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

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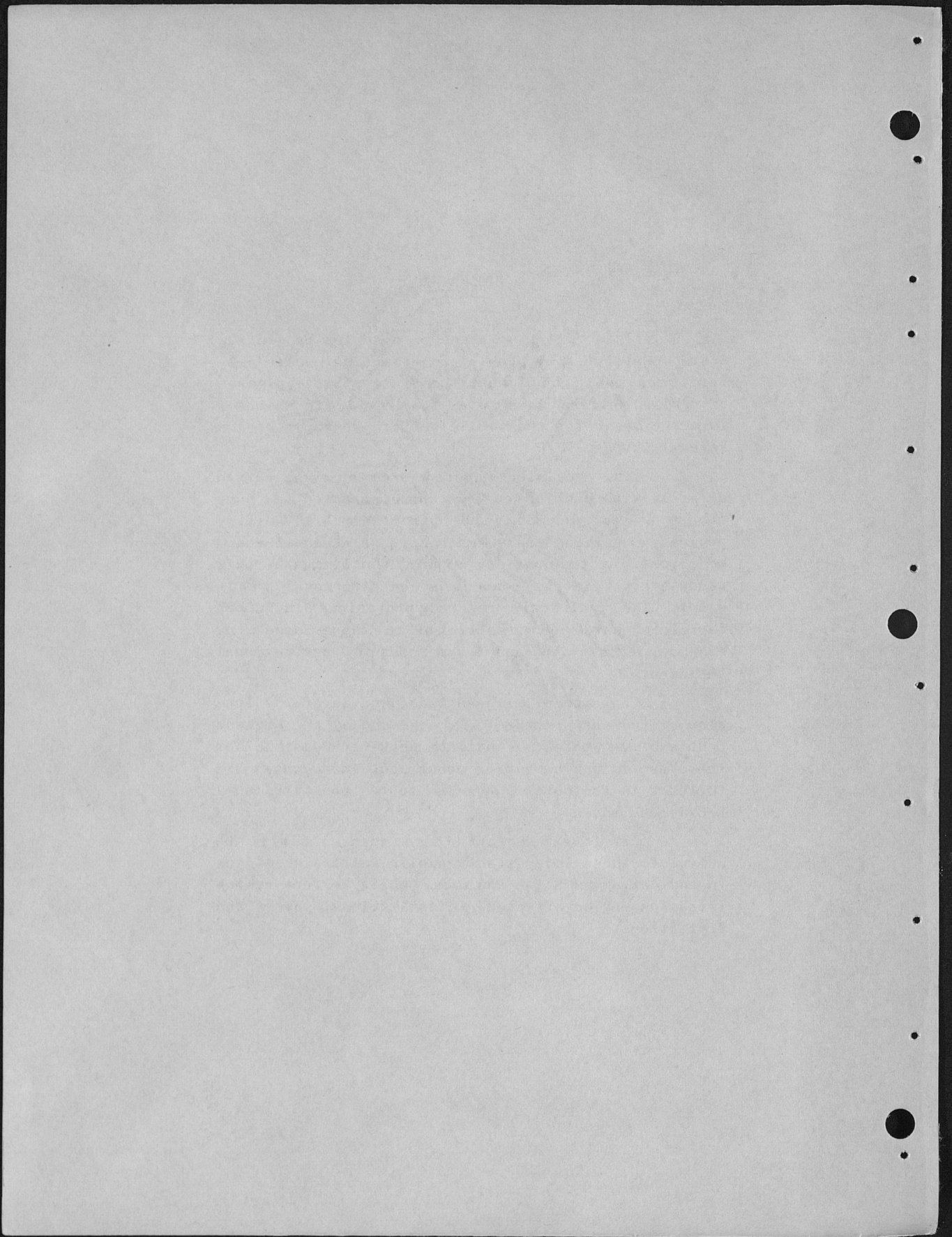
PREFACE

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.

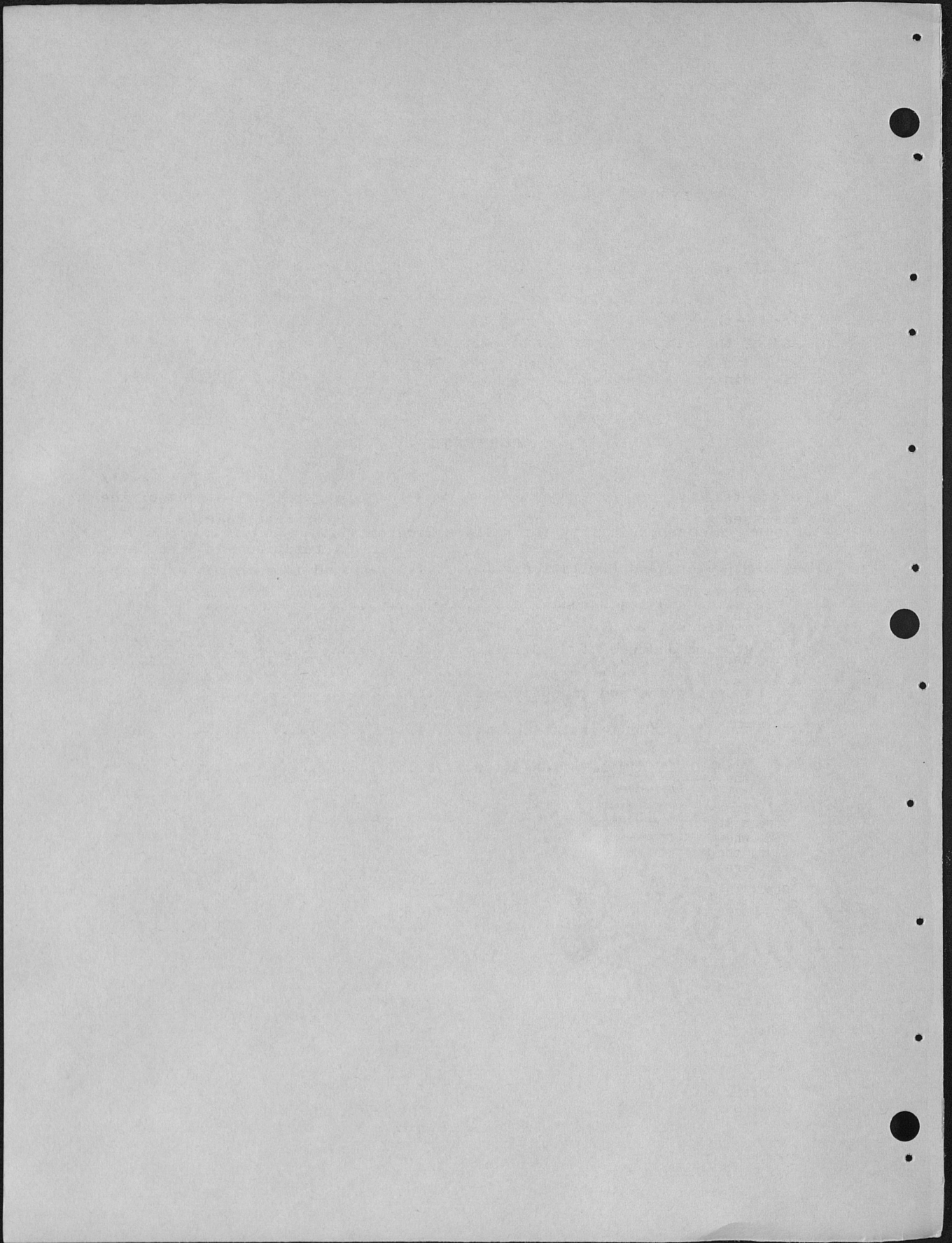
An attempt has been made, by a careful selection of the most recent cases decided by the highest courts of the States, to indicate wherever possible how these provisions have been construed. These cases are included in footnotes appended to the constitutional provisions shown.

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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Arkansas

ANALYSIS OF CONSTITUTIONAL PROVISIONS AFFECTING
PUBLIC WELFARE IN ARKANSAS¹

I. Incidence of Responsibility for Welfare Program

A. It shall be the duty of the General Assembly to provide by law for the support of institutions for the education of the deaf and dumb and of the blind, and also for the treatment of the insane.²

II. Financial Powers and Limitations

A. Taxation and Assessments

(1) State

(a) The General Assembly shall not have power to levy State taxes for any one year to exceed in the aggregate one percent of the assessed valuation of the property of the State for that year.³

(b) All property subject to taxation shall be taxed according to its value, that value to be ascertained in such manner as the General Assembly shall direct, making the same equal and uniform throughout the State. No one species of property from which a tax may be collected shall be taxed higher than another species of property of equal value, provided the General Assembly shall have power from time to time to tax hawkers, peddlers, ferries, exhibitions and privileges in such manner as may be deemed proper.⁴ * * *

¹Constitution (1874), with all amendments to March 1, 1937.

All citations and quotations are to the Constitution of the State of Arkansas published by the Secretary of State (1935).

"It is a fundamental and universally recognized canon of construction that the Constitution of this state is not a grant, but a limitation, of power, * * *. Therefore a statute will be upheld unless it is clearly prohibited by the Constitution, and, where it is doubtful whether an act comes within the inhibition of the Constitution, the doubt must be resolved in favor of the constitutionality of the act." Cobb vs. Parnell, 183 Ark. 429, 36 S. W. (2d) 388 (1931).

²Constitution, Art. XIX, Sec. 19.

³Constitution, Art. XVI, Sec. 8.

The limitation of this section applies exclusively to a property tax; and there is nothing in this section which prevents the Legislature from selecting other subjects of taxation and prescribing the amount or rate of tax that it may see fit to levy thereon. Baker vs. Hill, 180 Ark. 387, 21 S. W. (2d) 867 (1929).

"Since the Constitution contains no restriction on the power of the Legislature to levy taxes except as to property as such, the Legislature has full and complete power in the levy of taxes for state purposes as to other recognized subjects of taxation." Ibid.

⁴Constitution, Art. XVI, Sec. 5.

The requirement of uniformity of this section applies only to property taxes, and the latter part of the section granting the right to tax "hawkers, peddlers,

II. Financial Powers and Limitations—Continued

A. Taxation and Assessments—Continued

(1) State—Continued

(c) None of the rates for property, excise, privilege or personal taxes, now levied shall be increased by the General Assembly except after the approval of the qualified electors voting thereon at an election, or in case of emergency, by the vote of three-fourths of the members elected to each House of the General Assembly.⁵

(d) No State tax shall be allowed, or appropriation of money made, except to raise means for the payment of the just debts of the State, for defraying the necessary expenses of government, to sustain common schools, to repel invasion and suppress insurrection, except by a majority of two-thirds of both houses of the General Assembly.⁶

(e) No tax shall be levied except in pursuance of law, and every law imposing a tax shall state distinctly the object of the same; and no moneys arising from a tax levied for one purpose shall be used for any other purpose.⁷

(f) The General Assembly shall provide by the general laws for the support of common schools by taxes, which shall never exceed

ferries, exhibitions and privileges" does not by negative implication prevent the Legislature from providing for other forms of taxation. *Stanley vs. Gates*, 179 Ark. 886, 19 S. W. (2d) 1000 (1929).

An income tax was held not to be a property tax and so a net income tax statute which provided for a progressive rate of taxation and for exemption of incomes below certain amounts did not violate this section. *Stanley vs. Gates*, 179 Ark. 886, 19 S. W. (2d) 1000 (1929).

An inheritance tax statute providing for progressive rates was held valid and not violative of this section, such a tax not being on property but on the privilege of succession. *State vs. Handlin*, 100 Ark. 175, 139 S. W. 1112, (1911). Followed in *Gates vs. Bank of Commerce & Trust Company*, 47 S. W. (2d) 806 (1931).

A tax on retail sales being an excise tax was held not to violate this section. *Wiseman vs. Phillips*, 191 Ark. 63, 84 S. W. (2d) 91 (1935).

⁵Constitution, Amendment 19, Sec. 2 (1934).

⁶Constitution, Art. V, Sec. 31.

The word "allowed" as used in this section means "allowed" by law or permitted by statute. *Stanley vs. Gates*, 179 Ark. 886, 19 S. W. (2d) 1000 (1929).

The portion of a tax appropriated to the State charities fund was conceded to be appropriated to one of "the necessary expenses of government," and so did not require a two-thirds vote for its passage. *Ibid.*

Money raised and expended for the promotion of public health was held to be for a "necessary expense of government" within the meaning of this section. *Central States Life Insurance Company vs. State*, 80 S. W. (2d) 628 (1935).

A statute, taxing the privilege of operating pool tables and appropriating the revenues therefrom to a fund for the indigent blind, was held not to require a two-thirds vote of the Legislature. *Thompson vs. Wiseman*, 75 S. W. (2d) 393 (1934).

⁷Constitution, Art. XVI, Sec. 11.

A temporary diversion of money from one State fund to another was held not to violate this section because this section was intended to refer to the permanent diversion of money from one fund to another. *Cobb vs. Parnell*, 183 Ark. 429, 36 S.W. (2d) 388 (1931).

This section has no application to municipal ordinances. *Sheppard vs. City of Little Rock*, 183 Ark. 244, 35 S. W. (2d) 361 (1931).

II. Financial Powers and Limitations—Continued

A. Taxation and Assessments—Continued

(1) State—Continued

in any one year three mills on the dollar on the taxable property in the State, and by an annual per capita tax of one dollar, to be assessed on every male inhabitant of this State over the age of twenty-one years.⁸

* * *

(g) Excepting monies raised or collected for educational purposes, highway purposes, to pay Confederate pensions and the just debts of the State, the General Assembly is hereby prohibited from appropriating or expending more than the sum of Two and One-Half Million Dollars for all purposes, for any biennial period; provided the limit herein fixed may be exceeded by the votes of three-fourths of the members elected to each House of the General Assembly.⁹

(2) Counties

No county shall levy a tax to exceed one-half of one per cent for all purposes, but may levy an additional one-half of one per cent to pay indebtedness existing at the time of the ratification of this Constitution.¹⁰

(3) Other Local Units

(a) The General Assembly shall provide, by general laws, for the organization of cities (which may be classified) and incorporated towns, and restrict their power of taxation, assessment, borrowing money and contracting debts, so as to prevent the abuse of such power.¹¹

(b) No municipal corporation shall be authorized to pass any laws contrary to the general laws of the State; nor levy any tax on real or personal property to a greater extent, in one year, than five mills on the dollar of the assessed value of the same. Provided, that, to pay indebtedness existing at the time of the adoption of this Constitution, an additional tax of not more than five mills on the dollar may be levied.¹²

⁸ Constitution, Amendment 11 (1926), amending Art. XIV, Sec. 3.

⁹ Constitution, Amendment 19, Sec. 3 (1934), amending Art. V.

¹⁰ Constitution, Art. XVI, Sec. 9.

Amendment 17 to the Constitution, adopted in 1928, authorizes any county to levy an additional tax of not to exceed one-half of one percent on the dollar of the valuation of the property therein, for the purpose of constructing or improving any county courthouse or county jail, upon the approval of a majority of the voters of the county.

Amendment 3 to the Constitution, adopted in 1898, authorizes counties to levy a tax not exceeding three mills on the dollar on all taxable property in the county, to be used for road purposes.

¹¹ Constitution, Art. XII, Sec. 3.

¹² Constitution, Art. XII, Sec. 4.

II. Financial Powers and Limitations—Continued

A. Taxation and Assessments—Continued

(3) Other Local Units—Continued

(c) * * * Provided, that the General Assembly may, by general law, authorize school districts to levy by a vote of the qualified electors of such districts a tax not to exceed eighteen mills on the dollar in any one year for the maintenance of schools, the erection and equipment of school buildings and the retirement of existing indebtedness for buildings.¹³ * * *

(d) Nothing in this Constitution shall be so construed as to prohibit the General Assembly from authorizing assessments on real property for local improvements in the towns and cities, under such regulations as may be prescribed by law, to be based upon the consent of a majority in value of the property holders owning property adjoining the locality to be affected; but such assessments shall be ad valorem and uniform.¹⁴

B. Exemptions

(1) * * * Provided further, that the following property shall be exempt from taxation: Public property used exclusively for public purposes; churches used as such; cemeteries used exclusively as such; school buildings and apparatus; libraries and grounds used exclusively for school purposes, and buildings and grounds and materials used exclusively for public charity.¹⁵

Under this section where a municipal ordinance conflicts with a State statute, the statute will prevail. *City of Morrilton vs. Comes*, 75 Ark. 458, 87 S. W. 1024 (1905).

It was held that a city was not authorized to levy a property tax in excess of the five percent limit for the purpose of building a city hospital. *Watkins vs. Duke*, 28 S. W. (2d) 248 (1935).

Amendment 13 to the Constitution, adopted in 1928, authorizes cities of the first and second class to levy an additional tax of not to exceed five mills on the dollar of taxable property for the purpose of paying certain municipal bonds with the additional proviso that for the purpose of improving or constructing water works or light plants a second additional tax up to five percent may be levied. See page 9, par. (b).

Under Amendment 18, adopted in 1928, cities of the first class may, if authorized by special vote, levy a special tax not exceeding five mills for the purpose of securing the location of factories, industries, etc.

¹³ Constitution, Amendment 11 (1928), amending Art. XIV, Sec. 3.

¹⁴ Constitution, Art. XIX, Sec. 27.

¹⁵ Constitution, Art. XVI, Sec. 5.

The Legislature cannot exempt property from taxation unless it comes within the exceptions mentioned in the Constitution. *Tedford vs. Vaulx*, 183 Ark. 240, 35 S. W. (2d) 346 (1931).

Where a statute authorized cities to issue revenue bonds to pay for a water works system, to be payable solely out of the revenues of the system, it was held to violate this section insofar as it attempted to exempt such bonds from taxation while in the hands of any person or agency whose property was not otherwise exempt from taxation, because such an exemption was not authorized by any of the exceptions enumerated in this section. *Jernigan vs. Harris*, 187 Ark. 705, 62 S. W. (2d) 5 (1933).

II. Financial Powers and Limitations—Continued

B. Exemptions—Continued

(2) All laws exempting property from taxation other than as provided in this Constitution shall be void.¹⁶

(3) That all capital invested in a textile mill in this State for the manufacture of cotton and fiber goods in any manner shall be and is hereby declared to be exempt from taxation for a period of seven years from the date of the location of said textile mill.¹⁷

(4) The homestead of each and every resident of the state, whether or not such resident be married or unmarried, male or female, shall be wholly exempt from all state taxes * * * in all cases where such homestead does not exceed the assessed valuation of One Thousand Dollars (\$1,000.00). Where the assessed valuation of such homestead exceeds One Thousand (\$1,000.00) this exemption shall apply to the first One Thousand Dollars (\$1,000.00) of such valuation.

Within a maximum limit of Two Thousand Five Hundred Dollars (\$2,500.00) and a minimum limit of One Thousand Dollars (\$1,000.00), the legislature is hereby authorized and empowered from time to time to fix the amount of the exemption hereby provided.¹⁸ * * *

C. Borrowing and Use of Credit

(1) State

(a) * * * Except for the purpose of refunding the existing outstanding indebtedness of the State and for assuming and

Automobiles owned by a county and used for public purposes, while they are not subject to a property tax under this section, were held to be subject to a State license fee. *Blackwood vs. Sibeck*, 180 Ark. 815, 23 S. W. (2d) 259 (1930).

Likewise, gasoline used by cities in propelling their motor vehicles was held subject to the State gasoline tax. *City of Fort Smith vs. Watson*, 187 Ark. 830, 62 S. W. (2d) 965 (1933).

The language of this section "churches used as such" was held to mean that church buildings and the ground necessary to the proper use and occupancy of the same were exempt. Where a church owned two adjoining lots, the church building being located on only one of them, the adjoining lot was held not exempt from taxation. *Pulaski County vs. First Baptist Church*, 86 Ark. 205, 110 S. W. 1034 (1908).

The constitutional exemption from taxation of school buildings and grounds used exclusively for school purposes was held to apply to private as well as to public schools. *Phillips County vs. Sister Estelle*, 42 Ark. 538 (1884).

The language of the Constitution "'buildings and grounds and materials used exclusively for public charity' leaves no room for doubt that it was not the intention to exempt any other property from taxation save such as is used exclusively for public charity, and that the exemption cannot be extended to property leased or rented, and from which revenue is derived, though the same be applied solely to support the charity." Property, the income from which was used entirely for the support of a public charitable hospital, was held not exempt from taxation. *Brodie vs. Fitzgerald*, 57 Ark. 445, 22 S. W. 29 (1893).

¹⁶ Constitution, Art. XVI, Sec. 6.

The Legislature cannot exempt property from taxation unless it comes within the exceptions mentioned in the Constitution. *Tedford vs. Vaulx*, 183 Ark. 240, 35 S. W. (2d) 346 (1931).

¹⁷ Constitution, Amendment 12, Sec. 1 (1926).

¹⁸ Constitution, Amendment 23, Secs. 1 and 2 (1936).

II. Financial Powers and Limitations—Continued

C. Borrowing and Use of Credit—Continued

(1) State—Continued

refunding valid outstanding road improvement district bonds, the State of Arkansas shall issue no bonds or other evidence of indebtedness pledging the faith and credit of the State or any of its revenues for any purpose whatsoever, except by and with the consent of the majority of the qualified electors of the State voting on the question at a general election or at a special election called for that purpose.¹⁹ * * *

(b) * * * Neither the State nor any city, county, town or other municipality in this State, shall ever lend its credit for any purpose whatever; nor shall any county, city, town or municipality ever issue any interest-bearing evidences of indebtedness, except such bonds as may be authorized by law to provide for and secure the payment of the indebtedness existing at the time of the adoption of the Constitution of 1874, and the State shall never issue any interest-bearing treasury warrants or scrip.²⁰ * * *

¹⁹Constitution, Amendment 20 (1934).

Bonds, which were to be obligations of the State Board of Education, and not general obligations of the State, were held not to be State bonds within the meaning of this section and so did not require the approval of the electors. The court stated that since the credit of the State was in no way pledged for these bonds they did not come within the meaning of this section. *Davis vs. Phipps*, 85 S. W. (2d) 1020 (1935).

A contract was entered into prior to the adoption of this section, between the State and the Federal Government and provided for the issuance of State bonds, to be delivered to the Federal Government. At the time of the adoption of this section the bonds had not been delivered. It was held that the issuance of the bonds was unaffected by this section. *Walton vs. Arkansas Construction Commission*, 80 S. W. (2d) 927 (1935).

²⁰Constitution, Amendment 13 (1926), amending Art. XVI, Sec. 1.

In construing this section of the Constitution "this court has refused to take a narrow view" but has kept in mind the evil which this section was intended to remedy which was the looting of the State treasury by the lending of the credit of the State to private enterprises, particularly railroads. Therefore it has become recognized that the State, although prohibited from lending its credit in the furtherance of private enterprises, may still use that credit for the promotion of the common good. A statute, which authorized the lending of State funds to farmers and stock raisers who were in dire need because of drought and depression was held not to violate this section, because this was lending the credit of the State for the purpose of promoting the general welfare rather than to foster an individual enterprise. *Cobb vs. Parnell*, 183 Ark. 429, 36 S. W. (2d) 388 (1931).

A statute authorizing the State to borrow money to cover deficiencies in the general revenue fund was held not to violate this section. (1) The statute did not violate the first clause of the section because it did not contemplate any loan of the State's credit. (2) It did not violate the second clause of the section that no "county, city, town or municipality ever issue any interest-bearing evidence of indebtedness" because the word "municipality" did not include the State so the State was not subject to this restriction. The court said: "The state, acting through its Legislature, may borrow money for its own uses unless that right is denied to it by the Constitution, and the only inhibition against the state there contained, in this respect, is that it shall not issue any interest-bearing treasury warrants or scrip." *Hays vs. McDaniel*, 130 Ark. 52, 196 S. W. 934, 936 (1917). Followed in: *Tapley vs. Futrell*, 187 Ark. 844, 62 S. W. (2d) 32 (1933).

By an amendment adopted in 1934, borrowing by the State must be approved by a majority vote of the electors. See page 5, par. (a).

II. Financial Powers and Limitations—Continued

C. Borrowing and Use of Credit—Continued

(1) State—Continued

(c) Except as herein otherwise provided, the State shall never assume or pay the debt or liability of any county, town, city, or other corporation whatsoever, or any part thereof, unless such debt or liability shall have been created to repel invasion, suppress insurrection or to provide for the public welfare and defense. Nor shall the indebtedness of any corporation to the State ever be released or in any manner discharged save by payment into the public treasury.²¹

(d) Except as herein provided, the State shall never become a stockholder in, or subscribe to, or be interested in, the stock of any corporation or association.²²

(2) Counties and Other Local Units

(a) * * * The fiscal affairs of counties, cities and incorporated towns shall be conducted on a sound financial basis, and no county court or levying board or agent of any county shall make or authorize any contract or make any allowance for any purpose whatsoever in excess of the revenue from all sources for the fiscal year in which said contract or allowance is made; nor shall any county judge, county clerk or other county officer, sign or issue any scrip, warrant or make any allowance in excess of the revenue from all sources for the current fiscal year; nor shall any city council, board of aldermen, board of public affairs, or commissioners of any city of the first or second class, or any incorporated town, enter into any contract or make any allowance for any purpose whatsoever or authorize the issuance of any contract or warrants, scrip or other evidences of indebtedness in excess of the revenue for such city or town for the current fiscal year; nor shall any mayor, city clerk or recorder, or any other officer or officers, however designated, of any city of the first or second class or incorporated town sign or issue any scrip, warrant or other certificate of indebtedness in excess of the revenue from all sources for the current fiscal year.

Provided, however, to secure funds to pay indebtedness outstanding at the time of the adoption of this amendment, counties, cities, and incorporated towns may issue interest-bearing certificates of indebtedness or bonds with interest coupons for the payment of which a

²¹Constitution, Art. XII, Sec. 12.

Road improvement districts, either created by the Legislature itself or created under the authority of the Legislature, are not corporations within the meaning of this section. Tapley vs. Futrell, 187 Ark. 844, 62 S. W. (2d) 32 (1933).

²²Constitution, Art. XII, Sec. 7.

II. Financial Powers and Limitations—Continued

C. Borrowing and Use of Credit—Continued

(2) Counties and Other Local Units—Continued

county or city tax in addition to that now authorized, not exceeding three mills, may be levied for the time as provided by law until such indebtedness is paid.²³ * * *

²³Constitution, Amendment 10 (1924), amending Art. XII, Sec. 4.

For limitations upon taxation of counties and cities see pages 3 and 4.

In holding a county prohibited from issuing bonds for the improvement of roads and bridges the court said "* * * we are of the opinion that the people by the adoption of Amendment No. 11 (this section) at the general election of 1924, intended to prevent the further issuance of bonds by counties, cities, and towns except for the payment of indebtedness existing at the time of the adoption of the amendment; and this, by necessary implication, repealed all former amendments looking to the issuance of bonds by counties, cities, and towns." The court further held that Amendment 13, approved two years later (see page 9, par. (b)) did not impliedly repeal this section, but modified this amendment only to the extent that it authorizes cities of the first and second class to issue bonds for the improvements enumerated therein. *Chesshir vs. Copeland*, 182 Ark. 425, 32 S. W. (2d) 301 (1930).

"The history of the times shows that when Amendment No. 11 (this section) was adopted, many, if not all, the counties, cities, and towns of the state were heavily in debt. In order to enable them to pay off their indebtedness existing at the time of the adoption of Amendment No. 11 and thus to get on a cash basis, they were authorized to issue bonds; and in order to keep them on a cash basis, they were prohibited from incurring any future obligations in any fiscal year which exceeded the revenue for such a year." *Lybrand vs. Wafford*, 174 Ark. 298, 296 S. W. 729, 732 (1927).

A later amendment authorizes counties to borrow and levy special taxes for the purposes of building a county courthouse or county jail, upon the approval of the voters. Constitution, Amendment 17 (1929).

This section must be construed literally which means that with the exception of constructing courthouses or jails, as set out above, a county cannot incur an obligation in any one year which will be greater than the revenues for that year. So it was held that the action of a county in assuming the obligation of buying a county hospital should be enjoined because the cost could not be paid out of a single year's revenues. *Luter vs. Pulaski County Hospital Association*, 182 Ark. 1099, 34 S. W. (2d) 770 (1931).

"There can be but one meaning for the language of the Constitution quoted, (this section) i.e., that whatever the expense may be and for whatever purpose incurred, it falls within the prohibition of the amendment if in excess of the county revenue." Consequently a claim against a county for expenses of a term of the circuit court was held void, where the county revenues for the year had been exhausted. *Miller County vs. Blocker*, 90 S. W. (2d) 218 (1936).

Whenever county expenditures have equalled revenues in any given year, allowance of any sum in excess thereof is void, and any warrant issued on such allowance is also void. If there is a surplus in any succeeding year such a claim may be paid from it. *Skinner and Kennedy Stationery Company vs. Crawford County*, 190 Ark. 883, 82 S. W. (2d) 22 (1935).

Held that the claim of a State sanatorium against a county for maintenance of tubercular patients could not be allowed where it exceeded the revenue of the county for the current fiscal year. *Pulaski County vs. Board of Trustees of Arkansas Tuberculosis Sanatorium*, 186 Ark. 61, 52 S. W. (2d) 972 (1932).

Warrants issued by a city in excess of the revenues for the current year are void. The law will presume that city warrants are valid, however, unless it is shown that they were issued after the revenues for the current year had been exhausted. *Chesnutt vs. Yates*, 177 Ark. 894, 9 S. W. (2d) 37 (1928).

A contract to build a light plant, which provided that the bonds to be issued should not be city obligations but should be payable only out of the revenues accruing from operation of the plant, was held not to come within the restriction of this section. *City of Siloam Springs*, 185 Ark. 846, 49 S. W. (2d) 1037 (1932).

II. Financial Powers and Limitations—Continued

C. Borrowing and Use of Credit—Continued

(2) Counties and Other Local Units—Continued

(b) * * * Neither the State nor any city, county, town or other municipality in this State, shall ever lend its credit for any purpose whatever; (see page 6, par. (b)) nor shall any county, city, town or municipality ever issue any interest-bearing evidences of indebtedness, except such bonds as may be authorized by law to provide for and secure the payment of the indebtedness existing at the time of the adoption of the Constitution of 1874, * * *. Provided that cities of the first and second class may issue by and with the consent of a majority of the qualified electors of said municipality voting on the question at an election held for the purpose, bonds in sums and for the purposes approved by such majority at such election as follows:²⁴ * * *.

(c) No county, city, town or other municipal corporation shall become a stockholder in any company, association or corporation, or obtain or appropriate money for, or loan its credit to, any corporation, association, institution or individual.²⁵

Bonds, issued to pay for a water works system, payable solely out of the revenues of the system, were held valid since this section was intended to prevent cities from issuing bonds payable out of taxes, but it was not intended to prevent cities from constructing improvements and issuing bonds payable solely out of the revenues of the improvements. *Snodgrass vs. City of Pochontas*, 189 Ark. 819, 75 S. W. (2d) 223 (1934).

Likewise, revenue bonds, issued by a city for the purpose of constructing additional sewer mains and a sewage disposal plant, payable out of a monthly charge against the property using the system, and not being general obligations of the city, were held not to violate this section. *Freeman vs. Jones*, 189 Ark. 815, 75 S. W. (2d) 226 (1934).

²⁴ Constitution, Amendment 13 (1926), amending Art. XVI, Sec. 1.

The purposes for which such bonds may be issued are: Streets and roads, parks, flying fields, sewers, fire fighting apparatus, city halls, auditoriums, prisons, libraries, hospitals, public abattoirs, incinerators, bridges, water works or light plants. Special taxes to pay for bonds issued for all of the above purposes may not exceed five mills. *Ibid.*

The phrase "indebtedness existing at the time of the adoption of the Constitution of 1874" was inserted in this section through an inadvertance of the draughtsman, in place of "present existing indebtedness." The phrase was intended to mean precisely the same as "present existing indebtedness" and should be so construed. *Lybrand vs. Wafford*, 174 Ark. 298, 296 S. W. 729 (1927).

Construing this amendment together with Amendment 11 (see page 7, par. (a)) it was held that they prohibited counties, cities, and towns from borrowing for any purpose except: (1) For paying indebtedness existing at the time of the adoption of Amendment 11; and (2) cities of the first and second class for improvements specified in this section. *Chesshir vs. Copeland*, 182 Ark. 425, 32 S. W. (2d) 301 (1930).

Amendment 17, adopted in 1928, authorizes counties to borrow for the purpose of constructing a courthouse or jail, upon the approval of the voters.

²⁵ Constitution, Art. XII, Sec. 5.

This section of the Constitution was framed with the intention of preventing the evils of "carpet-bag government" which in 1874 were draining the resources of the State for the benefit of enterprises for private profit, such as railroads. It was never the intention of the framers to prohibit municipalities from carrying on

II. Financial Powers and Limitations—Continued

D. Other Income

No money or property belonging to the public school fund, or to this State for the benefit of schools or universities, shall ever be used for any other than the respective purposes to which it belongs.²⁶

E. Appropriations and Expenditures

(1) No money shall be paid out of the treasury until the same shall have been appropriated by law, and then only in accordance with said appropriation.²⁷

(2) No money shall be drawn from the treasury except in pursuance of specific appropriations made by law, the purpose of which shall be distinctly stated in the bill, and the maximum amount which may be drawn shall be specified in dollars and cents; and no appropriations shall be for a longer period than two years.²⁸

III. Provisions Affecting Legislation

A. Regular Sessions of the Legislature

(1) The General Assembly shall meet at the seat of government every two years on the first Tuesday after the second Monday in November until the said time be altered by law.²⁹

(2) The regular biennial sessions shall not exceed sixty days in duration, unless by a vote of two-thirds of the members elected to each house of said General Assembly. Provided, that this section shall not apply to the first session of the General Assembly under this constitution, or when impeachments are pending.³⁰

governmental functions through any agency the municipality might select for this purpose. * * * there are no more worthy * * * objects of government to be attained than those of making suitable provision for the care and maintenance of those of the city's inhabitants, who, through unavoidable casualty and misfortune have become indigent and sick, and who are, therefore, wholly unable to care for themselves. This includes not only the aged and infirm, but orphans, or babies and poor dependent children whose parents are unable to care for them.* Consequently, appropriations by a city to a welfare organization organized to render aid to the poor and unfortunate of the city, were held not to violate this section. Bourland vs. Pollock, 157 Ark. 538, 249 S. W. 360 (1923).

²⁶ Constitution, Art. XIV, Sec. 2.

²⁷ Constitution, Art. XVI, Sec. 12.

²⁸ Constitution, Art. V, Sec. 29.

²⁹ Constitution, Art. V, Sec. 5.

The time has been changed by statute and is now fixed for the second Monday in January of the odd years. Crawford and Moses Arkansas Statutes (1921), page 1337.

³⁰ Constitution, Art. V, Sec. 17.

III. Provisions Affecting Legislation—Continued

B. Special Sessions of the Legislature

The Governor may, by proclamation, on extraordinary occasions, convene the General Assembly * * *; and he shall specify in his proclamation the purpose for which they are convened, and no other business than set forth therein shall be transacted until the same shall have been disposed of, after which they may, by a vote of two-thirds of all the members elected to both houses, entered upon their journals, remain in session not exceeding fifteen days.³¹

C. Powers of Initiative and Referendum

The legislative power of the people of this State shall be vested in a General Assembly, which shall consist of the Senate and House of Representatives, but the people reserve to themselves the power to propose legislative measures, laws and amendments to the Constitution, and to enact or reject the same at the polls independent of the General Assembly; and also reserve the power, at their own option, to approve or reject at the polls any entire act or any item of an appropriation bill.³² * * *

D. Legislative Enactment

(1) Every bill shall be read at length on three different days in each house, unless the rules be suspended by two-thirds of the house, when the same may be read a second or third time on the same day; and no bill shall become a law unless on its final passage the vote be

³¹ Constitution, Art. VI, Sec. 19.

³² Constitution, Amendment 7, declared adopted by Special Supreme Court in *Brickhouse vs. Hill*, February 16, 1925, 167 Ark., 513.

Other sections follow providing detailed procedure for the initiative and referendum. Eight percent of the legal voters may propose a law, and ten percent a constitutional amendment. Six percent of the legal voters may, by petition, order a referendum on any general act or item of an appropriation bill. A referendum petition must be filed within ninety days of the adjournment, and when such a petition is filed against an act which is not an emergency measure, the act remains inoperative until a vote is taken. *Ibid.*

A bill may be made an emergency measure when it is necessary for "the preservation of the public peace, health or safety," and the facts constituting such emergency are set out and the bill is passed by a two-thirds majority of all the members elected to each house. If a referendum is filed against any emergency measure it shall be a law unless and until it is disapproved by the voters. *Ibid.*

Initiative and referendum powers may be exercised by local units on local legislation. Municipalities may provide for initiative and referendum on their local legislation. Constitution, Amendment 7.

The veto power of the Governor or Mayor shall not extend to initiative or referendum measures. *Ibid.*

Other sections provide for the procedure relating to elections, petitions, and other similar matters. *Ibid.*

The action of the Legislature is supreme in declaring when an emergency exists, and if it states a fact or facts constituting the emergency so that its action cannot be said to be arbitrary, the courts cannot say that it has not performed its constitutional duty. *Stanley vs. Gates*, 179 Ark., 886, 19 S. W. (2d) 1000 (1929).

III. Provisions Affecting Legislation—Continued

D. Legislative Enactment—Continued

taken by yeas and nays, the names of the persons voting for and against the same be entered on the journal, and a majority of each house be recorded thereon as voting in its favor.³³

(2) * * * The General Assembly shall not pass any local or special act. This amendment shall not prohibit the repeal of local or special acts.³⁴

(3) In all cases where a general law can be made applicable no special law shall be enacted;³⁵ * * *

(4) The general appropriation bill shall embrace nothing but appropriations for the ordinary expense of the executive, legislative, and judicial departments of the State. All other appropriations shall be made by separate bills, each embracing but one subject.³⁶

(5) In making appropriations for any biennial period, the General Assembly shall first pass the General Appropriation Bill provided for in Section 30 of Article 5 of the Constitution, (see the preceding article in the text) and no other appropriation bill may be enacted before that shall have been done.³⁷

(6) No expense shall be incurred or authorized for either House except by a bill duly passed by both Houses and approved by the Governor.³⁸ * * *

³³ Constitution, Art. V, Sec. 22.

Where a statute has been signed by the Governor and deposited with the Secretary of State there is a conclusive presumption that every requirement of this section has been complied with unless the contrary affirmatively appears from the records of the General Assembly. The court will take judicial notice of the records of the General Assembly, and will not allow other evidence to rebut this presumption. *Road Improvement District No. 16 et al. vs. Sale*, 154 Ark. 551, 243 S. W. 825 (1922). Followed in: *State Military Note Board vs. Casey*, 185 Ark. 271, 47 S. W. (2d) 23 (1932).

³⁴ Constitution, Amendment 14 (1926).

In construing this amendment with Section 25 of Article XII, (see par. (3), above) it was held that the amendment was not intended to do away with reasonable classification, such as classification of cities or counties on a population basis, for the purpose of legislation. However, if the classification is unreasonable the statute will be void as a special act. Where a statute was applicable to counties of over 75,000, of which there was only one, and related to dams and reservoirs to protect the road system, it was held that the classification bore no reasonable relation to the subject matter and consequently the classification was arbitrary and the statute void as a special law. *Simpson vs. Matthews*, 184 Ark. 213, 40 S. W. (2d) 991 (1931).

³⁵ Constitution, Art. V, Sec. 25.

³⁶ Constitution, Art. V, Sec. 30.

³⁷ Constitution, Amendment 19, Sec. 4 (1934).

³⁸ Constitution, Amendment 19, Sec. 5 (1934).

III. Provisions Affecting Legislation—Continued

D. Legislative Enactment—Continued

(7) No new bill shall be introduced in either house during the last three days of the session.³⁹

(8) Every bill which shall have passed both houses of the General Assembly shall be presented to the Governor; if he approves it he shall sign it; but if he shall not approve it, he shall return it, with his objections, to the house in which it originated, which house shall enter the objections at large upon their journal and proceed to reconsider. If, after such reconsideration, a majority of the whole number elected to that house shall agree to pass the bill, it shall be sent with the objections to the other house, by which likewise, it shall be reconsidered; and, if approved by a majority of the whole number elected to that house, it shall be a law; * * *. If any bill shall not be returned by the Governor within five days, Sunday excepted, after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the General Assembly, by their adjournment, prevented its return, in which case it shall become a law, unless he shall file the same, with his objections, in the office of the Secretary of State and give notice thereof by public proclamation within twenty days after such adjournment.⁴⁰

IV. Constitutional Amendment or Revision

A. By Proposal of Legislature or People

Either branch of the General Assembly at a regular session thereof may propose amendments to this Constitution, and, if the same be agreed to by a majority of all the members elected to each house, such proposed amendments shall be entered on the journals with the yeas and nays, and published in at least one newspaper in each county, where a newspaper is published, for six months immediately preceding the next general election for Senators and Representatives, at which time the same shall be submitted to the electors of the State for approval or rejection; and if a majority of the electors voting at such election adopt such amendments the same shall become a part of this Constitution; but no more than

³⁹Constitution, Art. V, Sec. 34.

⁴⁰Constitution, Art. VI, Sec. 15.

Every order or resolution in which the concurrence of both houses is necessary (except on questions of adjournment) is subject to the Governor's veto under the same rules as set out in this section. Constitution, Art. VI, Sec. 16.

Any item or items of an appropriation bill are subject to the Governor's veto under the same rules as set out in this section. Constitution, Art. VI, Sec. 17.

IV. Constitutional Amendment or Revision—Continued

A. By Proposal of Legislature or People—Continued

three amendments shall be proposed or submitted at the same time. They shall be so submitted as to enable the electors to vote on each amendment separately.⁴¹

B. By Constitutional Convention

No provision.

⁴¹Constitution, Art. XIX, Sec. 22.

For provisions relative to the proposing of constitutional amendments by initiative petition see page 11, par. C, and footnote 32.

The amendment in regard to initiative and referendum provides in part as follows: "* * *. Any measure submitted to the people as herein provided shall take effect and become a law when approved by a majority of the votes cast upon such measure, and not otherwise, and shall not be required to receive a majority of the electors voting at such elections, * * *." Constitution, Amendment 7.

The court has held that the preceding clause of the initiative and referendum amendment applied to all measures submitted to the people whether they be statutes, or constitutional amendments initiated by the people, or constitutional amendments proposed by the Legislature, because of the general language used in the clause, "any measure." Consequently the phrase "if a majority of the electors voting at such election adopt such amendments" used in this section has been repealed by the above amendment and the rule which now applies to all amendments whether proposed by the people or by the Legislature is that they need be approved only by a majority of the electors voting on the amendment and not by a majority voting at the election. *Combs vs. Gray*, 170 Ark. 956, 281 S. W. 918 (1926); *Brickhouse vs. Hill*, 167 Ark. 513, 268 S. W. 865 (1925).

The two above cases expressly overrule *Hildreth vs. Taylor*, 117 Ark. 465, 175 S. W. 40 (1915).

