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WORKS PROGRESS ADMINISTRATION

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

FEBRUARY 15, 1937

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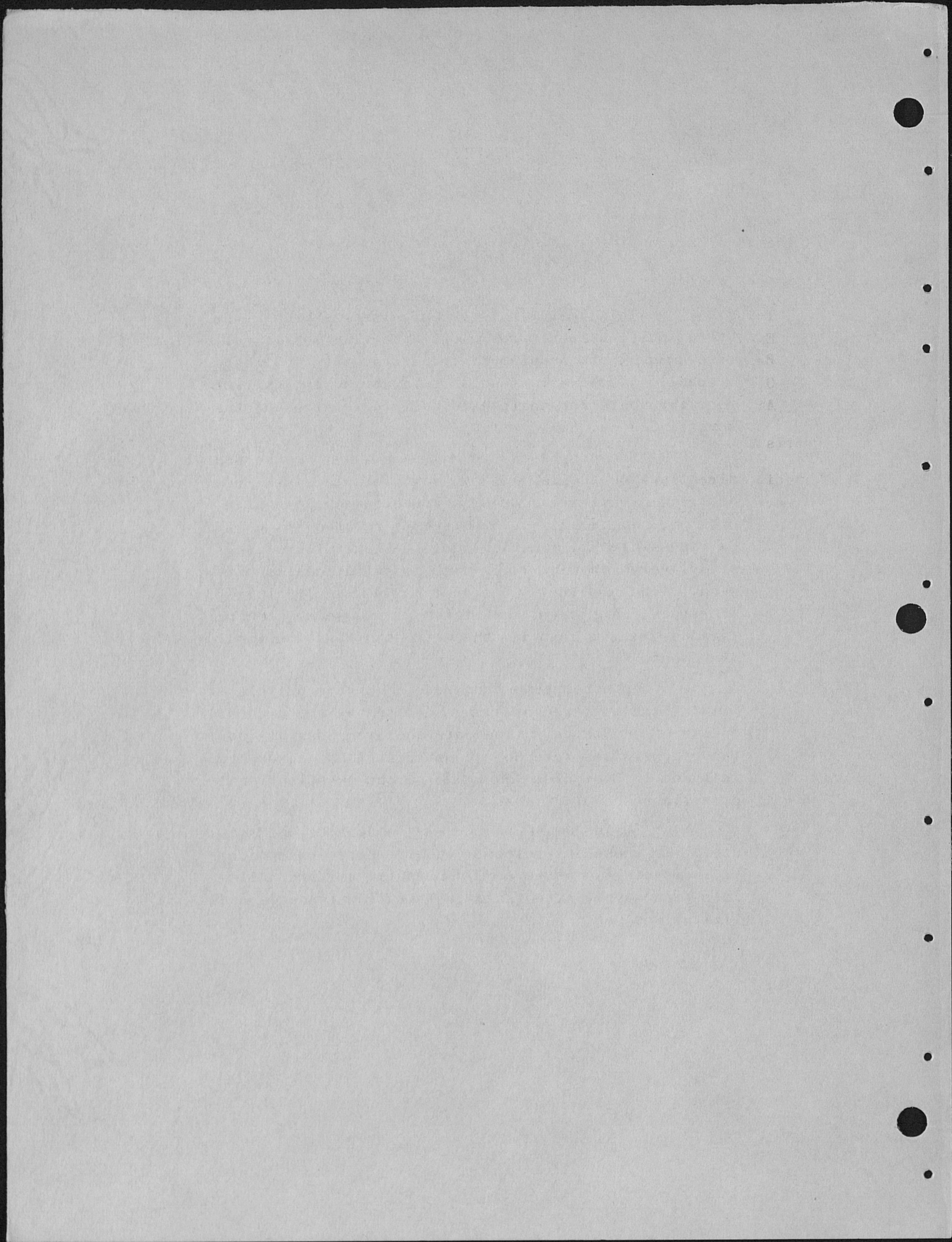
PREFACE

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.



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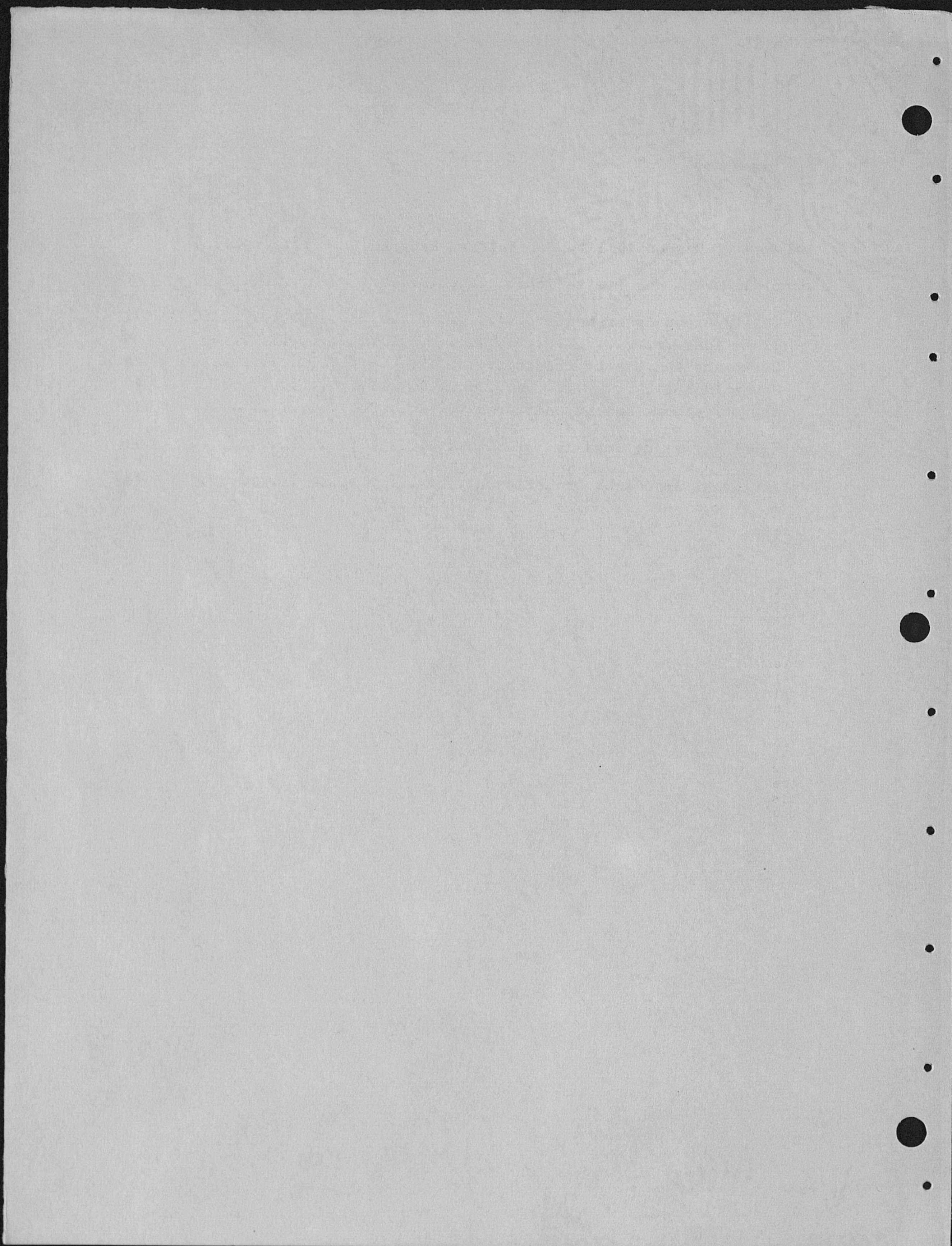

ANALYSIS OF CONSTITUTIONAL PROVISIONS AFFECTING PUBLIC WELFARE IN WISCONSIN[1]

I. Incidence of Responsibility for Welfare Program

No provision.[2]

II. Financial Powers and Limitations

A. Taxation and Assessments

(1) State[3]

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[1]Constitution (1848), with all amendments to February 15, 1937.

The Constitution of this State is not a grant, but a limitation of the powers of the Legislature, and it is competent for that body to exercise all legislative power not prohibited thereby. Bushnell vs. Beloit, 10 Wis. 155 (1860).

[2]The police power extends to everything promotive of public welfare, but the exercise of it is limited by the letter and spirit of the Constitution. State ex rel. Owen vs. Donald, 160 Wis. 21, 151 N. W. 331 (1915).

"The power of the government to embark in enterprises of public charity and benefit can only be limited by the restrictions upon the power of taxation, and to that extent alone can these subjects . . . be said to fall within the police power of the state." State ex rel. City of New Richmond vs. Davidson, 114 Wis. 563, 90 N. W. 1067 (1902).

A city was struck by a cyclone and almost totally destroyed. To bury the dead, clear up the debris, to prevent the spread of disease, care for the wounded, and to relieve generally the distress of the people, the city incurred large expense; to pay this it borrowed on its bonds from the State. An act appropriating State money to cancel this debt was held valid as being for a public purpose subserving the common interest and well-being of the people of the whole State. Ibid.

An act providing for the treatment of habitual drunkards or drug addicts in private institutions at the expense of the counties in which such persons resided, when the persons or those charged with their support had not the means to pay for such treatment, was held unconstitutional on the ground that it was not a legitimate exercise of the police power of the State, but involved the imposition of a tax upon a county, without its consent, for the benefit of private institutions and individuals not necessarily paupers and not necessarily objects of public charity. Wisconsin Keeley Institute Company vs. Milwaukee County, 95 Wis. 153, 70 N. W. 68 (1897).

[3]To justify the use of the taxing power, an act imposing a tax must be in furtherance of a public purpose, i.e., for the common interest and well-being of the people at large. An act, imposing an income surtax and a property tax for the purpose of paying a bonus to Wisconsin soldiers and sailors of the World War "as a token of appreciation of the character and spirit of their patriotic service" was held valid as being for a public purpose. State ex rel. Atwood vs. Johnson, 170 Wis. 218, 175 N. W. 589 (1919).

But where certain material men had furnished supplies to a contractor for a public building, and the contractor, (not having been required by the State to post any bond or security for the payment of material men), was paid in full by the State and later became bankrupt without paying the material men, an act of the Legislature appropriating money to indemnify them was held invalid on the ground that "no appropriation can be made and no tax can be levied for a mere private purpose". State ex rel. Consolidated Stone Company vs. Houser, 125 Wis. 256, 104 N. W. 77 (1905).

See State ex rel. City of New Richmond vs. Davidson, and page 2, footnote 4.

II. Financial Powers and Limitations—Continued

A. Taxation and Assessments—Continued

(1) State—Continued

(a) The rule of taxation shall be uniform, and taxes shall be levied upon such property with such classifications as to forests and minerals, including or separate or severed from the land, as the legislature shall prescribe. Taxes may also be imposed on incomes, privileges and occupations, which taxes may be graduated and progressive, and reasonable exemptions may be provided.[4]

The power to tax is not retained by the Legislature for all purposes not mentioned in the Constitution; but the mention, expressly and impliedly, of particulars as recognized governmental purposes, excludes all others. State ex rel. Owen vs. Donald, 160 Wis. 21, 151 N. W. 331 (1915).

The purposes for which taxes may be levied are denominated public purposes, not in the broad general sense, but in the constitutional sense of such State-wide purposes as are contemplated by the functions of government under the system created by the fundamental law. Ibid.

Any purpose, whether public or not, not included in the plan of government created by the Constitution, is outside the limitation upon the right to take private property for public use by the power of taxation, and outside the power to appropriate money. Ibid.

[4]Constitution, Art. VIII, Sec. 1.

By the addition in 1908 of the second sentence to this section, the State's system of taxation was changed from one of uniform taxation on real and personal property, to a system combining two ideas, namely, uniform taxation of real property only, and secondly, progressive taxation of persons, based on their ability to pay. State ex rel. Bolens vs. Frear, 148 Wis. 456, 134 N. W. 673 (1912).

"There can be no uniform rule, which is not at the same time an equal rule, operating alike upon all the taxable property throughout the territorial limits of the state, municipality or local subdivision of the government within and for which the tax is to be raised." Chicago & N. W. Railway Company vs. State, 128 Wis. 553, 108 N. W. 557 (1906).

An act creating a metropolitan sewer district and providing for a tax levy only on the property within the limits of the district was held not to violate the uniformity provisions of this section. "An improvement which will conduce to the public health or welfare may be made at the expense of the property which will be directly benefited thereby." Thielen vs. Metropolitan Sewerage Commission, 178 Wis. 34, 189 N. W. 484 (1922).

Where a city was almost wholly destroyed by a cyclone, and a large number of its inhabitants killed or injured, the city authorities, by the issuance of bonds, borrowed from the State for the purpose of burying the dead, removing the debris, preventing the spread of disease, caring for the wounded, and relieving the general distress. A State appropriation by the Legislature to the city of an amount sufficient to cancel the debt was upheld by the court as being in furtherance of a public purpose subserving the common interest and well-being of the people of the whole State. The court declared that if the object of the appropriation had been merely local to the city, then the rule of uniformity of taxation would have required that the taxes necessary to supply the appropriation should have been limited to that city, but that since the contribution was public and in the interest of the people of the State as a whole, the funds raised by State-wide taxes were spent legitimately. State ex rel. City of New Richmond vs. Davidson, 114 Wis. 563, 90 N. W. 1067 (1902).

The uniformity clause of this section does not apply to income taxes. It is enough regarding such taxes that there be no discrimination in favor of one as against another of the same class and that the method of assessment and collection be not inconsistent with natural justice. Van Dyke vs. Wisconsin Tax Commission, 217 Wis. 528, 259 N. W. 700 (1935).

II. Financial Powers and Limitations—Continued

A. Taxation and Assessments—Continued

(1) State—Continued

(b) The legislature shall provide for an annual tax sufficient to defray the estimated expenses of the state for each year; and whenever the expenses of any year shall exceed the income, the legislature shall provide for levying a tax for the ensuing year, sufficient, with other sources of income, to pay the deficiency as well as the estimated expenses of such ensuing year.[5]

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

(d) See page 13, par. (3).

(2) Counties[6]

(a) See page 2, par. (a).

The word "income" as used in this section is defined "as the profit or gain derived from capital or labor, or from both combined". State ex rel. Wisconsin Trust Company vs. Widule, 164 Wis. 56, 159 N. W. 630 (1916).

All taxes, not property taxes or capitation taxes, are excise or privilege taxes. The word "privilege" is broad enough to cover any species of tax except the former two and is so used in the Wisconsin Constitution. Thus taxes on incomes, inheritances, successions, sales, transfers of property inter vivos, and transactions transferring dividends declared and received by the stockholders out of income derived by the corporation from property located or business transacted within the State are all excise or privilege taxes. State ex rel. Froedtert Grain & Malting Company, Inc. vs. Tax Commission of Wisconsin, 265 N. W. 672 (1936).

Inheritance taxes are excise taxes levied on the right to transfer property, and not on the property itself; they are, therefore, only subject to the general rule of uniformity in legislation that they must operate alike on all persons similarly situated. Nunnemacher vs. State, 129 Wis. 190, 108 N. W. 627 (1906).

A fee exacted from the owner of a business, for the purpose of regulating, supervising, and inspecting such business in the exercise of the police power is a police regulation and not a tax; but where the fee exacted and collected so far exceeds the expenses of regulation that it could not reasonably be claimed that its purpose is merely supervisory, then such exaction will be deemed a revenue tax. Wadhams Oil Company vs. Tracy, 141 Wis. 150, 123 N. W. 785 (1909); Wisconsin Telephone Company vs. City of Milwaukee, 126 Wis. 1, 104 N. W. 1009 (1905).

[5] Constitution, Art. VIII, Sec. 5.

This section is satisfied by any legitimate kind of taxation whether direct or indirect, which in the judgment of the Legislature, having regard to the experience in the past and the probabilities of the future, will be sufficient to meet the annual public expenses. No express legislative estimate of the public needs is necessary, nor is annual or semi-annual legislation necessary. Such a tax law may provide generally for the future or until changed by the Legislature. Chicago & N. W. Railway Company vs. State, 128 Wis. 553, 108 N. W. 557 (1906).

[6] "The legislature shall establish but one system of town and county government, which shall be as nearly uniform as practicable". Art. IV, Sec. 23.

The Legislature may confer upon the boards of supervisors of the several counties such powers of a local, legislative and administrative character as they shall from time to time prescribe. Art. IV, Sec 22.

An act which authorized counties to enter competitive tenders to the State, of money to be raised by taxation, in order to secure the establishment within the county of a State-controlled home, was held valid as being for a proper public purpose, by reason of the peculiar local benefits accruing to a county in which such home might be established. Lund vs. Chippewa County, 93 Wis. 640, 67 N. W. 927 (1896).

II. Financial Powers and Limitations—Continued

A. Taxation and Assessments—Continued

(2) Counties—Continued

(b) The legislature is prohibited from enacting any special or private laws in the following cases: . . . .

For assessment or collection of taxes or for extending the time for the collection thereof . . . .[7]

(c) The legislature shall provide general laws for the transaction of any business that may be prohibited by section thirty-one of this article (see page 6, par. (b)), and all such laws shall be uniform in their operation throughout the state.[8]

(d) See page 8, par. (2).

(3) Other Local Units[9]

(a) See page 2, par. (a).

County boards of supervisors have implied authority under Art. IV, Sec. 22, above, to pass any ordinance necessary or convenient, such as to levy a tax for the carrying out of a proper public purpose designated in an act. In this case such tax levy was not specifically authorized in the act. Ibid.

In the above case it was held that the State could not "compel" one or more counties less than all, to make a greater donation than another for the establishment of the home, but could "authorize" a county to do so. Ibid.

[7]Constitution, Art. IV, Sec. 31.

An act applied solely to special charter cities and provided that reassessment of property might be made where an assessment proved invalid for failure to observe the law or procedure thereto relating. It was contended that as the act applied to past assessments, it could necessarily apply only to certain cities and was therefore violative of this section. In holding the act valid, the court said, ". . . the law applies to the entire class, and the fact that all the cities in the class may not be in a situation to make use of its provisions does not make it special or private". Schintgen vs. City of La Crosse, 117 Wis, 158, 94 N. W. 84 (1903).

[8]Constitution, Art. IV, Sec. 32.

[9]Organized cities and villages may determine their local affairs and government, subject only to the Constitution and such enactments of the Legislature of State-wide concern as shall with uniformity affect every city or village. Art. XI, Sec. 3.

"The legislature may 'authorize' a town or other municipality to levy taxes therein for public purposes not strictly of a municipal character, but from which the public have received or will receive some direct advantage; or where the tax is to be expended in defraying the expenses of the government or in promoting the peace, good order and welfare of society; or where it is to be expended to pay claims, founded in natural justice and equity, or in gratitude for public services or expenditures, or to discharge the obligations of charity and humanity from which no person or corporation is exempt." State ex rel. McCurdy vs. Tappan, 29 Wis. 664 (1872).

"The legislature has no power to 'compel' a municipality to levy taxes for any of the foregoing purposes until the liability to pay the same has been adjudged by a court of competent jurisdiction." Ibid.

"The legislature cannot confer a valid authority upon a municipality to tax itself for any purpose, which is not . . . a public purpose." Ibid.

The above section was held to impose no limitations upon the power of the Legislature to classify cities for the purposes of legislation in accordance with settled practice. When cities under this section enact legislation, that legislation supplants in that city all enactments of the Legislature with which it comes in conflict, unless such enactments of the Legislature affect all cities with uniformity. If the

II. Financial Powers and Limitations—Continued

A. Taxation and Assessments—Continued

(3) Other Local Units—Continued

(b) Each town and city shall be required to raise by tax, annually, for the support of common schools therein, a sum not less than one-half the amount received by such town or city respectively for school purposes from the income of the school fund.[10]

(c) See page 4, par. (b) and footnote 7.

(d) See page 8, par. (2).

B. Exemptions

The rule of taxation shall be uniform, and taxes shall be levied upon such property with such classifications as to forests and minerals, including or separate or severed from the land, as the legislature shall prescribe. Taxes may also be imposed on incomes, privileges and occupations, which taxes may be graduated and progressive, and reasonable exemptions may be provided.[11]

State legislation affects only classes of cities, it is subordinate to the city legislation in the city which has so legislated, but is still in force and effect for the government of cities which have not acted under the "home rule" powers of this section. State ex rel. Sleeman vs. Baxter, 195 Wis. 437, 219 N. W. 858 (1928).

A city, authorized by its charter under its police power to regulate the use of its streets, adopted an ordinance purporting to be a regulatory measure, which provided for inspection, counting and recording of all telephone poles erected in the streets, and which also exacted, for each pole maintained therein, an annual fee of one dollar to be paid to the general city fund. In an action by a telephone company to enjoin the enforcement of the ordinance, the court noted the fundamental distinction between a regulatory police measure imposing a fee to pay the necessary expenses of inspection and supervision of a business, and a license tax which is a charge imposed for a privilege granted and exercised under the power to raise revenue, and held that on the facts stipulated, the fees sought to be collected so far exceeded the reasonable cost of supervision as to make the obvious effect of the ordinance a license tax imposed to raise revenue. For the further reason that the power *resting solely in the State* to determine what occupations shall be licensed, and what privileges or franchises shall be granted by a municipality, had not been delegated by it expressly to the city either by legislative enactment or municipal charter, it was held that the municipality was without power to pass such an ordinance. Wisconsin Telephone Company vs. City of Milwaukee, 126 Wis. 1, 104 N. W. 1009 (1905).

[10] Constitution, Art. X, Sec. 4.

As to what constitutes "the school fund", see page 10, par. (1).

[11] Constitution, Art. VIII, Sec. 1.

In regard to the constitutional power of the Legislature to exempt from taxation, leaving out superfluous words, the mandate is: "The rule of taxation shall be uniform upon such property as the legislature shall prescribe". The right to prescribe what property shall be taxed includes the right to prescribe what shall not be taxed. The power to discriminate between what shall be chosen and what rejected from the multiplicity of kinds, classes, species, uses and ownership of property is absolute, except so far as it is limited by the rule of uniformity. "It is uniformity of rule, and not uniformity of subjects, which the constitution requires." Nash Sales, Inc. vs. City of Milwaukee, 198 Wis. 281, 224 N. W. 126 (1929), and cases cited therein.

II. Financial Powers and Limitations—Continued

C. Borrowing and Use of Credit

(1) State

(a) For the purpose of defraying extraordinary expenditures the state may contract public debts (but such debts shall never in the aggregate exceed one hundred thousand dollars). Every such debt shall be authorized by law, for some purpose or purposes to be distinctly specified therein; and the vote of a majority of all the members elected to each house, to be taken by yeas and nays, shall be necessary to the passage of such law; and every such law shall provide for levying an annual tax sufficient to pay the annual interest of such debt and the principal within five years from the passage of such law, and shall specially appropriate the proceeds of such taxes to the payment of such principal and interest; and such appropriation shall not be repealed, nor the taxes be postponed or diminished, until the principal and interest of such debt shall have been wholly paid.[12]

(b) The legislature may also borrow money to repel invasion, suppress insurrection, or defend the state in time of war; but the money thus raised shall be applied exclusively to the object for

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A church club, maintaining a home and meeting place for its members, by renting rooms and supplying table board, for the purpose of expanding the interest in religious activities, and acquiring new members, was held not to be a "benevolent association" within the meaning of the statute exempting from taxation the property owned by any religious, scientific, literary, educational or benevolent association, on the ground that the benevolent activities of the club, consisting of securing positions for a few young men and the furnishing of an inconsequential number of free meals, were not sufficient to bring the club within the exemption statute. The court stated that "statutes exempting property from taxation are not to be enlarged by construction. Taxation is the rule, and exemption the exception." Methodist Episcopal Church Baraca Club vs. City of Madison, 167 Wis. 207, 167 N. W. 258 (1918).

To ascertain whether a corporation falls within the statute exempting from taxation property used exclusively for religious, scientific, literary, educational or benevolent purposes, it must be judged not only by its declared objects, but also by what the corporation actually does. Catholic Woman's Club vs. City of Green Bay, 180 Wis. 102, 192 N. W. 479 (1923).

Under a statute exempting from taxation all the real property of educational societies used exclusively for educational purposes, it was held that where such a society rented a part of its building for a saloon and barbershop, applying the proceeds therefrom to the educational purposes of the society, the building was not "used exclusively for educational purposes", and being indivisible, was wholly subject to taxation. The court affirmed the rule that "statutes according exemption from taxation are to be strictly construed, and understood to confer exemption only so far as their words, by their natural and necessary meaning, go". Gymnastic Association of South Side of Milwaukee vs. City of Milwaukee, 129 Wis. 429, 109 N. W. 109 (1906).

[12] Constitution, Art. VIII, Sec. 6.

"There is nothing particularly technical about the meaning of the word 'debt' as used in the constitution. It includes all absolute obligations to pay money, or its equivalent, from funds to be provided, as distinguished from money presently available or in process of collection and so treatable as in hand." State ex rel. Owen vs. Donald, 160 Wis. 21, 151 N. W. 331 (1915).

See page 13, par. (3).

II. Financial Powers and Limitations—Continued

C. Borrowing and Use of Credit—Continued

(1) State—Continued

which the loan was authorized, or to the repayment of the debt thereby created.[13]

(c) No script, certificate, or other evidence of state debt whatsoever, shall be issued except for such debts as are authorized by the sixth and seventh sections of this article.[14]

(d) The state shall never contract any debt for works of internal improvement, or be a party in carrying on such works; but whenever grants of land or other property shall have been made to the state, especially dedicated by the grant to particular works of internal improvement, the state may carry on such particular works, and shall devote thereto the avails of such grants, and may pledge or appropriate the revenues derived from such works in aid of their completion. Provided, that the state may appropriate money in the treasury or to be thereafter raised by taxation for the construction or improvement of public highways. Provided, that the state may appropriate moneys for the purpose of acquiring, preserving and developing the forests of the state; but there shall not be appropriated under the authority of this section in any one year an amount to exceed two-tenths of one mill of the taxable property of the state as determined by the last preceding state assessment.[15]

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[13]Constitution, Art. VIII, Sec. 7.
See page 6, footnote 12 and page 13, par. (3).

[14]Constitution, Art. VIII, Sec. 9.
The "sixth and seventh sections of this article" are set forth on page 6, pars. (a) and (b).

[15]Constitution, Art. VIII, Sec. 10.
The State may acquire by gift, purchase or condemnation, lands for establishing, enlarging and maintaining streets, parks, playgrounds, sites for public buildings, etc. Art. XI, Sec. 3a.

What constitute "works of internal improvement" within the meaning of this section is a judicial question. The prohibition as to such works is not restricted to those only which appertain to business enterprises and mere avenues of trade and commerce; it extends to every kind of public improvement not necessary or convenient for the use of the State in carrying out its essentially governmental function as limited by the Constitution. State ex rel. Owen vs. Donald, 160 Wis. 21, 151 N. W. 331 (1915).

An act provided that the proceeds from an income tax levy should be distributed to the local subdivisions for the purpose of providing work and relief for the unemployed; the State was authorized under the act to reimburse the local units up to 25 percent of the labor cost of public works undertaken by them. In holding the act valid the court stated that the primary purpose of the State was to subserve the well-being of the people as a whole (this being of immediate concern to the State), and the means employed to accomplish this end, in this case, the engaging in works of internal improvement, were merely incidental to the main purpose. Van Dyke vs. Wisconsin Tax Commission 217 Wis. 528, 259 N. W. 700 (1935).

The prohibition in the last sentence of this section on appropriations exceeding the amount of two-tenths of one mill of the State's taxable property applies

II. Financial Powers and Limitations—Continued

C. Borrowing and Use of Credit—Continued

(1) State—Continued

(e) The state shall never contract any public debt except in the cases and manner herein provided.[16]

(f) The credit of the state shall never be given, or loaned, in aid of any individual, association or corporation.[17]

(2) Counties and Other Local Units[18]

. . . No county, city, town, village, school district, or other municipal corporation shall be allowed to become indebted in any manner or for any purpose to any amount, including existing indebtedness, in the aggregate exceeding five per centum on the value of the taxable property therein, to be ascertained by the last assessment for state and county taxes previous to the incurring of such indebtedness. Any county, city, town, village, school district, or other municipal corporation incurring any indebtedness as aforesaid shall, before or at the time of doing so, provide for the collection of a direct annual tax sufficient to pay the interest on such debt as it falls due, and also to pay and discharge the principal thereof within twenty years from the time of contracting the same; except that when such indebtedness is incurred in the acquisition of lands by cities, or by counties having a population of one hundred fifty thousand or over, for public, municipal purposes, or for the permanent improvement thereof, the city or county incurring the same shall, before or at the time of so doing, provide for the collection of a direct annual tax sufficient to pay the interest on such debt as it falls due, and also to pay and discharge the principal thereof within a period not exceeding fifty years from the time of contracting the same. Providing, that an indebtedness created for the purpose of purchasing, acquiring, leasing, constructing, extending, adding to, improving, conducting, controlling, operating or managing a public utility

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only to the proviso concerning forestry, and does not limit in any way the amount of appropriations which may be expended for highway purposes. State ex rel. Ekern vs. Zimmerman, 187 Wis. 180, 204 N. W. 803 (1925).

See page 6, footnote 12 and page 13, par. (3).

[16]Constitution, Art. VIII, Sec. 4.

For the excepted cases, see page 6, pars. (a) and (b), and page 7, par. (d).

For a definition of the term "debt", see page 6, footnote 12.

[17]Constitution, Art. VIII, Sec. 3.

The Emergency Income Tax Act providing that the proceeds of the tax be directly distributed to the local subdivisions on a per capita basis for the purpose of relieving unemployment, was held not violative of this section for the reason "that the state does not lend its credit or create a debt within the meaning of the Constitution by making a voluntary lawful gift to a number of its citizens". Van Dyke vs. Wisconsin Tax Commission, 217 Wis. 528, 259 N. W. 700 (1935).

[18]See page 3, footnote 6 and page 4, footnote 9.

II. Financial Powers and Limitations—Continued

C. Borrowing and Use of Credit—Continued

(2) Counties and Other Local Units—Continued

of a town, village or city, and secured solely by the property or income of such public utility, and whereby no municipal liability is created, shall not be considered an indebtedness of such town, village or city, and shall not be included in arriving at such five per centum debt limitation.[19]

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[19]Constitution, Art. XI, Sec. 3.

This section is not a grant of power to a municipality to incur indebtedness up to the amount specified therein. That grant of power must come from the Legislature and the section is a limitation upon the power which the Legislature may extend. In no event may the amount exceed five percent but the Legislature may limit it to an amount less than five percent. Oconto County vs. Town of Townsend, 210 Wis. 85, 246 N. W. 410 (1933).

This section refers to the individual indebtedness of each municipality mentioned, and not to the aggregate indebtedness of municipalities, Thus, in determining whether the indebtedness of a school district exceeds the constitutional limit, the indebtedness of a village with boundaries coterminous with those of the district may not be added. Lippert vs. School District No. 4, etc., 187 Wis. 154, 203 N. W. 940 (1925).

"The 'last assessment for state and county taxes' within the meaning of this section is the last assessment of the town, city, or village as fixed by the local board of review, upon which county and state taxes may be extended as well as local taxes." School District No. 4, etc. vs. First Wisconsin Company, 187 Wis. 150, 203 N. W. 939 (1925).

The direct annual tax, which must be levied and collected to pay the principal and interest on the indebtedness, is irrevocable and must be taken into consideration for the purpose of determining the amount of additional tax leviable under a statute limiting the maximum indebtedness of a county to one percent of its valuation. Oconto County vs. Town of Townsend, 210 Wis. 85, 246 N. W. 410 (1933).

In computing the indebtedness incurred by a city through a contract for the annual rental of a waterworks system for a period of 30 years, only the amount that may become due within one year is to be considered. A stipulation in such a contract, giving the city an option to purchase the waterworks at the expiration of a certain time, does not create an obligation on the part of the city within the meaning of this section since the city may decline to purchase at the stated time "and put an end to the entire matter". Stedman vs. City of Berlin, 97 Wis. 505, 73 N. W. 57 (1897).

A county resolution providing for the issuance of bonds for the erection of certain public buildings, but making no provision for the collection of any tax except the following: "There shall be annually levied by the county board . . . upon the taxable property . . . a direct annual tax sufficient to pay the interest upon said bonds as it falls due, and to pay the principal . . . within the time fixed therefor", was held insufficient to meet the requirements of this section, it being only a promise that future county boards would levy the necessary amount of taxes. Nothing less than a present levy of the tax which the county clerk may be compelled by mandamus to apportion and the officers to collect, would satisfy the mandate of this section. Kyes vs. St. Croix County, 108 Wis. 136, 83 N. W. 637 (1900); Borner vs. City of Prescott, 150 Wis. 197, 136 N. W. 552 (1912).

Where a contractor had fully performed his obligation under a contract entered into by a school district for the construction of a school house, which contract carried the district's indebtedness beyond the constitutional debt limit of five percent of the assessed valuation, the court refused to allow recovery on the theory that the contract was absolutely void. McGillwray vs. Joint School District No. 1, etc., 112 Wis. 354, 88 N. W. 310 (1901).

But where a contract was within the debt limit but the authorities incurring the debt neglected to comply with the requirement of this section that a direct annual tax be levied to meet the payments of interest and principal on the debt, the

II. Financial Powers and Limitations—Continued

D. Other Income

(1) The proceeds of all lands that have been or hereafter may be granted by the United States to this state for educational purpose (except the lands heretofore granted for the purposes of a university) and all moneys and the clear proceeds of all property that may accrue to the state by forfeiture or escheat, and all moneys which may be paid as an equivalent for exemption from military duty; and the clear proceeds of all fines collected in the several counties for any breach of the penal laws, and all moneys arising from any grant to the state where the purposes of such grant are not specified, . . . shall be set apart as a separate fund to be called "the school fund", the interest of which and all other revenues derived from the school lands shall be exclusively applied to the following objects, to wit:

To support and maintenance of common schools in each school district, and the purchase of suitable libraries and apparatus therefor.

The residue shall be appropriated to the support and maintenance of academies and normal schools, and suitable libraries and apparatus therefor.[20]

(2) See page 7, par. (d).

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court allowed recovery by a contractor under circumstances similar to the above case on the theory that benefits had accrued to the town and that therefore mere irregularity in the proceedings should not constitute a defense to its enforcement. First Wisconsin National Bank of Milwaukee vs. Town of Catawba, 183 Wis. 220, 197 N. W. 1013 (1924).

The exception, contained in the proviso of this section, pertaining to an indebtedness created in connection with public utilities, was held applicable to an extension of an existing municipal sewage system where the city secured a loan from the Public Works Administration secured by bonds payable solely out of the revenues and property of the sewage system. Payne vs. City of Racine, 217 Wis. 550, 259, N. W. 437 (1935).

The State or any of its cities may acquire by gift, purchase or condemnation, lands for establishing, enlarging and maintaining streets, parks, playgrounds, sites for public buildings, etc. Art. XI, Sec. 3a.

[20] Constitution, Art. X, Sec. 2.

In interpreting the clause "property accruing to the state by escheat", the court held that it includes personal property as well as real property and that the Legislature had no power to provide that the personal property of intestate persons without heirs or next of kin should be assigned to the County Orphans' Board. The ground on which the decision rested was that while the Legislature may waive the State's rights to property which the State holds in a proprietary nature, it may not divert funds to which the State is entitled under the Constitution for the benefit of the schools, since it holds such funds in the capacity of trustee. In re Payne's Estate, 208 Wis. 142, 242 N. W. 553 (1932).

So much of an act which provided that one-third of the fines imposed and collected in the counties for violations of the fish and game laws should be paid to the county treasurer to reimburse the county for moneys expended in enforcing such laws, was held void as in conflict with this section. State ex rel. Johnson vs. Maurer, 159 Wis. 653, 150 N. W. 966 (1915).

II. Financial Powers and Limitations—Continued

E. Appropriations and Expenditures

No money shall be paid out of the treasury except in pursuance of an appropriation by law. No appropriation shall be made for the payment of any claim against the state except claims of the United States and judgments, unless filed within six years after the claim accrued.[21]

III. Provisions Affecting Legislation

A. Regular Sessions of Legislature

(1) The legislative power shall be vested in a senate and assembly.[22]

(2) The legislature shall meet . . . at such time as shall be provided by law, once in two years, and no oftener, unless convened by the governor in special session, and when so convened no business shall be transacted except as shall be necessary to accomplish the special purposes for which it was convened.[23]

B. Special Sessions of Legislature

(1) . . . He (the Governor) shall have power to convene the legislature on extraordinary occasions, ...[24]

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[21] Constitution, Art. VIII, Sec. 2.

See page 13, par. (3) and page 7, par. (d).

The power to appropriate money out of the State Treasury is limited by the power of taxation to create a fund to appropriate from. State ex rel. Owen vs. Donald, 160 Wis. 21, 151 N. W. 331 (1915).

For cases distinguishing the power to tax from the power to appropriate moneys already in the treasury, see the concurring opinion of Dodge, J., in State ex rel. City of New Richmond vs. Davidson, 114 Wis. 563, 90 N. W. 1067 (1902).

For the holding in the same case relating to a State appropriation for the purpose of aiding a city, see page 2, footnote 4.

A statute authorized annual appropriations of such sums as would be necessary to meet operating expenses of any State institution, department, board, etc., for which sufficient money had not been regularly appropriated. Such sums were to be made available upon the certification of the Governor, Secretary of State and State Treasurer that they were needed. The act was held not void, merely because it prescribed no definite or maximum sum, since, it was said, the Constitution does not prohibit continuing unlimited appropriations. It was further held not to provide for an unlawful delegation of the legislative power of appropriation to the three executive officers as prohibited by Art. IV, Sec. 1 (see par. (1), above), because the appropriation was complete when the bill became a law, even though the exact amounts of the expenditures under the law were to be later determined by these officers according to need. State ex rel. Board of Regents of Normal Schools vs. Zimmerman, 183 Wis. 132, 197 N. W. 823 (1924).

[22] Constitution, Art. IV, Sec. 1.

See footnote 21, above and page 12, footnote 25.

[23] Constitution, Art. IV, Sec. 11.

The Constitution provides that general elections shall be held in the even-numbered years. Art. XIII, Sec. 1.

[24] Constitution, Art. V, Sec. 4.

Where the Governor's purpose for calling a special session was to make provision for unemployment relief in cooperation with county and local authorities by employment on necessary public works and/or providing necessities of life where work

III. Provisions Affecting Legislation—Continued

B. Special Sessions of Legislature—Continued

(2) See page 11, par. (2).

C. Powers of Initiative and Referendum

No provision.[25]

D. Legislative Enactment

(1) Any bill may originate in either house of the legislature, and a bill passed by one house may be amended by the other.[26]

(2) Every bill which shall have passed the legislature shall, before it becomes a law, be presented to the governor; if he approve, he shall sign it, but if not, he shall return it, with his objections, to that house in which it shall have originated, who shall . . . reconsider it. Appropriation bills may be approved in whole or in part by the governor, and the part approved shall become law, and the part objected to shall be returned in the same manner as provided for other bills.[27] If, after such reconsideration, two-thirds of the members present shall agree to pass the bill, or the part of the bill objected to, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two-thirds of the

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could not be secured, it was held that the enactment of an emergency income tax law, the proceeds of which were to be distributed directly to the cities, villages and towns on a per capita basis, came within the purpose of the call. The court also rejected the contention that the funds appropriated could lawfully be used for general municipal purposes bearing no relation to relief, and stated that where prompt and efficient action was necessary to relieve the distress which existed generally, distribution through the local units sufficiently served the purpose of the call by placing such units in a better financial condition to relieve the extraordinary burdens thrust upon them. Van Dyke vs. Wisconsin Tax Commission, 217 Wis. 528, 529 N. W. 700 (1935).

[25] The Legislature may enact laws of a local nature and refer the same to the people locally to decide whether such laws shall become effective in the locality in which they reside. Similarly, the Legislature may submit general laws to the voters of the State for approval by referendum. State ex rel. Van Alstine vs. Frear, 142 Wis. 320, 125 N. W. 961 (1910).

[26] Constitution, Art. IV, Sec. 19.

[27] A bill containing no appropriation but amending previously enacted statutes relating to the taxation of motor carriers and the creation of continuing revolving fund appropriations, by increasing certain carrier permit fees, was held not to be an "appropriation bill" within the meaning of this section authorizing the Governor's partial approval thereof, since its operation referred particularly to the raising of revenue and had only an indirect bearing upon the subject of the appropriations of public moneys as dealt with in the earlier statutes. Hence the Governor's partial veto of the bill had the effect of an absolute veto. State ex rel. Finnegan vs. Dammann, 220 Wis. 143, 264 N. W. 622 (1936).

The word "part" within the meaning of this section authorizing the Governor to disapprove part of an appropriation bill was held to have its usual, customary meaning and not a narrow meaning such as would authorize his disapproval only of items which actually appropriate, and therefore the Governor's action in vetoing certain sections of an appropriation bill which stated the Legislature's purpose in enacting the bill, and which created a new administrative agency, was held proper. State ex rel. Wisconsin Telephone Company vs. Henry, 218 Wis. 302, 260 N. W. 486 (1935).

III. Provisions Affecting Legislation—Continued

D. Legislative Enactment—Continued

members present it shall become a law . . .. If any bill shall not be returned by the governor within six days (Sundays excepted) after it shall have been presented to him, the same shall be a law unless the legislature shall, by their adjournment,[28] prevent its return, in which case it shall not be a law.[29]

(3) On the passage in either house of the legislature of any law which imposes, continues or renews a tax, or creates a debt[30] or charge, or makes, continues or renews an appropriation of public or trust money,[31] or releases, discharges or commutes a claim or demand of the state, . . . three-fifths of all the members elected to such house shall in all such cases be required to constitute a quorum therein.[32]

(4) No private or local bill which may be passed by the legislature shall embrace more than one subject, and that shall be expressed in the title.[33]

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[28] The word "adjournment" as used in this section means a final adjournment, and hence a temporary adjournment for seven days did not prevent a particular bill from becoming a law where the Governor failed to return it within six days. State ex rel. Sullivan vs. Dammann, 267 N. W. 433 (1936).

[29] Constitution, Art. V, Sec. 10.

[30] The term "debt" as used in this section refers to that type of debt mentioned in Art. VIII, Sec. 6 (see page 6, par. (a)) and not to debts for mere ordinary legislative expenses such as would be incidental to a resolution authorizing the investigation of the manner in which the primary election laws were carried out. State ex rel. Rosenhein vs. Frear, 138 Wis. 173, 119 N. W. 894 (1909).

[31] "Public or trust money" as used in this section refers to public funds in which the general public has a beneficial interest, and not to special funds held by the State Treasurer as a mere depositor, such as the funds to be used to make payments to employees under the Workmen's Compensation Act, where only a limited class of the public is directly interested. B. F. Strutevant Company vs. O'Brien, 186 Wis. 10, 202 N. W. 324 (1925).

[32] Constitution Art. VIII, Sec. 8.

[33] Constitution, Art. IV, Sec. 18.

"As far as general legislation is concerned, the Legislature may, . . . , unite as many subjects in one bill as it chooses." State ex rel. Wisconsin Telephone Company vs. Henry, 218 Wis. 302, 260 N. W. 486 (1935).

A local act entitled "An Act in relation to sheriff's fees" and providing that the sheriff of Milwaukee County should receive an annual salary in lieu of fees as was the customary manner of payment in other counties, and an amendment to the act which was entitled "An Act to amend . . .. An Act in relation to sheriff's fees" and which created several additional salaried county officers were both held unconstitutional under this section, on the ground that the titles of neither act reasonably suggested the main objects to be accomplished, namely, to make the sheriff a salaried officer and to create several other salaried officers. Milwaukee County vs. Isenring, 109 Wis. 9, 85 N. W. 131 (1901).

A later act providing that in counties with a population of 150,000 or more (of which Milwaukee County was the only one) the register of deeds should receive a certain salary in lieu of fees and further providing that the act should go into effect 15 months after its passage, was held to be a general and not a "private or local bill", on the ground that the act would be applicable to and embrace all counties attaining the requisite population. Verges vs. Milwaukee County, 116 Wis. 191, 93 N. W. 44 (1903).

III. Provisions Affecting Legislation—Continued

D. Legislative Enactment—Continued

(5) See page 4, pars. (b) and (c) and footnote 7.

(6) . . . He (the Governor) shall communicate to the legislature, at every session, the condition of the state, and recommend such matters to them for their consideration as he may deem expedient . . . .[34]

IV. Constitutional Amendment or Revision

A. By Proposal of Legislature or People

Any amendment or amendments to this constitution may be proposed in either house of the legislature, and if the same shall be agreed to by a majority of the members elected to each of the two houses, such proposed amendment or amendments shall be entered on their journals, with the yeas and nays taken thereon, and referred to the legislature to be chosen at the next general election, and shall be published for three months previous to the time of holding such election;[35] and if, in the legislature so next chosen, such proposed amendment or amendments shall be agreed to by a majority of all the members elected to each house, then it shall be the duty of the legislature to submit such proposed amendment or amendments to the people in such manner and at such time as the legislature shall prescribe; and if the people shall approve and ratify such amendment or amendments by a majority of the electors voting thereon, such amendment or amendments shall become part of the constitution; provided, that if more than one amendment be submitted, they shall be submitted in such manner that the people may vote for or against such amendments separately.[36]

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[34] Constitution, Art. V, Sec. 4.

[35] Where one of two proposed amendments was omitted from the joint resolution as it finally passed the Legislature, but was erroneously included in the publication of the resolution, it was held that such publication did not substantially comply with the requirements of this section. State ex rel. Bentley vs. Hall, 178 Wis. 109, 189 N. W. 265 (1922).

[36] Constitution, Art. XII, Sec. 1.
Where a resolution proposing an amendment to the Constitution was entered in the Senate Journal, and later passed by that body in an amended form without further entry, and at the next session a new resolution was passed and entered on the Senate Journal purporting to embody the action of the previous session, but omitting a change that had been made, after which it was never passed upon by the Assembly, not entered on its journal, it was held that the Legislature had fallen far short of meeting the constitutional requirements as to proposing amendments. The court warned against the conviction of some that judicial disapproval of the legislative procedure when not conforming to the requirements of this section, was based on mere "technicalities", and defended its duty to obey the mandates as laid down by the framers of the Constitution. State ex rel. Owen vs. Donald, 160 Wis. 21, 151 N. W. 331 (1915).

IV. Constitutional Amendment or Revision—Continued

B. By Constitutional Convention

If at any time a majority of the senate and assembly shall deem it necessary to call a convention to revise or change this constitution, they shall recommend to the electors to vote for or against a convention at the next election for members of the legislature. And if it shall appear that a majority of the electors voting thereon have voted for a convention, the legislature shall, at its next session, provide for calling such convention.[37]

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[37]Constitution, Art. XII, Sec. 2.