

4020.P.F.

WORKS PROGRESS ADMINISTRATION

HARRY L. HOPKINS, ADMINISTRATOR

CORRINGTON GILL, ASSISTANT ADMINISTRATOR

HOWARD B. MYERS, DIRECTOR
DIVISION OF SOCIAL RESEARCH

ANALYSIS OF CONSTITUTIONAL PROVISIONS
AFFECTING PUBLIC WELFARE IN THE STATE OF
NORTH CAROLINA

APRIL 1, 1937

JUL 1 1937

PREPARED BY
ROBERT C. LOWE AND HELEN R. SHERFEY
LEGAL RESEARCH SECTION

UNDER THE SUPERVISION OF
A. ROSS ECKLER, COORDINATOR OF SPECIAL INQUIRIES
DIVISION OF SOCIAL RESEARCH

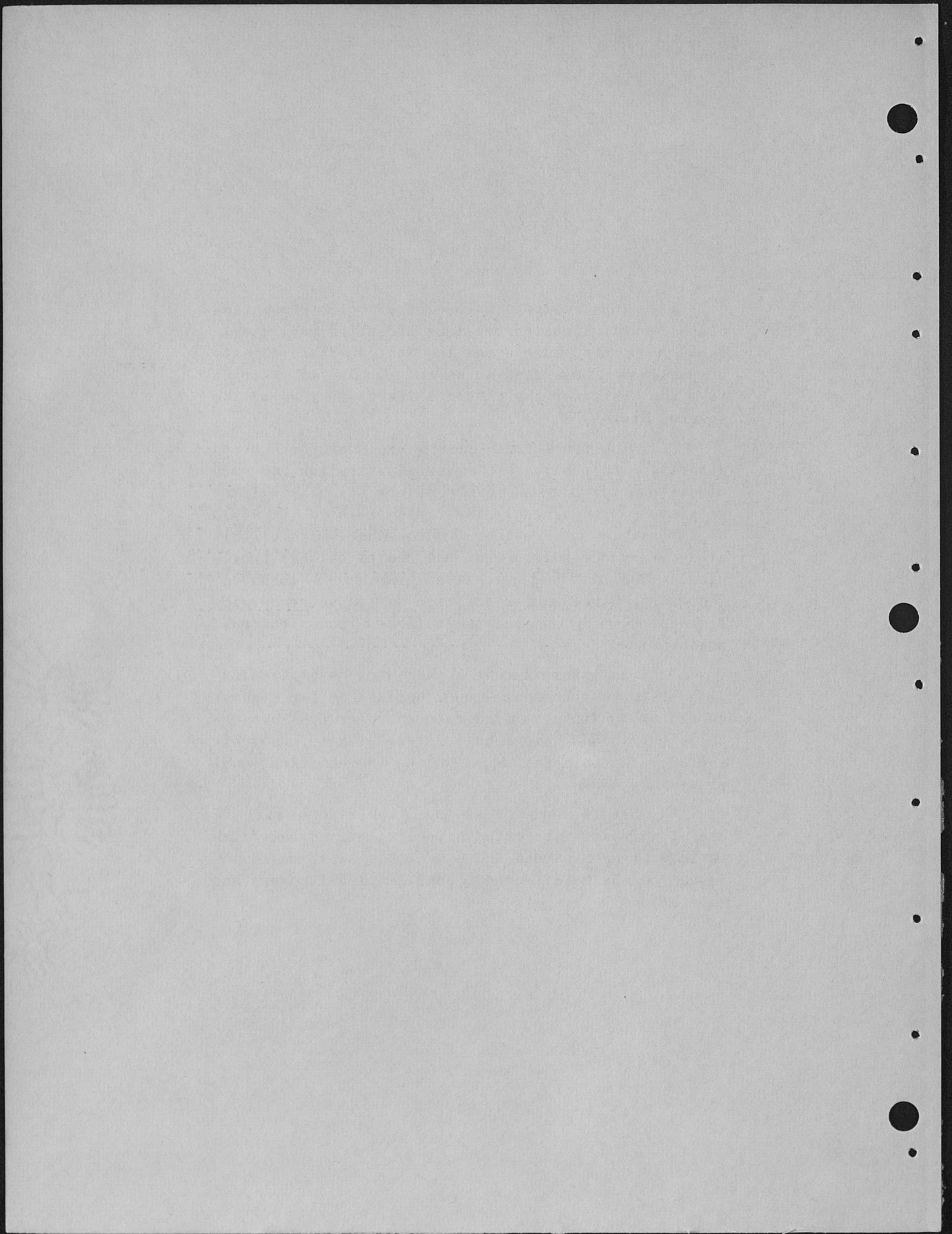
PREFACE

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.

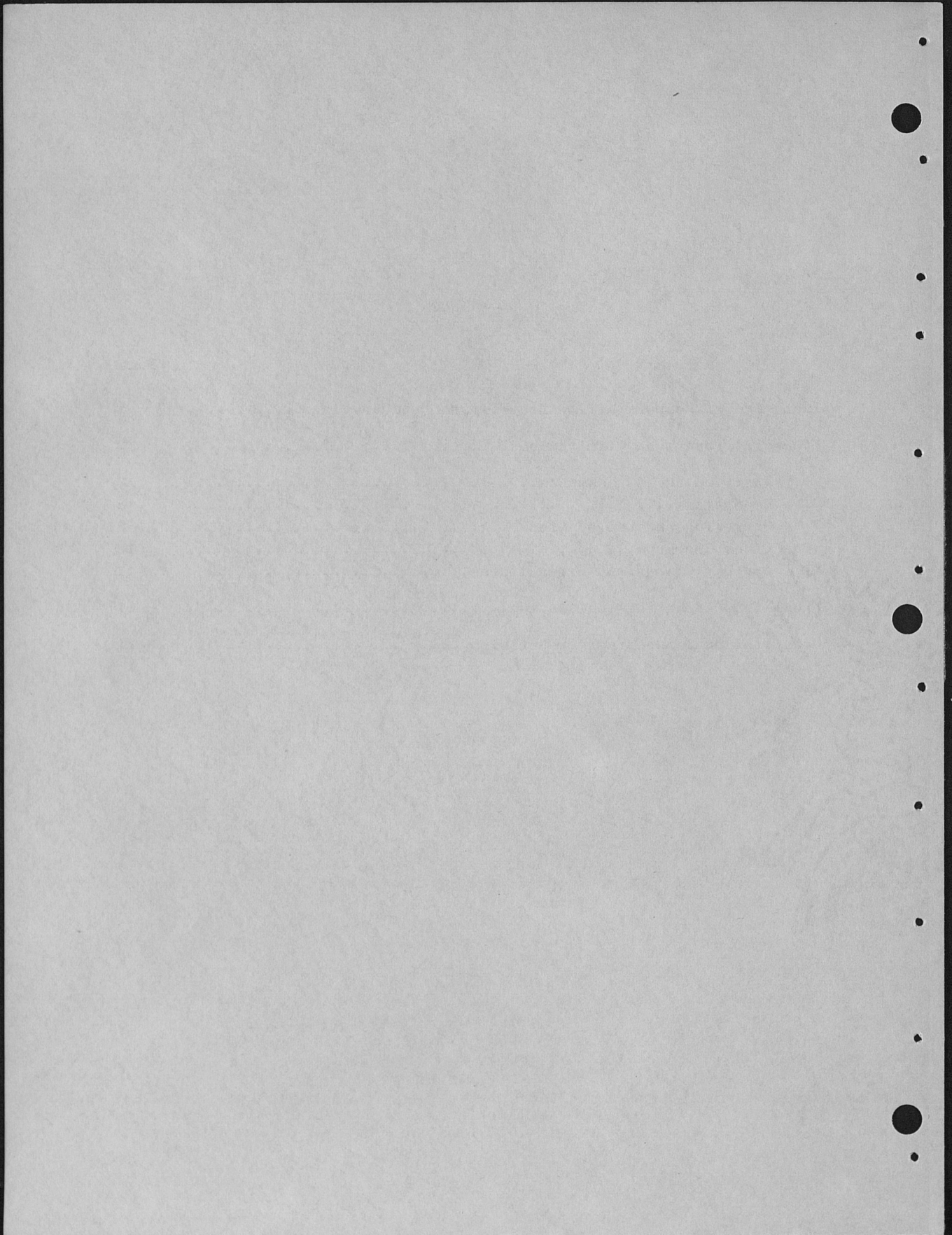
An attempt has been made, by a careful selection of the most recent cases decided by the highest courts of the States, to indicate wherever possible how these provisions have been construed. These cases are included in footnotes appended to the constitutional provisions shown.

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.



CONTENTS

	Page
Incidence of Responsibility for Welfare Program.....	1
Financial Powers and Limitations.....	2
Taxation and Assessments.....	2
Exemptions.....	6
Borrowing and Use of Credit.....	8
Other Income.....	10
Appropriations and Expenditures.....	11
Provisions Affecting Legislation.....	11
Constitutional Amendment or Revision.....	14



North Carolina

ANALYSIS OF CONSTITUTIONAL PROVISIONS AFFECTING
PUBLIC WELFARE IN NORTH CAROLINA¹

I. Incidence of Responsibility for Welfare Program

A. Beneficent provisions for the poor, the unfortunate and orphan, being one of the first duties of a civilized and Christian state, the General Assembly shall, at its first session, appoint and define the duties of a board of public charities, to whom shall be entrusted the supervision of all charitable and penal State institutions, and who shall annually report to the Governor upon their condition, with suggestions for their improvement.²

B. There shall also, as soon as practicable, be measures devised by the State for the establishment of one or more orphan houses, where destitute orphans may be cared for, educated and taught some business or trade.³

C. It shall be the duty of the Legislature, as soon as practicable, to devise means for the education of idiots and inebriates.⁴

¹Constitution (1868), including amendments to 1935, as published in Michie's North Carolina Code (1935); with all subsequent amendments to April 1, 1937.

²Constitution, Art. XI, Sec. 7.

The Legislature has the exclusive right in the exercise of the State's police power to determine and declare by whom and how the indigent of the State entitled to support shall be ascertained, and from what fund and by whom allowances for their support shall be made. Thus, the Legislature may disburse a part of a fund devoted by the Constitution in Art. V, Sec. 2 (see p. 2, par. E), to the support of the poor, by appropriating it directly to a particular class of indigent or unfortunate, such as Confederate veterans and their widows; or the Legislature may delegate authority to county officials to provide and care for this particular class, if in its opinion, their wants may be better supplied through agencies other than itself. Board of Education vs. Board of Commissioners, 113 N. C. 379, 18 S. E. 661 (1893).

All powers and functions of a county bear reference to the general State policy. A county is not strictly a municipal corporation but rather an instrumentality of the State, by means of which the State performs certain of its governmental functions within the territorial limits of such county. The State may therefore require the counties to provide for the care of the indigent sick and poor within their territorial limits. Martin vs. Board of Commissioners of Wake County, 208 N. C. 354, 180 S. E. 777 (1935).

A contract authorized by the Legislature to permit a county to contract with a hospital for the care and maintenance of indigent sick and poor for 30 years was held not against public policy. Ibid.

See p. 9, footnote 31.

³Constitution, Art. XI, Sec. 8.

⁴Constitution, Art. XI, Sec. 9.

I. Incidence of Responsibility for Welfare Program—Continued

D. The General Assembly may provide that indigent deaf-mute, blind, and insane of the State shall be cared for at the charge of the State.⁵

E. The proceeds of the State and county capitation tax shall be applied to the purposes of education and the support of the poor, but in no one year shall more than twenty-five per cents thereof be appropriated to the latter purpose.⁶

F. It shall be steadily kept in view by the Legislature and the board of public charities that all penal and charitable institutions should be made as nearly self-supporting as is consistent with the purposes of their creation.⁷

G. The General Assembly shall, * * * make provision for the erection and conduct of a States prison or penitentiary,⁸ * * *.

H. The General Assembly may provide for the erection of houses of correction, where vagrants and persons guilty of misdemeanors shall be restrained and usefully employed.⁹

I. A house or houses of refuge may be established whenever the public interest may require it, for the correction and instruction of other classes or offenders.¹⁰

J. The people have the right to the privilege of education, and it is the duty of the State to guard and maintain that right.¹¹

II. Financial Powers and Limitations

A. Taxation and Assessments

(1) State

(a) The power of taxation shall be exercised in a just and equitable manner, and shall never be surrendered, suspended or contracted away. Taxes on property shall be uniform as to each class of

⁵Constitution, Art. XI, Sec. 10.

⁶Constitution, Art. V, Sec. 2.

The proceeds from the State and county capitation taxes may not be diverted to any purposes other than those mentioned in this section. *Wagstaff vs. Central Highway Commission of Person County*, 177 N. C. 354, 99 S. E. 1 (1919). See p. 9, par. (b), and footnote 31, and *Board of Education vs. Board of Commissioners*, p. 1, footnote 2.

⁷Constitution, Art. XI, Sec. 11.

⁸Constitution, Art. XI, Sec. 3.

⁹Constitution, Art. XI, Sec. 4.

¹⁰Constitution, Art. XI, Sec. 5.

¹¹Constitution, Art. I, Sec. 27.

II. Financial Powers and Limitations—Continued

A. Taxation and Assessments—Continued

(1) State—Continued

property taxed.¹² Taxes shall be levied only for public purposes, and every act levying a tax shall state the object to which it is to be applied. The General Assembly may also tax trades, professions, franchises, and incomes: Provided, the rate of tax on incomes shall not in any case exceed ten per cent (10%),¹³ * * *.

(b) The total of the State and county tax on property shall not exceed fifteen cents on the one hundred dollars value of property, except when the county property tax is levied for a special purpose and with the special approval of the General Assembly, which may be done by special or general act: Provided, this limitation shall not apply to taxes levied for the maintenance of the public schools of the State for

¹²There is a fundamental distinction between general property taxes which are levied for revenue purposes for the support of the government, and special assessments which are imposed only on those owners of property who in respect to such ownership derive special benefits from the local improvements for which the assessments are to be expended. As to the former, the Constitution requires uniformity; the latter do not come within the constitutional restraints put upon general taxation, and could not be uniform by the very theory on which they are based. *Town of Saluda vs. Polk County*, 207 N. C. 180, 176 S. E. 298 (1934).

¹³Constitution, Art. V, Sec. 3.

The first three sentences of this section were adopted by the electorate at the November election in 1936; they replace former provisions relating to taxation of moneys, credits, and investments by a uniform rule, and real and personal property according to its true value in money, with certain exemptions therefrom. The limit on the rate of taxes on incomes as here set forth was adopted at the same time, in lieu of the former 8-percent limit.

An annual privilege tax of \$100 on bakers delivering bread and \$50 on those delivering cakes, pies, or doughnuts was held not to be a property tax but a privilege or license tax and was further held to be uniform and not discriminatory against those delivering bread. The court stated: "When a classification has been made by the General Assembly for the purpose of imposing license taxes on all trades, professions, franchises, or incomes, solely for * * * revenue, this court will not hold the classification invalid, unless it shall appear, clearly and unmistakably that the classification is unreasonable and arbitrary, resulting in an unjust discrimination. * * * A tax is uniform when it is equal upon all persons belonging to the described class upon which it is imposed." *Hilton vs. Harris*, 207 N. C. 465, 177 S. E. 411 (1934).

A statute which required from all lumber dealers using the public roads in Macon County a privilege or license fee in proportion to the quantity of lumber hauled was held not to be discriminatory on the ground that the hauling of lumber had a peculiar propensity for damaging dirt roads, but even if this were not so, "the Legislature can classify vocations and lay a tax of a different amount upon the different occupations." *Road Trustees vs. Brown & Company*, 159 N. C. 175, 75 S. E. 40 (1912).

Under this section as it formerly read (before the 1936 amendment), requiring that property should be taxed uniformly "according to its true value in money," it was held that an income tax was not a tax on property, and further that the Legislature could levy an income tax upon the net profits of a corporation in addition to the tax upon its property; and could tax so much of the net profits of a foreign corporation arising from interstate commerce as were properly apportionable to the State. *Maxwell vs. Kent-Coffey Manufacturing Company*, 204 N. C. 365, 168 S. E. 397 (1933), affirmed *Id.*, 291 U. S. 642, 54 Sup. Ct. 437, 78 L. Ed. 1040 (1934).

II. Financial Powers and Limitations—Continued

A. Taxation and Assessments—Continued

(1) State—Continued

the term required by article nine, section three, of the Constitution: Provided, further, the State tax shall not exceed five cents on the one hundred dollars value of property.¹⁴

(c) The General Assembly may levy a capitation tax on every male inhabitant of the State over twenty-one and under fifty years of age, which said tax shall not exceed two dollars, and cities and towns may levy a capitation tax which shall not exceed one dollar. No other capitation tax shall be levied. The commissioners of the several counties and of the cities and towns may exempt from the capitation tax any special cases on account of poverty or infirmity.¹⁵

(2) Counties

(a) The total of the State and county tax on property shall not exceed fifteen cents on the one hundred dollars value of property, except when the county property tax is levied for a special purpose and with the special approval of the General Assembly, which may be done by special or general act:¹⁶ Provided, this limitation shall not apply to taxes levied for the maintenance of the public schools of the State for the term required by article nine, section three, of the Constitution: Provided, further, the State tax shall not exceed five cents on the one hundred dollars value of property.¹⁷

An inheritance tax is not a tax upon property, but is a tax upon the privilege of acquiring property by will or descent. The State "may tax the privilege, grant exemptions, discriminate between relatives and between these and strangers, and is not precluded from the exercise of this power by constitutional provisions requiring uniformity and equality of taxation." *In re Morris' Estate*, 138 N. C. 259, 50 S. E. 882 (1905).

¹⁴Constitution, Art. V, Sec. 6.

¹⁵Constitution, Art. V, Sec. 1.

This section is self-executing. *Dixon vs. Board of County Commissioners*, 200 N. C. 215, 156 S. E. 852 (1931). See p. 2, par. E. The amount of the capitation taxes may not be increased beyond the limits of this section. *Wagstaff vs. Central Highway Commission of Person County*, 177 N. C. 354, 99 S. E. 1 (1919).

¹⁶The "special approval of the General Assembly" required by this section for the levying of a tax in excess of the 15-cent limitation, may be expressed by a special act restricted to one county, or by a general statute giving an option to any county to avail itself of such permission. *Board of Commissioners of Surry County vs. Wachovia Bank & Trust Company*, 178 N. C. 170, 100 S. E. 421 (1919). See p. 13, pars. (4) and (5).

¹⁷Constitution, Art. V, Sec. 6.

This section should be read with Art. VII, Sec. 7 (see p. 9, par. (b)) which provides in part that the county, city, or town authorities may not levy or collect any tax except for necessary expenses, unless by a majority vote of the electors therein. The county commissioners may levy taxes up to the limit of this section, and they may also tax in excess of the limits of this section for "special purposes" and on the "special approval of the General Assembly" without a vote of the electors

II. Financial Powers and Limitations—Continued

A. Taxation and Assessments—Continued

(2) Counties—Continued

(b) It shall be the duty of the commissioners to exercise a general supervision and control of the penal and charitable institutions, schools, roads, bridges, levying of taxes, and finances of the county, as may be prescribed by law.¹⁸ * * *

(c) See page 9, par. (b), and footnote 31.

(d) See page 4, par. (c), and page 2, par. E.

(3) Other Local Units¹⁹

(a) It shall be the duty of the Legislature to provide by general laws for the organization of cities, towns, and incorporated villages, and to restrict their power of taxation, assessment, borrowing money, contracting debts, and loaning their credit, so as to prevent abuses in assessment and in contracting debts by such municipal corporations.²⁰

provided such taxes are for "necessary county expenses." *Glenn vs. Board of Commissioners of Durham County*, 201 N. C. 233, 159 S. E. 439 (1931). For cases defining "necessary county expenses," see p. 9, footnote 31.

What constitutes a "special purpose" within the meaning of this section is a judicial question. *Glenn vs. Board of Commissioners of Durham County*, 201 N. C. 233, 159 S. E. 439 (1931).

The support of the county home for the aged and infirm, county aid and poor relief, and public health are "special purposes" for which county taxes may exceed the limit imposed by this section. *Atlantic Coast Line Railway Company vs. Lenoir County*, 200 N. C. 494, 157 S. E. 610 (1931).

Medical treatment and hospital care for the "indigent sick and afflicted poor" is a "special purpose" and a necessary county expense. Taxes for such purpose may exceed the constitutional tax limit, and do not require the approval of the electors. *Martin vs. Board of Commissioners of Wake County*, 208 N. C. 354, 180 S. E. 777 (1935).

It has been held in the following instances that the taxes were not levied for a "special purpose": To supplement the general county fund (*Norfolk-Southern Railway Company vs. Reid*, 187 N. C. 320, 121 S. E. 534 (1924)); to provide for deficiencies in the necessary expenses and revenue of certain counties (*Director General of Railroads vs. Commissioners of Bladen County*, 178 N. C. 449, 101 S. E. 91 (1919)); to meet "the other current expenses" of a county in certain years (*Williams vs. Craven County Commissioners*, 119 N. C. 520, 26 S. E. 150 (1896)).

¹⁸ Constitution, Art. VII, Sec. 2.

Counties are not regarded as municipal corporations in the strict legal sense, but as instrumentalities of the State, created and organized for the more convenient administration of government; and in the exercise of ordinary governmental functions, they are subject practically to the unlimited control of the Legislature, unless restricted by constitutional provision. *O'Neal vs. Jennette*, 190 N. C. 96, 129 S. E. 184 (1925).

¹⁹ The Legislature has full power to create taxing districts for special governmental purposes, and is not restricted to towns, counties, or other political subdivisions of the State. Thus, it may create a school district within the limits of a town with power to issue bonds for the purpose of establishing educational facilities. *Hammond vs. McRae*, 182 N. C. 747, 110 S. E. 102 (1921).

²⁰ Constitution, Art. VIII, Sec. 4.

This section imposes on the Legislature "a moral obligation" or duty to pass general laws relating to the organization of cities and towns, leaving it to the discretion of the Legislature to enact special laws as the needs of the municipalities

II. Financial Powers and Limitations—Continued

A. Taxation and Assessments—Continued

(3) Other Local Units—Continued

(b) See page 9, par. (b), and footnote 31.

(c) * * * cities and towns may levy a capitation tax which shall not exceed one dollar.²¹ * * *

(d) In each township there shall be biennially elected, by the qualified voters thereof, a clerk and two justices of the peace, who shall constitute a board of trustees, and shall, under the supervision of the county commissioners, have control of the taxes and finances, roads and bridges of the townships, as may be prescribed by law.²² * * *

B. Exemptions

(1) State

(a) Property belonging to the State, * * * shall be exempt from taxation. The General Assembly may exempt cemeteries and property held for educational, scientific, literary, charitable, or religious purposes; also wearing apparel, arms for muster, household and kitchen furniture, the mechanical and agricultural implements of mechanics and farmers; libraries and scientific instruments, or any other personal property, to a value not exceeding three hundred dollars. "The General Assembly may exempt from taxation not exceeding one thousand dollars (\$1,000.00) in value of property held and used as the place of residence of the owner."²³

(b) * * * the rate of tax on incomes shall not in any case exceed ten per cent (10%),²⁴ and there shall be allowed the

may require. *Kornegay vs. City of Goldsboro*, 180 N. C. 441, 105 S. E. 187 (1920).

In holding that a school district does not come within the purview of this section the court upheld the validity of a local act authorizing the issuance of school bonds by a county, which act placed no limit upon the amount of indebtedness that might be incurred. *Felmet vs. Commissioners of Buncombe County*, 186 N. C. 251, 119 S. E. 353 (1923).

²¹Constitution, Art. V, Sec. 1.

For further provisions of this section, see p. 4, par. (c), and footnote 15.

²²Constitution, Art. VII, Sec. 5.

It is the duty of the county commissioners to divide the county into districts, which districts shall have corporate powers for the necessary purposes of local government, and be known as townships. Art. VII, Secs. 3 and 4.

²³Constitution, Art. V, Sec. 5.

With the exception of the provision as to exemption from taxation of State or municipally owned property, which is self-executing and mandatory upon the Legislature, all other property is subject to taxation, in whole or in part or not at all, within the Legislature's discretion. Statutes exempting specific property from taxation, because of the purposes for which it is used, should be strictly construed.

The last sentence of this section was adopted by the electorate at the November election, 1936. See Public Laws of North Carolina (1935), p. 745.

²⁴See p. 2, par. (a), and p. 3, footnote 13.

II. Financial Powers and Limitations—Continued

B. Exemptions—Continued

(1) State—Continued

following exemptions, to be deducted from the amount of annual incomes, to-wit: for married man with a wife living with him, or to a widow or widower having minor child or children, natural or adopted, not less than \$2,000; to all other persons not less than \$1,000, and there may be allowed other deductions (not including living expenses) so that only net incomes are taxed.²⁵

(2) Counties and Other Local Units

(a) Property belonging to * * * municipal corporations, shall be exempt from taxation.²⁶ * * *

(b) The General Assembly may levy a capitation tax on every male inhabitant of the State over twenty-one and under fifty years of age, * * * and cities and towns may levy a capitation tax * * *. The commissioners of the several counties and of the cities and towns may exempt from the capitation tax any special cases on account of poverty or infirmity.²⁷

²⁵ Constitution, Art. V, Sec. 3, as amended 1936.

²⁶ Constitution, Art. V, Sec. 5.

Under a statute exempting from taxation municipal or State owned property when used exclusively for public purposes, it was held that property acquired by a municipality in a tax foreclosure proceeding and used by it for rental purposes was not exempt from county taxes on the ground that this section of the Constitution exempting State and municipally owned property does not apply where the property is used in a business or proprietary capacity. *Town of Benson vs. Johnston County*, 209 N. C. 751, 185 S. E. 6 (1936).

A statute levying an excise tax upon all distributors of gasoline and including a municipality within the definition "distributor" was held valid as to a municipality using the gasoline solely for governmental purposes on the ground that the exemption as to municipalities provided in this section applies only to taxes on property, and does not extend to excise taxes. *Stedman vs. City of Winston-Salem*, 204 N. C. 203, 167 S. E. 813 (1933).

It was held that a drainage district is not a municipal corporation within the meaning of this section. *Board of Drainage Commissioners of Muddy Creek Drainage District vs. Webb & Company*, 160 N. C. 594, 76 S. E. 552 (1912).

In a later case where a statute created the Morehead City Port Commission, a corporation for the purpose of constructing and maintaining terminals to facilitate water transportation, and exempted its bonds from State and municipal taxation, the court upheld the exemption without reference to the *Webb Company* case (case immediately preceding), "for the reason that the property of the port commission will be held and the bonds will be issued solely for public purposes." *Webb vs. Port Commission of Morehead City*, 205 N. C. 663, 172 S. E. 377 (1934). See p. 6, footnote 23.

A hospital organized as a business corporation but accepting charity patients was held not to be exempt from taxation under a statute exempting the property of charitable associations or of hospitals used exclusively for charitable purposes. *Salisbury Hospital, Incorporated vs. Rowan County*, 205 N. C. 8, 169 S. E. 805 (1933).

²⁷ Constitution, Art. V, Sec. 1.

II. Financial Powers and Limitations—Continued

C. Borrowing and Use of Credit

(1) State

(a) The General Assembly shall have the power to contract debts and to pledge the faith and credit of the State * * * for the following purposes:

"To fund or refund a valid existing debt;

"To borrow in anticipation of the collection of taxes due and payable within the fiscal year to an amount not exceeding fifty per centum of such taxes;

"To supply a casual deficit;

"To suppress riots or insurrections, or to repel invasions.

"For any purpose other than these enumerated, the General Assembly shall have no power, during any biennium, to contract new debts on behalf of the State to an amount in excess of two-thirds of the amount by which the State's outstanding indebtedness shall have been reduced during the next preceding biennium, unless the subject be submitted to a vote of the people of the State; * * *. In any election held in the State * * * under the provisions of this section, the proposed indebtedness must be approved by a majority of those who shall vote thereon."²⁸ * * *

(b) * * * And the General Assembly shall have no power to give or lend the credit of the State in aid of any person, association, or corporation, except to aid in the completion of such railroads as may be unfinished at the time of the adoption of this Constitution, or in which the State has a direct pecuniary interest, unless the subject be submitted to a direct vote of the people of the State, and be approved by a majority of those who shall vote thereon.²⁹

(2) Counties and Other Local Units

(a) The General Assembly shall have the power * * * to authorize counties and municipalities to contract debts and pledge their faith and credit for the following purposes:

²⁸ Constitution, Art. V, Sec. 4.

So much of Art. V, Sec. 4, as is set forth in par. (a), (State), above, was adopted by the electorate in November 1936. See Public Laws of North Carolina (1935), p. 271.

²⁹ Constitution, Art. V, Sec. 4.

It was held that neither the credit of the State nor the municipality of Morehead City was pledged in aid of the "Port Commission of Morehead City," a corporation created by statute for the governmental purpose of constructing and maintaining transportation terminals, where the statute provided that bonds issued by the corporation should be payable only out of revenues derived from the operation of the terminals and solely on the credit of the corporation. *Webb vs. Port Commission of Morehead City*, 205 N. C. 663, 172 S. E. 377 (1934).

See p. 9, footnote 31.

II. Financial Powers and Limitations—Continued

C. Borrowing and Use of Credit—Continued

(2) Counties and Other Local Units—Continued

"To fund or refund a valid existing debt;

"To borrow in anticipation of the collection of taxes due and payable within the fiscal year to an amount not exceeding fifty per centum of such taxes;

"To supply a casual deficit;

"To suppress riots or insurrections, or to repel invasions.

"For any purpose other than these enumerated, * * * the General Assembly shall have no power to authorize counties or municipalities to contract debts, and counties and municipalities shall not contract debts, during any fiscal year, to an amount exceeding two-thirds of the amount by which the outstanding indebtedness of the particular county or municipality shall have been reduced during the next preceding fiscal year, unless the subject be submitted to a vote of the people of the particular county or municipality. In any election held * * * in any county or municipality under the provisions of this section, the proposed indebtedness must be approved by a majority of those who shall vote thereon."³⁰ * * *

(b) No county, city, town, or other municipal corporation shall contract any debt, pledge its faith or loan its credit, nor shall any tax be levied or collected by any officers of the same except for the necessary expenses thereof, unless by a vote of the majority of the qualified voters therein.³¹

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

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

³⁰Constitution, Art. V, Sec. 4.

So much of Art. V, Sec. 4, as is set forth in par. (a), (Counties), p. 8, was adopted by the electorate in November 1936. See Public Laws of North Carolina (1935), p. 271.

³¹Constitution, Art. VII, Sec. 7.

In construing this section with Art. V, Sec. 6 (see p. 3, par. (b)) providing for an exception to the tax limit which may be imposed by counties for special purposes, it was held "(1) that for necessary expenses the municipal authorities may levy a tax up to the constitutional limitation without a vote of the people and without legislative permission; (2) that for necessary expenses they may exceed the constitutional limitation by legislative authority, without a vote of the people; and (3) that for purposes other than necessary expenses a tax cannot be levied either within or in excess of the constitutional limitation except by a vote of the people under special legislative authority * * *. Henderson vs. City of Wilmington, 191 N. C. 269, 132 S. E. 25 (1926)." This is a clear and accurate statement of the principles of constitutional law applicable to municipal taxation in this state." Burleson vs. Board of Aldermen of Town of Spruce Pines, 200 N. C. 30, 158 S. E. 241 (1930). See p. 4, footnote 17.

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, and not otherwise appropriated by this State or the United States; also all moneys, stocks,

The term "necessary expense" as used in this section includes law and fact, and is a question for judicial determination. *Henderson vs. City of Wilmington*, 191 N. C. 269, 132 S. E. 25 (1926). This case includes an extended review of authorities presenting general and specific definitions of the term.

The maintenance of a home for the support of the indigent aged and infirm is a necessary county expense. *Board of Commissioners of Caldwell County vs. Sidney Spitzer*, 173 N. C. 147, 91 S. E. 707 (1917).

The construction and repair of bridges and roads are necessary county expenses. *Barbour vs. Wake County*, 197 N. C. 314, 148 S. E. 470 (1929).

A public hospital is not a necessary expense of a town within the meaning of this section; therefore, bonds issued by a town for the construction and maintenance of a hospital must have the approval of the qualified voters and legislative authorization. *Armstrong vs. Board of Commissioners of Gaston County*, 185 N. C. 405, 117 S. E. 388 (1923); *Burleson vs. Board of Aldermen of Town of Spruce Pines*, 200 N. C. 30, 156 S. E. 241 (1930).

A county board of education which contracted with certain mutual fire insurance companies for insurance on a school building by the payment of a fixed premium with a further contingent liability not to exceed an amount equal to the fixed premium was held not to have loaned its credit to a private corporation within the meaning of this section and Art. V, Sec. 4 (see p. 8, par. (b)) prohibiting the State from lending its credit in aid of any person, association, or corporation without an approval of a majority of the electors. The court stated that the contract was in effect a purchase of the insurance, as a necessary county expense for the protection of its property, and therefore did not require a vote of the people in the county. *Fuller vs. Lockhard*, 209 N. C. 61, 182 S. E. 733 (1935).

The phrase "a vote of the majority of the qualified voters" is construed to mean all persons resident in the district and qualified to vote therein. Although a statute requires only a majority of those voting upon the question of the incurring of a debt or the levying of a tax, if a majority of all the qualified voters actually approve, this cures the defect and the election will be upheld. *Hammond vs. McRae*, 182 N. C. 747, 110 S. E. 102 (1921).

An act creating a corporation for the purpose of purchasing and operating a waterworks system for the City of Charlotte, and authorizing such corporation to issue bonds, (secured by a mortgage of the waterworks), *payable solely out of the rents and tolls derived from the operation of such waterworks* was held not to create a debt of the city. *Brockenbrough vs. Board of Water Commissioners of City of Charlotte*, 134 N. C. 1, 46 S. E. 28 (1903).

A city ordinance passed under statutory authority and providing for the issuance of bonds to refund prior bonds which were valid obligations of the municipality, though not for necessary expenses of the municipality, was held not to create a new debt of the municipality within the meaning of this section, and therefore did not need to be submitted to the voters for their approval. *Bolich vs. City of Winston-Salem*, 202 N. C. 786, 164 S. E. 361 (1932).

A statute which authorized a city to issue its bonds and lend the proceeds to a railroad company to build a depot within its limits, when the question had been submitted to and approved by its voters, did not contravene any section of the Constitution and was therefore valid. *Hudson vs. City of Greensboro*, 185 N. C. 502, 117 S. E. 629 (1923).

See p. 8, footnote 29.

The Legislature may by statute modify, change, or abrogate any and all of the provisions of Art. VII, which deal with the government of the political subdivisions, and may substitute others in their place with the exception of Art. VII, Sec. 7, (p. 9), and one other section not included in this bulletin as it is not within the scope of this study. Art. VII, Sec. 13. (Designated as Sec. 14 in Michie's 1935 Code, but renumbered, making it Sec. 13, by a constitutional amendment adopted November 1936; see North Carolina Public Laws (1935), p. 270.)

II. Financial Powers and Limitations—Continued

D. Other Income—Continued

bonds, and other property now belonging to any State fund for purposes of education; also the net proceeds of all sales of the swamp lands belonging to the State, and all other grants, gifts or devises that have been or hereafter may be made to the State, and not otherwise appropriated by the State, or by the terms of the grant, gift, or devise, shall be paid into the State treasury, and, together with so much of the ordinary revenue of the State as may be by law set apart for that purpose, shall be faithfully appropriated for establishing and maintaining in this State a system of free public schools, and for no other uses or purposes whatsoever.³²

(2) All moneys, stocks, bonds, and other property belonging to a county school fund; also the net proceeds from the sale of estrays; also the clear proceeds of all penalties and forfeitures and of all fines collected in the several counties for any breach of the penal or military laws of the State; and all moneys which shall be paid by persons as an equivalent for exemption from military duty, shall belong to and remain in the several counties, and shall be faithfully appropriated for establishing and maintaining free public schools in the several counties of this State:³³ * * *.

(3) * * * all the property which has heretofore accrued to the State, or shall hereafter accrue, from escheats, unclaimed dividends, or distributive shares of the estates of deceased persons, shall be appropriated to the use of the University.³⁴

E. Appropriations and Expenditures

(1) No money shall be drawn from the treasury but in consequence of appropriations made by law; and an accurate account of the receipts and expenditures of the public money shall be annually published.³⁵

(2) No money shall be drawn from any county or township treasury, except by authority of law.³⁶

III. Provisions Affecting Legislation

A. Regular Sessions of Legislature

(1) The legislative authority shall be vested in two distinct branches, both dependent on the people, to-wit: a Senate and a House of Representatives.³⁷

³²Constitution, Art. IX, Sec. 4.

³³Constitution, Art. IX, Sec. 5.

³⁴Constitution, Art. IX, Sec. 7.

³⁵Constitution, Art. XIV, Sec. 3.

³⁶Constitution, Art. VII, Sec. 8.

³⁷Constitution, Art. II, Sec. 1.

III. Provisions Affecting Legislation—Continued

A. Regular Sessions of Legislature—Continued

(2) The Senate and House of Representatives shall meet biennially on the first Wednesday after the first Monday in January next after their election;³⁸ * * *.

B. Special Sessions of Legislature

(1) The Governor shall have power on extraordinary occasions, by and with the advice of the Council of State, to convene the General Assembly in extra session by his proclamation, stating therein the purpose or purposes for which they are thus convened.³⁹

(2) The Secretary of State, Auditor, Treasurer, and Superintendent of Public Instruction shall constitute, ex officio, the Council of State, who shall advise the Governor in the execution of his office, and three of whom shall constitute a quorum;⁴⁰ * * *.

C. Powers of Initiative and Referendum

No provision.⁴¹

D. Legislative Enactment

(1) All bills and resolutions of a legislative nature shall be read three times in each house before they pass into laws, and shall be signed by the presiding officers of both houses.⁴²

(2) No law shall be passed to raise money on the credit of the State, or to pledge the faith of the State, directly or indirectly, for the payment of any debt, or to impose any tax upon the people of the State, or allow the counties, cities or towns to do so, unless the bill for the purpose shall have been read three times in each house of the General Assembly and passed three several readings, which readings shall have been on three different days, and agreed to by each house respectively, and unless the yeas and nays on the second and third readings of

³⁸Constitution, Art. II, Sec. 2.

³⁹Constitution, Art. III, Sec. 9.

⁴⁰Constitution, Art. III, Sec. 14.

⁴¹The Constitution provides that a vote of the electors is necessary for the contracting of any debt by the State, counties, and municipalities in excess of certain limits set by Art. V, Sec. 4 (see p. 8, par. (a), (State)); and for the lending of the State's credit in aid of any person, association, or corporation (see Art. V, Sec. 4, p. 8, par. (b)); and for the contracting of any municipal debt, or loan of its credit, or the levy of a municipal tax except for the necessary expenses thereof (see Art. VII, Sec. 7, p. 9, par. (b)); and for the adoption of an amendment to the Constitution proposed by the Legislature (see Art. XIII, Sec. 2, p. 14, par. A); and for the assembling of a convention for the revision or amendment of the Constitution (see Art. XIII, Sec. 1, p. 15, par. B).

⁴²Constitution, Art. II, Sec. 23.

III. Provisions Affecting Legislation—Continued

D. Legislative Enactment—Continued

the bill shall have been entered on the journal.⁴³

(3) Every act of the General Assembly levying a tax shall state the special object to which it is to be applied, and it shall be applied to no other purpose.⁴⁴

(4) The General Assembly shall not pass any local, private, or special act or resolution relating to * * * health, sanitation, and the abatement of nuisances; * * * nor shall the General Assembly enact any such local, private or special act by the partial repeal of a general law, * * *. Any local, private or special act or resolution passed in violation of the provisions of this section shall be void. The General Assembly shall have power to pass general laws regulating matters set out in this section.⁴⁵

(5) No corporation shall be created nor shall its charter be extended, altered, or amended by special act, except corporations for charitable, educational, penal, or reformatory purposes that are to be

⁴³Constitution, Art. II, Sec. 14.

This section is a further limitation upon par. (1), D. 12 (Art. II, Sec. 23), in that it requires additional formalities as to the passage of certain acts, i. e., those raising money on the credit of the State; pledging the faith of the State; paying any debt or imposing any tax. Held that in determining the legality of the passage of acts which are mentioned in this section, the courts will go behind the signatures of the presiding officers of each house, and will review the legislative journals. As to all other kinds of legislation, the requirements of Art. II, Sec. 23 (p. 12 par. (1)) are sufficient, and the courts will consider the signatures of the presiding officers of both houses affixed to a bill as conclusive evidence that such bill was read three times and duly passed and ratified by both houses. *Frazier vs. Board of Commissioners of Guilford County*, 194 N. C. 49, 138 S. E. 433 (1927).

In the absence of a showing by the journals that amendments to bills are material, the validity of bills cannot be attacked by a showing that a bill, after three readings, (the yeas and nays having been taken), was not, *after the amendment*, again reread three times and the yeas and nays entered on the journal. There is a presumption that such amendments or alterations in a bill are immaterial, and the journals constitute the only competent evidence to rebut this presumption. *Ibid.*

An amendment will not be deemed material unless it purports to levy a tax or create or increase a debt, or to change the rate of interest or the time of payment, or otherwise to broaden the scope of the amended act, or materially affect its financial features. *O'Neal vs. Jennette*, 190 N. C. 96, 129 S. E. 184 (1925).

⁴⁴Constitution, Art. V, Sec. 7.

This section does not apply to taxes levied by county authorities for county purposes. *Cabe vs. Sisk*, 185 N. C. 158, 116 S. E. 419 (1923).

See p. 2, par. (a).

⁴⁵Constitution, Art. II, Sec. 29.

"Local laws are special as to place, and special laws are those made for individual cases." *Day vs. Commissioners of Yadkin County*, 191 N. C. 780, 133 S. E. 184 (1928).

A local act authorizing the board of commissioners of Gaston County to issue bonds to the amount of \$150,000 for the construction of a county tuberculosis hospital was held unconstitutional as being in violation of this provision. *Armstrong vs. Board of Commissioners of Gaston County*, 185 N. C. 405, 117 S. E. 388 (1923).

Included in those 13 other subjects concerning which local, private, or special acts are forbidden are those relating to the maintenance of highways and the extension of the time for the collection of taxes. Art. II, Sec. 29.

III. Provisions Affecting Legislation—Continued

D. Legislative Enactment—Continued

and remain under the patronage and control of the State; but the General Assembly shall provide by general laws for the chartering and organization of all corporations * * * except those above permitted by special act. * * * and the General Assembly may at any time by special act repeal the charter of any corporation.⁴⁶

(6) The General Assembly shall not pass any private laws, unless it shall be made to appear that thirty days' notice of application to pass such a law shall have been given, under such direction and in such manner as shall be provided by law.⁴⁷

(7) All power of suspending laws, or the execution of laws, by any authority, without the consent of the representatives of the people, is injurious to their rights, and ought not to be exercised.⁴⁸

IV. Constitutional Amendment or Revision

A. By Proposal of Legislature or People

No part of the Constitution of this State shall be altered unless a bill to alter the same shall have been agreed to by three-fifths of each house of the General Assembly. And the amendment or amendments so agreed to shall be submitted at the next general election to the qualified voters of the whole State, in such manner as may be prescribed by law. And in the event of their adoption by a majority of the votes cast, such amendment or amendments shall become a part of the Constitution of this State.⁴⁹

⁴⁶Constitution, Art. VIII, Sec. 1.

A port commission created for the purpose of providing facilities for the transportation of goods, wares, and merchandise both into and out of the State was held to have been validly created by special act, it being a public corporation acting as an agency of the State in the performance of a governmental function. The court stated that the prohibitions contained in this section on the creation of corporations by special act extend only to private or business corporations operated for profit, and not to public or quasi-public corporations operated as governmental agencies with power to perform governmental functions. *Webb vs. Port Commission of Morehead City*, 205 N. C. 663, 172 S. E. 377 (1934).

⁴⁷Constitution, Art. II, Sec. 12.

As to whether the requisite notice of application to pass a private law has been given, the courts will consider this section binding upon the conscience of the Legislature, and will conclusively presume from the ratification of such an act that it has been validly passed. *Mathews vs. Town of Blowing Rock*, 207 N. C. 450, 177 S. E. 429 (1934).

⁴⁸Constitution, Art. I, Sec. 9.

⁴⁹Constitution, Art. XIII, Sec. 2.

The General Assembly has the power, without restriction, to prescribe the method by which amendments may be submitted to the people. Thus, it may prescribe the time when the proposed amendments should become effective. *Reade vs. City of Durham*, 173 N. C. 668, 92 S. E. 712 (1917).

IV. Constitutional Amendment or Revision—Continued

B. By Constitutional Convention

No convention of the people of this State shall ever be called by the General Assembly, unless by the concurrence of two-thirds of all the members of each house * * * and except the proposition, convention or no convention, be first submitted to the qualified voters of the whole State, at the next general election, in a manner to be prescribed by law. And should a majority of the votes cast be in favor of said convention, it shall assemble on such day as may be prescribed by the General Assembly.⁵⁰

⁵⁰Constitution, Art. XIII, Sec. 1.

"This section has reference to conventions called primarily to consider amendments to the state Constitution * * *. The General Assembly * * * in calling a convention for the sole purpose of considering a proposed amendment to the Constitution of the United States, may * * * provide for the submission of the question * * * or it may call such convention in the exercise of its plenary power without regard to the provisions of said section." Per Stacy, Chief Justice in re Opinions of the Justices, 204 N. C. 806, 172 S. E. 474 (1933).

