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

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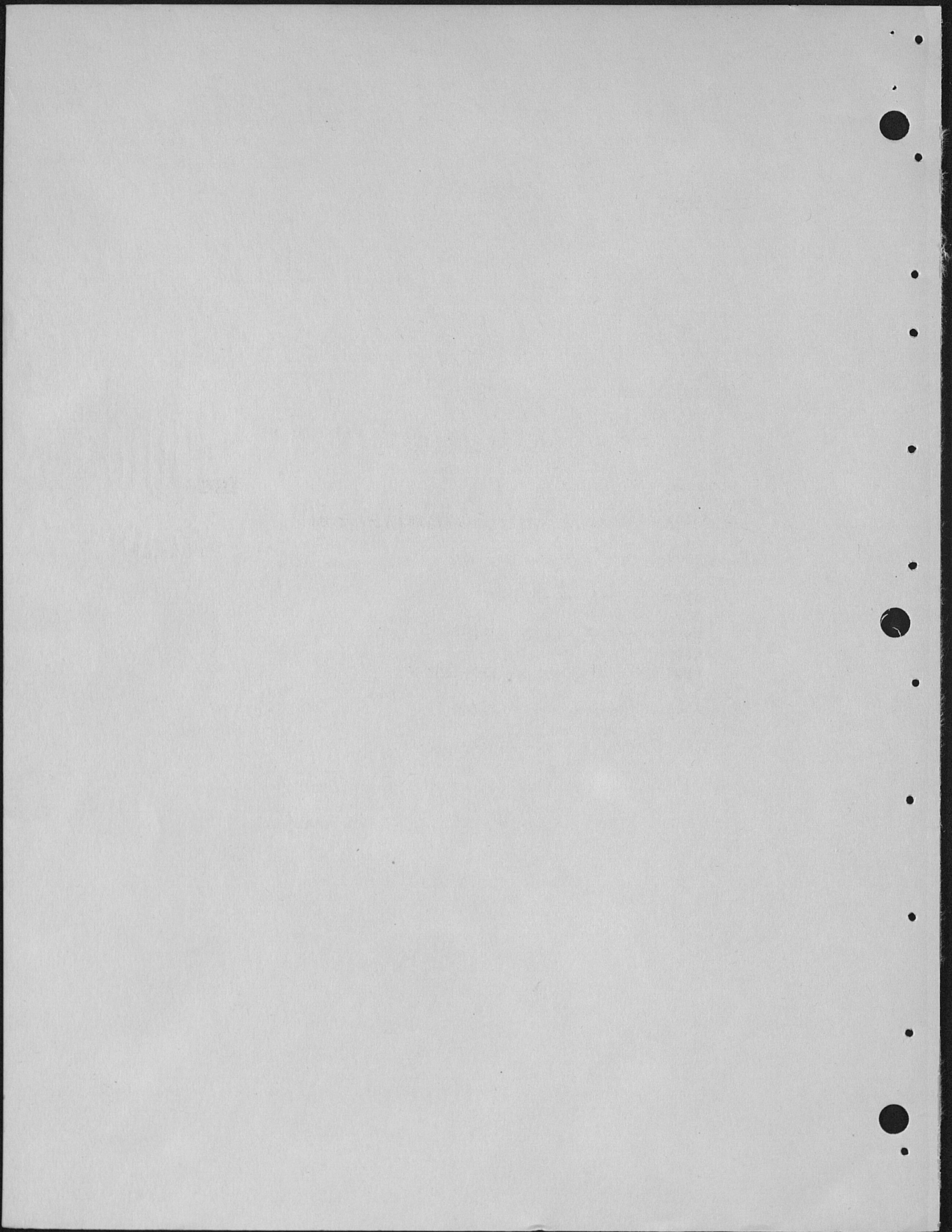
## Preface

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.

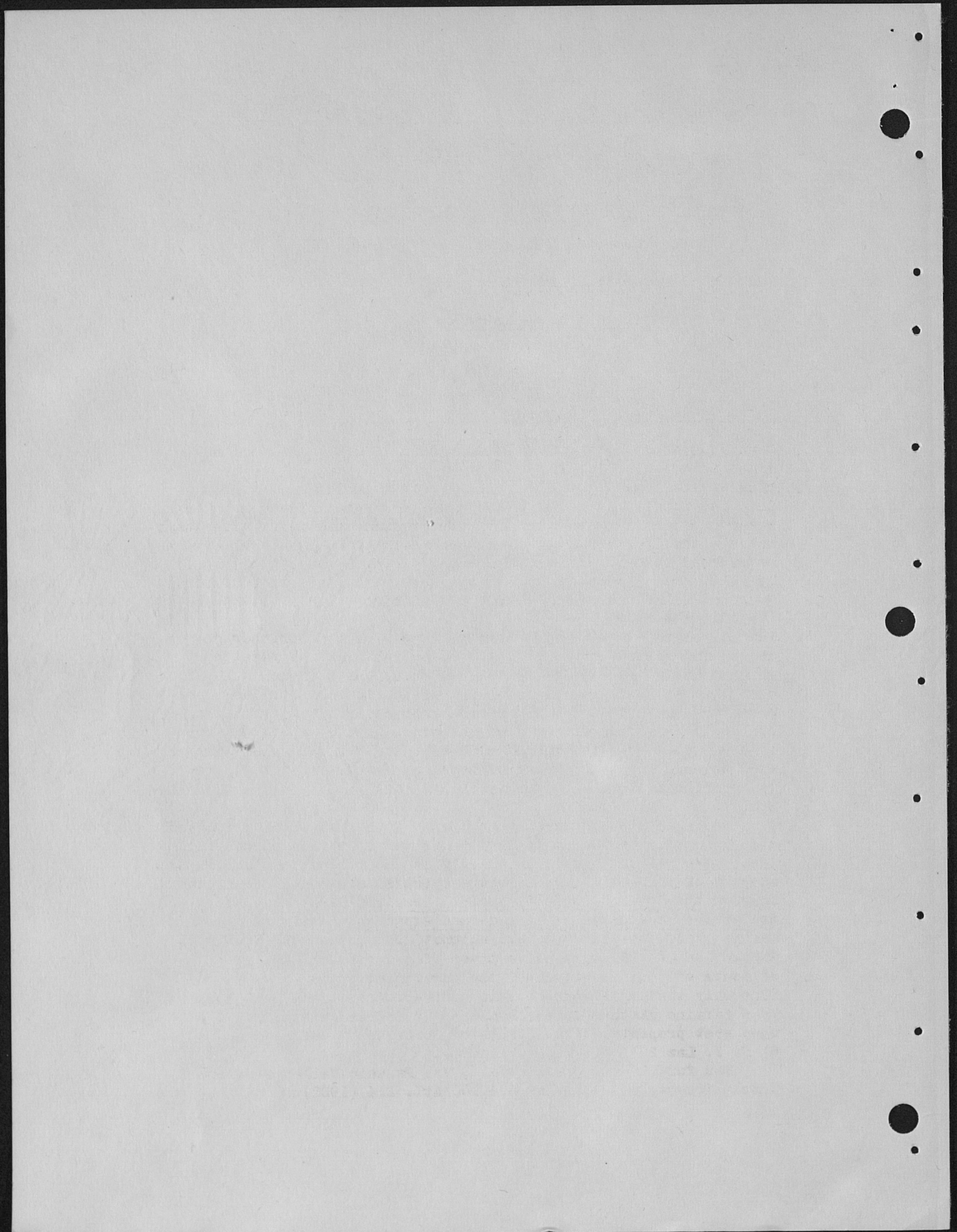




New Jersey

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ANALYSIS OF CONSTITUTIONAL PROVISIONS AFFECTING

PUBLIC WELFARE IN NEW JERSEY 1/

I. Incidence of Responsibility for Welfare Program

No provision. 2/

II. Financial Powers and Limitations

A. Taxation and Assessments 3/

(1) State

Property shall be assessed for taxes under general

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1. Constitution of 1875 with revisions of 1897 and subsequent amendments to November 15, 1936.
  2. "The police power extends to all the great public needs . . . Changing conditions necessarily impose a greater demand upon this reserve power for such reasonable supervision and regulation as may be essential for the common good and welfare . . . generally it may be exerted whenever necessary for the preservation of the public health, morals, comfort, order, and safety." State ex rel. State Board of Milk Control vs. Newark Milk Company, 118 N. J. Eq. 504, 179 Atl. 116 (1935).
  3. The Legislature may provide for the appointment of officers to assess and collect taxes, but the essential power of taxation, which is the power to levy a tax, is incapable of being delegated by the Legislature; however, on the principle that for local purposes the local authorities are the representatives of the people, the Legislature may confer upon the minor political subdivisions of the State power to impose and levy taxes and assessments to provide revenue for the payment of local expenses, debts, and liabilities. *Inhabitants of Township of Bernards vs. Allen*, 61 N. J. Law 228, 39 Atl. 716 (1898).

Where an act providing that if the local boards of towns and municipalities neglected to levy taxes for specified purposes of local government, to wit, schools, fire department, public health, support of poor, etc., or if there appeared a vacancy in the local boards, the Governor should appoint three resident freeholders to assess and levy taxes as they deemed expedient within a certain maximum rate, the act was held unconstitutional as an unlawful delegation of the legislative power of taxation to ministerial officers of another branch of the government. The court stated that only the Legislature itself or the local boards were competent to determine whether taxes should be levied and at what rate and upon what property. *Inhabitants of Township of Bernards vs. Allen*, 61 N. J. Law 228, 39 Atl. 716 (1898).

See further *Van Cleve et al., vs. Passaic Valley Sewerage Commissioners*, 71 N. J. Law 574, 60 Atl. 214 (1905).

2. New Jersey

II. Financial Powers and Limitations (Cont'd)

A. Taxation and Assessments (Cont'd)

(1) State (Cont'd)

laws, and by uniform rules 4/, according to its true value. 5/

4. The phrase "uniform rules" as used in this section does not refer to the procedure adopted by the taxing agencies, or to the methods employed in the assessment and collection of taxes; it refers only to the basic rules for taxation which settle how the public burden is to be distributed including the selection of subjects for taxation and the rate by which taxes are to be laid. *Central Railroad Company of N. J. vs. State Board of Assessors*, 75 N. J. Law 120, 67 Atl. 672 (1907).

5. Constitution, Art. IV, Sec. 7, Par. 12.

"The Legislature may create special taxing districts, defining their limits in its discretion, or designate certain occupations, trades or employments as special subjects for taxation; or discriminate between different kinds of property in the rate of taxation; or apportion the tax among the classes of persons or property made liable to taxation, in such manner as may seem fit . . . But when the taxing district has been defined, and the classes of persons or kinds of property specially set apart for taxation have been designated, the tax must be apportioned among those who are to bear the burden upon the rule of uniformity." *State, Trustees of White House School District vs. Readington Township Committee*, 36 N. J. Law 66 (1872).

Special assessments imposed upon property on which improvements are bestowed are not taxes within the restriction of this section, and therefore are imposed not according to "value", but by measuring the benefit received from the improvement. *State (Herrman et al.) vs. Town of Guttenberg*, 62 N. J. Law 605, 43 Atl. 703 (1899), affirmed, *Id.*, 63 N. J. Law 616, 44 Atl. 758 (1899).

An act exempting from taxation for five years all improvements to realty for dwelling purposes, to be erected between 1920 and 1922 was held unconstitutional under this section since the act did not classify the property so as to include all within the class - i.e., all improvements used for dwelling purposes - but arbitrarily exempted such improvements as were erected during the two years. Such a classification, based not upon use to which the property was to be put, but upon construction within a certain time, would also violate Art. IV, Sec. 7, par. 11 (for provisions of this section, see page 3, footnote 6), relating to special acts. *Koch vs. Essex County Board of Taxation*, 97 N. J. Law 61, 116 Atl. 328 (1922).

See page 3, footnote 8.

There is no restriction in the Constitution upon the power of the Legislature to impose franchise and license taxes. *Standard Under-Ground Cable Company vs. Attorney General*, 46 N. J. Eq. 270, 19 Atl. 733 (1890).

Such taxes are taxes upon a privilege, and are not taxes upon (Footnote forwarded)



II. Financial Powers and Limitations (Cont'd)

A. Taxation and Assessments (Cont'd)

(2) County

No provision. 6/

(3) Other Local Units

No provision. 7/

B. Exemptions

No provision. 8/

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(Footnote #5 - Continued)

property; they are not, therefore, subject to the requirement of this section that property shall be assessed according to its true value. North Jersey Street Railway Company vs. Mayor, etc., 73 N. J. Law 481, 63 Atl. 833 (1906).

A tax levied upon property passing by will is not a property tax but is a premium upon the right to receive such property, and is not, therefore, affected by the requirements of this section. Howell vs. Edwards, 88 N. J. Law 134, 96 Atl. 186 (1915), affirmed Id., 89 N. J. Law 713, 99 Atl. 1070 (1916).

6. See page 1, footnote 3 and page 2, footnote 5.

Art. IV, Sec. 7, Par. 11 enumerates ten cases in which private, local, or special laws may not be passed. Among these are laws relating to the internal affairs of counties and towns, and the appointment of local officers or commissions to regulate municipal affairs. The Legislature is limited to general laws in regard to these subjects and to all other subjects which, in its judgment, may be provided for by general laws.

7. See page 1, footnote 3, and page 2, footnote 5.

A municipal body that seeks to tax its inhabitants must show power to do so derived from positive statute. While it is not necessary to have express authority to levy taxes for every specific purpose for which they are imposed, still the grant from the Legislature must be unmistakable. Where the charter of a town expressly provided that the fund for street improvements should be raised by the issuance of improvement certificates, and a special assessment on the property benefited to redeem said certificates at maturity, it was held that without any more definite grant of authority the town could not levy a general tax to pay the certificates where the special assessment fund for their redemption had proved inadequate. State ex rel. Shackelton vs. Guttenberg Board of Councilmen, 39 N. J. Law 660 (1877).

See footnote 6, above.

8. Exemptions from taxation are always strictly construed; a person claiming immunity for his property must show affirmatively that (Footnote forwarded)

II. Financial Powers and Limitations (Cont'd)

C. Borrowing and Use of Credit

(1) State

(a) The credit of the state shall not be directly or indirectly loaned in any case. <sup>9/</sup>

(b) The legislature shall not, in any manner create any debt or debts, liability or liabilities, of the state, which shall singly or in the aggregate with any previous debts or liabilities at any time exceed one hundred thousand dollars, except for purposes of war, or to repel invasion, or to suppress insurrection, unless the same shall be authorized by a law for some single object or work, to be distinctly specified therein; which law shall provide the ways and means, exclusive of loans, to pay the interest of such debt or liability as it falls due, and also to pay and discharge the principal of such debt or liability within thirty-five years from the time of the contracting thereof, and shall be irrevocable until such debt or liability, and the interest thereon, are fully paid and discharged; and no such law shall take effect until it shall, at a general election, have been submitted to the people, and have received the sanction of a majority of all the votes cast for and against it at such election; and all money to be raised by the authority of such law shall be applied only to the specific object stated therein, and to the payment of the debt thereby

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(Footnote #8 - Continued)

it comes within the statutory exemption. State (Congregation of Mission of St. Vincent de Paul, etc. ) vs. Brakely, 67 N. J. Law 176, 50 Atl. 589 (1901).

Exemptions from taxation of property, real or personal, must be based upon characteristics possessed by such property itself, or upon the uses to which it is put, and not upon the personal status of the owners of such property. Thus an act exempting up to \$500 all personal and real property of active firemen was held unconstitutional under Art. IV, Sec. 7, Par. 15, (page 1, Sec. II, par. A, (1)), which by implication requires that classifications of property for purposes of exemption from taxation must be accomplished under general laws operating uniformly upon all prop-erty in the class. Tippet vs. McGrath, 70 N. J. Law 110, 56 Atl. 134 (1903).

Under an act exempting all buildings used exclusively for charitable purposes, it was held that buildings used by a charitable association for commercial purposes were not exempt from taxation even though all the profits derived therefrom were devoted to charity. State (Sisters of Peace) vs. Westervelt, 64 N. J. Law 510, 45 Atl. 788 (1900).

9. Constitution, Art. IV, Sec. 6, Par. 3.

See page 7, Sec. II, par. E, (1), (a).



II. Financial Powers and Limitations (Cont'd)

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

(1) State (Cont'd)

created. This section shall not be construed to refer to any money that has been, or may be, deposited with this state by the government of the United States. 10/

(2) Counties

No county, city, borough, town, township or village shall hereafter give any money or property, or loan its money or credit, to or in aid of any individual, association or corporation, or become security for or be directly or indirectly the owner of any stock or bonds of any association or corporation. 11/

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10. Constitution, Art. IV, Sec. 6, Par. 4.

Under an act of the Legislature authorizing the State Water Supply Commission, a corporation, to acquire property for the purpose of conserving the potable waters of the State to the common use of the inhabitants thereof, and to issue bonds, and provide for a sinking fund and a mortgage as the Commission might see fit to secure the payment of the bonds, said Commission contracted for the purchase of certain lands for \$1,000,000 to be secured by 50 year bonds of the Commission to that amount and a mortgage on the lands, and further provided for a sinking fund into which should be placed any moneys which from time to time might be appropriated by any Legislature toward payment of the principal on said bonds. This statute and the acts of the Commission thereunder were held invalid as in conflict with this section. The court, after liberally defining the term "debts" as used in this section as those "payable by legislative appropriation" rejected the contention that the debt obligated only the Commission and not the State, and concluded that the Commission acted as an agent of the Legislature in creating the debt, further that the Legislature itself was unauthorized to create such a debt except by an act which act would be subject to a referendum vote of the people. Wilson vs. State Water Supply Commission et al., 84 N. J. Eq. 150, 93 Atl. 732 (1915).

11. Constitution, Art. I, Sec. 19.

Resolutions of city commissioners authorizing the expenditure of city money to defend proceedings by landlords to dispossess tenants in cases where "unscrupulous owners have demanded unconscionable" rent, beyond the tenants' ability to pay was held unconstitutional with reference to this section as an advancement of public moneys in aid of private litigation. The court held that the general welfare and good government of the city did not require and would not tolerate the protection of one class of citizens at the expense of another. Stell vs. Mayor and Aldermen of Jersey City, 95 N. J. Law 38, 111 Atl. 274 (1920).  
(Footnote forwarded)

6. New Jersey

II. Financial Powers and Limitations (Cont'd)

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

(3) Other Local Units

See page 5, par. (2).

D. Other Income

The fund for the support of free schools, and all money, stock and other property, which may hereafter be appropriated for that purpose, or received into the treasury under the provision of any law heretofore passed to augment the said fund, shall be securely invested, and remain a perpetual fund; and the income thereof, except so much as it may be judged expedient to apply to an increase of the capital, shall be annually appropriated to the support of public free schools, for the equal benefit of all the people of the state 12/; and it shall not be competent for the legislature to borrow, appropriate or use the said fund, or any part thereof, for any other purpose, under any pretense whatever . . . 13/

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(Footnote #11 - Continued)

A statute providing for a policemen's pension fund maintained in part by enforced contributions by policemen, and in part by moneys collected from taxes was held valid with reference to this section in view of the fact that the moneys paid out for pensions were a part of the compensation for services rendered to the city by the police members, and were inducements to their enlistments. *Hayes vs. Mayor and Council of City of Hoboken*, 93 N. J. Law 432, 108 Atl. 868 (1919).

A public library association is a municipal agency serving a public purpose and therefore does not come within the prohibitions of this section or Art. I, Sec. 20 (page 7, Sec. II, par. E, (1), (a)), even though it is constituted a separate corporate entity. *Trustees of Free Public Library of Newark vs. Civil Service Commission*, 83 N. J. Law 196, 83 Atl. 980 (1912).

12. Income arising out of real estate which is a part of the school fund may not be used to pay taxes to a municipality in which such real estate is located. *State vs. Mayor etc. of Borough of Rutherford*, 98 N. J. Law 465, 120 Atl. 202 (1923).
13. Constitution, Art. IV, Sec. 7, Par. 6.



II. Financial Powers and Limitations (Cont'd)

E. Appropriations and Expenditures

(1) State

(a) No donation of land or appropriation of money shall be made by the state or any municipal corporation to or for the use of any society, association or corporation whatever. 14/

(b) No money shall be drawn from the treasury but for appropriations made by law. 15/

(2) Counties

No provision.

(3) Other Local Units

See above, par. (a).

III. Provisions Affecting Legislation

A. Regular Sessions of Legislature

(1) The legislative power shall be vested in a senate and general assembly. 16/

(2) Members of the senate and general assembly shall be elected yearly and every year, on the first Tuesday after the first Monday in November; and the two houses shall meet separately on the second Tuesday in January next after the said day of election, at which time of meeting, the legislative year shall commence; but the time of holding such election may be altered by the legislature. 17/

(3) . . . He (The Governor) shall communicate by message to the legislature at the opening of each session, and at such other times as he may deem necessary, the condition of the state, and recommend such measures as he may deem expedient; . . . 18/

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14. Constitution, Art. I, Sec. 20.

See page 5, par. (2), and footnote 11.

15. Constitution, Art. IV, Sec. 6, Par. 2.

16. Constitution, Art. IV, Sec. 1, Par. 1.

17. Constitution, Art. IV, Sec. 1, Par. 3.

18. Constitution, Art. V, Sec. 6.

8. New Jersey

III. Provisions Affecting Legislation (Cont'd)

B. Special Sessions of Legislature

. . . He (The Governor) shall have power to convene the legislature, or the senate alone, whenever in his opinion public necessity requires it; . . . 19/

C. Powers of Initiative and Referendum

See page 4, par. (b).

D. Legislative Enactment

(1) All bills for raising revenue shall originate in the house of assembly; but the senate may propose or concur with amendments, as on other bills. 20/

(2) All bills and joint resolutions shall be read three times in each house, before the final passage thereof; and no bill or joint resolution shall pass, unless there be a majority of all the members of each body personally present and agreeing thereto 21/; and the yeas and nays of the members voting on such final passage shall be entered on the journal. 22/

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19. Constitution, Art. V, Sec. 6.

20. Constitution, Art. IV, Sec. 6, Par. 1.

Where a revenue bill introduced and passed by the Senate after the prescribed three readings, was referred to the House Committee on Taxation, and that committee reported a "substitute" bill, substantially identical with the Senate bill, and the "substitute" bill was read and passed in both houses as a bill originating in the House, the court upheld the act as sufficiently complying with this section. In re Ross, 86 N. J. Law 387, 94 Atl. 304 (1914).

21. This provision has been practically construed to require the concurrence of a majority of the entire membership of each House. Ross vs. Miller, 115 N. J. Law 61, 178 Atl. 771 (1935).

22. Constitution, Art. IV, Sec. 4, Par. 6.

The decision in State ex rel. Pangborn vs. Young, 32 N. J. Law 29 (1866), held that where an act had been duly filed with the Secretary of State and sealed with the official seal, the judiciary might not call into question the legislative journals to determine whether or not the constitutional requirements had been met. This decision, however, in Ex parte Hague, 104 N. J. Eq. 31, 144 Atl. 546 (1929), was held to be limited in its application to public laws, and not applicable to joint resolutions or special acts on the theory that the latter are of less solemnity than public laws. The effect of State ex rel. Pangborn vs. Young is further minimized by a statute, held constitutional in re "An Act to Amend an Act", etc., 83 N. J. Law 303, 84 Atl. 706 (1912), which provides that whenever the Governor shall have reason to believe that any law or joint resolution has not been duly passed or approved in accordance with the Constitution, he may, in his dis-

(Footnote forwarded)



III. Provisions Affecting Legislation (Cont'd)D. Legislative Enactment (Cont'd)

(3) To avoid improper influences which may result from intermixing in one and the same act such things as have no proper relation to each other, every law shall embrace but one object, and that shall be expressed in the title. No law shall be revived or amended by reference to its title only, but the act revived, or the section or sections amended, shall be inserted at length. 23/ No general law shall embrace any provision of a private, special or local character. No act shall be passed which shall provide that any existing law, or any part thereof, shall be made or deemed a part of the act, or which shall enact that any existing law, or any part thereof, shall be applicable, except by inserting it in such act. 24/

(4) No private, special or local bill shall be passed, unless public notice of the intention to apply therefor, and of the general object thereof, shall have been previously given. 25/ The legislature, at the next session after the adoption hereof, and from time to time thereafter, shall prescribe the time and mode of giving such notice, the evidence thereof, and how such evidence shall be preserved. 26/

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(Footnote #22 - Continued)

cretion, direct the Attorney General within one year from the passage of such law or joint resolution, to institute a proceeding in the Supreme Court to test its validity.

23. An act providing for the regulation of slaughterhouses and fixing a penalty for violation of the act or for violation of an earlier act securing the purity of foods and beverages, without inserting at length the sections of the earlier act thereby amended, was held invalidated only as to the objectionable part, since the main object of the act was intelligent and constitutional, standing alone. Board of Health of New Jersey vs. Schwarz Brothers Company, 86 N. J. Law 170, 90 Atl. 1061 (1914).

24. Constitution, Art. IV, Sec. 7, Par. 4.

25. The question whether the requisite notice has been given of an intention to apply for the passage of a local law is a subject matter for judicial inquiry. State (Inhabitants of Ewing Township) vs. Inhabitants of City of Trenton, 57 N. J. Law 318, 31 Atl. 223 (1895).

26. Constitution, Art. IV, Sec. 7, Par. 9.

The Constitution enumerates ten cases in which private, local, or special laws may not be passed. Among these are laws relating to local government, granting of privileges and immunities, management of free public schools, and the laying out of highways. The Legislature is limited to general laws in regard to these subjects and all other subjects which, in its judgment, may be provided for by general laws. Art. IV, Sec. 7, Par. 11.

III. Provisions Affecting Legislation (Cont'd)

D. Legislative Enactment (Cont'd)

(5) Every bill which shall have passed both houses shall be presented to the governor; if he approve he shall sign it, but if not he shall return it, with his objections, to the house in which it shall have originated, who shall . . . proceed to reconsider it; if, after such reconsideration, a majority of the whole number of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, . . . and if approved of by a majority of the whole number of that house, it shall become a law; but, in neither house shall the vote be taken on the same day on which the bill shall be returned to it 27/; . . . If any bill shall not be returned by the governor, within five days (Sunday excepted) after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the legislature by their adjournment, prevent its return, in which case it shall not be a law. 28/ If any bill presented to the governor contain several items of appropriations of money, he may object to one or more of such items while approving of the other portions of the bill. In such case he shall append to the bill, at the time of signing it, a statement of the items to which he objects, and the appropriation so objected to shall not take effect. If the legislature be in session he shall transmit to the house in which the bill originated a copy of such statement, and the items objected to shall be separately reconsidered. If, on reconsideration, one or more of such items be approved by a majority of the members elected to each house, the same shall be a part of the law, notwithstanding the objections of the governor. All the provisions of this section in relation to bills not approved by the governor shall apply to cases in which he shall withhold his approval from any item or items contained in a bill appropriating money. 29/

IV. Constitutional Amendment or Revision

A. By Proposal of Legislature or People

Any specific amendment or amendments to the constitution may be proposed in the senate or general assembly, and if the same shall

27. This provision has been interpreted to mean that no matter in which House the bill originated, the House of origin shall not vote upon the Governor's veto on the same day on which he returns the bill to that House. The house to which the bill is referred may vote upon it the same day on which it is received. In re Session Laws (1923), C. 184, 98 N. J. Law 586, 121 Atl. 736 (1923).
28. The meaning of this provision is that any adjournment of the house of origin of a bill, whether temporary or final, for more than five days after such bill has been presented to the Governor, will prevent the return of the bill and destroy its validity; the purpose of the framers of the Constitution in inserting this provision was to prevent the Legislature, by adjournment, from nullifying the Governor's constitutional right of veto. In re "An Act to Amend an Act", etc., 83 N. J. Law 303, 84 Atl. 706 (1912).
29. Constitution, Art. V, Sec. 7.



IV. Constitutional Amendment or Revision (Cont'd)A. By Proposal of Legislature or People (Cont'd)

be agreed to by a majority of the members elected to each of the two houses, such proposed amendment or amendments shall be entered on their journals, with the yeas and nays taken thereon, and referred to the legislature then next to be chosen, and shall be published for three months previous to making such choice, in at least one newspaper of each county, if any be published therein; and if in the legislature next chosen, as aforesaid, such proposed amendment or amendments, or any of them, shall be agreed to by a majority of all the members elected to each house, then it shall be the duty of the legislature to submit such proposed amendment or amendments . . . as have been agreed to as aforesaid by the two legislatures, to the people, in such manner and at such time, at least four months after the adjournment of the legislature, as the legislature shall prescribe 30/; and if the people at a special election to be held for that purpose only, shall approve and ratify such amendment or amendments, or any of them, by a majority of the electors qualified to vote for members of the legislature voting thereon 31/, such amendment or amendments so approved and ratified shall become part of the constitution; provided, that if more than one amendment be submitted, they shall be submitted in such manner and form that the people may vote for or against each amendment separately and distinctly; but no amendment or amendments shall be submitted to the people by the legislature oftener than once in five years. 32/

B. By Constitutional Convention

No provision.

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30. In inquiring as to the constitutionality of the adoption of a proposed amendment, the judiciary has authority to go behind the Governor's proclamation of adoption, and call into question the action of the State Board of Canvassers, a statutory board set up to canvass and estimate the votes given for and against a proposed amendment. State (Bott) vs. Wurts, 63 N. J. Law 289, 43 Atl. 744 (1899), affirmed, Id., 63 N. J. Law 289, 43 Atl. 881 (1899).

31. This provision has been interpreted to mean a majority of all the electors voting on each proposed amendment, not a majority of all the electors qualified to vote for members of the Legislature, nor even a majority of all those electors casting ballots for or against all proposed amendments. State (Bott) vs. Wurts, 63 N. J. Law 289, 43 Atl. 744 (1899), affirmed, Id., 63 N. J. Law 289, 43 Atl. 881 (1899).

32. Constitution, Art. IX.

