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

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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.

Kansas

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ANALYSIS OF CONSTITUTIONAL PROVISIONS AFFECTING

PUBLIC WELFARE IN THE STATE OF KANSAS 1/

I. Incidence of Responsibility for Welfare Program

A. Institutions for the benefit of the insane, blind, and deaf and dumb, and such other benevolent institutions as the public good may require, shall be fostered and supported by the state, subject to such regulations as may be prescribed by law . . . 2/

B. The respective counties of the state shall provide, as may be prescribed by law, for those inhabitants, who, by reason of age, infirmity, or other misfortune, may have claims upon the sympathy and aid of society. Provided however, the State may participate financially in such aid and supervise and control the administration thereof. 3/

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1. Constitution (1859), with all amendments to November 15, 1936. All citations are to (1933) Supplement to Revised Statutes of Kansas (1923).

2. Constitution, Art. VII, Sec. 1.

This section of the Constitution, which charges the State at large with the duty of fostering and supporting institutions for the benefit of the insane, does not preclude the Legislature from also imposing a part of that duty on the several counties, since Art. VII, Sec. 4 of the Constitution, which imposed on the counties the duty to care for their infirm and unfortunate residents, is broad enough to include persons whose infirmity or misfortune is insanity. *Donnelly vs. Board of County Commissioners of Atchison County*, 130 K. 428, 286 P. 250 (1930).

The State may appropriate money to privately owned and operated charitable institutions as well as to public charitable institutions. *Ingleside Association vs. Nation*, 83 K. 172, 109 P. 984 (1910).

3. Constitution, Art. VII, Sec. 4 as amended November 3, 1936. *New Laws (1936)*, page. 3.

The proviso clause of this section was added by an amendment approved by the people November 3, 1936. Prior to this amendment the State Highway Commission sought to borrow \$17,000,000.00 from the Federal Government for the purpose of constructing roads and bridges and to provide work for the unemployed. The first question presented to the court was whether or not the State had power and jurisdiction to provide work for the unemployed, or otherwise (Footnote forwarded)

2. Kansas

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

C. The State may provide by law for unemployment compensation and contributory old age benefits and may tax employers and employees therefor; and the restrictions and limitations of Section 24 of Article II, page 9, Sec. II, par. E, (1), and Section 1 of Article XI, page 3, Sec. II, par. A, (1), (a), of the Constitution shall not be construed to limit the authority conferred by this amendment. No direct ad valorem tax shall be laid on real or personal property for such purposes. 4/

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(Footnote #3 - Continued)

care for poor and needy citizens of the State, in view of this section of the Constitution. The court held that this section did not prohibit the State from exercising this function, and that all governmental power being primarily vested in the State, the State might exercise all powers not granted to the Federal Government or prohibited or limited by the State Constitution. The Constitution nowhere prohibits the State from making provision for the poor, therefore the act in question did not violate this section. State ex rel. Boynton vs. Kansas State Highway Commission, 138 K. 913, 28 P. (2d) 770 (1934).

A statute authorizing counties to issue bonds for the relief of the poor and unemployed, setting out the limits of such bond issues, was valid, even though such bond issues exceeded in amount the debt limitations of counties provided for in earlier statutes, because the debt limitations of counties being statutory, the latest statute controls. State ex rel. Stanley vs. Roff, 143 K. 527, 55 P. (2d) 815 (1936), see page 9, Sec. II, par. C, (2).

A statute providing for a county public welfare institution including a tuberculosis sanitarium, which was to collect fees from patients able to pay and treat others free, was held not to contravene this section. The court said that a county may be authorized to care for certain classes of its unfortunate citizens even though they are not paupers. Beck vs. Board of Commissioners of Shawnee County, 105 K. 325, 182 P. 397 (1919).

A Kansas municipality has authority to accept a bequest of a trust fund and to administer it in perpetuity if the purpose of the trust created by such bequest is for a public charitable use. Treadwell vs. Beebe, 107 K. 31, 190 P. 768 (1920).

Likewise a county may accept gifts or trusts for charitable purposes. Rishel vs. McPherson County, 122 K. 741, 253 P. 586 (1927).

4. Constitution, Art. VII, Sec. 5, New Laws (1936), page 1.

II. Financial Powers and Limitations

A. Taxation and Assessments

(1) State

(a) The legislature shall provide for a uniform and equal rate of assessment and taxation, except that mineral products, money, mortgages, notes and other evidence of debt may be classified and taxed uniformly as to class as the legislature shall provide. . . 5/

(b) The legislature shall provide, at each regular session, for raising sufficient revenue to defray the current expenses of the state for two years. 6/

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5. Constitution, Art. XI, Sec. 1, as amended 1924.

This section applies exclusively to the taxation of property. A motor vehicle fuel tax is not a tax on property and so this section has no application to it. State ex rel. Beck vs. Board of County Commissioners of Barton County, 142 K. 624, 51 P. (2d) 33 (1935).

The constitutional rule of uniformity applies to property taxes only. It does not apply to excise or privilege taxes. The only limitation on the power to impose taxes of this kind is that the tax shall bear some reasonable relation to the right, privilege, or franchise taxed. Wheeler vs. Weightman, 96 K. 50, 149 P. 977 (1915).

This section does not apply to the following: License taxes, registration taxes, poll taxes, inheritance taxes, or franchise taxes. For a citation of cases dealing with these specific taxes see Wheeler vs. Weightman, 96 K. 50, 149 P. 977, 983 (1915).

6. Constitution, Art. XI, Sec. 4.

Another section provides that the Legislature may levy a permanent tax for the use of the State educational institutions. Constitution, Art. VI, Sec. 10.

The Constitution provides a "pay as you go" basis for ordinary expenses. Borrowing is permitted only for extraordinary expenses. Where revenues are insufficient to meet salaries appropriated, a bond issue to pay them is void, because the fact that sufficient taxes have not been collected to pay "ordinary" expenses does not make the expenses "extraordinary". State ex rel. Boynton vs. Atherton, 139 K. 197, 30 P. (2d) 291, 296 (1934), citing with approval State ex rel. Guthrie vs. School Fund, 4 K. 261 (1868), see page 6, footnote 12.

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II. Financial Powers and Limitations (Cont'd)

A. Taxation and Assessments (Cont'd)

(1) State (Cont'd)

(c) No tax shall be levied except in pursuance of a law, which shall distinctly state the object of the same; to which object only such tax shall be applied. 7/

(d) The state shall have power to levy and collect taxes on incomes from whatever source derived, which taxes may be graduated and progressive. 8/

(e) The state shall have power to levy special taxes, for road and highway purposes, on motor vehicles and on motor fuels. 9/

(2) Counties

No provisions, see page 5, footnote 10.

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7. Constitution, Art. XI, Sec. 5.

A small claim for tuition for high school students may be paid by the county out of the general fund without violating this section. This is not considered a diversion of funds levied for one purpose to another purpose. The general fund is provided for the ordinary current expenses of the county. It may be used also for incidental expenses, and for some unusual expenses where there is a surplus in the fund. *School District No. 4, Logan County vs. Board of Commissioners of Wallace County*, 127 K. 793, 275 P. 188 (1929).

However, a claim for jack rabbit bounty cannot be paid out of the general fund, where it is such an extraordinary sum as not to be an incidental expense of conducting the government business of the county, and where the general fund is exhausted. *State ex rel. Smith vs. Board of Commissioners of Thomas County*, 122 K. 850, 253 P. 406 (1927).

8. Constitution, Art. XI, Sec. 2, adopted 1932.

9. Constitution, Art. XI, Sec. 10.

These taxes are for road and highway purposes only, and the Legislature has no authority to appropriate them for any other purpose. *State ex rel. Boynton vs. Kansas State Highway Commission*, 139 K. 391, 32 P. (2d) 493 (1934). See page 8, Sec. II, par. C, (1), (d).



II. Financial Powers and Limitations (Cont'd)

A. Taxation and Assessments (Cont'd)

(3) Other Local Units

Provision shall be made by general law for the organization of cities, towns and villages; and their power of taxation, assessment, borrowing money, contracting debts and loaning their credit, shall be so restricted as to prevent the abuse of such power. 10/

B. Exemptions

(1) State

. . . all property used exclusively for state, county, municipal, literary, educational, scientific, religious, benevolent and charitable purposes, and personal property to the amount of at least two hundred dollars for each family, shall be exempted from taxation. 11/

10. Constitution, Art. XII, Sec. 5.

The State Tax Commission ascertains the assessed value of all property in the State, and from appropriations ascertains the amount to be raised for State purposes, and from this determines the amount of county property tax to be assessed for State purposes. Kansas Gas and Electric Company vs. Dalton, 142 K. 59, 46 P. (2d) 27 (1935).

The tax limitations for county purposes are fixed by statute. State ex rel. Woodward vs. Peal, 136 K. 136, 13 P. (2d) 302 (1932).

The fact that bonded indebtedness, authorized by one statute, may under certain contingencies exceed the debt limit authorized by another statute, does not render the former statute void, because the debt limits of municipalities are statutory and not constitutional, and so may be changed by the Legislature. State ex rel. Boynton vs. Board of Education of City of Topeka, 137 K. 451, 21 P. (2d) 295 (1933).

The limit of bonded indebtedness of counties is fixed by statute. State ex rel. Stanley vs. Robb, 143 K. 527, 55 P. (2d) 815 (1936).

11. Constitution, Art. XI, Sec. 1, as amended 1924.

The Legislature must make the exemptions provided for by this section, and may exempt property other than that named in the Constitution, if the exemption has a public purpose and is designed to promote the public welfare. A statute exempting the property of college fraternities was held void as not promoting public welfare. A.T.G. Fraternity of Lawrence vs. Board of County Commissioners of Douglas County, 136 K. 675, 18 P. (2d) 573 (1933).

(Footnote forwarded)

II. Financial Powers and Limitations (Cont'd)

B. Exemptions (Cont'd)

(2) Counties and Other Local Units

See page 5, Art. XI, Sec. 1.

C. Borrowing and Use of Credit

(1) State

(a) For the purpose of defraying extraordinary expenses and making public improvements, the state may contract public debts; but such debts shall never, in the aggregate, exceed one million dollars, except as hereinafter provided. Every such debt shall be authorized by law for some purpose specified therein, . . . and every such law shall provide for levying an annual tax sufficient to pay the annual interest of such debt, and the principal thereof, when it shall become due; and shall specifically appropriate the proceeds of such taxes to the payment of such principal and interest; and such appropriation shall not be repealed nor the taxes postponed or diminished, until the interest and principal of such debt shall have been wholly paid. 12/

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(Footnote #11 - Continued)

The enumerated exemptions are not exclusive. The Legislature can provide other exemptions or increase the personal property exemptions of each family, so long as the exempt property benefits the public in a way different from other property. *Wheeler vs. Weightman*, 96 K. 50, 149 P. 977 (1915).

Where a hospital corporation has no capital stock and pays no dividends, and all the income of the hospital from pay patients and gifts is used for the care of the sick, such a hospital is used exclusively for charitable purposes within the meaning of this section. *Nuns of Third Order of St. Dominic vs. Younkin*, 118 K. 554, 235 P. 869 (1925).

A Masonic Temple is not exempt from taxation as a charitable institution. *Manhattan Masonic Temple Association vs. Rhodes*, 132 K. 646, 296 P. 734 (1931).

The residence of a college president owned by a college is exempt from taxation. 120 K. 496, 243 P. 1055 (1926).

12. Constitution, Art. XI, Sec. 6.

This section must be read together with the following sections: Constitution, Art. XI, Sec. 7 and 8 found in Sec. II, par. C, (1), (b), and (c), on pages 7 and 8 herein. *Griffith vs. Davis*, 113 K. 4, 213 P. 171 (1923).

Under this section debts may be created for "the purpose of defraying extraordinary expenses and making public improvements" up to the sum of \$1,000,000. The phrase "except as hereinafter provided" necessarily refers to the two following sections. Debts in excess of \$1,000,000 for the purpose of  
(Footnote forwarded)

II. Financial Powers and Limitations (Cont'd)

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

(1) State (Cont'd)

(b) No debt shall be contracted by the state except as herein provided, unless the proposed law for creating such debt shall first be submitted to a direct vote of the electors of the state at some general election; and if such proposed law shall be ratified by a majority of all the votes cast at such general election, then it shall be the duty of the legislature next after such election to enact such law and create such debt, subject to all the provisions and restrictions provided in the preceding section of this article. 13/

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(Footnote #12 - Continued)

defraying extraordinary expenses and making public improvements may be contracted if ratified by a majority of the votes cast. Debts for military purposes need not be so ratified. Extraordinary expenses mean those other than ordinary expenses. "They are such as must be incurred by the State for the promotion of the general welfare, compelled by some unforeseen condition which is not regularly provided for by law, such as flood, famine, fire, earthquake, pestilence, war or any other condition that will compel the State to put forward its highest endeavors to protect the people, their property, liberty, or lives."

A \$25,000,000 bond issue to provide a bonus for World War veterans was held to be an extraordinary expense and valid. State ex rel. Griffith vs. Davis, 113 K. 4, 213 P. 171 (1923).

"Debts" within the meaning of the Constitution are debts to be paid by a general property tax. Warrants issued by the State Highway Commission to secure money borrowed from an agency of the Federal Government payable out of a special tax on motor vehicles and motor fuels are not debts within the meaning of the Constitution. State vs. Kansas State Highway Commission, 138 K. 913, 28 P. (2d) 770 (1934).

13. Constitution, Art. XI, Sec. 7.

This section must be read together with the preceding section. A bond issue in excess of \$1,000,000 for "the purpose of defraying extraordinary expenses and making public improvements" is valid if ratified by a majority of the votes cast. State ex rel. Griffith vs. Davis, 113 K. 4, 213 P. 171 (1923), see page 6, footnote 12.

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II. Financial Powers and Limitations (Cont'd)

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

(1) State (Cont'd)

(c) The state may 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 which the loan was authorized, or to the repayment of the debt thereby created. 14/

(d) The state shall never be a party in carrying on any work of internal improvement except that it may adopt, construct, reconstruct and maintain a state system of highways, but no general property tax shall ever be laid nor bonds issued by the state for such highways. 15/

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14. Constitution, Art. XI, Sec. 8.

A \$25,000,000 bond issue to provide bonuses for soldiers and sailors of the World War was held valid as coming within this section, because such service men were defending the State in time of war. Consequently, it is not necessary that this bond issue or an additional bond issue of \$7,000,000 for the same purpose, be ratified by a vote of the people. State ex rel. Griffith vs. Davis, 113 K. 4, 213 P. 171 (1923); State ex rel. Griffith vs. Davis, 115 K. 10, 221 P. 895 (1923). See page 6, footnote 12.

15. Constitution, Art. XI, Sec. 9 as amended 1928.

For a special tax for highway purposes, see page 4, Sec. II, par. A, (1), (e).

Under this section the State is forbidden to engage in "internal improvements", but may engage in "public improvements" under section 6. See page 6, Sec. II, par. C, (1), (a).

A statute authorizing a loan from the Federal Reconstruction Finance Corporation for the purpose of the development, control, and utilization of water, prevention of soil erosion, and flood control, was held to be for the purpose of works of internal improvement, and hence to violate this section. State ex rel. Boynton vs. Atherton, 139 K. 197, 30 P. (2d) 291 (1934).

The framers of the Constitution by the term "public improvements" used in section 6 meant public buildings, such as the State house, State penal, educational and eleemosynary institutions, while the term "internal improvements" used in this section applied to turnpikes, canals, and the like. State ex rel. Boynton vs. Kansas State Highway Commission, 138 K. 913, 28 P. (2d) 770 (1934). See page 6, Sec. II, par. C, (1), (a).

A statute authorizing the State to construct, operate, and maintain an oil refinery had as its object a work of "internal improvement" and hence was void under this section. State ex rel. Coleman vs. Kelly, 71 K. 811, 81 P. 450 (1905).

(Footnote forwarded)

II. Financial Powers and Limitations (Cont'd)

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

(2) Counties

No provisions. The county debt limit is regulated by statute, see page 5, footnote 10.

(3) Other Local Units

See page 5, Sec. II, par. A, (3), and footnote 10.

D. Other Income 16/

E. Appropriations and Expenditures

(1) State

No money shall be drawn from the treasury, except in pursuance of a specific appropriation made by law, and no appropriation shall be for a longer term than two years. 17/

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(Footnote #15 - Continued)

A drainage district may not engage in the business of conducting a sand plant for profit under this section. State ex rel. Mellott vs. Kaw Valley Drainage District of Wyandotte County, 126 K. 43, 267 P. 31 (1928).

16. Sections of the Constitution provide that certain funds such as proceeds of the sale of public lands, and escheats to the State, shall be set aside in a common school fund. The principal of this fund shall not be touched, but the interest shall be used for the support of common schools. The manner of distributing these funds throughout the State is provided for. A similar fund is set up for the support of the State University. A board is set up to administer these school funds. Constitution, Art. VI, Sec. 3-8. See Treadwell vs. Beebe and Rishel vs. McPherson County, under footnote 3, page 1.

17. Constitution, Art. II, Sec. 24, as amended 1876.

Special taxes, which the State may levy on motor vehicles and motor fuels, for the maintenance of highways, need not be paid into the State treasury, and therefore this section is inapplicable to such taxes, even though such funds are paid into the treasury as a matter of convenience. Consequently the Legislature need not make a specific appropriation of these funds. State ex rel. Boynton vs. Kansas State Highway Commission, 139 K. 391, 32 P. (2d) 493 (1934).

10. Kansas

II. Financial Powers and Limitations (Cont'd)

E. Appropriations and Expenditures (Cont'd)

(2) Counties and Other Local Units

No provisions.

III. Provisions Affecting Legislation

A. Regular Sessions of the Legislature

All sessions of the legislature shall be held at the state capital, and beginning with the session of eighteen hundred and seventy-seven, all regular sessions shall be held once in two years, commencing on the second Tuesday of January of each alternate year thereafter. 18/

B. Special Sessions of the Legislature

He (the Governor) may, on extraordinary occasions, convene the legislature by proclamation, and shall, at the commencement of every session, communicate in writing such information as he may possess in reference to the condition of the state, and recommend such measures as he may deem expedient. 19/

C. Powers of Initiative and Referendum

No banking law shall be in force until the same shall have been submitted to a vote of the electors of the state at some general election, and approved by a majority of all the votes cast at such election. 20/

D. Legislative Enactment

(1) Every bill shall be read on three separate days in each house, unless in case of emergency. Two-thirds of the house where such bill is pending may, if deemed expedient, suspend the

18. Constitution, Art. II, Sec. 25.

19. Constitution, Art. I, Sec. 5.

The question of the existence of an extraordinary occasion of sufficient gravity to justify a call for an extra session of the legislature is to be determined by the Governor alone, in the exercise of his discretion as a sworn officer, and this discretion is not subject to challenge or review by the courts. Farrelly vs. Cole, 60 K. 356, 56 P. 492 (1899).

20. Constitution, Art. XIII, Sec. 8.

This section pertains only to banks having authority to issue their own circulating currency, of which there have been none in this State for 50 years or more. State vs. Dietrich, 117 K. 62, 230 P. 329 (1924), citing Pape vs. Capital Bank, 20 K. 440 (1878).

III. Provisions Affecting Legislation (Cont'd)

D. Legislative Enactment (Cont'd)

rules; but the reading of the bill by sections, on its final passage, shall in no case be dispensed with. 21/

(2) 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 contain the entire act revived or the section or sections amended, and the section or sections so amended shall be repealed. 21/

(3) All laws of a general nature shall have a uniform operation throughout the state; and in all cases where a general law can be made applicable, no special law shall be enacted; and whether or not a law enacted is repugnant to this provision of the constitution shall be construed and determined by the courts of the state. 23/

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21. Constitution, Art. II, Sec. 15.

Each house of the Legislature is the exclusive judge as to when a case of emergency arises or exists within the meaning of this section, and it is not necessary, in order that the reading of the bill shall be considered valid, that the emergency shall be stated upon the journal. *Weyand vs. Stover*, 35 K. 545 (1886).

22. Constitution, Art. II, Sec. 16.

Where an act made provision for indebtedness of all types of governmental units, naming them specifically, it was held not to violate this section, and not to contain more than one subject, since all the provisions of the act related to indebtedness of governmental units. *State ex rel. Boynton vs. Board of Education of City of Topeka*, 137 K. 451, 21 P. (2d) 295 (1933).

Where the title of a statute mentioned maintenance of an airport and the body of the act authorized subletting of an airport, the title was held to be sufficient. *Concordia-Arrow Flying Service Corporation vs. City of Concordia*, 131 K. 247, 289 P. 955 (1930).

23. Constitution, Art. II, Sec. 17, as amended 1906.

A statute applicable to cities above a certain population does not contravene this section and is uniform in operation even though the statute is now applicable to Kansas City only, because other cities may later come within the classification set up. *State ex rel. Smith vs. French*, 130 K. 464, 286 P. 204 (1930).

A statute applicable to counties having a population of more than 85,000 and less than 130,000 is a proper classification and valid under this section. *State ex rel. Wertz vs. North Wichita Drainage District of Sedgwick County*, 127 K. 207, 272 P. 177 (1928).

12. Kansas

III. Provisions Affecting Legislation (Cont'd)

D. Legislative Enactment (Cont'd)

(4) The legislature shall prescribe the time when its acts shall be in force, and shall provide for the speedy publication of the same; and no law of a general nature, shall be in force until the same be published. . . . 24/

IV. Constitutional Amendment or Revision

A. By Proposal of Legislature or People

Propositions for the amendment of this constitution may be made by either branch of the legislature; and if two-thirds of all the members elected to each house shall concur therein, such proposed amendments, together with the yeas and nays, shall be entered on the journal; and the secretary of state shall cause the same to be published . . . for three months preceding the next election for representatives, at which time the same shall be submitted to the electors, for their approval or rejection; and if a majority of the electors voting on said amendments, at said election, shall adopt the amendments, the same shall become a part of the constitution . . . not more than three propositions to amend shall be submitted at the same election. 25/

B. By Constitutional Convention

Whenever two-thirds of the members elected to each branch of the legislature 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 of members of the legislature, for or against a convention; and if a majority of all the electors voting at such election shall have voted for a convention, the legislature shall, at the next session, provide for calling the same. 26/

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24. Constitution, Art. II, Sec. 19.

25. Constitution, Art. XIV, Sec. 1.

The provision of the Constitution that a proposed amendment, if approved by both branches of the Legislature, shall be voted upon at the next general election, is mandatory; and if such a proposition is not submitted at the next general election, the Secretary of State has no authority to provide for its submission at any later time. State ex rel. Dawson vs. Sessions, 87 K. 497, 124 P. 403 (1912).

26. Constitution, Art. XIV, Sec. 2.



