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

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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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Michigan

ANALYSIS OF CONSTITUTIONAL PROVISIONS AFFECTING
PUBLIC WELFARE IN MICHIGAN¹

I. Incidence of Responsibility for Welfare Program

A. Institutions for the benefit of those inhabitants who are deaf, dumb, blind, feeble-minded or insane shall always be fostered and supported.²

B. Any county in this state, either separately or in conjunction with other counties, may appropriate money for the construction and maintenance or assistance of public and charitable hospitals, sanatoria or other institutions for the treatment of persons suffering from contagious or infectious diseases.³ Each county may also maintain an infirmary for the care and support of its indigent poor and unfortunate, and all county poor houses shall hereafter be designated and maintained as county infirmaries.⁴

C. In each county organized for judicial purposes, there shall be a probate court. The jurisdiction, powers and duties of such courts * * * shall be prescribed by law, and they shall also have original jurisdiction in all cases of juvenile delinquents and dependents.⁵

¹Constitution (1908), as published by the State of Michigan in the Michigan Official Directory and Legislative Manual (1935-1936); with all amendments to March 15, 1937.

²Constitution, Art. XI, Sec. 15.

The Legislature may devise other types of care in addition to institutional care for mental defectives when public economy, safety, and welfare so demand. Thus a statute authorizing the sterilization of the feeble-minded not in institutions was held constitutional under this section. *Smith vs. Command*, 231 Mich. 409, 204 N. W. 140 (1925).

³This provision giving a specific grant of authority must be strictly construed since it is an exception to the general limitation upon the right of the State and its constituent municipalities to grant credit or levy taxes or assessments in aid of any person, association, or corporation. (See page 5, par. (c) and page 6, par. (b)). *Sault Ste. Marie Hospital vs. Sharpe*, 209 Mich. 684, 177 N. W. 297 (1920).

The power to make appropriations under this section is limited to those institutions only where persons suffering from contagious or infectious diseases are treated, and cannot be extended to include hospitals generally where persons suffering from other diseases are also treated. The court stated in a dictum that this provision could not be interpreted to include hospitals where contagious or infectious diseases were not treated. *Sault Ste. Marie Hospital vs. Sharpe*, 209 Mich. 684, 177 N. W. 297 (1920).

⁴Constitution, Art. VIII, Sec. 11.

This provision is self-executing. *Sault Ste. Marie Hospital vs. Sharpe*, 209 Mich. 684, 177 N. W. 297 (1920).

⁵Constitution, Art. VII, Sec. 13.

No appeal may lie from the decision of the probate court in cases of juvenile delinquents and dependents. *Van Leuven vs. Ingham Circuit Judge*, 166 Mich. 115, 131 N. W. 531 (1911); *in re Broughton*, 192 Mich. 418, 158 N. W. 884 (1916).

I. Incidence of Responsibility for Welfare Program—Continued

D. Any city or village may acquire, own, establish and maintain, either within or without its corporate limits, parks, boulevards, cemeteries, hospitals, almshouses and all works which involve the public health or safety.⁶

II. Financial Powers and Limitations

A. Taxation and Assessments

(1) State

(a) The legislature shall provide by law for an annual tax sufficient with other resources to pay the estimated expenses of the state government, the interest on any state debt and such deficiency as may occur in the resources.⁷

(b) The legislature shall provide by law a uniform rule of taxation, except on property paying specific taxes, and taxes shall be levied on such property as shall be prescribed by law: Provided, That the legislature shall provide by law a uniform rule of taxation for such property as shall be assessed by a state board of assessors, and the rate of taxation on such property shall be the rate which the state board of assessors shall ascertain and determine is the average rate levied upon other property upon which ad valorem taxes are assessed for state, county, township, school and municipal purposes.⁸

(c) The total amount of taxes assessed against property for all purposes in any one year shall not exceed one and one-half

⁶Constitution, Art. VIII, Sec. 22.

This section is not self-executing. *City of Detroit vs. Oakland Circuit Judge*, 237 Mich. 446, 212 N. W. 207 (1927).

The words "all works which involve the public health or safety" have reference to physical properties which may be convenient or necessary in caring for the public health; however, this section should not be interpreted to mean that the State surrenders to any municipality control over matters relating to public health. *Civil Service Commission vs. Engel*, 184 Mich. 269, 150 N. W. 1081 (1915).

In matters relating to public health, the city acts as an arm of the State, and city property devoted to purposes of public health being used in discharge of a governmental function may not be sold. *Curry vs. City of Highland Park*, 242 Mich. 614, 219 N. W. 745 (1928).

"A sewage disposal plant is a work which involves the public health and safety, and a city has express constitutional authority under this section to establish and maintain such plant." *Young vs. City of Ann Arbor*, 267 Mich. 241, 255 N. W. 579 (1934). See page 7, par. (d), and footnote 22.

⁷Constitution, Art. X, Sec. 2.

The power to tax is vested exclusively in the Legislature and is limited in extent, in purpose, and in methods, only by the will of the State as expressed in its laws. *Harsha vs. City of Detroit*, 261 Mich. 586, 246 N. W. 849 (1933).

A license fee as a prerequisite to doing business, imposed for the regulation of such business, and not for revenue, is not a tax although incidental revenue may accrue therefrom. *Fletcher Oil Company vs. Bay City*, 247 Mich. 572, 226 N. W. 248 (1929).

⁸Constitution, Art. X, Sec. 3.

The term "specific taxes" as used in this section includes license, privilege, and occupation taxes. They are not ad valorem taxes upon property, and thus are not

II. Financial Powers and Limitations—Continued

A. Taxation and Assessments—Continued

(1) State—Continued

per cent of the assessed valuation of said property, except taxes levied for the payment of interest and principal on obligations heretofore incurred, which sums shall be separately assessed in all cases:⁹ Provided, That this limitation may be increased for a period of not to exceed five years at any one time, to not more than a total of five per cent of the assessed valuation, by a two-thirds vote of the electors of any assessing district, or when provided for by the charter of a municipal corporation:¹⁰

* * *

(d) The power of taxation shall never be surrendered or suspended by any grant or contract to which the state or any municipal corporation shall be a party.¹¹

subject to the rule of uniformity of this section. *C. F. Smith Company vs. Fitzgerald*, 270 Mich. 659, 259 N. W. 352 (1935).

Since assessments for local improvements are a peculiar species of taxation based on the assumption that a part of the property of the community is increased in value by the improvement, such assessments are not subject to the uniformity requirement of this section. *City of Detroit vs. Weil*, 180 Mich. 593, 147 N. W. 550 (1914).

The uniformity requirement means only that the Legislature may not arbitrarily tax property according to locality, kind, or quality without regard to value. The constitutional mandate is met so long as those objects which are taxed are brought within a uniform rule. *Union Trust Company vs. Common Council, etc.*, 170 Mich. 692, 137 N. W. 122 (1912).

Since an inheritance or succession tax is a tax on the privilege of receiving property by inheritance, and is not a tax upon property, it does not come within the uniformity rule of this section. *In re Fox's Estate*, 154 Mich. 5, 117 N. W. 558 (1908).

⁹Included within this exception are direct refunding bonds exchanged for prior bonds existing at the time this section became effective, new bonds sold to pay bonds existing at the time of the adoption of this section, and renewal of notes or evidences of indebtedness issued upon the faith of delinquent taxes and existing as general obligations of the public body prior to the adoption of this section. *Wilcox vs. Board of Commissioners of Sinking Fund, etc.*, 262 Mich. 699, 247 N. W. 923 (1933).

¹⁰Constitution, Art. X, Sec. 21.

The one and one-half percent tax limitation of this section is not self-executing and requires legislation for a division of the taxes between the State, counties, cities, villages, townships, or school districts. *School District of City of Pontiac vs. City of Pontiac*, 262 Mich. 338, 247 N. W. 474 (1933).

The phrase "two-thirds vote of the electors" does not mean two-thirds of all the electors of the assessing district, but only two-thirds of those electors voting on the question of an increase in the tax limit. *Wilcox vs. Board of Commissioners of Sinking Fund, etc.*, 262 Mich. 699, 247 N. W. 923 (1933).

This provision does not alter the right of home-rule cities or villages or fourth class cities to exercise their powers of local self-government and fix their own tax limits for local needs and purposes. In these excepted cities and villages, however, this amendment is effective as to State and county taxes. *School District of City of Pontiac vs. City of Pontiac*, 262 Mich. 338, 247 N. W. 474 (1933). See page 4, par. (a), and footnote 15; page 5, par. (b), and footnote 16.

¹¹Constitution, Art. X, Sec. 9.

II. Financial Powers and Limitations—Continued

A. Taxation and Assessments—Continued

(1) State—Continued

(e) The legislature may by law impose specific taxes, which shall be uniform upon the classes upon which they operate.¹²

(f) All assessments hereafter authorized shall be on property at its cash value.¹³

(2) Counties¹⁴

See page 2, pars. (b) and (c), and footnote 8; page 3, par. (d), and footnotes 9, 10, and 11; par. (f), above, and footnote 13, below.

(3) Other Local Units

(a) The legislature shall provide by a general law for the incorporation of cities, and by a general law for the incorporation of villages; such general laws shall limit their rate of taxation for municipal purposes, and restrict their powers of borrowing money and contracting debts.¹⁵

¹²Constitution, Art. X, Sec. 4.

These taxes include license, privilege, and occupation taxes; they are not ad valorem taxes on property. A license tax for the privilege to do business in more than one store, and graduated according to the number of stores operated was held to be a reasonable tax under this section. *C. F. Smith Company vs. Fitzgerald*, 270 Mich. 659, 259 N. W. 352 (1935).

A graduated inheritance tax not allowing for deductions of the amount paid under a Federal estate tax was held not to violate the uniformity requirement of this section. *In re Fish's Estate*, 219 Mich. 369, 189 N. W. 177 (1922).

¹³Constitution, Art. X, Sec. 7.

Held that in reviewing the assessments made by the city assessor, the board of review of the City of Jackson might horizontally reduce the values of realty due to excessive assessments or depreciation in value. It might not, however, arbitrarily reduce horizontally the valuation on personalty, since by its nature personalty takes so many forms that no general rule may be applied either to depreciation or reductions in value. *Hayes vs. City of Jackson*, 267 Mich. 523, 255 N. W. 361 (1934).

¹⁴Each organized county shall be a body corporate with such powers of a local, legislative, and administrative character conferred on the county boards of supervisors as the Legislature may provide by law. Constitution, Art. VIII, Secs. 1, 8.

The boards of supervisors are authorized without a vote of the electors (Art. VIII, Secs. 1, 8) to levy a tax in any one year of one-tenth of one mill on the assessed valuation of the county, or to borrow an equal sum, to maintain public buildings or bridges (such taxing or borrowing power limited to \$1,000 where the assessed valuation is less than \$10,000,000). Art. VIII, Sec. 10.

County taxes for road purposes are limited to five mills in any one year. Art. VIII, Sec. 26.

¹⁵Constitution, Art. VIII, Sec. 20.

This power of the Legislature is complete and unrestricted. *Harsha vs. City of Detroit*, 261 Mich. 586, 246 N. W. 849 (1933).

Municipal corporations are State agencies, and subject to constitutional restrictions; the Legislature may modify the charters of municipal corporations at will. *Harsha vs. City of Detroit*, 261 Mich. 586, 246 N. W. 849 (1933).

This section and the one following (par. (b), page 5) have been the basis of home-rule legislation, giving the electors of the cities chartered thereunder increased

II. Financial Powers and Limitations—Continued

A. Taxation and Assessments—Continued

(3) Other Local Units—Continued

(b) Under such general laws, the electors of each city and village shall have power and authority to frame, adopt and amend its charter, * * * and, through its regularly constituted authority, to pass all laws and ordinances relating to its municipal concerns, subject to the constitution and general laws of this state.¹⁶

(c) No city or village shall have power to * * * loan its credit, nor to assess, levy or collect any tax or assessment for other than a public purpose.¹⁷ * * *

(d) See page 2, pars. (b) and (c), and footnote 8; page 3, par. (d), and footnotes 9, 10, and 11; page 4, par. (f), and footnote 13.

control of local government. Thus, constitutional provision, Art. X, Sec. 21 (page 2, par. (c)), limiting the total amount of taxes to one and one-half percent of the assessed valuation has no reference to home-rule cities, or cities with special charters (with like provisions as to the taxing power), fourth class cities, or villages. *School District of City of Pontiac vs. City of Pontiac*, 282 Mich. 338, 247 N. W. 474 (1933).

A statute authorizing cities to make public improvements and pay for them by self-liquidating bonds was held not to create a debt on the part of the city since the bonds were payable solely from the income to be derived from the operation of such improvements, and not from the general revenues of the city. As the city incurred no debt by the bond issue it was deemed unimportant to determine whether the city's statutory debt limit had already been reached. *Young vs. City of Ann Arbor*, 287 Mich. 241, 255 N. W. 579 (1934).

Organized townships shall be bodies corporate with such powers of a local legislative and administrative character as the Legislature may provide by law. Art. VIII, Sec. 16, 17.

¹⁶Constitution, Art. VIII, Sec. 21.

This section forbids the State to meddle with purely local municipal affairs, and similarly forbids municipalities to usurp the police power of the State in its sovereign capacity. *Attorney General ex rel. Lennane vs. City of Detroit*, 225 Mich. 631, 196 N. W. 391 (1923).

A Workmen's Compensation Act, requiring each county, city, township, incorporated village, school district, incorporated public board, or public commission within the State to insure its employees against injury and death was held constitutional under this and other sections relating to municipalities, since the Act involved no right of local self-government or local control of corporate property. The Act was held to be declaratory of a new State-wide public purpose for which taxes could be levied. *Wood vs. City of Detroit*, 188 Mich. 547, 155 N. W. 592 (1915).

The Board of Health of the City of Detroit is a State and not a municipal governmental agency. *Civil Service Commission of City of Detroit vs. Engel*, 184 Mich. 269, 150 N. W. 1081 (1915).

The fire department, however, and the departments managing municipal streets and municipal waterworks are purely municipal agencies. The distinction between the two classes of agencies rests in the fact that negligence on the part of a municipal board of health might cause a State-wide epidemic, whereas the possibility that a conflagration would spread beyond the limits of the municipality is remote. *Davidson vs. Hine*, 151 Mich. 294, 115 N. W. 246 (1908).

¹⁷Constitution, Art. VIII, Sec. 25.

Under the Home Rule Act, providing for a civil service system in city charters, an ordinance of the City of Detroit creating a pension fund for civil employees was held to be for a "public purpose" under this section. *Bowler vs. Nagel*, 228 Mich. 437, 200 N. W. 258 (1924).

II. Financial Powers and Limitations—Continued

B. Exemptions

No provision.¹⁸

C. Borrowing and Use of Credit

(1) State

(a) The state may contract debts to meet deficits in revenue, but such debts shall not in the aggregate at any time, exceed two hundred fifty thousand dollars. The state may also contract debts to repel invasion, suppress insurrection, defend the state or aid the United States in time of war. The money so raised shall be applied to the purposes for which it was raised or to the payment of the debts contracted.¹⁹ * * *

(b) The credit of the state shall not be granted to, nor in aid of any person, association or corporation, public or private.²⁰

¹⁸There being no constitutional restriction on the power of the Legislature to exempt from taxation, it follows that it can exercise the power of exemption as it chooses. *C. F. Smith Company vs. Fitzgerald*, 270 Mich. 659, 259 N. W. 352 (1935).

The power to exempt from taxation the property of churches, schools, and libraries, has no reference to the rule of uniformity provided for in Art. X, Sec. 3 (page 2, par. (b)) in relation to ad valorem taxation or to the same rule as set out in Art. X, Sec. 4 (page 4, par. (e)) in relation to other forms of taxation. *Union Trust Company vs. Common Council*, 170 Mich. 692, 137 N. W. 122 (1912).

Under a statute exempting from taxation the real property of all houses of public worship and parsonages *occupied as such*, it was held that for the time covering construction of a parsonage and before the rector actually took up his residence there, the real property was not exempt from taxation. The court stated that exemption statutes should receive a strict construction. In all cases of doubt as to the legislative intention, the presumption is in favor of the taxing power, and the burden is on the claimant to establish clearly its right to exemption. *St. Joseph's Church vs. City of Detroit*, 189 Mich. 408, 155 N. W. 588 (1915).

¹⁹Constitution, Art. X, Sec. 10.

²⁰Constitution, Art. X, Sec. 12.

A deposit of State funds in a bank in the ordinary course of business cannot be considered a loan of State credit. *Fry vs. Equitable Trust Company*, 264 Mich. 165, 249 N. W. 619 (1933).

A statute authorized the State to contract with a railroad for certain improvements. Under the contract the State agreed to secure a new right-of-way for the railroad and construct a track thereon. In return the railroad was to deed certain land to the State. The contract further provided that the railroad was to repay the State within 15 years the amount spent. The statute was held valid as not providing for a grant of the State's credit. *Fitzsimmons & Galvin, Incorporated vs. Rogers*, 243 Mich. 649, 220 N. W. 881 (1928).

This section, being a general limitation upon the power of the State to grant credit, does not operate to curtail specific grants of authority to counties under Art. VIII, Sec. 11 (page 1, par. B), to furnish support to "public and charitable hospitals, sanatoria, or other institutions for the treatment of persons suffering from contagious or infectious diseases." *Sault Ste. Marie Hospital vs. Sharpe*, 209 Mich. 684, 177 N. W. 297 (1920).

Under this section the City of Detroit was held unauthorized to appropriate funds to the Detroit Museum of Art even though the museum conveyed its real property to the city, and the city had representation on the board of directors, and the museum was open to the public. The court, after determining that it was a private corporation, stated: "It is of no importance how public the aims and purposes of the corporation may be, unless it takes on the form of a municipal agency, it is still under the ban of the constitutional inhibition." *Detroit Museum of Art vs. Engel*, 187 Mich. 432, 153 N. W. 700 (1915). See page 12, footnote 45.

II. Financial Powers and Limitations—Continued

C. Borrowing and Use of Credit—Continued

(1) State—Continued

(c) The state shall not subscribe to, nor be interested in the stock of any company, association or corporation.²¹

(d) The state shall not be a party to, nor be interested in any work of internal improvement, nor engage in carrying on any such work, except in the improvement of or aiding in the improvement of the public wagon roads, in the reforestation and protection of lands owned by the state and in the expenditure of grants to the state of land or other property.²²

(e) The state shall borrow not to exceed thirty million dollars, pledge its faith and credit and issue its notes or bonds therefor, for the purpose of paying to each person who entered into the military, naval or marine forces of the United States between April sixth, nineteen hundred seventeen, and November eleventh, nineteen hundred eighteen, and served honestly and faithfully therein during the late world war and who was a resident in this state at the time of entering such service, the sum of fifteen dollars for each month or major fraction thereof, of such service, up to and including August first, nineteen hundred nineteen.²³

(2) Counties²⁴

No county shall incur any indebtedness which shall increase its total debt beyond three per cent of its assessed valuation, except counties having an assessed valuation of five million dollars or less, which counties may increase their total debt to five per cent of their assessed valuation.²⁵

²¹Constitution, Art. X, Sec. 13.

²²Constitution, Art. X, Sec. 14.

Since the State cannot engage in the construction and operation of internal improvements, municipal and quasi-municipal corporations may not do so, because the latter are but instrumentalities of the State in carrying on local government, and the State may not delegate power to a municipal or quasi-municipal corporation to do what it has no power to do itself. If, however, a work of public improvement can be classified under an express constitutional grant of power, such as the power of municipalities to acquire hospitals, almshouses, and all works involving the public health or safety, (see page 2, par. D), an act authorizing such a project will be held constitutional. Thus, an act authorizing the construction of a municipal sewage plant, being a work involving public health and safety, was upheld with reference to this section. *Young vs. City of Ann Arbor*, 267 Mich. 241, 255 N. W. 579 (1934). Similarly an act authorizing the development of municipal harbors and parks was held constitutional. *Gilbert vs. Traverse City*, 267 Mich. 257, 255 N. W. 585 (1934).

See, further, a discussion of this section in *Bird vs. Common Council of City of Detroit*, 148 Mich. 71, 111 N. W. 860 (1907).

²³Constitution, Art. X, Sec. 20-b.

²⁴See par. (d), above, and footnote 22; page 12, footnote 45.

²⁵Constitution, Art. VIII, Sec. 12.

See page 5, footnote 16.

II. Financial Powers and Limitations—Continued

C. Borrowing and Use of Credit—Continued

(3) Other Local Units

(a) See page 4, par. (a), and footnote 15.

(b) See page 5, par. (c), and footnote 17; page 7, par. (d), and footnote 22; page 12, footnote 45.

D. Other Income

(a) The proceeds from the sales of all lands that have been or hereafter may be granted by the United States to the state for educational purposes and the proceeds of all lands or other property given by individuals or appropriated by the state for like purposes shall be and remain a perpetual fund, the interest and income of which, together with the rents of all such lands as may remain unsold, shall be inviolably appropriated and annually applied to the specific objects of the original gift, grant or appropriation.²⁶

(b) All lands, the title to which shall fall from a defect of heirs, shall escheat to the state, and the interest on the clear proceeds from the sales thereof shall be appropriated exclusively to the support of the primary schools.²⁷

(c) The legislature shall appropriate all salt spring lands now unappropriated, or the money arising from the sale of the same, where such lands have already been sold, and any funds or lands which may hereafter be granted or appropriated for such purpose, for the support and maintenance of the agricultural college.²⁸

E. Appropriations and Expenditures

(1) State

(a) No money shall be paid out of the state treasury except in pursuance of appropriations made by law.²⁹

(b) * * * No money shall be appropriated or drawn from the treasury for the benefit of any religious sect or society, theological or religious seminary; nor shall property belonging to the state be appropriated for any such purpose.³⁰ * * *

²⁶ Constitution, Art. XI, Sec. 11.

All fines assessed and collected in the several counties, cities, and townships for any breach of the penal laws shall be exclusively applied to the support of libraries in the cities and townships. Art. XI, Sec. 14.

²⁷ Constitution, Art. XI, Sec. 12.

²⁸ Constitution, Art. XI, Sec. 13.

²⁹ Constitution, Art. X, Sec. 16.

³⁰ Constitution, Art. II, Sec. 3.

II. Financial Powers and Limitations—Continued

E. Appropriations and Expenditures—Continued

(2) Counties

See page 1, par. B.

(3) Other Local Units

No provision.

III. Provisions Affecting Legislation

A. Regular Sessions of Legislature

The legislature shall meet at the seat of government on the first Wednesday in January, 1909, and on the first Wednesday in January in every second year thereafter,³¹ * * *.

B. Special Sessions of Legislature

He (the governor) may convene the legislature on extraordinary occasions.³²

C. Powers of Initiative and Referendum

(1) Initiative

* * * the people reserve to themselves the power to propose legislative measures, resolutions and laws; to enact or reject the same at the polls independently of the legislature; and to approve or reject at the polls any act passed by the legislature, except acts making appropriations for state institutions³³ and to meet deficiencies in state funds. * * * At least 8 per cent of the legal voters of the state shall be required to propose any measure by petition: Provided, That no law shall be enacted by the initiative that could not under this constitution be enacted by the legislature. * * * If any law proposed by such petition shall be enacted by the legislature it shall be subject to referendum, as hereinafter provided. If any law so

³¹ Constitution, Art. V, Sec. 13.

³² Constitution, Art. VI, Sec. 7.

³³ The term "state institutions" should be interpreted in a broad sense, to include all organized departments of the State to which the Legislature may delegate the exercise of State functions. Thus, a law imposing a gasoline tax and appropriating the proceeds for the use of the State highway department is not subject to referendum. *Detroit Automobile Club vs. DeLand*, 230 Mich. 623, 203 N. W. 529 (1925). Similarly, the counties, when building roads for State purposes with funds appropriated from the State highway fund, are exercising State functions, and such an appropriation act is not subject to referendum. *Moreton vs. Haggerty*, 240 Mich. 584, 216 N. W. 450 (1927).

A resolution passed by the Legislature ratifying an amendment to the Federal Constitution is not an "act" within the meaning of this section, and thus is not subject to the power of referendum. *Decher vs. Vaughan*, 209 Mich. 565, 177 N. W. 388 (1920).

III. Provisions Affecting Legislation—Continued

C. Powers of Initiative and Referendum—Continued

(1) Initiative—Continued

pétitioned for be rejected, or if no action is taken upon it by the legislature within * * * forty days, the secretary of state shall submit such proposed law to the people for approval or rejection at the next ensuing general election. The legislature may reject any measure so proposed by initiative petition and propose a different measure upon the same subject * * *, and in such event both measures shall be submitted by the secretary of state to the electors for approval or rejection at the next ensuing general election.³⁴ * * *

(2) Referendum

(a) * * * Upon presentation to the secretary of state within ninety days after the final adjournment of the legislature, of a petition certified to as herein provided, * * * asking that any act, section or part of any act of the legislature, be submitted to the electors for approval or rejection, the secretary of state, after canvassing such petition as above required,³⁵ * * *, shall submit to the electors for approval or rejection such act or section or part of any act at the next succeeding general election; and no such act shall go into effect until and unless approved by a majority of the qualified electors voting thereon.³⁶ * * *

(b) * * * Any act submitted to the people by either initiative or referendum petition and approved by a majority of the votes

³⁴Constitution, Art. V, Sec. 1(b).

The section further provides that an initiative petition shall be certified to as to the signatures thereon by qualified electors equal in number to eight percent of the total vote cast for all candidates for Governor at the last preceding general election at which a Governor was elected, and shall be filed with the Secretary of State at least ten days before the beginning of any session of the Legislature, and after his canvassing the same for the requisite number of electors, shall be transmitted to the Legislature as soon as it convenes, where, within 40 days, it shall be either enacted or rejected without change or amendment. Ibid.

Every provision of Art. V, Sec. 1, as to initiative and referendum is mandatory, and self-executing. The duties of the Secretary of State are ministerial and he may be required to perform them by mandamus. *Thompson vs. Vaughan*, 192 Mich. 512, 159 N. W. 65 (1916).

In a mandamus action the court citing a former opinion said "the court took pains to guard against any decision that would prevent complaint where the public interest requires prompt action, or where the public prosecutors will not interfere in the matter." Further, "it is within the court's discretion whether the relator need have any greater interest than any other citizen." *People ex rel. Ayers vs. Board of State Auditors*, 42 Mich. 422, 4 N. W. 274 (1880).

³⁵The requirements of the certification and canvassing of the referendum petitions are the same as in the initiative petition. See footnote 34 above.

³⁶Constitution, Art. V, Sec. 1(b).

This section contains further procedural requirements, as to the application of which see *Thompson vs. Vaughan*, 192 Mich. 512, 159 N. W. 65 (1916).

III. Provisions Affecting Legislation—Continued

C. Powers of Initiative and Referendum—Continued

(2) Referendum—Continued

cast thereon at any election shall take effect ten days after the date of the official declaration of the vote by the secretary of state. No act initiated or adopted by the people, shall be subject to the veto power of the governor, and no act adopted by the people at the polls under the initiative provisions of this section shall be amended or repealed, except by a vote of the electors unless otherwise provided in said initiative measure, but the legislature may propose such amendments, alterations or repeals to the people. Acts adopted by the people under the referendum provision of this section may be amended by the legislature at any subsequent session thereof:³⁷ * * *.

(c) Any bill passed by the legislature and approved by the governor, except appropriation bills, may be referred by the legislature to the qualified electors; and no bill so referred shall become a law unless approved by a majority of the electors voting thereon.³⁸

D. Legislative Enactment

(a) All legislation by the legislature shall be by bill and may originate in either house of the legislature.³⁹

(b) No law shall embrace more than one object, which shall be expressed in its title.⁴⁰ No law shall be revised, altered or amended by reference to its title only; but the act revised and the section or sections of the act altered or amended shall be re-enacted and published at length.⁴¹ No act shall take effect or be in force until the expiration of ninety days from the end of the session at which the same is passed, except that the legislature may give immediate effect to acts making

³⁷ Constitution, Art. V, Sec. 1(b).

³⁸ Constitution, Art. V, Sec. 38.

³⁹ Constitution, Art. V, Sec. 19.

The Governor has no power to prepare bills or propose amendments to the Constitution. Cahill vs. Board of State Auditors, 127 Mich. 487, 86 N. W. 950 (1901).

⁴⁰ The title "An act to establish an insurance bureau" was held sufficient to authorize a comprehensive law creating the office of insurance commissioner, defining his powers and duties, and containing provisions relative to taxation of insurance companies, and the reciprocal rights and duties of the State and insurance companies. State ex rel. Connecticut Mutual Life Insurance Company vs. State Treasurer, 31 Mich. 5 (1875). Cited with approval in Loomis vs. Rogers, 197 Mich. 265, 163 N. W. 1018 (1917).

⁴¹ "It is a full compliance with the terms as well as the purpose of (this) provision if the section as amended be set forth at length, with such reference to the old law as will show for what the new law is substituted." People vs. Pritchard, 21 Mich. 235 (1870)." People vs. Stimer, 248 Mich. 272, 228 N. W. 899 (1929).

III. Provisions Affecting Legislation—Continued

D. Legislative Enactment—Continued

appropriations and acts immediately necessary for the preservation of the public peace, health or safety by a two-thirds vote of the members elected to each house.⁴²

(c) No bill shall be passed or become a law at any regular session of the legislature until it has been printed and in the possession of each house for at least five days. No bill shall be passed at a special session of the legislature on any other subjects than those expressly stated in the governor's proclamation or submitted by special message. No bill shall be altered or amended on its passage through either house so as to change its original purpose.⁴³

(d) Every bill shall be read three times in each house before the final passage thereof. No bill shall become a law without the concurrence of a majority of all the members elected to each house. On the final passage of all bills, the vote shall be by yeas and nays and entered on the journal.⁴⁴

(e) The assent of two-thirds of the members elected to each house of the legislature shall be requisite to every bill appropriating the public money or property for local or private purposes.⁴⁵

⁴²Constitution, Art. V, Sec. 21.

Whether an act is immediately necessary for the preservation of the public peace, health or safety is a question for judicial determination. Attorney General ex rel. Barbour vs. Lindsay, 178 Mich. 524, 145 N. W. 98 (1914).

"Public safety has not only to do with the safety and protection of persons, but also of their property." Industrial Bank vs. Reichert, 251 Mich. 396, 232 N. W. 235 (1930).

⁴³Constitution, Art. V, Sec. 22.

While the Governor may control the subject matter of legislation to be enacted at a special session, he may not restrict the boundaries within the natural range of that subject or dictate the methods of dealing with it, or the class of persons to be benefited by it. Timmer vs. Talbot, 13 F. Supp. 666 (W. D. Mich. 1935).

⁴⁴Constitution, Art. V, Sec. 23.

It was held that the legislative practice of reading bills the first and second times by title and only the third time at length had been maintained too long in this State to be now overthrown by the courts. McClellan vs. Stein, 229 Mich. 203, 201 N. W. 209 (1924).

⁴⁵Constitution, Art. V, Sec. 24.

This provision is mandatory. Allen vs. Board of State Auditors, 122 Mich. 324, 81 N. W. 113 (1899).

For the prohibitions against the use of the credit of the State and its subdivisions, see page 6, par. (b), and footnote 20; page 7, pars. (c) and (d), and footnote 22.

An act appropriating the revenue accruing from a State-wide gasoline tax levy (1) to counties to be expended in the maintenance of highways under the supervision of the State Highway Department; (2) for the maintenance of "State trunk-line highways, contained within the limits of a city or village, the maintenance of which is an obligation of such city or village," under the supervision of the same department; and (3) for the payment of State highway bonds, was held not to provide for appropriations for local purposes.

III. Provisions Affecting Legislation—Continued

D. Legislative Enactment—Continued

(f) The legislature shall pass no local or special act in any case where a general act can be made applicable, and whether a general act can be made applicable shall be a judicial question. No local or special act, * * * shall take effect until approved by a majority of the electors voting thereon in the district to be affected.⁴⁶

(g) Every bill passed by the legislature shall be presented to the governor before it becomes a law. If he approve, he shall sign it; if not, he shall return it with his objections to the house in which it originated, * * *. On * * * reconsideration, if two-thirds of the members elected agree to pass the bill it shall be sent with the objections to the other house, by which it shall be reconsidered. If approved by two-thirds of the members elected to that house, it shall become a law. * * * If any bill be not returned by the governor within ten days, Sundays excepted, after it has been presented to him, it shall become a law in like manner as if he had signed it, unless the legislature, by adjournment, prevents its return, in which case it shall not become a law. The governor may approve, sign and file in the office of the secretary of

The court said " * * * the act does not in form or in fact apply to any one particular locality. It is made to operate in the same way on every section of the State. It is a general statute enacted for a State-wide purpose, * * *. A building of a highway in any section of the State is of interest to every other section." *Moreton vs. Haggerty*, 240 Mich. 584, 218 N. W. 450 (1927). See also *Attorney General vs. Bruce*, 213 Mich. 532, 182 N. W. 155 (1921); *Loomis vs. Rogers*, 197 Mich. 265, 163 N. W. 1018 (1917).

The appropriation of funds for the use of a voluntary unincorporated society organized for the purpose of improving the quality of corn to be raised throughout the State was held to be an invalid attempt to devote public funds to a private purpose in violation of the Constitution. *Michigan Corn Improvement Association vs. Auditor General* 150 Mich. 69, 113 N. W. 582 (1907).

It was also held that a bounty for the manufacture of beet sugar could not validly be given by the State for the same reason. *Michigan Sugar Company vs. Auditor General*, 124 Mich. 674, 83 N. W. 625 (1900).

Townships are prohibited from raising money by taxation to aid a private corporation to build a railroad. *People ex rel. Detroit & Howell Railroad Company vs. Town of Salem*, 20 Mich. 452, 4 Am. Rep. 400 (1870).

The three preceding cases are cited with approval in the following case wherein it was held that the Workmen's Compensation Act did not appropriate public money for a private purpose, since the appropriations to defray the expenses of its administration were based on public policy and the protection of the State by providing for its workers, and not for the private benefit of the workers. *Mackin vs. Detroit-Timkin Axle Company*, 187 Mich. 8, 153 N. W. 49 (1915).

⁴⁶ Constitution, Art. V, Sec. 30 (b).

Local or special acts were common under the former Constitution (1850), and such acts survive the curtailment of the Legislature's power under this section and are effective until expressly repealed. *Port Huron Township vs. Board of Auditors of St. Clair County*, 269 Mich. 326, 257 N. W. 833 (1934).

A local act authorizing the proper authorities of the City of Detroit to borrow money to complete a public library building was held constitutional under this section, since the circumstances of an already half completed library building without the requisite funds for its completion was not one where a general act had been or could likely be made applicable. *Common Council of City of Detroit vs. Engel*, 202 Mich. 544, 168 N. W. 465 (1918).

III. Provisions Affecting Legislation—Continued

D. Legislative Enactment—Continued

state within five days, Sundays excepted, after the adjournment of the legislature any bill passed during the last five days of the session, and the same shall become a law.⁴⁷

(h) The governor shall have power to disapprove of any item or items of any bill making appropriations of money embracing distinct items; and the part or parts approved shall be the law; and the item or items disapproved shall be void, unless repassed according to the rules and limitations prescribed for the passage of other bills over the executive veto.⁴⁸

IV. Constitutional Amendment or Revision

A. By Proposal of Legislature or People

(1) Any amendment or amendments to this constitution may be proposed in the senate or house of representatives. If the same shall be agreed to by two-thirds of the members elected to each house, such amendment or amendments shall be entered on the journals,⁴⁹ respectively, with the yeas and nays taken thereon; and the same shall be submitted to the electors at the next spring or autumn election thereafter,⁵⁰ as the legislature shall direct; and, if a majority of electors qualified to vote for members of the legislature voting thereon shall ratify and approve

⁴⁷Constitution, Art. V, Sec. 36.

It is only the final adjournment of the Legislature which prevents the return of a bill on veto. Return within ten days even though the Legislature is temporarily adjourned confers jurisdiction on the Legislature to pass the bill over the veto. *Wood vs. State Administrative Board*, 255 Mich. 220, 238 N. W. 16 (1931). Contra: *Okanogan, etc., vs. United States*, (The Pocket Veto Case) 279 U. S. 655, 49 Supreme Court 463, 73 L. Ed. 894 (1929).

⁴⁸Constitution, Art. V, Sec. 37.

The Governor may veto specific items in an appropriation bill but may not reduce them. *Wood vs. State Administrative Board*, 255 Mich. 220, 238 N. W. 16 (1931).

⁴⁹The publication in the House journals of a proposed amendment as it first passed the House and the subsequent publication in the House of changes made by the Senate before adoption and the publication in the Senate journals of the complete amendment as finally approved, was held a sufficient compliance with this section of the Constitution. The court, however, observed that "there is a want of harmony in the authorities as to what is a compliance with this provision * * * most, if not all, of the cases adhere to the view that the constitutional provision is mandatory, and * * * those cases which require an entry of the resolution in full, as passed, have much the better of the argument." *People ex rel. Board of Supervisors vs. Loomis*, 135 Mich. 556, 98 N. W. 262 (1904).

⁵⁰The elections at which amendments are to be submitted are the State-wide elections referred to in the Constitution, i.e., the spring election in the odd year and the autumn election in the even year. The Legislature has no authority to create a special election for such purpose. *Chase vs. Board of Election Commissioners*, 151 Mich. 407, 115 N. W. 454 (1908).

IV. Constitutional Amendment or Revision—Continued

A. By Proposal of Legislature or People—Continued

such amendment or amendments, the same shall become part of the constitution.⁵¹

(2) Amendments may also be proposed to this constitution by petition of the qualified voters of this state. * * * Any Constitutional amendment initiated by the people as herein provided, shall take effect and become a part of the constitution if the same shall be approved by a majority of the electors voting thereon and not otherwise. Every amendment shall take effect thirty days after the election at which it is approved.⁵² * * *

B. By Constitutional Convention

At the general election to be held in the year nineteen hundred twenty-six, in each sixteenth year thereafter and at such other times as may be provided by law, the question of a general revision of the constitution shall be submitted to the electors qualified to vote for members of the legislature. In case a majority of such electors voting at such election shall decide in favor of a convention for such purpose, at the next biennial spring election the electors of each senatorial district of the state as then organized shall elect three delegates. The delegates so elected shall convene at the state capitol on the first Tuesday in September next succeeding such election, * * *. No proposed constitution or amendment adopted by such convention shall be submitted to the electors for approval as hereinafter provided unless by the assent of a majority of all the delegates elected to the convention, * * *.

⁵¹Constitution, Art. XVII, Sec. 1.

An amendment proposed by the Legislature pursuant to this section becomes effective 30 days after the election at which it is approved. *Hamilton vs. Vaughan*, 204 Mich. 439, 170 N. W. 554 (1919).

The Supreme Court of Michigan has jurisdiction to construe the Constitution by declaratory judgments. *Wilcox vs. Board of Commissioners*, 262 Mich. 699, 247 N. W. 923 (1933).

⁵²Constitution, Art. XVII, Sec. 2.

The section further provides that such a petition shall be signed by qualified electors equal in number to not less than ten percent of the total vote cast for Governor at the regular election last preceding the filing of the amendatory petition, and shall be filed with the Secretary of State at least four months before the election at which such proposed amendment is to be voted upon, and after canvassing the same for the requisite number of electors, the petition shall be submitted to the electors at the next regular election at which any State officer is to be elected.

The Secretary of State, in the performance of his duties under this section, has no discretion and performs merely a ministerial duty. *Scott vs. Vaughan*, 202 Mich. 629, 168 N. W. 709 (1918). Thus, he may not refuse to submit the proposed amendment to the electors on the ground that it would violate the Federal Constitution. *Hamilton vs. Vaughan*, 212 Mich. 31, 179 N. W. 553 (1920).

The Legislature may not impose additional burdensome restrictions on the amendatory procedure as set out in the Constitution. *Hamilton vs. DeLand*, 227 Mich. 111, 198 N. W. 843 (1924).

IV. Constitutional Amendment or Revision—Continued

B. By Constitutional Convention—Continued

Any proposed constitution or amendments adopted by such convention shall be submitted to the qualified electors in the manner provided by such convention * * *. Upon the approval of such constitution or amendments by a majority of the qualified electors voting thereon such constitution or amendments shall take effect on the first day of January following the approval thereof.⁵³

⁵³Constitution, Art. XVII, Sec. 4.

