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

FEBRUARY 1, 1937

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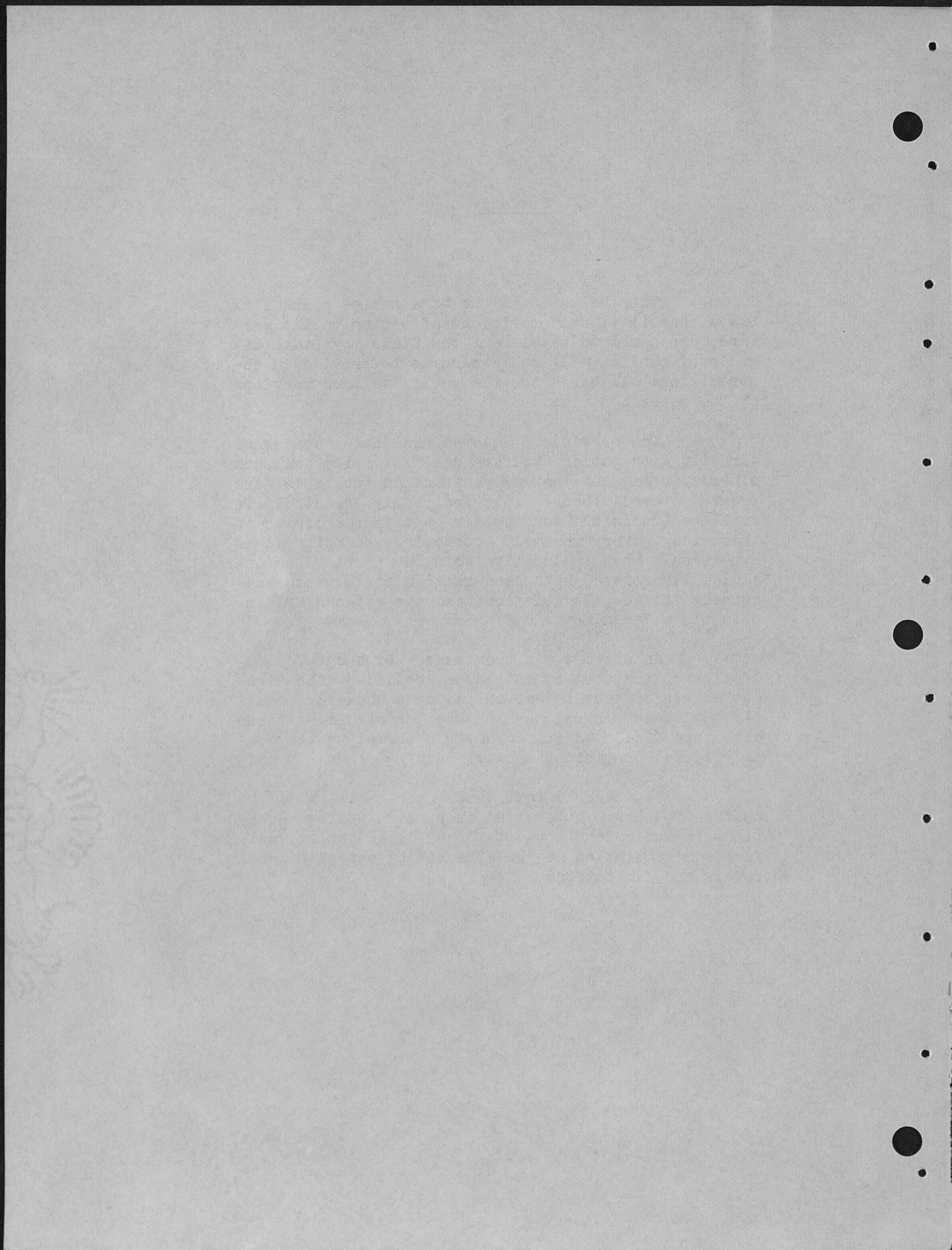
Preface

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.

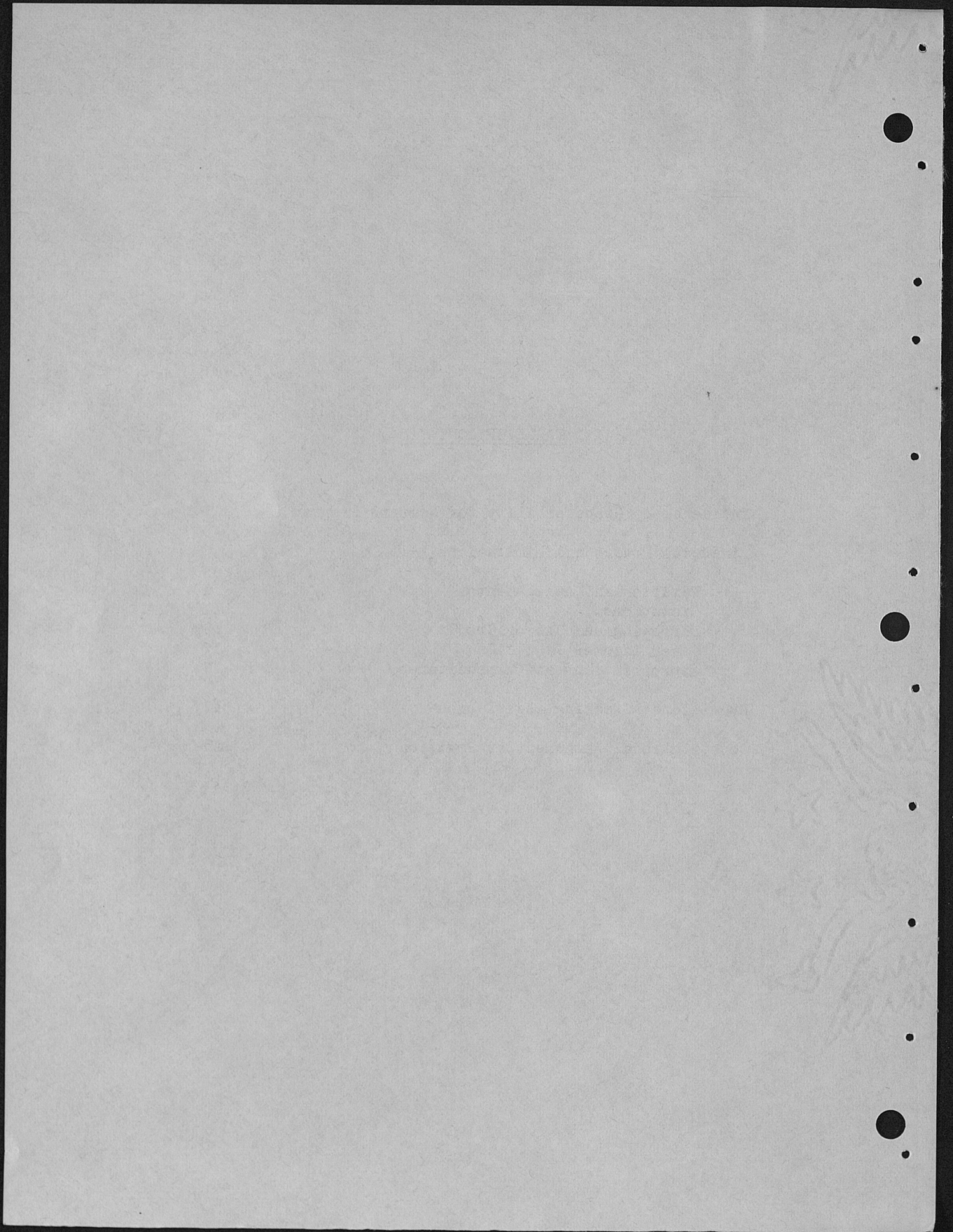
It is hoped that these abstracts will be useful to those interested in public welfare questions in indicating how State and local public welfare administration may be affected by constitutional powers and limitations.



Ohio

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ANALYSIS OF CONSTITUTIONAL PROVISIONS AFFECTING
PUBLIC WELFARE IN OHIO 1/

I. Incidence of Responsibility for Welfare Program 2/

1. Constitution (1912), with all amendments to February 1, 1937.
"In construing the Constitution of Ohio, if a power of legislation is not limited or denied, it may be said to exist." Green vs. Thomas, 37 O. App. 489, 175 N. E. 226 (1930).
2. "The Constitution contains no provision requiring that the relief of the poor shall be conducted and provided for in institutions, nor does it prohibit outdoor relief of the poor. The entire system for the establishment and maintenance of benevolent institutions and benevolent works of the state has proceeded upon the idea that the Legislature, in the exercise of its general legislative power, was vested with authority to do whatever in its judgment the public welfare demanded, always provided that the thing done should be for a public purpose and should not take public money for the advancement of a purely private object . . . It was early decided in Ohio that the whole subject of relieving the poor, where it is done in pursuance of law, is of statutory origin and depends on statutory regulations." State vs. Edmondson, 89 O. S. 351, 106 N. E. 41 (1913).

The Legislature passed an act providing that "all male blind persons over the age of 21 years and all female blind persons over the age of 18 years who have been residents of the State for five years, and of the county for one year, and have no property or means with which to support themselves, shall be entitled to and receive not more than \$25.00 per capita quarterly". The act was held invalid as providing for "an indeterminate gratuitous annuity, a gift pure and simple", because "The act does not direct that the payments shall continue during the lifetime of the beneficiary, nor does it limit the time, nor provide that payments shall cease with the needs of the donee, or provide for any subsequent inquiry"; and further "If the power of the Legislature to confer an annuity upon any class of needy citizens is admitted upon the ground that its tendency will be to prevent them from becoming a public charge, then innumerable classes may clamor for similar bounties . . . and it is doubted that any line could be drawn short of an equal distribution of property". Lucas County vs. State ex rel. Boyles, 75 O. S. 114, 78 N. E. 955 (1906).

An act creating a State board for the relief and benefit of the needy blind and providing that "any person who by reason of loss of eyesight, is unable to provide himself or herself with the necessaries of life and has not sufficient means . . . so to do, shall be entitled to the benefits of the law", held invalid. The court said that inasmuch as such a person might have children, friends, or relatives (Footnote forwarded)

2. Ohio

I. Incidence of Responsibility for Welfare Program (Cont'd)

A. Institutions for the benefit of the insane, blind, and deaf and dumb, shall always be fostered and supported by the State; and be subject to such regulations as may be prescribed by the General Assembly. 3/

(Footnote #2 - Continued)

supporting him or in a position to support him, such payment could not be said to be for a public object but would be the giving of a bounty to one who had no real need for it in order to prevent his becoming a charge upon the public. State vs. Edmondson, 89 O. S. 351, 106 N. E. 41 (1913).

Another act under consideration in this preceding case provided that "any person of either sex who by reason of loss of eyesight, is unable to provide himself with the necessities of life, who has not sufficient means of his own to maintain himself, and who unless relieved, as authorized by these provisions, would become a charge upon the public or upon those not required by law to support him, is entitled to its benefit, if he has become blind while a resident of the State . . . and of the county for one year". The law provided also that "such relief shall be in place of all other relief of a public nature". Also that the board of commissioners might modify or change the amount of relief given or discontinue same entirely when and if the beneficiaries in their judgment no longer needed same.

The court held the act valid and said "Every safeguard has been adopted to secure the application of the money to the support of the individual and to prevent him from becoming a public charge. It is not an indeterminate annuity, unlimited in time or uncertain in its application. The express object and the practical provision of the enactment is to furnish relief to the blind who are poor and needy. It is not questioned that the relief of the poor is a proper public purpose". Ibid.

See also Board of Health vs. City of Canton et al. vs. State ex rel. O'Wesney, 40 O. App. 77, 178 N. E. 215 (1931), and other cases cited under footnote 17, page 8.

Where an act provided that "the findings of the probate court shall be final and conclusive unless reviewed, set aside, or modified by the board (for the relief and benefit of the needy blind) at their discretion", the court said "it might well be doubted whether the Legislature has power to confer on an administrative board the authority to review a final order made by a court of record. If the order of the probate court can be regarded as a judicial order, the provision for review would be invalid, for such a board cannot exercise judicial functions". State vs. Edmondson, 89 O. S. 351, 106 N. E. 41 (1913).

3. Constitution, Art. VII, Sec. 1.

The word "institutions" means the places where, and the means by which, the afflictions of the persons referred to may be relieved; it is sometimes used to mean the establishment where the operations of an association are carried on, and is also used to designate the (Footnote forwarded)

I. Incidence of Responsibility for Welfare Program (Cont'd)

B. See page 13, par. (d).

C. Laws may be passed fixing and regulating the hours of labor, establishing a minimum wage, and providing for the comfort, health, safety and general welfare of all employees; and no other provision of the constitution shall impair or limit this power. 4/

(Footnote #3 - Continued)

organized body. *Gerke vs. Purcell*, 25 O. S. 229 (1874); reaffirmed in *State ex rel. Walton vs. Edmondson*, 89 O. S. 351, 106 N. E. 41 (1913).

This section was held to be "neither a grant nor a limitation of power, but a recognition of the fact that by enlightened people such classes are treated as wards of the State, and is an injunction upon the General Assembly to foster and support institutions for their benefit". *Lucas County vs. State ex rel. Boyles*, 75 O. S. 114, 78 N. E. 955 (1906).

See page 1, footnote 2.

Upon the proposition that under this section the State was required to support such institutions by taxation and could neither order nor authorize a county to levy a county property tax to meet the expense of maintaining inmates committed thereto from the county, the court held that inasmuch as "such provision of the Constitution is not self-executing and that the mode in which such institutions are to be fostered and supported is left to the discretion of the general assembly", the State might require a county to so provide. *State ex rel. Price Attorney General vs. Hume*, 105 O. S. 304, 137 N. E. 167 (1922).

4. Constitution, Art. II, Sec. 34.

Barber shop closing hour ordinance held constitutional as being a valid exercise of the police power and as a valid regulation of the hours of labor and general welfare of employees under this section. *City of Zanesville vs. Wilson*, 51 O. App. 433, 1 N. E. (2d) 638 (1935). But cf. *Olds vs. Klotz*, 131 O. S. 447, 3 N. E. (2d) 371 (1936), where the court distinguished a similar ordinance relating to retail food and grocery stores and held it unconstitutional on the ground that the ordinance had no substantial relation to the public health, safety, morals, or general welfare and was in violation of the due process clause of the Federal Constitution and the due course of law clause of the Ohio Constitution (Art. I, Sec. 16). The court stated that whereas barbering was not essential to health or life, "the necessity of having food available at the time it may be required to supply pressing human want" could not be overestimated.

II. Financial Powers and Limitations

A. Taxation and Assessments 5/

(1) State

(a) No tax shall be levied, except in pursuance of law; and every law imposing a tax, shall state, distinctly, the object of the same, to which only, it shall be applied. 6/

5. The powers of taxation are legislative and except for express and implied constitutional provisions, are vested in the General Assembly without interference on the part of other governmental agencies. *State vs. Akron Metropolitan Park District*, 120 O. S. 462, 482, 166 N. E. 407 (1929). *Aff. 281 U. S. 74 (1930)*.

Section 26 of article II of the Constitution (see page 24, par. (6)) provides that all laws of a general nature shall have a uniform operation throughout the State. Under this section an act which provided for the establishment of library buildings and the levy of taxes to retire bonds issued therefor, but limited in its application to those counties where a library system had already been established, was held invalid. The act actually could only apply to Hamilton County and of this fact the court took judicial notice. *Brown vs. State ex rel. Merland*, 120 O. S. 297, 166 N. E. 214 (1929), and cases cited therein.

An act provided for a State-wide uniform levy on property classed as intangible, the proceeds to be distributed under State supervision for local purposes. The act superseded prior enactments which permitted local county levies on the same property at rates which varied as between the counties. Distributive provisions of the act which distributed the funds collected on the basis of the pre-existing local rates were held invalid under section 26 of article II (see page 24, par. (6)) of the Constitution as being inequitable and not uniform in their application even though general in their terms. *Gorman vs. Friedlander*, 44 O. App. 14, 184 N. E. 248 (1932). Pursuant to this decision the Legislature passed an amendment providing that certain amounts of the taxes collected should be divided among public libraries and township park-districts. In an action in injunction brought by a city to enjoin the county from disbursing money in hand under the terms of the added amendment the court denied the writ on the grounds that no political subdivision of the State has any vested rights in taxes levied and in process of distribution, and until such distribution is made the Legislature may divert the proceeds among the subdivisions as it deems best to meet the emergencies which it finds to exist. *City of Cleveland vs. Zangerle*, 127 O. S. 91, 186 N. E. 805 (1933).

6. Constitution, Art. XII, Sec. 5.

An act provided for the levy of gasoline and motor fuel excise taxes to be used for roads and poor relief. A later act provided (Footnote forwarded)

II. Financial Powers and Limitations (Cont'd)

A. Taxation and Assessments (Cont'd)

(1) State (Cont'd)

(b) No property, taxed according to value, shall be so taxed in excess of one per cent of its true value in money for all state and local purposes, but laws may be passed authorizing additional taxes to be levied outside of such limitation, either when approved by at least a majority of the electors of the taxing district voting on such proposition, or when provided for by the charter of a municipal corporation. Land and improvements thereon shall be taxed by uniform rule according to value . . . 7/

(Footnote #6 - Continued)

that the same revenue be used for roads, and did not mention poor relief. Furthermore the act did not expressly repeal the former section relating to use of the funds for poor relief. The court held the former section repealed by implication, saying however that "the rule is well established that repeals by implication are not favored. The presumption is against an intention to repeal an earlier statute unless there is such inconsistency . . . between the statutes as to preclude the presumption". The court said that to hold otherwise would violate this section of the Constitution. *Rogers et al. vs. State ex rel. Lucas*, 129 O. S. 108, 193 N. E. 754 (1934).

Held to apply only to the levying and distribution of general taxes for State purposes and not to taxes levied and distributed by the State for local purposes. *City of Cleveland vs. Zangerle*, 127 O. S. 91, 186 N. E. 805 (1933).

A provision in an act requiring the counties to pay into the State, moneys collected by them for blind relief under prior acts, such moneys to be placed in a State fund and used by the State for a similar purpose, to wit, blind relief, was held violative of this section. *State vs. Edmondson*, 89 O. S. 351, 106 N. E. 41 (1913); see also *State ex rel. Village of Cuyahoga Heights vs. Zangerle*, 103 O. S. 566, 134 N. E. 686 (1921), p. 690 et seq. for discussion of principles.

7. Constitution, Art. XII, Sec. 2; (adopted 1933).

There are levies which may be made in excess of this limitation, including, those necessary for the retirement of bonds outstanding at the time of the adoption of this amendment; special levies for conservancy and sanitary districts; levies for municipalities and other political subdivisions formerly exempted under the pre-existing 15 mill limitation section. *Ibid.* See also page 13, par. (d) for soldiers' bonus bond levy which falls outside of this limitation.

For purposes of taxation, in Ohio, all property both real and personal, stands on an equal basis and constitutes a single class taxable at its true money value. *City Railway Company vs. Beard*, 293 Fed. 448 (D.C.S.D. Ohio, 1923).

Excise taxes are not subject to the uniformity requirement of this section. *Calerdine vs. Freiberg*, 129 O. S. 453, 195 N. E. 854 (1935).

6. Ohio

II. Financial Powers and Limitations (Cont'd)

A. Taxation and Assessments (Cont'd)

(1) State (Cont'd)

(c) Laws may be passed providing for the taxation of the right to receive, or to succeed to, estates, and such taxation may be uniform or . . . graduated . . . and a portion of each estate not exceeding twenty thousand dollars may be exempt from such taxation. 8/

(d) Laws may be passed providing for the taxation of incomes, and such taxation may be either uniform or graduated . . . but a part of each annual income not exceeding three thousand dollars may be exempt from such taxation. 9/

(e) Not less than fifty per centum of the income and inheritance taxes that may be collected by the state shall be returned to the county, school district, city, village, or township in which said income or inheritance tax originates, or to any of the same, as may be provided by law. 10/

(f) Laws may be passed providing for excise and franchise taxes and for the imposition of taxes upon the production of coal, oil, gas and other minerals. 11/

8. Constitution, Art. XII, Sec. 7.

Taxes on inheritances, incomes and occupations are not property taxes but are excise taxes and as such are not subject to the requirement that they be uniform and according to the true value in money. State ex rel. Zielonka vs. Carrel, 99 O. S. 220, 124 N. E. 134 (1919).

9. Constitution, Art. XII, Sec. 8.

See footnote 8, above.

10. Constitution, Art. XII, Sec. 9.

While this section implies that the State only may initiate income and inheritance taxes, there is no prohibition on the imposition by the political subdivisions of excise and franchise taxes, and taxes on mineral products, until the State interdicts the exercise of the power. State ex rel. Zielonka vs. Carrel, 99 O. S. 220, 124 N. E. 134 (1919). When the State however, has entered the same field of taxation (as by levying an excise tax upon the owners of motor vehicles) it is not competent for the municipalities to levy such a tax in addition to that levied by the State. Firestone vs. City of Cambridge, 113 O. S. 57, 148 N. E. 470 (1925).

11. Constitution, Art. XII, Sec. 10.

Excise taxes include taxes on the performance of an act, the engaging in an occupation, and the enjoyment of a privilege. Saviers vs. Smith, 101 O. S. 132, 128 N. E. 269 (1920).

"Funds raised by taxation of franchises, rights, and privileges may be applied to purposes of general revenue, or any other purpose authorized by statute." State ex rel. Schwartz vs. Ferris, 53 O. S. 314, 41 N. E. 579 (1895). Thus an annual motor vehicle (Footnote forwarded)

II. Financial Powers and Limitations (Cont'd)

A. Taxation and Assessments (Cont'd)

(1) State (Cont'd)

(g) The property of corporations, now existing or hereafter created, shall forever be subject to taxation, the same as the property of individuals. 12/

(h) The General Assembly shall make such provisions by taxation, or otherwise, as, with the income arising from the school trust fund, will secure a thorough and efficient system of common schools throughout the state. 13/

(i) See page 13, par. (c).

(j) See page 13, par. (d).

(k) The General Assembly shall provide for raising revenue, sufficient to defray the expenses of the State for each year, and also, a sufficient sum to pay the interest on the State debt. 14/

(l) No bonded indebtedness of the State or any political subdivisions thereof, shall be incurred or renewed, unless, in the legislation under which such indebtedness is incurred or renewed, provision is made for levying and collecting annually by taxation an amount sufficient to pay the interest on said bonds, and to provide a sinking fund for their final redemption at maturity. 15/

(Footnote #11 - Continued)

license tax, being an excise tax on a privilege, is not required to be used exclusively for the benefit of those who pay the tax, but may be used for poor relief. *Calderine vs. Freiberg*, 129 O. S. 453, 195 N. E. 854 (1935).

See page 6, footnote 10.

12. Constitution, Art. XIII, Sec. 4.

13. Constitution, Art. VI, Sec. 2.

No authority exists in law for the diversion or use of the school funds of the State for any purpose other than the establishment and maintenance of common or public schools. O. A. G. 1409 (1933).

14. Constitution, Art. XII, Sec. 4.

15. Constitution, Art. XII, Sec. 11.

Held mandatory upon taxing authorities to provide at time issue of bonds is proposed for an annual tax levy to pay interest and principal. This does not necessarily require the setting of a specific rate of tax at time of issue; this may be annually determined by the taxing officials. Annual levies however must be provided for. *Link vs. Karb*, 104 N. E. 632 (1914).

(Footnote forwarded)

II. Financial Powers and Limitations (Cont'd)

A. Taxation and Assessments (Cont'd)

(2) Counties 16/

(a) See page 5, par. (b).

(b) See page 6, par. (e), and footnote 10.

(3) Other Local Units 17/

(Footnote #15 - Continued)

Where bonds were issued in anticipation of the collection of special assessments to retire same which later proved inadequate, it was held that a writ of mandamus would lie to compel the authorities to levy and collect annually by taxation an amount sufficient to pay the principal and interest of the bonds. *State vs. Brooklyn*, 126 O. S. 459, 185 N. E. 841 (1933).

This section is mandatory and the levy for debt charges is preferred over all other levies even over levies for operating expenses. *State vs. Cuyahoga County*, 196 N. E. 890 (1935).

16. The General Assembly shall by general law provide for the organization and government of counties and may also provide alternative forms of county government. Constitution, Art. X, Sec. 1, 3.

Counties may frame and adopt charters to provide for their own form of government. The charters may provide for either the concurrent or exclusive exercise by the counties of all or any of the powers vested by the Constitution or general law in municipalities. However no charter vesting municipal powers in counties can be effective until approved by the electors of the county, the largest municipality, and by a majority of the other municipalities and townships in the county. These charters may also provide for the division of the county into districts for administration and taxation purposes. *Ibid.*

See footnote 17, below, for municipal provisions.

17. Municipalities shall subject to general regulatory law be classed into cities and villages. All with population over 5,000 shall be cities and all others, villages. General laws may be passed to provide for their incorporation and government. Additional laws may also be passed for the government of municipalities adopting them, but no such law may become effective unless approved by popular vote of the electors therein. Municipalities shall have authority to exercise all powers of local self-government not in conflict with general laws. Constitution, Art. XVIII.

The provisions of Article XVIII of the Constitution (immediately preceding) are not intended to prevent the Legislature from organizing taxation districts which may include any number of municipalities, townships and counties. *State vs. George*, 92 O. S. 344 (1919).

(Footnote forwarded)

II. Financial Powers and Limitations (Cont'd)

A. Taxation and Assessments (Cont'd)

(3) Other Local Units (Cont'd)

(a) See page 5, par. (b).

(b) The General Assembly shall provide for the organization of cities, and incorporated villages, by general laws; and restrict their power of taxation, assessment, borrowing money, contracting debts and loaning their credit, so as to prevent the abuse of such power. 18/

(c) Laws may be passed to limit the power of municipalities to levy taxes and incur debts for local purposes . . . 19/

(Footnote #17 - Continued)

There is nothing in the Constitution to prevent the Legislature from providing by general taxation for municipalities. The State may levy a uniform tax all over the State and then distribute the proceeds to municipalities according to classification, provided all in the same class are treated alike. State vs. Cook, 185 N. E. (1932) and cases cited therein.

It was held that to safeguard the health of the people, the health of any municipality being of vital concern to the State, the State had the authority under its police power to enact legislation providing that the State should be divided into health districts; that each city should constitute and be referred to as a "city health district"; that the townships and villages in each county should be combined and should constitute and be known as a "general health district".

Furthermore a city through taxation must pay its portion of the cost of its health administration in the district which it comprises.

Such an enactment does not violate section 3 of article XVIII of the Constitution (relating to Home Rule) and to so hold would nullify section 26 of article II (page 24, par. (6)). Board of Health of City of Canton et al. vs. State ex rel. O'Wesney, 40 O. App. 77, 178 N. E. 215 (1931); see also State ex rel. Village of Cuyahoga Heights vs. Zangerle, 103 O. S. 566, 134 N. E. 686 (1921); State Board of Health vs. City of Greenville, 86 O. S. 1, 98 N. E. 1019 (1912).

18. Constitution, Art. XIII, Sec. 6.

The words "general laws" used in this section refer to laws passed by the Legislature which are of general application throughout the State. Leis vs. Cleveland Railway Company, 101 O. S. 162, 128 N. E. 73 (1920). The power of municipalities may be limited or restricted by general law and such general laws apply to all municipalities whether operating under charter or not. Phillips vs. Hume, 122 O. S. 11, 170 N. E. 438 (1930).

See footnote 19 immediately below.

19. Constitution, Art. XVIII, Sec. 13.

(Footnote forwarded)

10. Ohio

II. Financial Powers and Limitations (Cont'd)

A. Taxation and Assessments (Cont'd)

(3) Other Local Units (Cont'd)

(d) See page 6, par. (e), and footnote 10.

(e) Any municipality appropriating private property for a public improvement may provide money therefor in part by assessments upon benefited property not in excess of the special benefits conferred upon such property by the improvements. Said assessments, however, upon all the abutting . . . property . . . benefited, shall in no case be levied for more than fifty per centum of the cost of such appropriation. 20/

(Footnote #19 - Continued)

Where there is a clear conflict between a city charter and State statutes relating to the same subjects, to wit, the levying of assessments for the improvement of streets, the charter provisions must yield to the statutes. State ex rel. Osborne vs. Williams, 111 O. S. 400, 145 N. E. 542 (1924).

See page 6, footnote 10.

The municipalities derive their powers of local self-government from this and other sections. A municipality may enact all such measures as pertain exclusively to it, in which the people of the State at large have no interest, and which they have not expressly withheld by constitutional provision. The limitations set forth in this section and article XIII, section 6 (page 9, par. (b)), refer to the Legislature's power to create limitations on tax levies and indebtedness and provide the manner of expenditure of public funds. They were not intended to authorize the Legislature to control such local functions as the salaries of municipal governing bodies. City of Mansfield vs. Endly, 38 O. App. 528, 176 N. E. 462 (1931).

Where however provisions of a city charter relating to the advertising requirements for public contracts involving a consideration in excess of \$500, were in conflict with the State law, the State law was held to supersede the charter. Phillips vs. Hume, 122 O. S. 11, 170 N. E. 438 (1930).

When the State has levied an excise tax upon the owners of motor vehicles it is not competent for the municipalities to levy such a tax in addition to that levied by the State. Firestone vs. City of Cambridge, 113 O. S. 57, 148 N. E. 470 (1925).

20. Constitution, Art. XVIII, Sec. 11.

Provisions of city ordinance providing for extension of municipal waterworks, and pledging revenue to secure bonds, and authorizing mortgage, which provided that in event of foreclosure, purchaser of bonds would have exclusive right to operate waterworks, held invalid as against public policy. Ohio Power Company vs. Craig, 50 O. App. 239, 197 N. E. 820 (1935).

II. Financial Powers and Limitations (Cont'd)

A. Taxation and Assessments (Cont'd)

(3) Other Local Units (Cont'd)

(f) The General Assembly shall provide by general law for the election of such township officers as may be necessary. The trustees of townships shall have such powers of local taxation as may be prescribed by law. No money shall be drawn from any township treasury except by authority of law. 21/

B. Exemptions

(1) No poll tax shall ever be levied in this state, or service required, which may be commuted in money or other thing of value. 22/

(2) . . . All bonds outstanding on the 1st day of January, 1913, of the state of Ohio or of any city, village, hamlet, county, or township in this state, or which have been issued in behalf of the public schools of Ohio . . . , which bonds were outstanding on the 1st day of January, 1913 and all bonds issued for the World War Compensation Fund, shall be exempt from taxation, and without limiting the general power, . . . to determine the subjects and methods of taxation or exemptions therefrom, general laws may be passed to exempt burying grounds, public school houses, houses used exclusively for public worship, institutions used exclusively for charitable purposes 23/, and public property used exclusively for any public purpose, but all such laws shall be subject to alteration or repeal; and the value of all property so exempted shall, from time to time, be ascertained and published as may be directed by law . . . 24/

21. Constitution, Art. X, Sec. 2.

22. Constitution, Art. XII, Sec. 1.

A poll tax is a uniform assessment levied against all persons without regard to their property, occupation or ability to pay, an occupation tax is not violative of this section, being a tax upon the privilege of engaging in business. *Marion Foundry Company vs. Landes*, 112 O. S. 220, 124 N. E. 134 (1919).

23. Under a law exempting from taxation the property of an institution of "purely public charity", if such property is rented for commercial purposes, it is not exempt even though the income arising therefrom is devoted wholly to charity. *State ex rel. Boss vs. Hess*, 113 O. S. 52, 148 N. E. 347 (1925).

Property used to dispense charity only to aged Master Masons, their wives, widows, and dependent orphans, or superannuated clergymen, was held not to be property used for purely public charity since the class of donees was limited and hence it was not exempt from an inheritance tax. *Tax Commission vs. Security Savings Bank and Trust Company*, 117 O. S. 443, 159 N. E. 570 (1927).

24. Constitution, Art. XII, Sec. 2.

II. Financial Powers and Limitations (Cont'd)

B. Exemptions (Cont'd)

(3) Laws may be passed to encourage forestry, and to that end areas devoted exclusively to forestry may be exempted, in whole or in part, from taxation . . . 25/

(4) See page 6, par. (c).

(5) See page 6, par. (d).

(6) On and after November 11, 1936, no excise tax shall be levied or collected upon the sale or purchase of food for human consumption off the premises where sold. 26/

C. Borrowing and Use of Credit

(1) State

(a) The State may contract debts, to supply casual deficits or failures in revenues, or to meet expenses not otherwise provided for; but the aggregate amount of such debts, direct and contingent, . . . shall never exceed seven hundred and fifty thousand dollars; and the money, arising from the creation of such debts, shall be applied to the purpose for which it was obtained, or to repay the debts so contracted, and to no other purpose whatever. 27/

(b) In addition to the above limited power, the State may contract debts to repel invasion, suppress insurrection, defend the State in time of war, or to redeem the present outstanding indebtedness of the State; but the money, arising from the contracting of such debts, shall be applied to the purpose for which it was raised,

25. Constitution, Art. II, Sec. 36.

26. Constitution, Art. XII, Sec. 12.

27. Constitution, Art. VIII, Sec. 1.

This section applies to the State only and not to the subdivisions. *Cass vs. Dillon*, 2 O. S. 608 (1853).

The State and its political subdivisions under the law can have but three forms of negotiable indebtedness, namely: Certificates of indebtedness, notes, and bonds. A certificate of indebtedness is an emergency obligation issued only for limited purposes and is not renewable. Notes are issued in anticipation of the taxes to be collected and distributed on the next semiannual collection day and may not be issued for a longer period than six months; they are not renewable. Furthermore the money realized from their sale may only be used for the purposes for which the tax when collected may be used. As the above forms of indebtedness are not renewable the only form of indebtedness that can be renewed is bonded indebtedness and the Constitution so states. *State ex rel. Strauss vs. Cuyahoga County*, 130 O. S. 64, 196 N. E. 890 (1935).

II. Financial Powers and Limitations (Cont'd)

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

(1) State (Cont'd)

or to repay such debts, and to no other purpose whatever; and all debts, incurred to redeem the present outstanding indebtedness of the State, shall be so contracted as to be payable by the sinking fund, herein-after provided for, as the same shall accumulate. 28/

(c) The faith of the State being pledged for the payment of its public debt, in order to provide therefor, there shall be created a sinking fund, which shall be sufficient to pay the accruing interest on such debt, and, annually, to reduce the principal thereof, by a sum not less than one hundred thousand dollars, increased yearly, and each and every year, by compounding, at the rate of six per cent per annum. The said sinking fund shall consist, of the net annual income of the public works and stocks owned by the State, of any other funds or resources that are, or may be, provided by law, and of such further sum, to be raised by taxation, as may be required for the purposes aforesaid. 29/

(d) "The Commissioners of the Sinking Fund" . . . shall . . . proceed to issue and sell from time to time, under such regulations as they may by order promulgate . . . not to exceed the total sum of twenty-five millions (\$25,000,000.00) of dollars of the bonds of the state of Ohio, . . . maturing in twenty equal semi-annual (semiannual) installments, commencing not later than the first day of April, 1923 . . . The proceeds of the sale of said bonds shall be paid into the treasury of the state of Ohio, subject to be paid out, without appropriation by the General Assembly upon the order of the said "The Commissioners of the Sinking Fund", the same to be known as "The World War Compensation Fund" . . .

The said "The Commissioners of the Sinking Fund" shall by their certificate filed with the auditor of the state, add to the state levy for taxation, in the year 1922 and thereafter during the life of such bonds, in addition to all other taxes now or hereafter provided by law, such amounts annually as shall be necessary, as a tax levy for the retirement of said bonds, and the payment of the interest thereon; and said levy may also provide for the payment of the expenses of administration hereof. Such levy shall not be considered in applying any limitation on aggregate tax rates now or hereafter provided by law. Said taxes when received shall be paid into a fund in the treasury . . . for the purpose of the payment, or retirement . . . of the said bonds . . .

"The Commissioners of the Sinking Fund" shall, . . . pay out of said fund to persons resident in Ohio . . . who served honorably on active service in the army, navy, or marine corps of the United States of America, . . . with the rank or grade of not higher than captain . . . , between the dates of April 6, 1917, and November 11, 1918, or their heirs at law, adjusted compensation for their full period

28. Constitution, Art. VIII, Sec. 2.

29. Constitution, Art. VIII, Sec. 7.

See page 7, par. (1), and footnote 15.

II. Financial Powers and Limitations (Cont'd)

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

(1) State (Cont'd)

of active service . . . , at the rate of ten (\$10.00) dollars per month, but not to exceed two hundred fifty (\$250.00) dollars . . .

The said "The Commissioners of the Sinking Fund" by order shall make regulations; providing for the assignment and payment of the whole or part of any such payment to a fund to be retained by the said . . . (commissioners) for the purpose of erecting and maintaining, under such laws as shall be enacted for that purpose, hospitals for the relief of veterans of the world war; . . . and such other regulations as are deemed necessary and proper . . . The people . . . hereby declare that they have enacted this special amendment to meet the specific emergency covered thereby and they declare it to be their intention to in no manner effect or change any of the existing provisions of this constitution except as herein set forth. The provisions of this section shall be self-executing. 30/

(e) Except the debts above specified in sections one and two of this article, (see page 12, par. (a) and (b)) no debt whatever shall hereafter be created by, or on behalf of the State. 31/

30. Constitution, Art. VIII, Sec. 2-a.

The Auditor of State, Secretary of State and Attorney General constitute a board of commissioners, known as "Commissioners of the Sinking Fund". Constitution, Art. VIII, Sec. 8.

31. Constitution, Art. VIII, Sec. 3.

The first three sections of this article apply to the State only and not to the subdivisions. Walker vs. Cincinnati, 21 O. S. 14 (1871).

The Board of Public Works entered into a contract to pay yearly over a five-year period an amount aggregating \$1,375,000. The contract was held invalid on several grounds including; (1) no State officers may enter into any contracts whereby the General Assembly will two years later be bound to make appropriations (except in certain cases specified in the Constitution); (2) no debt of any kind can be created on behalf of the State (except in certain cases specified in the Constitution). State vs. Medberry, 7 O. S. 522 (1857).

The above holdings were referred to and distinguished in the following case. The Industrial Commission of the State entered into a rental agreement subject to legislative appropriation to pay \$30,000 per annum for a period of two years. The court held it to be valid as "being for a necessary current expense" and as not creating any "debt" within the meaning of the Constitution. Further that sections 1, 2, and 3 of article VIII of the Constitution (page 12, par. (a) and (b), and par. (e), above) had no reference whatsoever to the necessary and everyday expenses of the sovereign government itself. State vs. Donahey, 113 N. E. 263 (1916).
(Footnote forwarded)

II. Financial Powers and Limitations (Cont'd)

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

(1) State (Cont'd)

(f) Except as otherwise provided in this constitution the state shall never contract any debt for purposes of internal improvement. 32/

(g) The credit of the State shall not, in any manner, be given or loaned to, or in aid of, any individual association or corporation whatever; nor shall the State ever hereafter become a joint owner, or stockholder, in any company or association in this State, or elsewhere, formed for any purpose whatever. 33/

(2) Counties

(a) See page 7, par. (1).

(b) The State shall never assume the debts of any county, city, town, or township, or of any corporation whatever, unless such debts shall have been created to repel invasion, suppress insurrection, or defend the State in war. 34/

(Footnote #31 - Continued)

An act providing for the acquisition of lands to be used in the construction of public works for the conservation of flood waters and providing that bonds might be issued in the name of the State, payable solely out of the income accruing from the improvements, was held valid as not creating any State debt. *Kasch vs. Miller*, 104 O. S. 281, 135 N. E. 813 (1922).

See footnote 32, below.

32. Constitution, Art. XII, Sec. 6.

This section implies that the State may make all such improvements as will not involve the creation of a debt. *Walker vs. City of Cincinnati*, 21 O. S. 14 (1871).

33. Constitution, Art. VIII, Sec. 4.

The inhibitions of this section relate only to private business enterprises. Construing this section in the light of article VIII, section 6 (page 16, par. (c)), forbidding a political subdivision from becoming a stockholder in or loaning its credit to business enterprises, the court in an early case held that the State and the subdivisions were to be distinguished from purely private business. *Walker vs. City of Cincinnati*, 21 O. S. 14 (1871).

An act providing State aid to independent agricultural societies was held constitutional, under this section and section 6, article VIII, (page 16, par. (c)), on the ground that these societies were not instituted for profit, but were for the purpose of holding fairs for "public instruction, the advancement of learning, and the dissemination of useful knowledge". *State ex rel. Leaverton vs. Kerns*, 104 O. S. 550, 136 N. E. 217 (1922).

34. Constitution, Art. VIII, Sec. 5.

"The clear implications of this section are, that counties, cities, towns, and townships, may create debts to repel invasion, suppress insurrection, or defend the State in war, which the State (Footnote forwarded)

II. Financial Powers and Limitations (Cont'd)

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

(2) Counties (Cont'd)

(c) No law shall be passed authorizing any county, city, town or township, by vote of its citizens, or otherwise, to become a stockholder in any joint stock company, corporation, or association whatever; or to raise money for, or to loan its credit to, or in aid of, any such company, corporation, or association: . . . 35/

(3) Other Local Units

(a) See page 7, par. (1).

(b) See page 9, par. (b) and (c), and footnotes 18 and 19, and page 8, footnote 17.

(Footnote #34 - Continued)

may assume; and may also create debts for other purposes, which the State is forbidden to assume." Walker vs. City of Cincinnati, 21 O. S. 14 (1871).

Act providing for issuance of county bonds for poor relief and providing for increase in excise tax, such income to be allocated to the subdivision by the State Auditor in amounts as needed sufficient to pay the principal and interest of said bonds, held not void as an agreement by the State to assume the debts of the political subdivisions. The court's decision rested on the ground, among others, that the bonds to be issued were to be county obligations only, and that the State Auditor was made a mere custodian of the county funds, whose duty it was to allocate the funds to the counties in proportion to the taxes therein collected. State ex rel. Ach vs. Braden, 125 O. S. 307, 181 N. E. 138 (1932).

35. Constitution, Art. VIII, Sec. 6.

See page 15, par. (g), and footnote 33.

The purpose of this section is to forbid a business partnership between a municipality or subdivision of the State, and individuals or private corporations or associations. It does not prohibit any species of public improvements which are to be entirely owned and operated by the public. Mill vs. Village of Orrville, 48 O. App. 87, 192 N. E. 474 (1934).

This section is not violated by an act authorizing any first class city to construct a municipally owned railroad through the agency of a corporation consisting of a board of trustees acting for the benefit of the city, on the approval of the electors of the municipality, and authorizing the board to issue bonds, secured by a mortgage on the railroad and the credit of the municipality, and to levy an annual tax to pay the interest and provide a sinking fund for the redemption of the bonds. Walker vs. City of Cincinnati, 21 O. S. 14 (1871).

(Footnote forwarded)

II. Financial Powers and Limitations (Cont'd)

D. Other Income

The principal of all funds, arising from the sale, or other disposition of lands, or other property, granted or entrusted to this State for educational and religious purposes, shall forever be preserved inviolate, and undiminished; and, the income arising therefrom, shall be faithfully applied to the specific objects of the original grants, or appropriations. 36/

E. Appropriations and Expenditures

It shall be the duty of the said Commissioners (Sinking Fund Commissioners) faithfully to apply said fund (see page 13, par. (c)), together with all moneys that may be, by the General Assembly, appropriated to that object, to the payment of the interest, as it becomes due, and the redemption of the principal of the public debt of the State, excepting only, the school and trust funds held by the State. 37/

See page 13, par. (f).

III. Provisions Affecting Legislation

A. Regular Sessions of Legislature

(1) The legislative power of the state shall be vested in a general assembly consisting of a senate and house of representatives. . . 38/

(2) All regular sessions of the General Assembly shall commence on the first Monday of January, biennially . . . 39/

(Footnote #35 - Continued)

The section would, however, forbid a statute authorizing the issuance of bonds by a municipality for the replacement and renewal of rails, ties, roadbeds and tracks in the street all of which equipment would become the property of a privately owned railway company, where the company pays for the improvement by assessments against it for the cost. In such a situation the company gets the property at once and becomes indebted to the city for the money the city has spent on the company's property. City of Cincinnati vs. Harth, 101 O. S. 344, 128 N. E. 263 (1920).

36. Constitution, Art. VI, Sec. 1.

37. Constitution, Art. VIII, Sec. 10.

38. Constitution, Art. II, Sec. 1.

39. Constitution, Art. II, Sec. 25.

Since the seventeenth article has expressly changed the date of election from November of the odd-numbered years to the same month of the even-numbered years, the provision for the convening of the (Footnote forwarded)

III. Provisions Affecting Legislation (Cont'd)

A. Regular Sessions of Legislature (Cont'd)

(3) He (The Governor) shall communicate at every session, by message, to the General Assembly, the condition of the State, and recommend such measures as he shall deem expedient. 40/

(4) The officers of the executive department, and of the public State Institutions shall, at least five days preceding each regular session of the General Assembly, severally report to the Governor, who shall transmit such reports, with his message, to the General Assembly. 41/

(5) The commissioners of the sinking fund shall, immediately preceding each regular session of the General Assembly, make an estimate of the probable amount of the fund, provided for in the seventh section of this article, (see page 13, par. (c)), from all sources except from taxation, and report the same . . . to the Governor, who shall transmit the same with his regular message, to the General Assembly; and the General Assembly shall make all necessary provision for raising and disbursing said sinking fund, in pursuance of the provisions of this article. 42/

B. Special Sessions of Legislature

The governor on extraordinary occasions may convene the general assembly by proclamation and shall state in the proclamation the purpose for which such special session is called, and no other business shall be transacted at such special session except that named in the proclamation, or in a subsequent public proclamation or message to the general assembly issued by the governor during such special session, but the general assembly may provide for the expenses of the session and other matters incidental thereto. 43/

(Footnote #39 - Continued)

regular session then elected must be regarded as changed by implication from the first Monday of January in the even-numbered years to the first Monday of the same month in the odd-numbered years. State ex rel. Cleveland C. C. & St. L. Railway Company vs. Creamer, 94 N. E. 831 (1911).

40. Constitution, Art. III, Sec. 7.

41. Constitution, Art. III, Sec. 20.

42. Constitution, Art. VIII, Sec. 9.

43. Constitution, Art. III, Sec. 8.

This provision is mandatory. The Legislature may legislate only upon such subjects as may be indicated in the proclamation or which are germane or incidental to the general purpose indicated in the proclamation; however, the Governor may not invade the province (Footnote forwarded)

III. Provisions Affecting Legislation (Cont'd)C. Initiative and Referendum

The legislative power of the state shall be vested in a general assembly . . . but the people reserve to themselves the power to propose to the general assembly laws and amendments to the constitution, and to adopt or reject the same at the polls on a referendum vote as hereinafter provided. They also reserve the power to adopt or reject any law, section of any law or any item in any law appropriating money passed by the general assembly, except as hereinafter provided; and independent of the general assembly to propose amendments to the constitution and to adopt or reject the same at the polls . . . The people also reserve to themselves the legislative power of the referendum of the action of the General Assembly ratifying any proposed amendment to the constitution of the United States. 44/

(1) Initiative(a) Constitutional Amendments

. . . the signatures of ten per centum of the electors shall be required upon a petition to propose an amendment to the constitution. When a petition . . . , shall have been filed with the secretary of state, and verified . . . the secretary of state shall submit for the approval or rejection of the electors, the proposed amendment, in the manner hereinafter provided, at the next succeeding regular or general election in any year occurring subsequent to ninety days after the filing of such petition . . . 45/

(Footnote #43 - Continued)

of the Legislature by detailing the particular class of persons to be affected, or the method or manner to be employed by the Legislature in accomplishing the purposes stated in the proclamation. State ex rel. Ach vs. Braden, 125 O. S. 307, 181 N. E. 138 (1932).

44. Constitution, Art. II, Sec. 1.

See Constitution, Art. II, Sec. 1-g, for requirements, preparation and submission of petitions.

The State has no authority under its Constitution to require a referendum vote on the Legislature's ratification or rejection of a proposed amendment to the Federal Constitution in view of Art. V of the Federal Constitution which provides that the ratification shall be by State Legislature or State Conventions. Hawke vs. Smith, 253 U. S. 221, 40 Supreme Court 495, 64 L. Ed. 871 (1920).

There can be no referendum upon the final action of a State Convention called for the above purpose. From this it follows that an act of the State Legislature providing for the election of delegates to such a convention is not subject to the referendum. State ex rel. Donnelly vs. Myers, 127 O. S. 104, 186 N. E. 918 (1933).

45. Constitution, Art. II, Sec. 1-a.

(Footnote forwarded)

III. Provisions Affecting Legislation (Cont'd)

C. Initiative and Referendum (Cont'd)

(1) Initiative (Cont'd)

(b) Laws

When at any time, not less than ten days prior to the commencement of any session of the general assembly, there shall have been filed with the secretary of state a petition signed by three per centum of the electors and verified as herein provided, proposing a law, . . . the secretary of state shall transmit the same to the general assembly as soon as it convenes . . . If it shall not be passed, or if it shall be passed in amended form, or if no action shall be taken thereon within four months from the time it is received by the general assembly, it shall be submitted by the secretary of state to the electors for their approval or rejection at the next regular or general election, if such submission shall be demanded by supplementary petition verified as herein provided and signed by not less than three per centum of the electors in addition to those signing the original petition, which supplementary petition must be signed and filed with the secretary of state within ninety days after the proposed law shall have been rejected by the general assembly or after the expiration of such term of four months, if no action has been taken thereon, or after the law as passed by the general assembly shall have been filed by the governor in the office of the secretary of state . . . Any proposed law or amendment to the constitution submitted to the electors as provided in sections 1 (a) and 1 (b), (see page 19, par. (a), and par. (b), above), if approved by a majority of the electors voting thereon, shall take effect thirty days after the election at which it was approved and shall be published by the secretary of state . . . No law proposed by initiative petition and approved by the electors shall be subject to the veto of the governor. 46/

(Footnote #45 - Continued)

The Secretary of State may not refuse to submit to the electors a proposed amendment to the State Constitution on the ground that it would contravene some provision of the Federal Constitution or law of Congress; mandamus lies to compel him to submit the proposed amendment. State ex rel. Marcolin vs. Smith, 105 O. S. 570, 138 N. E. 881 (1922).

An initiated petition may propose several separate and distinct amendments to the Constitution of Ohio, even though they do not all relate to the same subject-matter, provided the same are so separated and distinguished from each other in the petitions that the electors may appreciate and understand that they are proposing distinct and unrelated propositions, and further provided, that when the same are printed on the ballot, the individual voters may vote separately upon each separate proposal. State ex rel. Hubbell vs. Bettman, 124 O. S. 24, 176 N. E. 664 (1931).

46. Constitution, Art. II, Sec. 1-b.

III. Provisions Affecting Legislation (Cont'd)C. Initiative and Referendum (Cont'd)(2) Referendum

(a) . . . the signatures of six per centum of the electors shall be required upon a petition to order the submission to the electors of the state for their approval or rejection, of any law, section of any law or any item in any law appropriating money passed by the general assembly. No law passed by the General Assembly shall go into effect until ninety days after it shall have been filed by the governor in the office of the secretary of state, except as herein provided . . . When a petition . . . shall have been filed with the secretary of state within ninety days after any such law shall have been filed by the governor in the office of the secretary of state, . . . the secretary of state shall submit to the electors . . . such law, section or item . . . at the next succeeding regular or general election in any year occurring subsequent to sixty days after the filing of such petition, and no such law, section or item shall not go into effect until and unless approved by a majority of those voting upon the same. If, however, a referendum petition is filed against any such section or item, the remainder of the law shall not thereby be prevented or delayed from going into effect. 47/

(b) Laws providing for tax levies, appropriations for the current expenses of the state government and state institutions, and emergency laws necessary for the immediate preservation of the public peace, health or safety, shall go into immediate effect. Such emergency laws upon a yea and nay vote must receive the vote of two-thirds of all the members elected to each branch of the general assembly, and the reasons for such necessity shall be set forth in one section of the law, which section shall be passed only upon a yea and nay vote, upon a separate roll call thereon. The laws mentioned in this section shall not be subject to the referendum. 48/

47. Constitution, Art. II, Sec. 1-c.

48. Constitution, Art. II, Sec. 1-d.

The referendum provision applying to items for the appropriation of money does not apply to appropriations for current expenses. State ex rel. Davies Manufacturing Company, vs. Donahey, 94 O. S. 382, 114 N. E. 1037 (1916).

A single referendum petition attacking two or more separate laws may not be filed. State ex rel. Patton vs. Myers, 127 O. S. 95, 186 N. E. 872 (1933).

The phrase "laws providing for tax levies" is limited to actual self-executing State levies of taxes, and does not include laws generally "relating" to taxes, such as measures creating a new public purpose for taxes, or creating a new agency for levying taxes by any local subdivision or authority. State ex rel. Keller vs. Forney, 108 O. S. 463, 141 N. E. 16 (1923).

The term "current expenses" includes expenses incident to officering and maintaining the State Government, and the preserving in repair and the maintaining of the property of the State Government. State ex rel. Janes vs. Brown, 112 O. S. 590, 148 N. E. 95 (1925). (Footnote forwarded)

III. Provisions Affecting Legislation (Cont'd)

C. Initiative and Referendum (Cont'd)

(2) Referendum (Cont'd)

(c) The powers defined herein as the "initiative" and "referendum" shall not be used to pass a law authorizing any classification of property for the purpose of levying different rates of taxation thereon or of authorizing the levy of any single tax on land or land values or land sites at a higher rate or by a different rule than is or may be applied to improvements thereon or to personal property. 49/

(d) The initiative and referendum powers are hereby reserved to the people of each municipality on all questions which such municipalities may now or hereafter be authorized by law to control by legislative action; such powers shall be exercised in the manner now or hereafter provided by law. 50/

D. Legislative Enactments

(1) Bills may originate in either House; but may be altered, amended, or rejected in the other. 51/

(Footnote #48 - Continued)

Such emergency laws "go into immediate effect" as soon as they have been signed by the Governor. All other acts go into effect ninety days after they have been filed with the Secretary of State, regardless of the date of approval by the Governor. State vs. Lathrop, 93 O. S. 79, 112 N. E. 209 (1915).

The question of the emergency character of legislation is to be determined by the Legislature. It would be judicial usurpation for the courts to assume to review a question so clearly and conclusively committed to the Legislature. Holcomb vs. State ex rel. Coxey, 126 O. S. 496, 186 N. E. 99 (1933).

49. Constitution, Art. II, Sec. 1-e.

The word "law" as used in this section is confined to legislative enactments. Thus the initiative may be employed in proposing an amendment to the Constitution which authorizes legislation providing for classification of property for the purpose of levying different rates of taxation thereon. Thrailkill vs. Smith, 106 O. S. 1, 138 N. E. 532 (1922).

50. Constitution, Art. II, Sec. 1-f.

The city council of a non-charter city, in the absence of statutory limitation, has power to amend or repeal any initiated ordinance theretofore adopted by the electors of the city. State ex rel. Singer vs. Cartledge, 129 O. S. 279, 195 N. E. 237 (1935).

The Legislature may by law vest municipal authorities with the power to provide for the passing of emergency ordinances, involving the public health, peace, and safety, and provide that same be not subject to the referendum. Shryock vs. City of Zanesville, 92 O. S. 375, 110 N. E. 937 (1915).

51. Constitution, Art. II, Sec. 15.

III. Provisions Affecting Legislation (Cont'd)

D. Legislative Enactments (Cont'd)

(2) Each House shall keep a correct journal of its proceedings, which shall be published. At the desire of any two members, the yeas and nays shall be entered upon the journal; and, on the passage of every bill, in either House, the vote shall be taken by yeas and nays, and entered upon the journal; and no law shall be passed, in either House, without the concurrence of a majority of all the members elected thereto. 52/

(3) . . . no law passed by the general assembly shall go into effect until ninety days after it shall have been filed by the governor in the office of the secretary of state, except as herein provided . . . 53/

(4) Every bill shall be fully and distinctly read on three different days, unless in case of urgency three-fourths of the house in which it shall be pending, shall dispense with the rule. No bill shall contain more than one subject, which shall be clearly expressed in its title, and no law shall be revived, or amended unless the new act contains the entire act revived, or the section or sections amended, and the section or sections so amended shall be repealed . . . 54/

52. Constitution, Art. II, Sec. 9.

The legislative journals are conclusive on the question of whether or not the mandatory requirement has been met that a bill must receive a majority vote of all the members elected to both branches of the Legislature. *Ritzman vs. Campbell*, 93 O. S. 246, 112 N. E. 591 (1915).

53. Constitution, Art. II, Sec. 1-c.

See page 21, par. (b), for exceptions.

The prescribed ninety day period before a law becomes effective, and during which time a referendum petition may be filed, embraces ninety full days, and is computed by excluding the date on which the law is filed in the office of the Secretary of State. *Heuck vs. State ex rel. Mack*, 127 O. S. 247, 187 N. E. 869 (1933).

54. Constitution, Art. II, Sec. 16.

The provision that each new act shall contain the entire act as revived, or the section or sections amended, is mandatory. *State ex rel. Godfrey vs. O'Brien*, 95 O. S. 166, 115 N. E. 25 (1917).

The provisions that bills shall be read on three different days; that a bill shall embrace only one subject which must be expressed in the title; and that sections of acts amended shall be repealed, are not mandatory upon the Legislature but directory. *Lehman vs. McBride*, 15 O. S. 573 (1863).

(Footnote forwarded)

III. Provisions Affecting Legislation (Cont'd)D. Legislative Enactment (Cont'd)

(5) . . . Every bill passed by the general assembly shall, before it becomes a law, be presented to the governor for his approval. If he approves, he shall sign it and thereupon it shall become a law and be filed with the secretary of state. If he does not approve it, he shall return it with his objections in writing, to the house in which it originated, . . . If three-fifths of the members elected to that house vote to repass the bill, it shall be sent, with the objections of the governor, to the other house, . . . If three-fifths of the members elected to that house vote to repass it, it shall become a law notwithstanding (notwithstanding) the objections of the governor, except that in no case shall a bill be repassed by a smaller vote than is required by the constitution on its original passage . . . If a bill shall not be returned by the governor within ten days, Sundays excepted, after being presented to him, it shall become a law in like manner as if he had signed it, unless the general assembly by adjournment prevents its return; in which case, it shall become a law unless, within ten days after such adjournment, it shall be filed by him, with his objections in writing, in the office of the secretary of state. The governor may disapprove any item or items in any bill making an appropriation of money and the item or items, so disapproved, shall be void, unless repassed in the manner herein prescribed for the repassage of a bill. 55/

(6) All laws, of a general nature, shall have a uniform operation throughout the State; nor shall any act, except such as relates to public schools, be passed, to take effect upon the approval of any other authority than the General Assembly, except, as otherwise provided in this constitution. 56/

(Footnote #54 - Continued)

The part of this section providing that a new act shall contain the entire act revived or amended has no application to municipal ordinances. *City of Cincinnati vs. Hillenbrand*, 103 O. S. 286, 133 N. E. 556 (1921).

55. Constitution, Art. II, Sec. 16.

Where the Governor vetoed certain items of the appropriation of money to the Public Utilities Commission, the items became void since they were not repassed by the Legislature in accordance with this section; and the Controlling Board, set up in the appropriation act and authorized to transfer to new classifications necessary items which were not provided for by the Legislature in the act, was not authorized to transfer other items to those classifications, the items of which the Governor had vetoed, since such action would amount to an overriding of the Governor's right of veto by a board created by the Legislature. *State ex rel. Public Utilities Commission vs. Controlling Board*, 130 O. S. 127, 197 N. E. 129 (1935).

See page 21, par. (a).

56. Constitution, Art. II, Sec. 26.

"If the subject does or may exist in, and affect the people of, every county in the State, it is of a general nature . . . (and must) be given general application." *Relief of the poor is a subject-matter calling for laws of a general nature. State ex rel. vs. Bargus*, 53 O. S. 94, 41 N. E. 245 (1895).

III. Provisions Affecting Legislation (Cont'd)

D. Legislative Enactment (Cont'd)

(7) No money shall be drawn from the treasury, except in pursuance of a specific appropriation, made by law; and no appropriation shall be made for a longer period than two years. 57/

(8) No power of suspending laws shall ever be exercised, except by the General Assembly. 58/

(9) . . . No law shall be held unconstitutional and void by the supreme court without the concurrence of at least all but one of the judges, except in the affirmance of a judgment of the court of appeals declaring a law unconstitutional and void . . . 59/

IV. Constitutional Amendment or Revision

A. By Proposal of Legislature or People

(1) Either branch of the general assembly may propose amendments to this constitution; and, if the same shall be agreed to by three-fifths of the members elected to each house, such proposed amendments . . . shall be submitted to the electors, for their approval or rejection, . . . at either a special or general election as the general assembly may prescribe. Such proposed amendments shall be published once a week for five consecutive weeks preceding such election, in at least one newspaper in each county of the state . . . If the majority of the electors voting on the same shall adopt such amendments the same shall become part of the constitution. When more than one amendment shall be submitted at the same time, they shall be so submitted as to enable the electors to vote on each amendment, separately. 60/

57. Constitution, Art. II, Sec. 22.

58. Constitution, Art. I, Sec. 18.

59. Constitution, Art. IV, Sec. 2.

This provision was held not violative of the due process or equal protection clauses of the Fourteenth Amendment to the Federal Constitution. Ohio ex rel. Bryant vs. Akron Metropolitan Park District, 281 U. S. 74, 50 Supreme Court 228, 74 L. Ed. 710 (1930).

A municipal ordinance is not a "law" within the meaning of this section. Village of Brewster vs. Hill, 128 O. S. 354, 191 N. E. 366 (1934).

60. Constitution, Art. XVI, Sec. 1.

Provision that amendments should be submitted separately is mandatory. One amendment, however, may propose the repeal of several sections and the substitution of a new section, all relating to the same subject-matter. State ex rel. Lampson vs. Cook, 44 O. App. 501, 185 N. E. 212 (1932).
(Footnote forwarded)

IV. Constitutional Amendment or Revision (Cont'd)

A. By Proposal of Legislature or People (Cont'd)

(2) See page 19, par. C.

(3) See page 19, par. (a).

B. By Constitutional Convention

(1) Whenever two-thirds of the members elected to each branch of the general assembly, shall think it necessary to call a convention, to revise, amend, or change this constitution, they shall recommend to the electors to vote . . . at the next election for members to the general assembly, for or against a convention; and if a majority of all the electors . . . shall have voted for a convention, the general assembly shall, at their next session, provide, by law, for calling the same . . . The convention shall consist of as many members as the house of representatives, who shall be chosen as provided by law, and shall meet within three months after their election, for the purpose, aforesaid. 61/

(2) At the general election to be held in the year one thousand nine hundred and thirty-two, and in each twentieth year thereafter, the question: "Shall there be a convention to revise, alter or amend the constitution", shall be submitted to the electors of the state; and in case a majority of the electors . . . shall decide in favor of a convention, the general assembly, at its next session, shall provide, by law, for the election of delegates, and the assembling of such convention, as is provided in the preceding section; but no amendment . . . , agreed upon by any convention assembled in pursuance of this article, . . . shall take effect, until the same shall have been submitted to the electors . . . , and adopted by a majority of those voting thereon. 62/

(Footnote #60 - Continued)

Under this provision an amendment becomes effective as soon as it is adopted by the voters, unless the proposition to postpone the effective date is submitted to the electors and adopted by a majority voting thereon. State ex rel. McNamara vs. Campbell, 94 O. S. 403, 115 N. E. 29 (1916).

It should be noted that section 1-b of article II of the Constitution (page 20, par. (b)) provides that amendments proposed by initiative petition shall take effect 30 days after the election at which they were approved.

61. Constitution, Art. XVI, Sec. 2.

62. Constitution, Art. XVI, Sec. 3.

