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ANALYSIS OF CONSTITUTIONAL PROVISIONS
AFFECTING PUBLIC WELFARE IN THE STATE OF
NEW HAMPSHIRE

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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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New Hampshire

ANALYSIS OF CONSTITUTIONAL PROVISIONS AFFECTING
PUBLIC WELFARE IN NEW HAMPSHIRE¹

I. Incidence of Responsibility for Welfare Program²

A. Economy being a most essential virtue in all states, especially in a young one; no pension shall be granted, but in consideration of actual services; and such pensions ought to be granted with great caution, by the legislature, and never for more than one year at a time.³

¹Constitution (1783), with all amendments to April 15, 1937, as published by the Department of State in the New Hampshire Manual for the General Court, (1937).

The Legislature of New Hampshire is styled the General Court. Constitution, Part II, Art. 3.

Part II, Art. 73 of the Constitution provides that "each branch of the legislature as well as the governor and council shall have authority to require opinions of the justices of the superior court upon important questions of law and upon solemn occasions."

²"The validity of pauper acts has never been assailed. * * * It is true that a view may be taken that public support of paupers is gratuitous. The agencies of the state have no express constitutional duty to that end. The Legislature may or may not arrange for the support as it may please and any support furnished may be limited as it may see fit. But support of paupers has long been an accepted exercise of valid authority under the police power in promotion of the general welfare. No one would think of it as condemned by the Constitution because of some theory of gratuity involved. The same argument may be applied to practically all instances of support and aid furnished in carrying out a purpose or program justified in pursuance of the police power. * * * In the avoidance and relief of pauperism the state acts for its own benefit and welfare." In re Opinion of the Justices, 85 N. H. 562, 154 A. 217 (1931). See footnote 3, below.

"Under the police power the state has authority to legislate for the protection and preservation of the health, safety, morals, and general welfare of its citizens. It is peculiarly the province of the Legislature to determine what rules and regulations are needed to achieve the above ends." Chung Mee Restaurant Company vs. Healy, 86 N. H. 483, 171 A. 263, 264 (1934).

When the police power of the State is invoked by legislative act for a proper purpose, "such a statute will not be declared unconstitutional merely because it restricts some of the rights secured to individuals by fundamental law. It will be declared invalid only when the restrictions thus imposed are found to be unreasonable." Dederick vs. Smith, 184 A. 595, 599 (1936).

³Constitution, Part I, Art. 36.

In an advisory opinion the Supreme Court stated that if the term "old age pensions" means pensions, the right to which depends upon age alone, they are prohibited by this section. Pensions can only be granted in return for services which are fairly describable as actual, not constructive or imaginary. Nor in the case of allowable pensions can the Legislature at one session authorize the granting of a pension for a year, and by another separate act authorize the granting of a like pension for another year, in spite of the fact that since the adoption of the Constitution the sessions of the Legislature have been changed from annual to biennial. This provision was said to apply to the political subdivisions of the State as well as to the State Government itself. In re Opinion of the Justices, 78 N. H. 617, 100 A. 49 (1917).

In a later advisory opinion the Supreme Court stated that while under this section pensions can only be granted in return for services and that pensions based on age

I. Incidence of Responsibility for Welfare Program—Continued

B. * * * it shall be the duty of the legislators and magistrates, * * * to countenance and inculcate the principles of humanity and general benevolence, public and private charity * * * among the people:⁴ * * *.

II. Financial Powers and Limitations

A. Taxation and Assessments

(1) State

(a) Every member of the community has a right to be protected by it, in the enjoyment of his life, liberty, and property; he is therefore bound to contribute his share in the expense of such protection,⁵ * * *.

(b) No subsidy, charge, tax, impost, or duty, shall be established, fixed, laid, or levied, under any pretext whatsoever, without the consent of the people, or their representatives in the legislature, or authority derived from that body.⁶

(c) And further, full power and authority are hereby given and granted to the said general court, * * * to impose and levy proportional and reasonable assessments, rates, and taxes, upon all the inhabitants of, and residents within, the said state; and upon all estates within the same; to be issued and disposed of by warrant, under the hand of the governor of this state for the time being, with the advice and consent of the council, for the public service, in the necessary defense

alone would be invalid, the State has the undoubted right in the exercise of its police power to make provision for the poor. Therefore, a statute granting benefits to persons above a certain age *based on need* would be valid as a pauper law. In re Opinion of the Justices, 85 N. H. 562, 154 A. 217, (1931).

Furthermore, the State may legislate to prevent pauperism as well as to relieve it. Paupers may be reasonably classified, and the fact that needy persons over 65 years of age under such proposed statute would be given slightly different benefits from other needy persons would not render the statute invalid. Ibid.

Similarly, such a statute granting aid to persons owning property not in excess of \$2,000 in value would be valid. Such a provision would not necessarily grant relief to persons other than paupers as a person might conceivably be worth that much and still be in need of aid for himself and family. Ibid.

The above proposed old age assistance statute would be constitutional on all points raised with one exception. This involved the question of whether the administration of the act could be vested in the county courts. Such a provision would be invalid as constituting an unconstitutional delegation of authority to the judiciary. Ibid.

⁴Constitution, Part II, Art. 82.

⁵Constitution, Part I, Art. 12.

See p. 3, par. (d), and footnote 8.

⁶Constitution, Part I, Art. 28.

See p. 3, par. (d), and footnote 8.

II. Financial Powers and Limitations—Continued

A. Taxation and Assessments—Continued

(1) State—Continued

and support of the government of this state, and the protection and preservation of the subjects thereof, according to such acts as are, or shall be, in force within the same;⁷ * * *.

(d) The public charges of government, or any part thereof, may be raised by taxation upon polls, estates, and other classes of property, including franchises and property when passing by will or inheritance; and there shall be a valuation of the estates within the state taken anew once in every five years, at least, and as much oftener as the general court shall order.⁸

(2) Counties and Other Local Units

See page 2, paragraphs (a) and (b).⁹

⁷Constitution, Part II, Art. 5.

See par. (d), above and footnote 8, below.

⁸Constitution, Part II, Art. 6, as amended 1903.

"Except in the case of the tax upon polls, taxes are required to be laid ad valorem. * * * There is no warrant for the imposition of any other tax than one assessed upon a proportional and equal valuation of all the different kinds of property on which it is to be laid." In re Opinion of the Justices, 82 N. H. 561, 138 A. 284 (1927). Following: State vs. Express Company, 60 N. H. 219 (1882).

Since this section was amended in 1903, the Legislature has been empowered to impose taxes not only upon polls and estates, but also upon other classes of property, including franchises and property when passing by will or inheritance. Powers of taxation over these additional subjects only were granted by this amendment and it did not affect the rule of uniformity of taxation. "Any other classification for taxation of property or rights is contrary to the * * * Constitution as it has been interpreted since 1784." An inheritance tax statute, assessing different rates against different classes of persons, was held unconstitutional since it violated the rule of uniformity. Williams vs. State, 81 N. H. 341, 125 A. 661 (1924).

An inheritance tax statute, which granted certain exemptions but assessed a uniform rate, was constitutional since it was held that the Legislature could classify between taxables and nontaxables. Thompson vs. Kidder, 74 N. H. 89, 65 A. 392 (1906).

The Supreme Court in an advisory opinion stated that an income tax at a fixed rate would be constitutional and that exemptions could be granted without violating the rule of uniformity. In re Opinion of the Justices, 82 N. H. 561, 138 A. 284, 291 (1927).

When the Legislature asked whether an income tax could legally provide for different rates and different exemptions on different classes, the Supreme Court stated that income taxes must be levied at a common rate but that "the exemptions as to earned income and incomes from intangibles need not be in the same amount." In re Opinion of the Justices, 149 A. 321 (1930).

The provision that "public charges of government" may be raised by taxation means that the Legislature may authorize taxation only for public purposes. The granting of an old age pension *regardless of need* would not be a public purpose within the meaning of the Constitution. The granting of old age benefits to persons *in need*, however, was held to be a public purpose, since relief to the needy has long been considered in New Hampshire as promotive of the general welfare. In re Opinion of the Justices, 85 N. H. 562, 154 A. 217 (1931).

⁹Counties and other municipal corporations are subdivisions of the State exercising part of its powers of government. They can only exercise those powers which are conferred upon them by statute. O'Brien vs. Rockingham County, 80 N. H. 522, 120 A. 254 (1923).

II. Financial Powers and Limitations—Continued

B. Exemptions

No provision.¹⁰

C. Borrowing and Use of Credit

(1) State

No provision.

(2) Counties and Other Local Units¹¹

(a) * * * the general court shall not authorize any town to loan or give its money or credit directly or indirectly for the benefit of any corporation having for its object a dividend of profits or in any way aid the same by taking its stock or bonds.¹²

D. Other Income

No provision.

E. Appropriations and Expenditures

(1) No moneys shall be issued out of the treasury of this state, and disposed of, (except such sums as may be appropriated for the redemption of bills of credit, or treasurer's notes, or for the payment of interest arising thereon) but by warrant under the hand of the governor for the time being, by and with the advice and consent of the council, for the necessary support and defense of this state, and for the necessary protection and preservation of the inhabitants thereof, agreeably to the acts and resolves of the general court.¹³

(2) * * * Provided, nevertheless, that no money raised by taxation shall ever be granted or applied for the use of the schools or institutions of any religious sect or denomination.¹⁴ * * *

III. Provisions Affecting Legislation

A. Regular Sessions of Legislature

The senate and house shall assemble biennially on the first Wednesday of January and at such other times as they may judge necessary;

¹⁰The Legislature may make reasonable exemptions from taxation without violating the uniformity clauses of the Constitution. In re Opinion of the Justices, 82 N. H. 561, 138 A. 284 (1927), see p. 3, footnote 8.

The power of the Legislature to classify property into taxable and nontaxable groups includes the power to grant reasonable exemptions from taxation. In re Opinion of the Justices, 178 A. 125 (1935).

¹¹Counties and other municipal corporations are subdivisions of the State and may only exercise those powers granted by the Legislature. O'Brien vs. Rockingham County, 80 N. H. 522, 120 A. 254 (1923).

¹²Constitution, Part II Art. 5.

¹³Constitution, Part II, Art. 55.

¹⁴Constitution, Part II, Art. 82.

III. Provisions Affecting Legislation—Continued

A. Regular Sessions of Legislature—Continued

and shall dissolve and be dissolved, seven days next preceding the said first Wednesday of January biennially;¹⁵ * * *.

B. Special Sessions of Legislature

The governor, with advice of council, shall have full power and authority, in the recess of the general court, to prorogue the same from time to time, not exceeding ninety days, in any one recess of said court; and during the sessions of said court, to adjourn or prorogue it to any time the two houses may desire, and to call it together sooner than the time to which it may be adjourned, or prorogued, if the welfare of the state should require the same.¹⁶

C. Powers of Initiative and Referendum

No provision.

D. Legislative Enactment

(1) All money bills shall originate in the house of representatives; but the senate may propose, or concur with, amendments, as on other bills.¹⁷

(2) Every bill which shall have passed both houses of the general court, shall, before it become 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 enter the objections at large on their journal, and proceed to reconsider it; if after such reconsideration, two thirds of that house shall agree to pass the bill, it shall be sent, together with such objections, to the other house, by which it shall likewise be reconsidered, and, if approved by two thirds of that house, it shall become a law. * * * If any bill shall not be returned by the governor within five days (Sundays excepted) after it shall have been presented to him, the same shall be a law in like manner as if he had signed it unless the legislature, by their adjournment, prevent its return, in which case it shall not be a law.¹⁸

IV. Constitutional Amendment or Revision

A. By Proposal of Legislature or People

No provision.

¹⁵Constitution, Part II, Art. 3.

¹⁶Constitution, Part II, Art. 49.

¹⁷Constitution, Part II, Art. 17

¹⁸Constitution, Part II, Art. 43.

Art. 44, Part II of the Constitution provides that every resolve shall be subject to the Governor's veto under the same rules as in the case of a bill.

IV. Constitutional Amendment or Revision—Continued

B. By Constitutional Convention

(1) It shall be the duty of the selectmen, and assessors, of the several towns and places in this state, in warning the first annual meetings for the choice of senators, after the expiration of seven years from the adoption of this constitution, as amended, to insert expressly in the warrant this purpose, among the others for the meeting, to wit, to take the sense of the qualified voters on the subject of a revision of the constitution; and, * * * the moderator shall take the sense of the qualified voters present as to the necessity of a revision; and a return of the number of votes for and against such necessity, shall be made by the clerk sealed up, and directed to the general court at their then next session; and if it shall appear to the general court by such return, that the sense of the people of the state has been taken, and that, in the opinion of the majority of the qualified voters in the state, present and voting at said meetings, there is a necessity for a revision of the constitution, it shall be the duty of the general court to call a convention for that purpose, otherwise the general court shall direct the sense of the people to be taken, and then proceed in the manner before mentioned. The delegates to be chosen in the same manner, and proportioned, as the representatives to the general court; provided that no alterations shall be made in this constitution, before the same shall be laid before the towns and unincorporated places, and approved by two thirds of the qualified voters present and voting on the subject.¹⁹

(2) And the same method of taking the sense of the people, as to a revision of the constitution, and calling a convention for that purpose, shall be observed afterwards, at the expiration of every seven years.²⁰

¹⁹Constitution, Part II, Art. 98.

The delegates to constitutional conventions may be chosen at any election designated by the Legislature. In re Opinion of the Justices, 76 N. H. 586, 79 A. 29 (1911).

²⁰Constitution, Part II, Art. 99.

