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

MAY 15, 1937

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PREFACE

This bulletin is one of a series presenting State constitutional provisions affecting public welfare, prepared to supplement the State by State digests of public welfare laws so as to provide in abstract form the basis for the public welfare services of the several States.

The provisions quoted are those concerned directly with public welfare administration and such others as may substantially affect a public welfare program, even though only indirectly related. It would be impossible to consider within the limits of this study every remotely connected constitutional provision. The indirectly related provisions included, therefore, have been restricted to those concerning finance, legislation, and the methods of constitutional amendment.

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

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

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Pennsylvania

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

I. Incidence of Responsibility for Welfare Program

A. No appropriations except for pensions or gratuities for military services and to blind persons twenty-one years of age and upwards, shall be made for charitable, educational or benevolent purposes, to any person or community, nor to any denominational or sectarian institution, corporation or association.[2]

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[1] Constitution (1873), as published by the Commonwealth of Pennsylvania in the Pennsylvania Manual (1935-36); with all amendments to May 15, 1937.

[2] Constitution, Art. III, Sec. 18, as amended 1933.

An act (Old Age Assistance Act of 1923, P. L. 189) providing for a discretionary payment of $1 per day to persons over 70 with incomes not in excess of $365 per year and having property not in excess of $3,000 was held void under this section as granting gratuities, for the reason that the granting of aid was not based on the *need* of the recipient. Busser vs. Snyder, 282 Pa. 440, 128 A. 80 (1925).

The act was held not sustainable on the theory that it was a "poor" law, as the term "poor" describes those who are destitute and helpless, unable to support themselves and without means of support. Distinguishing appropriations under the above act from those made for State employees, school teachers, and judges by retirement acts, it was held that such were valid as constituting "delayed compensation for long-continued performance of public duties," and particularly in the case of retired judges "for holding themselves in readiness to perform work assigned." The words "person" and "community" were held not limited in their application to a single person or place, but might also include a group or class of persons wherever situated, in any part or all of the Commonwealth. It was further held that under this section appropriations might be made to nonsectarian and nondenominational institutions or persons for charitable, educational, or benevolent purposes; that this section of the Constitution does not prohibit appropriations to compensate institutions for caring for indigent, infirm, and mentally or physically defective persons who become direct charges on the body politic. Ibid.

Act No. 28 passed at the 1936 Extraordinary Session of the Legislature, provides for the granting of old age assistance. The act specifically sets out eligibility requirements including a provision that the applicant be indigent and without any relative responsible under the law of the State and financially able to support him or her.

The validity of this act has not, as yet, been questioned in the courts. [Ed. note.]

An act appropriating $10,000,000 for unemployment relief for division among the local poor districts of the State was held valid under the Constitution, as being a measure for the support of the poor. Commonwealth vs. Liveright, 308 Pa. 35, 161 A. 697 (1932).

The Supreme Court in its opinion stated that the support of the poor was held to be an obligatory governmental duty and the appropriations under the act were therefore not "charities" or "benevolences." The court further stated that the State, in performance of its governmental duty to care for the poor, is not forbidden by the Constitution to assume directly obligations or to permit or aid subsidiaries of government to perform it. However, when the unemployed have work offered to them, but without good reason do not work, they are not "poor people" entitled to support under the poor laws. Ibid.

I. Incidence of Responsibility for Welfare Program—Continued

B. The General Assembly may make appropriations of money to institutions wherein the widows of soldiers are supported or assisted, or the orphans of soldiers are maintained and educated; but such appropriations shall be applied exclusively to the support of such widows and orphans.[3]

II. Financial Powers and Limitations

A. Taxation and Assessments

(1) State

(a) All taxes shall be uniform, upon the same class of subjects, within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws;[4] * * *.

The intent of this section prohibiting appropriations for charitable, educational, or benevolent purposes to any denominational or sectarian institution was to forbid the State from giving any recognition to a religious sect or denomination, in furtherance of the purpose to divorce absolutely church and State. Therefore, it was held that though for upwards of 40 years the Legislature of Pennsylvania had been appropriating public money to sectarian and denominational institutions, under the guise of public charity, this did not warrant the violation of Sec. 18, Art. III of the Constitution, or stamp it with legality. Collins vs. Kephart, 271 Pa. 428, 117 A. 440 (1921).

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

[4]Constitution, Art. IX, Sec. 1, as amended 1923.

Under the constitutional requirement of uniformity of taxation, the power to classify is unlimited, but within each class actually established taxes must be uniform. In re Rowell's Estate, 315 Pa. 181, 173 A. 634 (1934).

An act levying a tax of $2 on every $100 of personal property passing by will or by the intestate law of Pennsylvania and providing for an exemption of personal property to the amount of $5,000 was held to violate Art. IX, Secs. 1 and 2. The court stated that the words "all taxes" must necessarily be construed to include property, inheritance, succession, and all other kinds of taxes, the subjects of which are susceptible of just and proper classification. A pretended classification that is based solely on a difference in quantity of precisely the same kind of property is necessarily unjust, arbitrary, and illegal. Cope's Estate, 191 Pa. 1, 43 A. 79 (1899).

In determining whether a legislative classification violates the tax uniformity clause of Constitution, the courts sit in judgment not on the legislative wisdom, but on the legislative power. Commonwealth vs. Lukens, 312 Pa. 220, 167 A. 167 (1933).

The classification of commodities for taxation is for the Legislature to determine, and courts will not interfere, unless reasonably certain that the classification is purely illusory and intended to evade the Constitution. It was held that anthracite and bituminous coal might be put into separate classes for purposes of taxation. Commonwealth vs. Hudson Coal Company, 287 Pa. 64, 134 A. 413 (1926). See also Heisler vs. Thomas Colliery Company, 274 Pa. 448, 118 A. 394 (1922).

With respect to corporations, this section requiring uniformity of taxation on the same class of subjects is satisfied if all corporations of like character fall within the statute, since uniformity according to classification is all that is required. Commonwealth vs. Quaker City Cab Company, 287 Pa. 161, 134 A. 404 (1926).

An act imposing a tax on the income of corporations, foreign and domestic, for the privilege of doing business in this State and exempting from its operation building and loan associations, banks, trust companies, insurance companies, and the like was held not to violate Art. IX, Sec. 2. Turco Paint and Varnish Company vs. Kalodner et al., 320 Pa. 421, 184 A. 37 (1936).

II. Financial Powers and Limitations—Continued

A. Taxation and Assessments—Continued

(1) State—Continued

(b) The power to tax corporations and corporate property shall not be surrendered or suspended by any contract or grant to which the State shall be a party.[5]

(2) Counties and Other Local Units[6]

(a) See page 2, paragraph (a), and footnote 4.

(b) The General Assembly shall not delegate to any special commission, private corporation or association, any power to make, supervise or interfere with any municipal improvement, money, property or effects, whether held in trust or otherwise, or to levy taxes or perform any municipal function whatever.[7]

(c) Any county, township, school district or other municipality incurring any indebtedness shall, at or before the time of

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The provision of this section that all taxes shall be uniform upon the same class of subjects is generally held not to apply to assessments for the cost of local improvements. Harrisburg vs. McPherran, 200 Pa. 343, 49 A. 988 (1901).

A graduated tax imposed on the net income of residents and upon the entire net incomes received by nonresidents from property owned or from any business or occupation carried on within the State, with certain exemptions, was held invalid as being in conflict with Art. IX, Sec. 1. The court discussed the question of whether a graduated income tax was a property or an excise tax and held that such tax was a property tax. The court further stated, "We pass no opinion upon the question of whether a tax upon the income from trades, occupations, or professions is a tax upon property, although respectable judicial opinion has indicated that it is not." Kelley et al., vs. Kalodner et al., 320 Pa. 180, 181 A. 598 (1935).

An occupation tax graduated according to the volume of business transacted was held valid. Differences in the manner of transacting business were held to constitute a legitimate basis for classification. Knisely vs. Cottereal, 196 Pa. 614, 46 A. 861 (1900).

The clause of this section requiring taxes to be levied and collected under general laws was held not to prohibit the levy of taxes under laws relating to a special class of municipal corporations. Commonwealth vs. MacFerran, 152, Pa. 244, 25 A. 556 (1893).

[5] Constitution, Art. IX, Sec. 3.

[6] "The Legislature shall have power to classify counties, cities, boroughs, school districts and townships according to population, and all laws passed relating to each class, * * * shall be deemed general legislation within the meaning of this Constitution; but counties shall not be divided into more than eight classes, cities into not more than seven classes, school districts into not more than five classes, and boroughs into not more than three classes." Constitution, Art. III, Sec. 34, adopted 1923.

The General Assembly is authorized to provide for the consolidation of the county, poor districts, cities, boroughs, and townships of the county of Allegheny into a consolidated city and county. Art. XV, Sec. 4, as amended 1933.

For provisions relating to the adoption of charters and local self-government by cities, see Art. XV, Sec. 1. These powers are subject to restriction by the Legislature.

[7] Constitution, Art. III, Sec. 20.

II. Financial Powers and Limitations—Continued

A. Taxation and Assessments—Continued

(2) Counties and Other Local Units—Continued

so doing, provide for the collection of an annual tax sufficient to pay the interest and also the principal thereof within thirty years.[8]

(d) The General Assembly shall not delegate to any special commission, private corporation or association, any power to make, supervise or interfere with any municipal improvement, money, property or effects, whether held in trust or otherwise, or to levy taxes or perform any municipal function whatever.[9]

B. Exemptions

(a) * * * the General Assembly may, by general laws, exempt from taxation public property used for public purposes, actual places of religious worship, places of burial not used or held for private

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[8]Constitution, Art. IX, Sec. 10.

This section does not apply to incidental and ordinary current expenses—Lehigh Coal and Navigation Company's Appeal, 112 Pa. 360, 5 A. 231 (1886); nor to a contract which can be fully discharged out of current revenues—Spangler vs. Gallagher, 182 Pa. 277, 37 A. 832 (1897).

If a city at the time of making a contract levies a special tax in good faith supposed to be adequate to meet it, but in consequence of fire, flood, or decline in values the revenues therefrom accruing are insufficient, it cannot be held that the contract, good at its inception, would thereby be made bad. The constitutional restriction was not intended to make municipalities dishonest, nor to prevent those who contract with them from collecting their just claims, but to check rash expenditure on credit, and to prevent loading the future with the results of present inconsiderate extravagance. Addyston Pipe and Steel Company vs. Corry, 197 Pa. 41, 46 A. 1035 (1900).

The Constitution does not grant the power to a municipality to incur indebtedness; the power comes from the Legislature, and is limited by Sec. 8 of Art. IX (p. 8, par. (a)), and regulated by Sec. 10 (p. 3, par. (c)). The latter section is a command to provide, by the method therein specified, funds for the payment of an indebtedness, which the Legislature has authorized within the limitation of the Constitution. The municipality's power is not therein affected, but rather its mode of exercise. The words "at or before" are mandatory, but there is no provision stating that any indebtedness of the city shall be void if such a tax is not provided at or before the incurring thereof. The section is an explicit and express command to the subdivisions of the government to perform a duty, a duty which may be enforced by mandamus. Ohlinger et al., vs. Maidencreek Township, Berks County et al., 312 Pa. 289, 167 A. 882 (1933).

A township issued notes without levying a tax to retire same. The notes were held valid and collectible in assumpsit. Ibid.

See p. 9, last paragraph of footnote 20.

[9]Constitution, Art. III, Sec. 20.

The Allegheny County Authority, a public corporation created by Act of 1933 and authorized to enter into agreements with the United States Government particularly as they related to the National Industrial Recovery Act, the State of Pennsylvania, and others, was held not to be a special commission nor a private corporation or association within the prohibitions of this section. The Authority, as the agent created for the purpose by the State, was held to deal not with property owned by the municipality, but with the highway system of the State as to which the power of the State was supreme. The Supreme Court stated: "It cannot be said that the creation of a public corporation as a state agency to take over public highways for the limited purpose of improving them, paying for the improvements out of revenues collected for

II. Financial Powers and Limitations—Continued

B. Exemptions—Continued

or corporate profit, and institutions of purely public charity and real and personal property owned, and used by any branch, post or camp of honorably discharged soldiers, sailors and marines.[10]

(b) Taxation laws may grant exemptions or rebates to residents, or estates of residents, of other States which grant similar exemptions or rebates to residents, or estates of residents, of Pennsylvania.[11]

(c) All laws exempting property from taxation, other than the property above enumerated, shall be void.[12]

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their use, and then returning them to the local political subdivisions to which they had formerly been entrusted by the state is a special commission in any sense in which those words were used * * * in the constitution, either in substance or in spirit." Tranter vs. Allegheny County Authority, 316 Pa. 65, 173 A. 289 (1934).

[10] Constitution, Art. IX, Sec. 1, as amended 1923.

The Constitution exempts nothing, it merely permits the Legislature to exempt within the lines laid down for its guidance. A claimant of exemption from taxation must show affirmative legislation in support of his claim, and his case must be clearly within it. Philadelphia vs. Barber, 160 Pa. 123, 28 A. 644 (1894).

This specific delegation of authority to exempt was held to impliedly prohibit exemption from taxation of any other property, but to place the matter beyond the reach of doubt, Sec. 2, Art. IX of the Constitution (par. (c) above), provides that "all laws exempting property from taxation other than the property above enumerated shall be void." Cope's Estate, 191 Pa. 1, 43 A. 79 (1899).

The provision in an act exempting from taxation persons whose incomes are below a certain figure depending on whether married or single violates the constitutional rule of uniformity in taxation. Ibid.

An assessment for benefits conferred by a municipal improvement is not a tax within the meaning of this section and a charitable institution cannot claim exemption from assessment under this provision. Wilkinsburg Borough vs. Home for Aged Women, 131 Pa. 109, 18 A. 937 (1890).

Municipal property owned and used for public purposes and from which no revenue is derived is exempt from taxation, unless specifically made taxable by law. Erie County vs. Erie City, 113 Pa. 360, 6 A. 138 (1886). But municipal property which produces revenue is taxable. Erie County vs. Commissioners of Water Works, 113 Pa. 368, 6 A. 138 (1886).

When part of a building is used solely for church purposes and certain rooms in the building are rented for a school, the building may be divided for purposes of taxation and the portion used solely for church purposes be declared exempt from taxation. Philadelphia vs. Barber, 160 Pa. 123, 28 A. 644 (1894).

Whatever is gratuitously done or given in relief of the public burden or for the advancement of the public good is a "public charity." As no private or pecuniary return is reserved to the giver or any particular person, but all the benefit resulting from the gift or act goes to the public, it is a "purely public charity," the word "purely" being equivalent to the word "wholly." Episcopal Academy vs. Philadelphia, 150 Pa. 565, 25 A. 55 (1892).

[11] Constitution, Art. IX, Sec. 1B, as amended 1928.

[12] Constitution, Art. IX, Sec. 2.

This section does not preclude the Legislature from exempting a certain class of property from all taxes except a specified one. Lackawanna County vs. First National Bank, 94 Pa. 221 (1880).

II. Financial Powers and Limitations—Continued

C. Borrowing and Use of Credit

(1) State

(a) No debt shall be created by or on behalf of the State, except to supply casual deficiencies of revenue, repel invasion, suppress insurrection, defend the State in war, or to pay existing debt; and the debt created to supply deficiencies in revenue shall never exceed in the aggregate, at any one time, one million dollars: Provided, however, That the General Assembly, irrespective of any debt, may authorize the State to issue bonds to the amount of one hundred millions of dollars for the purpose of improving and rebuilding the highways of the Commonwealth.[13]

(b) Soldiers' Bonus

In addition to the purposes stated in article nine, section four of this Constitution, [par. (a), above], the State may be authorized by law to create debt and to issue bonds, to the amount of fifty millions of dollars, for the payment of compensation to certain persons from this State who served in the Army, Navy, or Marine Corps of the United States during the war between the United States and Spain, between the twenty-first day of April, one thousand eight hundred and ninety-eight, and the thirteenth day of August, one thousand eight hundred and ninety-eight, or who served in the China Relief Expedition in the Philippines or Guam, between the twenty-first day of April, one thousand eight hundred and ninety-eight, and the fourth day of July, one thousand nine hundred and two, or who served in the Army, Navy, or Marine Corps of the United States during the World War, between the sixth day of April, one

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[13] Constitution, Art. IX, Sec. 4, as amended 1923.

"This section was intended to restrict legislative acts which incurred obligations or permitted engagements on the credit of the State beyond revenue in hand or anticipated through a biennium, and establishes the principle that we must keep within current revenue and $1,000,000." Kelley vs. Earle, 320 Pa. 449 (1936).

This section was held to be a restriction or limitation on the power of the Legislature to borrow money with the exceptions clearly stated in the section. However, an act authorizing the Commonwealth to negotiate temporary emergency loans to defray its expenses during the next fiscal biennium, evidenced by tax-anticipation notes payable from current revenues levied and assessed during such biennium, was held constitutional. The court stated, however, that the issue and payment of such are limited to moneys received from the revenues already provided for and to become payable in the biennium. Kelly vs. Baldwin, 319 Pa. 53, 179 A. 736 (1935).

The statutory appropriation of money does not in all cases create an enforceable debt. "A debt is not and cannot be created by merely making appropriations which direct expenditures in excess of anticipated revenue, and the legislature cannot so enact. Appropriations in excess of estimated revenues and $1,000,000 are simply ineffective; they incur no liability or obligation on the part of the State; they simply abate pro rata to be within the biennium receipts and cash on hand." Ibid.

See Georges Township vs. Union Trust Company, 293 Pa. 364, 143 A. 10 (1928); and Scranton Electric Company vs. Old Forge Borough, 309 Pa. 73, 83, 163 A. 154 (1932); and cases therein cited.

See p. 7, footnote 17.

II. Financial Powers and Limitations—Continued

C. Borrowing and Use of Credit—Continued

(1) State—Continued

thousand nine hundred and seventeen and the eleventh day of November, one thousand nine hundred and eighteen.[14]

(c) Toll Bridges

In addition to the purposes stated in article nine, section four, of this Constitution, [p. 6, par. (a)], the General Assembly may provide, by law, for the issue of bonds, to the amount of ten millions of dollars, for the purpose of acquiring toll bridges, and may, by law, provide that, upon the acquisition of any such bridge, tolls may be charged for the use thereof, sufficient to pay the interest and sinking fund charges on such bonds and the cost of the maintenance of such bridges, until the bonds issued have been retired and such bridges are freed of tolls.[15]

(d) The Governor, the Auditor General, and the State Treasurer, immediately upon the adoption of this amendment by the electors, may borrow an amount not exceeding twenty-five million dollars to defray the expenses of the State government for the biennium beginning June first, one thousand nine hundred thirty-three; provided the General Assembly, at its regular session of one thousand nine hundred thirty-three, has authorized the borrowing of money for this purpose.[16]

(e) To provide for the payment of the present State debt, and any additional debt contracted as aforesaid, the General Assembly shall continue and maintain the sinking fund, sufficient to pay the accruing interest on such debt and annually to reduce the principal thereof by a sum not less than two hundred and fifty thousand dollars; the said sinking fund shall consist of the proceeds of the sale of the public works or any part thereof, and of the income or proceeds of the sale of any stocks owned by the Commonwealth, together with other funds and resources that may be designated by law. and shall be increased from time to time by assigning to it any part of the taxes or other revenues of the State not required for the ordinary and current expenses of government; and unless in case of war, invasion or insurrection, no part of the said sinking fund shall be used or applied otherwise than in the extinguishment of the public debt.[17]

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[14]Constitution. Art. IX, Sec. 16, adopted 1933.

[15]Constitution, Art. IX, Sec. 16, adopted 1933.

[16]Constitution, Art. IX, Sec. 17, adopted 1933.

[17]Constitution, Art. IX, Sec. 11.

The Constitution does not make provision for refunding State loans. To liquidate debts incurred under Art. IX, Sec. 4 (p. 6, par. (a)), a sinking fund is required,

II. Financial Powers and Limitations—Continued

C. Borrowing and Use of Credit—Continued

(1) State—Continued

(f) All laws, authorizing the borrowing of money by and on behalf of the State, shall specify the purpose for which the money is to be used, and the money so borrowed shall be used for the purpose specified and no other.[18]

(g) The credit of the Commonwealth shall not be pledged or loaned to any individual, company, corporation or association, nor shall the Commonwealth become a joint owner or stockholder in any company, association or corporation.[19]

(2) Counties and Other Local Units

(a) The debt of any county, city, borough, township, school district, or other municipality or incorporated district, except as provided herein, and in section fifteen of this article [p. 9, last paragraph of footnote 20], shall never exceed seven (7) per centum upon the assessed value of the taxable property therein, * * * nor shall any such municipality or district incur any new debt, or increase its indebtedness to an amount exceeding two (2) per centum upon such assessed valuation of property, without the consent of the electors thereof at a public election in such manner as shall be provided by law.[20] * * *

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the money to be "used and applied" only for the extinguishment of such debts. Each debt for which the obligation of the Commonwealth is issued must be extinguished when it matures by funds appropriated to that purpose. In short, no express authority to make recurrent loans, by the issuance of refunding or substituted bonds for those purchased or canceled, is given by the Constitution and such power is impliedly denied. Montgomery vs. Martin, 294 Pa. 25, 143 A. 505 (1928).

[18] Constitution, Art. IX, Sec. 5.

Under this section every act which authorizes the creation of a debt must state distinctly, without reference to other sources of information, a single purpose for which the money is to be borrowed; the word "specify" meaning to mention specifically, to state in full and explicit terms, to name expressly or particularly. Hollinger vs. King, 282 Pa. 157, 127 A. 462 (1925).

An act authorizing the Governor to borrow money "for such purposes as the Constitution authorizes the state to issue bonds" was held to permit the use of the proceeds for any of the six purposes specified in Art. IX, Sec. 4 (p. 6, par. (a)), and was not a sufficient compliance with the above rule. Ibid.

[19] Constitution, Art. IX, Sec. 6.

[20] Constitution, Art. IX, Sec. 8, as amended 1920.

Special provisions of this section applying to the city of Philadelphia permit an increase in the total debt to 10 percent of the assessed valuation. The section further contains special provisions relating to utilities.

Sec. 15 of Art. IX of the Constitution sets out special provisions relative to obligations issued or to be issued for the construction or acquisition of waterworks, subways, and underground or street railways. Municipalities and counties (with the exception of Philadelphia) may with the assent of the voters incur additional debt for these purposes.

II. Financial Powers and Limitations—Continued

C. Borrowing and Use of Credit—Continued

(2) Counties and Other Local Units—Continued

(b) Any county, township, school district or other municipality incurring any indebtedness shall, at or before the time of so doing, provide for the collection of an annual tax sufficient to pay the interest and also the principal thereof within thirty years.[21]

(c) Every city shall create a sinking fund, which shall be inviolably pledged for the payment of its funded debt.[22]

(d) No debt shall be contracted or liability incurred by any municipal commission, except in pursuance of an appropriation previously made therefor by the municipal government.[23]

(e) The General Assembly shall not authorize any county, city, borough, township or incorporated district to become a stockholder in any company, association or corporation, or to obtain or appropriate money for, or to loan its credit to, any corporation, association, institution or individual.[24]

An act passed at the first session of the Legislature after the adoption of the present State Constitution (and held constitutional in Elliot vs. Philadelphia, 229 Pa. 215, 78 A. 107 (1910)), defines "indebtedness" as including any and all manner of debt, floating and funded, of the said municipality; and the net amount of such indebtedness is to be ascertained by deducting from the gross amount thereof the moneys in the treasury, together with all outstanding solvent debts (receivable), and all revenues applicable within 1 year to the payment of the same. Act of April 20, 1874, P. L. 65.

The words "debt" and "indebtedness" used in this section include all contractual obligations and have no technical meaning. They include all floating debts and are not restricted to bonded indebtedness. Keller vs. Scranton, 200 Pa. 130, 49 P. 781 (1901). See also Lesser vs. Warren Borough, 237 Pa. 501, 85 A. 839 (1912).

Temporary borrowing by a township in anticipation of current revenue to be repaid therefrom held not an "increase of indebtedness" prohibited by Constitution. Athens National Bank vs. Ridgebury Township, 303 Pa. 479, 154 A. 791 (1931).

Allegheny County Authority Act relating to public improvements was held not violative of this section. The court stated: "We are here dealing with the construction of a purely public self-liquidating project. The denial of power to incur liability on the credit of the county or of any municipality is notice to prospective purchasers of the bonds that their security and their only source of payment will be in the revenues derived from the users of the improved highway facilities." Tranter vs. Allegheny County Authority, 316 Pa. 65, 173 A. 289 (1934).

An act authorizing county commissioners to issue refunding bonds was held not the incurring of a new debt. Commonwealth vs. Cannon, 308 Pa. 321, 162 A. 277 (1932).

[21] Constitution, Art. IX, Sec. 10.

[22] Constitution, Art. XV, Sec. 3.

"Funded debt" includes all municipal indebtedness embraced within or evidenced by bond, the principal of which is payable at a time beyond the current fiscal year of its issue, with periodical terms for payment of interest. Protestant Episcopal Church in Pennsylvania vs. City of Philadelphia, 317 Pa. 76, 176 A. 727 (1935).

[23] Constitution, Art. XV, Sec. 2.

[24] Constitution, Art. IX, Sec. 7.

This section had its origin in the amendment adopted in 1857 to the Constitution of 1838. The amendment was prompted by the growing evils of reckless and extravagant

II. Financial Powers and Limitations—Continued

C. Borrowing and Use of Credit—Continued

(2) Counties and Other Local Units—Continued

(f) The Commonwealth shall not assume the debt, or any part thereof, of any city, county, borough or township, unless such debt shall have been contracted to enable the State to repel invasion, suppress domestic insurrection, defend itself in time of war, or to assist the State in the discharge of any portion of its present indebtedness.[25]

D. Other Income

(1) The moneys of the State, over and above the necessary reserve, shall be used in the payment of the debt of the State, either directly or through the sinking fund, and the moneys of the sinking fund shall never be invested in or loaned upon the security of anything, except the bonds of the United States or of this State.[26]

(2) See page 7, paragraph (e).

E. Appropriations and Expenditures

(1) State

(a) No money shall be paid out of the treasury, except upon appropriations made by law, and on warrant drawn by the proper officer in pursuance thereof.[27]

(b) No appropriation shall be made to any charitable or educational institution not under the absolute control of the Commonwealth, other than normal schools established by law for the professional training of teachers for the public schools of the State, except by a vote of two-thirds of all the members elected to each House.[28]

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municipal subscriptions to railroads, plank roads, etc. Those evils were so aggravated that it became necessary to interfere and prevent by a constitutional prohibition all future pledges of municipal faith and property for such purposes under the sanction of the Legislature, which alone possessed the power to grant proper authority. Commonwealth vs. Walton, 182 Pa. 373 (1897).

A contract between a home for colored children and the poor directors of a county for maintenance of children placed in the home by the directors was held valid as being for a public purpose. Home for Colored Children vs. Directors of the Poor of Cambria County, 72 Super. 106 (1919).

[25] Constitution, Art. IX, Sec. 9.

[26] Constitution, Art. IX, Sec. 12.

[27] Constitution, Art. III, Sec. 16.

An act authorizing the Governor to borrow money "for such purposes as the Constitution authorizes the state to issue bonds" was held unconstitutional, in that it permitted the appropriation by the Governor of part of the proceeds of such bonds to one purpose and part to another, in violation of this section prohibiting any payment of money out of the treasury except on "appropriations made by law." Hollinger vs. King, 282 Pa. 157, 127 A. 462 (1925).

[28] Constitution, Art. III, Sec. 17.

II. Financial Powers and Limitations—Continued

E. Appropriations and Expenditures—Continued

(1) State—Continued

(c) See page 1, paragraph A, and footnote 2.

(d) See page 2, paragraph B, and footnote 3.

(2) Counties and Other Local Units

(a) See page 9, paragraph (e), and footnote 24.

(b) The General Assembly shall provide by law for the strict accountability of all county, township and borough officers, as well for the fees which may be collected by them, as for all public or municipal moneys which may be paid to them.[29]

III. Provisions Affecting Legislation

A. Regular Sessions of Legislature

(1) The General Assembly shall meet at twelve o'clock, noon, on the first Tuesday of January every second year, and at other times when convened by the Governor, but shall hold no adjourned annual session after the year one thousand eight hundred and seventy-eight.[30]

* * *

(2) He shall, (the Governor), from time to time, give to the General Assembly information of the state of the Commonwealth, and recommend to their consideration such measures as he may judge expedient.[31]

B. Special Sessions of Legislature

(1) See A, paragraph (1), above.

(2) When the General Assembly shall be convened in special session, there shall be no legislation upon subjects other than those designated in the proclamation of the Governor calling such session.[32]

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[29] Constitution, Art. XIV, Sec. 6.

[30] Constitution, Art. II, Sec. 4.

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

[32] Constitution, Art. III, Sec. 25.

There is no limitation upon the number of subjects which may be contained in the Governor's proclamation calling a special session. Such is limited only by the Governor's conception of the public need. Commonwealth vs. Liveright, 308 Pa. 35, 161 A. 697 (1932).

The Legislature must confine itself to matters submitted in the call of a special session but need not follow the views of the Governor or legislate in any particular way. Ibid.

See also p. 12, footnote 33.

III. Provisions Affecting Legislation—Continued

B. Special Sessions of Legislature—Continued

(3) He (the Governor) may, on extraordinary occasions, convene the General Assembly, and in case of disagreement between the two Houses, with respect to the time of adjournment, adjourn them to such time as he shall think proper, not exceeding four months. He shall have power to convene the Senate in extraordinary session by proclamation for the transaction of executive business.[33]

C. Powers of Initiative and Referendum

No provision.

D. Legislative Enactment

(1) The legislative power of this Commonwealth shall be vested in a General Assembly which shall consist of a Senate and House of Representatives.[34]

(2) No law shall be passed except by bill, and no bill shall be so altered or amended, on its passage through either House, as to change its original purpose.[35]

(3) No bill, except general appropriation bills, shall be passed containing more than one subject, which shall be clearly expressed in its title.[36]

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[33] Constitution, Art. IV, Sec. 12.
The determination as to whether an occasion exists for an extraordinary session is a matter entirely for the executive. Pittsburgh's Petition, 32 Pa. Super. 210 (1906).
Where the General Assembly has been convened by the Governor in extraordinary session to meet on a day named to consider certain designated subjects, the Governor may subsequently before the day stated issue another proclamation submitting additional subjects for the consideration of the extra session. Ibid.
The purpose of the proclamation is to inform the members of the Legislature of the designated subject which they are convened to consider, and when the General Assembly enacts a law which is fully and clearly responsive to such a call, both in its title and in the body of the act, such law will be sustained by the courts. In re Likins, 223 Pa. 456, 72 A. 858 (1909).

[34] Constitution, Art. II, Sec. 1.

[35] Constitution, Art. III, Sec. 1.
So far as the duty and consciences of the members of the Legislature are involved, this provision as to the manner of passage of bills through either house is mandatory. They are bound by their oaths to obey the constitutional mode of proceedings. But when a law has been passed, approved, and certified in due form, the court will not, on a bill in equity filed to enjoin the execution of the statute, consider allegations that it was so altered and amended during its passage as to entirely change its original purpose. Kilgore vs. Magee, 85 Pa. 401 (1877).

[36] Constitution, Art. III, Sec. 3.
The title of a statute need not be an index of its contents. Commonwealth ex rel. Attorney General vs. Irwin, 110 Pa. Super. 387, 168 A. 868 (1933); Retirement Board of Allegheny County vs. McGovern, 316 Pa. 161, 174 A. 400 (1934); Commonwealth vs. Markmann, 114 Pa. Super. 29, 174 A. 6 (1934); in re Soldiers' and Sailors' Memorial Bridge, 308 Pa. 487, 162 A. 309 (1932).

III. Provisions Affecting Legislation—Continued

D. Legislative Enactment—Continued

(4) The general appropriation bill shall embrace nothing but appropriations for the ordinary expenses of the executive, legislative and judicial departments of the Commonwealth, interest on the public debt and for public schools; all other appropriations shall be made by separate bills, each embracing but one subject.[37]

(5) Every bill shall be read at length on three different days in each House; all amendments made thereto shall be printed for the use of the members before the final vote is taken on the bill, and no bill shall become a law, unless on its final passage the vote be taken by yeas and nays, the names of the persons voting for and against the same be entered on the journal, and a majority of the members elected to each House be recorded thereon as voting in its favor.[38]

(6) No amendment to bills by one House, shall be concurred in by the other except by the vote of a majority of the members elected thereto, taken by yeas and nays, and the names of those voting for and

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A bill may contain any number of provisions properly connected with and germane to its expressed subject without violating the constitutional requirement that a bill contain no more than one subject clearly expressed in its title. Mallinger vs. City of Pittsburgh, 316 Pa. 257, 175 A. 525 (1934).

Where a general act repeals inconsistent acts on same subject, the repealing clause in the act is germane to the subject and need not be referred to in the title. Baker vs. Kirschnek, 317 Pa. 225, 176 A. 489 (1935).

[37] Constitution, Art. III, Sec. 15.

The history and purpose of this section is well known. It was aimed at the objectionable practice of putting a measure of doubtful merit into the general appropriation bill (in legislative phrase, tacking it on as a rider), in order to compel members to vote for it or bring the wheels of government to a stop. The same constitutional intent is embodied in Sec. 16 of Art. IV (p. 15, par. (11)), giving the Governor power to disapprove separate items of appropriation bills. It is the practice of thus forcing the passage of extraneous matters not germane to the purpose of the bill itself, that was intended to be abolished. As to general legislation the same object among others was secured by the provisions of Sec. 3 of Art. III (p. 12, D, par. (3)) that "no bill, except general appropriations, shall be passed, containing more than one subject." General appropriation bills from their nature usually cover a number of items, not all relating strictly to one subject. They were therefore excepted from the requirement of Sec. 3 and this exception necessitated the special Sec. 15 relating to them. The object of both is the same. Commonwealth vs. Gregg, 161 Pa. 582, 29 A. 297 (1894).

An act providing that funds from registrations and licenses should be available to aid in constructing, maintaining, and improving highways was held not violative of this section which was intended only to apply to biennial appropriations from general revenues and not to a fund created for a special purpose. Commonwealth vs. Powell, 249 Pa. 144, 94 A. 746 (1915).

[38] Constitution, Art. III, Sec. 4.

In a case seeking to have an act declared invalid on the ground that the constitutional mode of proceeding in the enactment thereof was not followed, the court stated "when a law has been passed and approved and certified in due form it is no part of the duty of the judiciary to go behind the law as duly certified to inquire into the observance of form in its passage. The presumption in favor of regularity is essential to the peace and order of the State." Kilgore vs. Magee, 85 Pa. 401 (1877).

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III. Provisions Affecting Legislation—Continued

D. Legislative Enactment—Continued

against recorded upon the journal thereof; and reports of committees of conference shall be adopted in either House only by the vote of a majority of the members elected thereto, taken by yeas and nays, and the names of those voting recorded upon the journals.[39]

(7) No law shall be revived, amended, or the provisions thereof extended or conferred, by reference to its title only, but so much thereof as is revived, amended, extended or conferred shall be re-enacted and published at length.[40]

(8) The General Assembly shall not pass any local or special law * * *

Regulating the affairs of counties, cities, townships, wards, boroughs or school districts: * * *

Locating or changing county seats, erecting new counties or changing county lines:

Incorporating cities, towns or villages, or changing their charters: * * *

Erecting new townships or boroughs, changing township lines, borough limits or school districts: * * *

Exempting property from taxation:[41] * * *.

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[39]Constitution, Art. III, Sec. 5.

[40]Constitution, Art. III, Sec. 6.

The intention of this section is that when the provisions of a former law are to be incorporated with a subsequent statute, they or the law containing them shall be re-enacted and published at length. Gallagher vs. MacLean, 193 Pa. 583, 45 A. 76 (1899).

This section includes municipal ordinances. Norristown vs. Norristown Passenger Railway Company, 148 Pa. 87, 23 A. 1060 (1892).

An act which is complete in itself, the purpose, meaning, and full scope of which are apparent on its face, is valid, although it may operate to alter, extend, or repeal a prior act, or may provide for the means of carrying its provisions into effect by a reference to a course of procedure established by other acts of the Legislature. In re Reber, 235 Pa. 622, 84 A. 587 (1912). See Mayer vs. Franklin County, 85 Pa. Super. 463 (1925).

[41]Constitution, Art. III, Sec. 7.

Municipal or borough ordinances are not "laws" within the meaning of this section. Taylor vs. City of Philadelphia, 261 Pa. 458, 104 A. 766 (1918).

A law is general where every person who is brought within the relations and circumstances provided for is affected by the law. Evans vs. Phillipi, 117 Pa. 226, 11 A. 630 (1887).

A law which permanently excludes any one from a class is special. Davis vs. Moore, 50 Pa. Super. 494 (1912).

If an act is intended to apply to but one particular city, county, borough, or township, and is not intended to, and under existing conditions never could, apply to any other, it is local and therefore unconstitutional. Perkins vs. Philadelphia, 156 Pa. 539, 27 A. 356 (1893).

Where a class to which a statute is made applicable is unnecessarily restricted or improperly selected, the law is special, though the subject of the legislation is such that separate laws for separate classes are demanded. Chalmers vs. City of Philadelphia, 250 Pa. 251, 95 A. 427 (1915).

III. Provisions Affecting Legislation—Continued

D. Legislative Enactment—Continued

(9) No local or special bill shall be passed unless notice of the intention to apply therefor shall have been published in the locality where the matter or the thing to be effected may be situated, which notice shall be at least thirty days prior to the introduction into the General Assembly of such bill and in the manner to be provided by law; the evidence of such notice having been published, shall be exhibited in the General Assembly before such act shall be passed.[42]

(10) All bills for raising revenue shall originate in the House of Representatives, but the Senate may propose amendments as in other bills.[43]

(11) Every order, resolution or vote, to which the concurrence of both Houses may be necessary, except on the question of adjournment, shall be presented to the Governor and before it shall take effect be approved by him, or being disapproved, shall be re-passed by two-thirds of both Houses according to the rules and limitations prescribed in case of a bill.[44]

The most general criterion of the unconstitutionality of an act under this section is whether its operation will produce uniformity or diversity. An act which serves to repeal an existing local system for the assessment of damages for municipal improvements, and substitutes in its place the system prevailing generally throughout the State tends to promote uniformity and is valid. In re Ruan Street, 132 Pa. 257, 19 A. 219 (1890).

Classification is a legislative question, with which the courts will not interfere, if made in good faith and based on genuine and substantial distinction. Appeal of J. A. Young and Company, 105 Pa. Super. 153, 160 A. 151 (1932).

Where a statute, general in form, covering every county in the State is an enabling act, and the only thing necessary for the local body of voters or taxpayers to do is to decide whether they will proceed under the terms of the act, it cannot be deemed local because by proceeding under the act in some counties and not in others, local results may be produced. On this theory an act providing for establishment of tuberculosis hospitals covering every county of the State was held not in violation of this section as a local law because of the provision requiring a majority vote of the electors in each county for the establishment of a hospital. Commonwealth vs. Woodring, 289 Pa. 437, 137 A. 635 (1927).

Since poor districts are not specifically mentioned in this section, local legislation for poor districts was held probably not prohibited. Janks Township Poor District vs. Sheffield Township Poor District, 135 Pa. 400, 19 A. 1004 (1890).

[42]Constitution, Art. III, Sec. 8.

The Supreme Court cannot declare an act of the Legislature void, which has been certified to by both houses and approved by the Governor, on the ground that it has not been advertised in the locality affected as required. It is bound to presume that all precedent formalities have been complied with. Perkins vs. Philadelphia, 156 Pa. 539, 27 A. 356 (1893).

The repeal of a local act is itself a local act within the meaning of this section, and requires publication of notice in the locality to be affected. Chalfant vs. Edwards, 173 Pa. 246, 33 A. 1048 (1896). Publication is essential to the validity of a law which comes within the purview of this section and if nonpublication be admitted, overcoming the presumption of compliance with the formalities, the act is void, and the courts may so declare it. Ibid.

[43]Constitution, Art. III, Sec. 14.

[44]Constitution, Art. III, Sec. 26.

III. Provisions Affecting Legislation—Continued

D. Legislative Enactment—Continued

(12) The Governor shall have power to disapprove of any item or items of any bill, making appropriations of money, embracing distinct items, and the part or parts of the bill approved shall be the law, and the item or items of appropriations disapproved shall be void, unless repassed according to the rules and limitations prescribed for the passage of other bills over the executive veto.[45]

(13) Every bill which shall have passed both Houses shall be presented to the Governor; if he approve he shall sign it, but if he shall not approve he shall return it with his objections to the House in which it shall have originated, which House shall enter the objections at large upon their journal, and proceed to reconsider it. If after such reconsideration, two-thirds of all the members elected to that House shall agree to pass the bill, it shall be sent with the objections to the other House by which likewise it shall be reconsidered, and if approved by two-thirds of all the members elected to that House it shall be a law; but in such cases the votes of both Houses shall be determined by yeas and nays, and the names of the members, voting for and against the bill shall be entered on the journals of each House, respectively. If any bill shall not be returned by the Governor within ten days 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 General Assembly, by their adjournment, prevent its return, in which case it shall be a law, unless he shall file the same, with his objections, in the office of the Secretary of the Commonwealth, and give notice thereof by public proclamation within thirty days after such adjournment.[46]

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[45] Constitution, Art. IV, Sec. 16.

An appropriation bill contained a section appropriating $11,000,000 for the public schools. The Governor approved the item to the extent of $10,000,000 and disapproved it as to the remainder. A school district, claiming that it was entitled to its proportionate share of the $1,000,000 disapproved by the Governor, petitioned for a writ of mandamus to compel the State Treasurer to pay said amount. The court held that the Governor had exercised his power of veto in a proper manner; that the purpose, object, and amount of an appropriation were separate and distinct "parts" of the bill; that he might approve the object and purpose and disapprove the amount; that the word "item" means any fraction of a lump sum, and not a specific integral sum as is the usual meaning of the word. Commonwealth vs. Barnett, 199 Pa. 161, 48 A. 976 (1901).

[46] Constitution, Art. IV, Sec. 15.

After the Governor has signed a bill, it will be conclusively presumed that the proper formalities were observed in its passage; and the courts will not consider allegations to the contrary. Perkins vs. Philadelphia, 156 Pa. 539, 27 A. 356 (1893). See also Kilgore vs. Magee, 85 Pa. 401 (1877).

As a proposed constitutional amendment need not be submitted to the Governor for his approval, he has no power to veto such an amendment, and an attempted veto is nugatory. Commonwealth vs. Griest, 196 Pa. 396, 46 A. 505 (1900).

IV. Constitutional Amendment or Revision

A. By Proposal of Legislature or People

Any amendment or amendments to this Constitution may be proposed in the Senate or House of Representatives, and, if the same shall be agreed to by a majority of the members elected to each House, such proposed amendment or amendments shall be entered on their journals with the yeas and nays taken thereon, and the Secretary of the Commonwealth shall cause the same to be published three months before the next general election, in at least two newspapers in every county in which such newspapers shall be published; and if, in the General Assembly next afterwards chosen, such proposed amendment or amendments shall be agreed to by a majority of the members elected to each House, the Secretary of the Commonwealth shall cause the same again to be published in the manner aforesaid; and such proposed amendment or amendments shall be submitted to the qualified electors of the State in such manner, and at such time, at least three months after being so agreed to by the two Houses, as the General Assembly shall prescribe; and, if such amendment or amendments shall be approved by a majority of those voting thereon, such amendment or amendments shall become a part of the Constitution; but no amendment or amendments shall be submitted oftener than once in five years. When two or more amendments shall be submitted they shall be voted upon separately.[47]

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[47] Constitution, Art. XVIII, Sec. 1.

The Secretary of the Commonwealth cannot allege as ground for refusing to publish a proposed amendment to the Constitution that no appropriation has been made to defray the cost of publication. Commonwealth vs. Griest, 196 Pa. 396, 46 A. 505 (1900).

It is not absolutely necessary that the publication of a proposed constitutional amendment should be made 3 months before the general election which follows next after the amendment was agreed to by the two Houses. This provision should be regarded as merely directory, and the time limit as not essential. When the Secretary of the Commonwealth has neglected or refused to publish a proposed amendment until after the general election next following the session at which the amendment was proposed, he may be compelled by mandamus to make publication for 3 months prior to the succeeding general election at which members of the Legislature are voted for. Ibid.

Under this section, providing for submission of constitutional amendments proposed in the Senate or House of Representatives to the people, specifying the procedure and stating "but no amendment or amendments shall be submitted oftener than once in five years," the people shall not be asked to amend the Constitution oftener than once in 5 years, since such provision has reference to any amendments, and does not merely preclude resubmission of amendments once defeated. Armstrong vs. King, 281 Pa. 207, 126 A. 263 (1924).

Proposed amendments may be submitted either at general elections which occur in even-numbered years, or at those elections technically termed "municipal" occurring in odd-numbered years. Commonwealth vs. King, 278 Pa. 280, 122 A. 279 (1923).

There may be a technical error in the manner in which a proposed amendment is adopted, or in its advertisement; yet, if followed, unobjected to, and approved by the electors, it becomes a part of the Constitution. Legal complaints to the submission may be made prior to taking the vote, but if once sanctioned, the amendment cannot be attacked, either directly or collaterally, because of any mistake antecedent thereto. Taylor vs. King, 284 Pa. 235, 130 A. 407 (1925).

IV. Constitutional Amendment or Revision—Continued

B. By Contitutional Convention

No provision.[48]

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[48] The provisions for amending the Constitution found in Sec. 1 of Art. XVIII (p. 17, par. A) are not exclusive. The Constitution may be amended by a convention called by law to propose changes. Wells vs. Bain, 75 Pa. 39 (1873); see also Woods Appeal, 75 Pa. 59 (1874).

The Constitution may be amended as provided for in Sec. 1 of Art. XVIII (p. 17, par. A) or a new Constitution may be drafted by a convention duly assembled, the action of the convention being however subject to ratification by the people. These are the only ways in which the fundamental law can be altered. Taylor vs. King, 284 Pa. 235, 130 A. 407 (1925).

U. S. GOVERNMENT PRINTING OFFICE: 1937