Art. II, Sec. 20.

III. Provisions Affecting Legislation—Continued

D. Legislative Enactment—Continued

(2) No bill shall be considered in either house unless the time for its introduction shall have been at least ten days before the final adjournment of the Legislature, unless the Legislature shall otherwise direct by a vote of two-thirds of all the members elected to each house, * * * or unless the same be at a special session.⁴⁰

(3) No bill shall become a law unless on its final passage the vote be taken by yeas and nays, the names of the members voting for and against the same be entered on the journal of each house, and a majority of the members elected to each house be recorded thereon as voting in its favor.⁴¹

(4) No bill shall become a law until the same shall have been signed by the presiding officer of each of the two houses in open session, and under such rules as the Legislature shall prescribe.⁴²

(5) Every act which shall have passed the Legislature, shall be, before it becomes a law, presented to the Governor. If he approves, he shall sign it; but if not, he shall return it, with his objections, to that house in which it shall have originated, which house shall * * * proceed to reconsider. If, after such reconsideration, two-thirds of the members present shall agree to pass the bill it shall be sent, * * * to the other house, by which it shall likewise be reconsidered, and if approved by two-thirds of the members present, it shall become a law; * * *. If any bill shall not be returned by the Governor within five days, Sundays excepted, after it shall be presented to him, it shall become a law without his signature, unless the general adjournment shall prevent its return, in which case it shall become a law unless the Governor, within ten days next after the adjournment, Sundays excepted, shall file such bill with his objections thereto, in the office of the Secretary of State, who shall lay the same before the Legislature at its next session in like manner as if it had been returned by the Governor. If any bill presented to the Governor contain several sections or items, he may object to one or more sections or items while approving other portions

⁴⁰Constitution, Art. II, Sec. 36.

⁴¹Constitution, Art. II, Sec. 22.
See footnote 42, below.

⁴²Constitution, Art. II, Sec. 32.

An enrolled bill signed by the presiding officers of the respective houses and approved by the Governor is conclusive on the courts as to the valid passage of such bill by the Legislature; the courts will not go beyond the enrolled bill to determine whether or not the required journal entries have been made. State ex rel. Reed vs. Jones, 6 Wash. 452, 34 Pac. 201 (1893), reaffirmed in Gottstein vs. Lister, 88 Wash. 462, 153 Pac. 595 (1915).

III. Provisions Affecting Legislation—Continued

D. Legislative Enactment—Continued

of the bill. * * * and the * * * sections, * * * or items so objected to, shall not take effect unless passed over the Governor's objection, as hereinbefore provided.⁴³

(6) * * * The veto power of the Governor shall not extend to measures initiated by or referred to the people.⁴⁴ * * *

(7) No bill shall embrace more than one subject, and that shall be expressed in the title.⁴⁵

(8) See page 10, paragraph E.

(9) No tax shall be levied except in pursuance of law; and every law imposing a tax shall state distinctly the object of the same to which only it shall be applied.⁴⁶

(10) No act shall ever be revised or amended by mere reference to its title, but the act revised or the section amended shall be set forth at full length.⁴⁷

(11) No amendment to any bill shall be allowed which shall change the scope and object of the bill.⁴⁸

IV. Constitutional Amendment or Revision

A. By Proposal of Legislature or People

Any amendment or amendments to this constitution may be proposed in either branch of the Legislature; and if the same shall be agreed to by two-thirds of the members elected to each of the two houses,

⁴³ Constitution, Art. III, Sec. 12.

⁴⁴ Constitution, Art. II, Sec. 1d.

⁴⁵ Constitution, Art. II, Sec. 19.

With reference to this section the Supreme Court stated that a " * * * title to an act should be liberally construed and in deference to the legislative discretion on the subject acts will not be construed as void, * * * unless they are so beyond any reasonable doubt. A title to an act may be as broad as the Legislature sees fit to make it, and thereunder any specific legislation as to any subject relating to the general character thus broadly embraced in the title will be sustained." State ex rel. Scofield vs. Easterday, 182 Wash. 209, 48 P. (2d) 1052 (1935).

⁴⁶ Constitution, Art. VII, Sec. 5.

This section has reference only to property taxes, whether a general tax according to value, or a special assessment according to benefits; it does not apply to excise taxes, such as inheritance taxes and occupation taxes. State vs. Sheppard, 79 Wash. 328, 140 Pac. 332 (1914).

⁴⁷ Constitution, Art. II, Sec. 37.

This section is not applicable in a situation where a later act, complete in itself, makes no specific reference to any prior act or acts except to declare that all prior statutes in conflict therewith are repealed. State ex rel. Scofield vs. Easterday, 182 Wash. 209, 48 P. (2d) 1052 (1935).

⁴⁸ Constitution, Art. II, Sec. 38.

IV. Constitutional Amendment or Revision—Continued

A. By Proposal of Legislature or People—Continued

such proposed amendment or amendments shall * * * be submitted to the qualified electors of the state for their approval, at the next general election; and if the people approve and ratify such amendment or amendments, by a majority of the electors voting thereon, the same shall become part of this constitution, and proclamation thereof shall be made by the Governor: Provided, That if more than one amendment be submitted, they shall be submitted in such a manner that the people may vote for or against such amendments separately. The Legislature shall also cause the amendments that are to be submitted to the people to be published for at least three months next preceding the election, in some weekly newspaper, in every county where a newspaper is published throughout the state.⁴⁹

B. By Constitutional Convention

(1) Whenever two-thirds of the members elected to each branch of the Legislature shall deem it necessary to call a convention to revise or amend this constitution, they shall recommend to the electors to vote at the next general election, 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 the next session, provide by law for calling the same; and such convention shall consist of a number of members, not less than that of the most numerous branch of the Legislature.⁵⁰

(2) Any constitution adopted by such convention shall have no validity until it has been submitted to and adopted by the people.⁵¹

⁴⁹ Constitution, Art. XXIII, Sec. 1.

The Legislature has a discretion within the bounds of common sense of determining what shall be submitted as a single amendment, and they are not compelled to submit as separate amendments different propositions necessary to accomplish a single purpose. *Gottstein vs. Lister*, 88 Wash. 462, 153 Pac. 595 (1915).

⁵⁰ Constitution, Art. XXIII, Sec. 2.

⁵¹ Constitution, Art. XXIII, Sec. 3.

