

Supreme Court Copy

No. S173586

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

STATE BUILDING AND CONSTRUCTION TRADES COUNCIL OF
CALIFORNIA, AFL-CIO

Petitioner,

v.

THE CITY OF VISTA, et al.

Respondents.

SUPREME COURT
FILED

DEC 03 2009

FILED IN CASE NO. S173586

After Decision by the Court of Appeal Fourth District – Division 1
Case No. D052181

On Appeal from the Superior Court for San Diego County
Case No.37-2007-00054316-CU-WM-NC
Hon. Robert P. Dahlquist, Presiding

RESPONDENT'S REQUEST FOR JUDICIAL NOTICE OF OTHER STATES' CONSTITUTIONAL PROVISIONS AND CODES

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ATTORNEYS FOR RESPONDENTS

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ATTORNEYS FOR RESPONDENTS

Respondents request that this Court take judicial notice of the attached documents. These documents include: (1) ballot materials concerning a sales tax increase measure passed by the citizens of Vista which include documents with anticipated public works projects to be constructed with local sales tax funds that Petitioners complain about; (2) constitutional and statutory provisions from other states demonstrating that in these other states, the scope of home rule city authority is equal to or narrower than in California, so that charter or home-rule cities in some of these other states may have to comply with all general state laws; and (3) a 2008 decision of the California Department of Industrial Relations about non-applicability of prevailing wage laws to charter cities.

The ballot pamphlet material is relevant to demonstrate the scope of Vista's interest in ensuring that it gets the best value for its taxpayers' dollars rather than paying prevailing wages.

The out-of-state constitutional and statutory provisions are relevant to this appeal because they respond to Petitioner's contention that other states require charter cities to comply with prevailing wage laws by demonstrating that charter cities elsewhere are differently situated from those in California. Out of state judicial decisions are also relevant to show where states cited as having prevailing wage laws, such as Nebraska, make exceptions of Charter Cities.

The Department of Industrial Relations decision is relevant because

it shows that the executive branch of California State Government continues to adopt the position that charter cities are exempt from prevailing wage laws. This opinion is relevant to this appeal because it helps demonstrate that circumstances have not changed dramatically as claimed by Petitioner, so there is not adequate justification for overturning the long-standing rule that charter cities are constitutionally protected from prevailing wage mandates.

Evidence Code section 459 authorizes this Court to take judicial notice of any matter referenced in Evidence Code sections 451 or 452. Section 452(a) allows this Court to take judicial notice of the “decisional, constitutional, or statutory law of any state of the United States ...” including the attached state constitutional and statutory provisions. Section 452(c) authorizes this Court to take judicial notice of “[o]fficial acts of the ... executive ... departments ... of any state of the United States,” including the ballot pamphlet information and Department of Industrial Relations’ administrative decision.

These documents were not presented to the trial court. They would not have been relevant before the trial court, which properly noted in its opinion that it was bound to rule as it did by *stare decisis*.

Because the attached evidence is relevant to determining the claims made by Petitioner in this appeal, Respondent request that this Court take judicial notice of the attached official documents:

Official Records of California Government

Exhibit 1: San Diego County Official Ballot for the General Election, November 7, 2006. City of Vista Proposition “L”, including Ballot Question, City Attorney Impartial Analysis, Arguments in Favor and Against the proposition and Text of Vista Ordinance No. 2006-15.

State Constitutional Provisions

Exhibit 2: State of Alaska, Constitution Article X, §§ 10-11.

Exhibit 3: State of Arkansas, Constitution of 1874, Article XII, §§ 3 & 6.

Exhibit 4: State of Connecticut, Constitution, Article X, §§ 1-2.

Exhibit 5: State of Delaware, Constitution, Article IX, § 1.

Exhibit 6: State of Hawaii, Constitution, Article VIII, §§ 1-2.

Exhibit 7: State of Illinois, Constitution, Article VII, § 6(i).

Exhibit 8: State of Kentucky, Constitution, pt. II, § 156b.

Exhibit 9: State of Maryland, Constitution, Article XI-E §§ 3 & 6.

Exhibit 10: Commonwealth of Massachusetts Constitution, Article LXXXIX of Articles of Amendment, §§2, 6, 7, 8 & 9.

Exhibit 11: State of Michigan Constitution, Article VII § 22.

Exhibit 12: State of Minnesota Constitution, Article XII §§ 2 & 4.

Exhibit 13: State of Missouri Constitution, Article VI, § 19(a).

Exhibit 14: State of Montana Constitution, Article XI, § 6.

Exhibit 15: State of Nevada Constitution, Article 8, § 8.

Exhibit 16: State of New Jersey Constitution, Article IV, § VII, ¶
9.

Exhibit 17: State of New Mexico Constitution, Article X, § 6,
subd. D.

Exhibit 18: State of New York Constitution, Article IX, § 2(c)(9).

Exhibit 19: State of Ohio Constitution, Article 18 §§ 18.03 &
18.07.

Exhibit 20: State of Pennsylvania Constitution, Article IX, § 2.

Exhibit 21: State of Rhode Island Constitution, Article XIII, § 2.

Exhibit 22: State of Tennessee Constitution, Article XI, § 9.

Exhibit 23: State of Washington Constitution, Article XI, § 10.

Exhibit 24: State of Wyoming Constitution, Section 97-13-001(b).

State Statutes

Exhibit 5: State of Delaware, Delaware Code, Title 22 (Home
Rule) §§ 802 & 835(a)(2).

Exhibit 25: State of Indiana Code § 36-1-3-4(a).

State Case Law

Exhibit 26: State of Nebraska: *Niklaus v. Miller* (1954) 159 Neb.
301, 309, 66 N.W.2d 824, 829.

California State Administrative Decisions

Exhibit 27: Department of Industrial Relations, *Public Works Case*

No. 2007-018: Zoo Improvements City of Merced, John C. Duncan
(Director), Dated May 2, 2008.

RESPECTFULLY SUBMITTED,

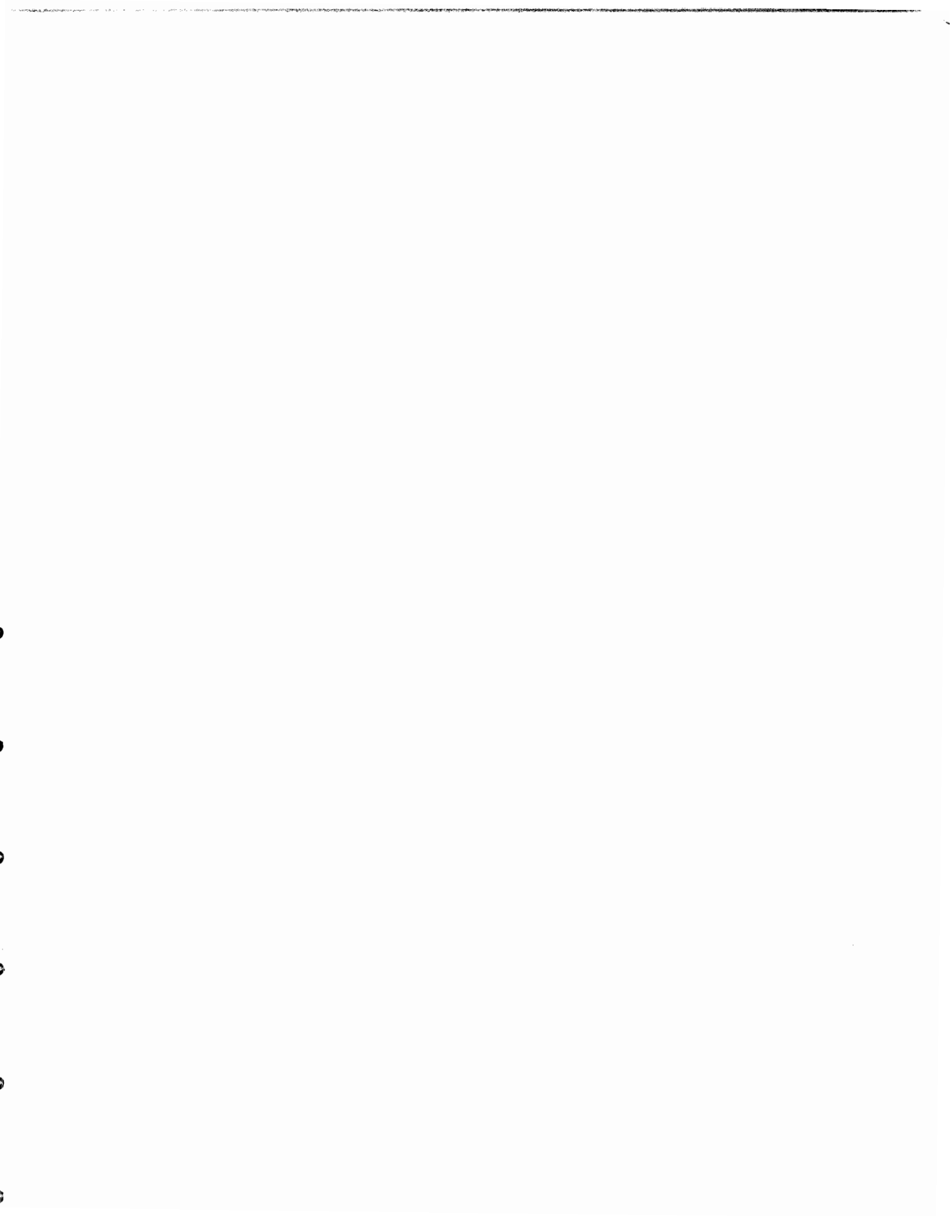
Dated: 11/30/09

**McDOUGAL, LOVE, ECKIS, SMITH
BOEHMER FOLEY & LOUGH**

By: 

James P. Lough

**Attorneys for Respondents City
of Vista, Mayor Morris B.
Vance and City Manager Rita
Geldert**



REBUTTAL TO THE ARGUMENT AGAINST PROPOSITION-A

A MILITARY AIRFIELD IS NOT SAFER THAN A COMMERCIAL AIRPORT.

The notion that operating fully armed, bomb-laden military aircraft is safer than commercial aircraft is ludicrous. There have been eight military aircraft crashes outside the Miramar air station boundary and over 30 mishaps since the 1970s versus only one aircraft mishap near Lindbergh Field in the same period.

MILITARY AIRCRAFT ARE LOUDER

Just stand by Miramar and listen for yourself. The Joint Strike Fighter will be much louder still.

WE ARE NOT ASKING THE MARINES TO LEAVE

The Airport Authority simply wants direction to talk. Surely the Marines can discuss the future of military and commercial aviation in our community.

WE MUST START NOW

We need 20 years to plan, approve and build an airport. Sites throughout the San Diego region and even outside it have been studied exhaustively. There is only one viable site reasonably located and geographically suitable - Miramar. We truly wish there was another option, but there is none.

A YES VOTE IS A VOTE FOR THE FUTURE.

Think of it this way: You don't start building your children's college funds when they are seniors in high school. You start when they are in pre-school. Building the infrastructure your children will need, like highways, roads AND a new airport is a similar process. And just like the day when your children have their bags packed, ready to head to college, the day will come when San Diego will need a new airport.

FOR YOUR CHILDREN, VOTE YES ON A

ANTHONY YOUNG

San Diego City Council President Pro-Tem
Regional Airport Authority Board Member

THELLA BOWENS

President/CEO San Diego County
Regional Airport Authority

JOHN CHALKER

Chair, Coalition to Preserve the Economy
Former Navy A-7 pilot

PR-CW01-5

SD 107-038

CITY OF VISTA

Proposition L

(This proposition will appear on the ballot in the following form.)

PROPOSITION L THE VISTA VITAL PUBLIC SERVICES RESTORATION AND PROTECTION MEASURE.

To enhance safety and vital city services including, but not limited to, reducing 9-1-1 emergency times by hiring additional police officers and firefighters/paramedics, building new fire stations, replacing the decayed city hall, repairing streets and potholes, adding youth sports fields, and other general city services, shall the ordinance be adopted increasing the city general sales tax by one-half cent, with guaranteed independent annual financial audits and legally required to end after 30 years?

This proposition requires approval by a simple majority (over 50%) of the voters.

Full text of this proposition follows the arguments/rebuttals.

CITY ATTORNEY IMPARTIAL ANALYSIS

Proposition L would raise revenue for the City of Vista by authorizing a one-half percent transaction and use tax (commonly referred to as a "sales tax") within the City of Vista. The one-half percent tax would be paid in addition to current sales taxes. If approved by a majority of the voters, the tax would go into effect April 1, 2007.

Proposition L provides that the sales tax is to be used for the general governmental purposes of the City and be received into the general fund of the City. Because this sales tax would be a general tax, it could be used for any legal municipal purpose. The City would not be legally bound to use the tax monies for any special purpose or for any particular services, facilities or programs. The tax would expire in thirty years on March 31, 2037.

Proposition L authorizes but does not direct the City Council to use the proceeds of any bonds issued by the Vista Joint Powers Financing Authority for any general governmental purposes, including, without limitation or obligation, the construction or operation of fire facilities, police facilities, streets and roads, youth athletic fields and facilities, cultural facilities, or a new civic center facility. It also authorizes the City to appropriate funds for the rent, lease or construction of new municipal administrative facilities having a contract value in excess of \$300,000. This authorization is intended to comply with Chapter 1.24.030 of the Vista Municipal Code, which was enacted by Proposition T in the election of November 6, 1979. In addition, to the extent that any provision of Proposition S, the tax initiative from the election of November 6, 1994, could be construed to conflict with any provision of this sales tax ordinance, then to that extent the conflicting provisions would be repealed.

Proposition L requires the City's independent auditors to complete an annual Transactions and Use Tax Ordinance Compliance and Internal Control Audit Report. Their report must review whether the sales tax revenues collected by the City are collected, managed and expended in accordance with the requirements of applicable law. The proposition also requires the City Council to establish a Sales Tax Oversight Committee to review the expenditure of all City sales tax revenues. The Committee must consist of at least five members appointed by the Mayor and approved by the City Council, and they must be residents of or employed in Vista. The terms of the Committee members and their specific duties will be established by resolution of the City Council.

Proposition L would make Vista Ordinance 2006-15 operative. The ordinance, which has also been reviewed by the State Board of Equalization, is the legal instrument that authorizes the additional sales tax, but only if it is approved by a majority of the voters at the November 7, 2006, election. The ordinance was adopted by the Vista City Council on August 8, 2006, and a copy of it is printed as part of these ballot materials.

Darold Plepser, City Attorney

PR-09N0-1

SD 107-037

ARGUMENT IN FAVOR OF PROPOSITION L

Vista residents and businesses know that our city is a great place to live and work. We enjoy a high quality of life, a diverse local economy and strong property values. Proposition L is crucial to our ability to maintain quality of life for local Visionaries. In recent years, more and more of our local tax dollars have been taken by Sacramento. As a result, Vista's ability to keep pace with critically needed repairs/improvement of basic local infrastructure and adequate staffing of essential police, fire, and life safety personnel has been eroded. Proposition L ensures local tax dollars remain in Vista to benefit local residents and businesses.

Please consider these facts:

- As city population has grown, emergency calls have nearly doubled. Despite efforts of local police and firefighters, emergency 9-1-1 response times are twice the recommended average.
- Vista roads are heavily used, congested, and need repair and improvement. Current resources for annual maintenance are insufficient.
- City Hall, originally built as a junior high school in 1956, is deteriorated, and outdated infrastructure/technology is completely inadequate to meet the service needs of the community. Underground water and sewer systems are even older. Loss of service or system failure is an ongoing concern.

Proposition L will provide the local funds to:

- Reduce emergency response times, hiring more firefighters and police officers.
- Construct an up-to-date/efficient Civic Center, including an Emergency Operations Center (EOC)
- Add needed fire stations/safety equipment
- Reduce graffiti/improve neighborhood policing
- Improve city services, youth sports/recreational fields, Moonlight Amphitheatre, and improve roadways

Funds raised by Proposition L remain in our community for direct local benefit of residents and businesses. Proposition L funds cannot be taken by Sacramento. A Citizen's Oversight Committee will be appointed to oversee expenditures.

We respectfully urge your YES vote.

GARY FISHER
Fire Chief, City of Vista

BERNIE RAPPAPORT
Former Mayor, Chairman of VCPS

PAUL ECKERT
Former County Supervisor
Vista Businessman

MARTY MILLER
RBV Little League Baseball Manager

MARJORIE B. COSH
President, Friends of the Vista Library

PR-08NO-2

SD 107-038

REBUTTAL TO THE ARGUMENT IN FAVOR OF PROPOSITION L

OUT OF CONTROL SPENDING

- Vista City politicians have done a poor job of keeping expenses in line with revenues. From 2002 to 2006, the City Council approved a 35-4% increase to their own budget, plus a stunning increase in employee benefits. Before increasing Vista's taxes, real efforts should be made to streamline bureaucracy, control runaway employee pension costs and cut back on unnecessary expenses.
- Oceanside, Carlsbad, Encinitas, San Marcos, Escondido and even San Diego are getting along without raising their sales tax. So should Vista.

MISLEADING BALLOT STATEMENT

- Shame on our politicians for attempting to mislead voters, with a disingenuous ballot statement. The proposition grandly touts a guaranteed independent financial audit, but there is no legal requirement that a DIME of the sales tax be spent on any of the "vital city services" listed in the measure. The audit will only review whether the sales tax revenues are collected, managed and expended in accordance with applicable law.

NO ONE CAN GUARANTEE WHAT THIS TAX WILL BE SPENT ON

- Approval of this sales tax increase is the equivalent of signing a blank check to city politicians every year for the next 30 years. As author P.J. O'Rourke wryly noted, "Giving [more] money and power to government is like giving whiskey and car keys to teenage boys."

Let's insist that Vista politicians do what we all do - live within a budget! San Diego Tax Fighters and the San Diego County Taxpayers Association urge you to reject Prop L.

LANI LUTAR
President & CEO, San Diego County
Taxpayers Association

ED ESTES, JR.
Former Mayor/Councilman,

JAMES E. GIBSON
Trustee, VOUSD

RICHARD M. COOKE
USMC Retired

RICHARD RIDER
Chair, San Diego Tax Fighters

PR-08NO-3

SD 107-038

ARGUMENT AGAINST PROPOSITION L

- Vista's tax revenue is continuing to rise at a healthy clip. So why are our politicians telling us we need to RAISE our taxes??
- Too much of this regressive tax will fall on the backs of our seniors and less fortunate citizens. That's unfair!
- If this tax passes, Vista will charge the second highest sales tax in the county (tied with El Cajon). How come our politicians can't operate our city government with the sales tax rate used by almost every other city in the county?
- To avoid this tax, we Vista citizens will tend to buy goods outside our own city, and county consumers will tend to avoid Vista as a place to shop or visit. This helps our economy?
- Vista car dealers' customers who live outside Vista will NOT pay the higher tax due to state law!
- Even worse, most Vista residents and businesses buy their vehicles outside the city. But we still will pay the higher Vista sales tax on cars and trucks regardless of where we make our purchase.
- Read the measure carefully. Though the tax hikers claim that the tax increase will be used for vital city projects, there is NO LEGAL REQUIREMENT that the money be spent that way. Notel
- Voters are supposed to trust Vista politicians to do the right thing. And not only today's politicians, but all the city politicians for the next 30 years while the tax is being collected. Bad idea!
- This ballot is a wash with bonds and tax increases. Enough is enough!
- If you think that your taxes are already too high, or even just high enough, you should vote NO on this tax increase.

Reject Prop L.

For more information, contact San Diego Tax Fighters
SDTF@EconomyTelecom.com phone 658-530-3027

RICHARD M. COOKE
Former Vista City Councilman

JOHN W. KUUVINEN
Electronic Engineer

RICHARD G. MILLS
President TPB

MONTE COUGHRAN

RICHARD RIDER
Chair, San Diego Tax Fighters

PR-09NO-4

SD 107-040

REBUTTAL TO THE ARGUMENT AGAINST PROPOSITION L

There are three things you should know about the people who signed the argument against Proposition L.

- They do not dispute the urgent need to improve public safety and local services in Vista. In fact, their argument does not even specifically address local needs or quality of life in our community.
- They are part of a group that submitted similar arguments against other local measures throughout San Diego County, regardless of the facts.
- One of the primary authors does not even live in Vista.

As residents and/or active members of the Vista community, we want you to know the facts.

- State raids on local funding have meant drastic cuts to public health/safety services, including sheriff and fire personnel.
- Local seniors/children/residents rely on rapid response to emergency calls. Additional police, fire and paramedic personnel/equipment/facilities are critically needed to improve response time to nationally accepted standards.
- Passage of Proposition L is crucial to maintain/improve local roads, infrastructure, youth sports facilities, city services and civic/cultural resources important to Vista residents/businesses.

Proposition L is the only measure on the ballot that directly benefits Vistas, with not one cent going to Sacramento. Upon passage of Proposition L, annual independent audits and citizen oversight, including local seniors, business, homeowners, and taxpayers, will monitor city expenditures.

Proposition L has broad-based, community support. The benefits of Proposition L are essential to maintain property values and quality of life for local residents.

We urge your YES vote on Proposition L.

DANIEL X. WRAY,

Local Businessman

PAUL ECKERT

Former County Supervisor

RICH WILKINSON

President, Vista Firefighters Assoc.

JAMES F. DUFFY, President,

Deputy Sheriffs Association of San Diego County

MARJORIE COSH

Friends of the Vista Library

PR-09NO-4

PR-09NO-5

SD 107-041

AN ORDINANCE OF THE CITY OF VISTA, CALIFORNIA, IMPOSING A TRANSACTIONS AND USE TAX TO BE ADMINISTERED BY THE STATE BOARD OF EQUALIZATION

Section 1. TITLE. This ordinance shall be known as the Vista 2006 Transactions and Use Tax Ordinance. The City of Vista hereinafter shall be called "City." This ordinance shall be applicable in the incorporated territory of the City.

Section 2. OPERATIVE DATE. "Operative Date" means the first day of the first calendar quarter commencing more than 110 days after the adoption of this ordinance, the date of such adoption being as set forth below.

Section 3. PURPOSE. This ordinance is adopted to achieve the following, among other purposes, and directs that the provisions hereof be interpreted in order to accomplish those purposes:

A. To impose a retail transactions and use tax in accordance with the provisions of Part 1.6 (commencing with Section 7251) of Division 2 of the Revenue and Taxation Code and Section 7285.9 of Part 1.7 of Division 2 which authorizes the City to adopt this tax ordinance which shall be operative if a majority of the electors voting on the measure vote to approve the imposition of the tax at an election called for that purpose.

B. To adopt a retail transactions and use tax ordinance that incorporates provisions identical to those of the Sales and Use Tax Law of the State of California, insofar as those provisions are not inconsistent with the requirements and limitations contained in Part 1.6 of Division 2 of the Revenue and Taxation Code.

C. To adopt a retail transactions and use tax ordinance that imposes a tax and provides a measure therefore that can be administered and collected by the State Board of Equalization in a manner that adapts itself as fully as practicable to, and requires the least possible deviation from, the existing statutory and administrative procedures followed by the State Board of Equalization in administering and collecting the California State Sales and Use Taxes.

D. To adopt a retail transactions and use tax ordinance that can be administered in a manner that will be, to the greatest degree possible, consistent with the provisions of Part 1.6 of Division 2 of the Revenue and Taxation Code, minimize the cost of collecting the transactions and use taxes, and at the same time, minimize the burden of record keeping upon persons subject to taxation under the provisions of this ordinance.

Section 4. CONTRACT WITH STATE. Prior to the operative date, the City shall contract with the State Board of Equalization to perform all functions incident to the administration and operation of this transactions and use tax ordinance; provided, that if the City shall not have contracted with the State Board of Equalization prior to the operative date, it shall nevertheless so contract and in such a case the operative date shall be the first day of the first calendar quarter following the execution of such a contract.

Section 5. TRANSACTIONS TAX RATE. For the privilege of selling tangible personal property at retail, a tax is hereby imposed upon all retailers in the incorporated territory of the City at the rate of one-half of one percent (0.50%) of the gross receipts of any retailer from the sale of all tangible personal property sold at retail in said territory on and after the operative date of this ordinance.

Section 6. PLACE OF SALE. For the purposes of this ordinance, all retail sales are consummated at the place of business of the retailer unless the tangible personal property sold is delivered by the retailer or his agent to an out-of-state destination or to a common carrier for delivery to an out-of-state destination. The gross receipts from such sales shall include delivery charges, when such charges are subject to the state sales and use tax, regardless of the place to which delivery is made. In the event a retailer has no permanent place of business in the State or has more than one place of business, the place or places at which the retail sales are consummated shall be determined under rules and regulations to be prescribed and adopted by the State Board of Equalization.

PR-09NO-6

SD 107-042

Section 7. USE TAX RATE. An excise tax is hereby imposed on the storage, use or other consumption in the City of tangible personal property purchased from any retailer on and after the operative date of this ordinance for storage, use or other consumption in said territory at the rate of one half of one percent (0.50%) of the sales price of the property. The sales price shall include delivery charges when such charges are subject to state sales or use tax regardless of the place to which delivery is made.

Section 8. ADOPTION OF PROVISIONS OF STATE LAW. Except as otherwise provided in this ordinance and except insofar as they are inconsistent with the provisions of Part 1.6 of Division 2 of the Revenue and Taxation Code, all of the provisions of Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code are hereby adopted and made a part of this ordinance as though fully set forth herein.

Section 9. LIMITATIONS ON ADOPTION OF STATE LAW AND COLLECTION OF USE TAXES. In adopting the provisions of Part 1 of Division 2 of the Revenue and Taxation Code:

A. Wherever the State of California is named or referred to as the taxing agency, the name of this City shall be substituted therefore. However, the substitution shall not be made when:

1. The word "State" is used as a part of the title of the State Controller, State Treasurer, State Board of Control, State Board of Equalization, State Treasury, or the Constitution of the State of California;

2. The result of that substitution would require action to be taken by or against this City or any agency, officer, or employee thereof rather than by or against the State Board of Equalization, in performing the functions incident to the administration, or operation of this Ordinance;

3. In those sections, including, but not necessarily limited to sections referring to the exterior boundaries of the State of California, where the result of the substitution would be to:

a. Provide an exemption from this tax with respect to certain sales, storage, use or other consumption of tangible personal property which would not otherwise be exempt from this tax while such sales, storage, use or other consumption remain subject to tax by the State under the provisions of Part 1 of Division 2 of the Revenue and Taxation Code, or

b. Impose this tax with respect to certain sales, storage, use or other consumption of tangible personal property which would not be subject to tax by the state under the said provision of that code.

4. In Sections 6701, 6702 (except in the last sentence thereof), 6711, 6715, 6737, 6797 or 6828 of the Revenue and Taxation Code.

B. The word "City" shall be substituted for the word "State" in the phrase "retailer engaged in business in this State" in Section 6203 and in the definition of that phrase in Section 6203.

Section 10. PERMIT NOT REQUIRED. If a seller's permit has been issued to a retailer under Section 6067 of the Revenue and Taxation Code, an additional transactor's permit shall not be required by this ordinance.

Section 11. EXEMPTIONS AND EXCLUSIONS.

A. There shall be excluded from the measure of the transactions tax and the use tax the amount of any sales tax or use tax imposed by the State of California or by any city, county or other state-administered transactions or use tax.

B. There are exempted from the computation of the amount of transactions tax the gross receipts from:

1. Sales of tangible personal property, other than fuel or petroleum products, to operators of aircraft to be used or consumed principally outside the county in which the sale is made and directly and exclusively in the use of such aircraft as common carriers of persons or property under the authority of the laws of this State, the United States, or any foreign government.

PR-09NO-7

SD 107-043

2. Sales of property to be used outside the City which is shipped to a point outside the City, pursuant to the contract of sale, by delivery to such point by the retailer or his agent, or by delivery by the retailer to a carrier for shipment to a consignee at such point. For the purposes of this paragraph, delivery to a point outside the City shall be satisfied:

a. With respect to vehicles (other than commercial vehicles) subject to registration pursuant to Chapter 1 (commencing with Section 4000) of the Vehicle Code, aircraft licensed in compliance with Section 21411 of the Public Utilities Code, and undocumented vessels registered under Division 315 (commencing with Section 9840) of the Vehicle Code by registration to an out-of-City address and by a declaration under penalty of perjury, signed by the buyer, stating that such address is, in fact, his or her principal place of residence; and

b. With respect to commercial vehicles, by registration to a place of business out-of-City and declaration under penalty of perjury, signed by the buyer, that the vehicle will be operated from that address.

3. The sale of tangible personal property if the seller is obligated to furnish the property for a fixed price pursuant to a contract entered into prior to the operative date of this ordinance.

4. A lease of tangible personal property which is a continuing sale of such property, for any period of time for which the lessor is obligated to lease the property for an amount fixed by the lease prior to the operative date of this ordinance.

5. For the purposes of subparagraphs (3) and (4) of this section, the sale or lease of tangible personal property shall be deemed not to be obligated pursuant to a contract or lease for any period of time for which any party to the contract or lease has the unconditional right to terminate the contract or lease upon notice, whether or not such right is exercised.

C. There are exempted from the use tax imposed by this ordinance, the storage, use or other consumption, in this City of tangible personal property:

1. The gross receipts from the sale of which have been subject to a transactions tax under any state-administered transactions and use tax ordinance.

2. Other than fuel or petroleum products purchased by operators of aircraft and used or consumed by such operators directly and exclusively in the use of such aircraft as common carriers of persons or property for hire or compensation under a certificate of public convenience and necessity issued pursuant to the laws of this State, the United States, or any foreign government. This exemption is, in addition to the exemptions provided in Sections 6366 and 8366.1 of the Revenue and Taxation Code of the State of California.

3. If the purchaser is obligated to purchase the property for a fixed price pursuant to a contract entered into prior to the operative date of this ordinance.

4. If the possession of, or the exercise of, any right of power over, the tangible personal property arises under a lease which is a continuing purchase of such property for any period of time for which the lessee is obligated to lease the property for an amount fixed by a lease prior to the operative date of this ordinance.

5. For the purposes of subparagraphs (3) and (4) of this section, storage, use, or other consumption, or possession of, or exercise of any right of power over, tangible personal property shall be deemed not to be obligated pursuant to a contract or lease for any period of time for which any party to the contract or lease has the unconditional right to terminate the contract or lease upon notice, whether or not such right is exercised.

6. Except as provided in subparagraph (7), a retailer engaged in business in the City shall not be required to collect use tax from the purchaser of tangible personal property unless the retailer ships or delivers the property into the City or participates within the City in making the sale of the property, including, but not limited to, soliciting or receiving the order, either directly or indirectly, at a place of business of the retailer in the City or through any representative, agent, canvasser, solicitor, subsidiary, or person in the City under the authority of the retailer.

7. A retailer engaged in business in the City shall also include any retailer of any of the following: vehicles subject to registration pursuant to Chapter 1 (commencing with Section 4000) of Division 3 of the Vehicle Code, aircraft licensed in compliance with Section 21411 of the Public Utilities Code, or undocumented vessels registered under Division 315 (commencing with Section 9840) of the Vehicle Code. That retailer shall be required to collect use tax from any purchaser who registers or licenses the vehicle, vessel, or aircraft at an address in the City.

D. Any person subject to use tax under this ordinance may credit against that tax any transactions tax or reimbursement for transactions tax paid to a district imposing, or retailer liable for a transactions tax pursuant to Part 1.6 of Division 2 of the Revenue and Taxation Code with respect to the sale to the person of the property the storage, use or other consumption of which is subject to the use tax.

Section 12. AMENDMENTS. All amendments subsequent to the effective date of this ordinance to Part 1 of Division 2 of the Revenue and Taxation Code relating to sales and use taxes and which are not inconsistent with Part 1.6 and Part 1.7 of Division 2 of the Revenue and Taxation Code, and all amendments to Part 1.6 and Part 1.7 of Division 2 of the Revenue and Taxation Code, shall automatically become a part of this ordinance, provided however, that no such amendment shall operate so as to affect the rate of tax imposed by this ordinance.

Section 13. ENJOINING COLLECTION FORBIDDEN. No injunction or writ of mandate or other legal or equitable process shall issue in any suit, action or proceeding in any court against the State or the City, or against any officer of the State or the City, to prevent or enjoin the collection under this ordinance, or Part 1.6 of Division 2 of the Revenue and Taxation Code, of any tax or any amount of tax required to be collected.

Section 14. SEVERABILITY. If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the ordinance and the application of such provision to other persons or circumstances shall not be affected thereby.

Section 15. USE OF PROCEEDS. The proceeds from the retail transaction and use tax imposed by this ordinance shall be for the general governmental purposes of the City and be received into the general fund of the City. Nothing herein shall (i) bind the City to use the proceeds for any specific purpose or function or to (ii) authorize or direct the issuance of bonds secured by or payable from any sales tax proceeds.

Section 16. ANCILLARY AUTHORIZATIONS. The City Council is hereby authorized but not directed to use the proceeds of any bonds issued by the Vista Joint Powers Financing Authority for any general governmental purposes, including, without limitation or obligation, the construction or operation of fire facilities, police facilities, streets and roads, youth athletic fields and facilities, cultural facilities, or a new civic center facility.

Section 17. OTHER PROPOSITIONS. In accordance with Chapter 1.24.030 of the Vista Municipal Code (Proposition 1, election of 11-06-1978), the City of Vista is hereby authorized to appropriate funds for the rent, lease or construction of new municipal administrative facilities having a contract value in excess of \$300,000. To the extent that any provision of Proposition S (election of 11-06-1984) could be construed to conflict with any provision of this ordinance, then to that extent the conflicting provisions of Proposition S are hereby repealed.

Section 18. INDEPENDENT FINANCIAL AUDIT. By no later than November 30 of each year the City's independent auditors shall complete a Transactions and Use Tax Ordinance Compliance and Internal Control Audit Report. Such report shall review whether the sales tax revenues collected by the City are collected, managed and expended in accordance with the requirements of applicable law.

Section 19. SALES TAX OVERSIGHT COMMITTEE. Although not otherwise required by law, the City Council shall, no later than December 31, 2006, establish a Sales Tax Oversight Committee to review the expenditure of all City sales tax revenues. The Committee shall consist of at least five members appointed by the Mayor and approved by the City Council. The Committee members shall be residents of or employed in the City. The terms of the Committee members and their specific duties shall be established by resolution of the City Council. All meetings of the Committee shall comply with the provisions of the Ralph M. Brown Act (commencing with Section 54950 of the Government Code of the State of California).

ORDINANCE NO: 2006-15: Continued

Section 20. . . EFFECTIVE DATE. This ordinance relates to the levying and collecting of the City transactions and use taxes and shall take effect immediately but it shall not become operative until approved by a majority of the voters voting at the general municipal election to be held November 7, 2006.

Section 21. TERMINATION DATE. The authority to levy the tax imposed by this ordinance shall expire March 31, 2037.

PASSED AND ADOPTED at a regular meeting of the City Council held on August 8, 2006, following introduction and a first reading at a meeting held on August 1, 2006, by the following vote:

AYES: GRONKE, LOPEZ, RITTER, MAYOR VANCE

NOES: NONE

ABSTAIN: NONE

MORRIS B. VANCE, MAYOR

ATTEST:

MARCI KILIAN, CITY CLERK

APPROVED AS TO FORM:

DAROLD PIEPER, CITY ATTORNEY

PALOMAR COMMUNITY COLLEGE DISTRICT

Proposition M

(This proposition will appear on the ballot in the following form.)

PROP M

To better prepare Palomar Community College students for university-transfer and high demand jobs, shall Palomar Community College District repair/upgrade aging educational facilities, including classrooms for nursing, emergency medical, and public safety careers, science and high-tech computer labs, outdated plumbing, ventilating, roofing, energy, electrical and safety systems, acquire sites and equipment, and construct new educational facilities, by issuing \$694 million in bonds, at legal rates, with citizen oversight, mandatory audits, and no proceeds used for administrative salaries?

This proposition requires approval by 55% of the voters.

Full text of this proposition follows the arguments/rebuttals.



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The Alaska Constitution

State of Alaska » Lieutenant Governor » Alaska Constitution

The Constitution of the State of Alaska

Adopted by the Constitutional Convention February 5, 1956

Ratified by the People of Alaska April 24, 1956

Became Operative with the Formal Proclamation of Statehood January 3, 1959.

Article 10 - Local Government

§ 1. Purpose and Construction

The purpose of this article is to provide for maximum local self-government with a minimum of local government units, and to prevent duplication of tax-levying jurisdictions. A liberal construction shall be given to the powers of local government units.

§ 2. Local Government Powers

All local government powers shall be vested in boroughs and cities. The State may delegate taxing powers to organized boroughs and cities only.

§ 3. Boroughs

The entire State shall be divided into boroughs, organized or unorganized. They shall be established in a manner and according to standards provided by law. The standards shall include population, geography, economy, transportation, and other factors. Each borough shall embrace an area and population with common interests to the maximum degree possible. The legislature shall classify boroughs and prescribe their powers and functions. Methods by which boroughs may be organized, incorporated, merged, consolidated, reclassified, or dissolved shall be prescribed by law.

§ 4. Assembly

The governing body of the organized borough shall be the assembly, and its composition shall be established by law or charter. [Amended 1972]

§ 5. Service Areas

Service areas to provide special services within an organized borough may be established, altered, or abolished by the assembly, subject to the provisions of law or charter. A new service area shall not be established if, consistent with the purposes of this article, the new service can be provided by an existing service area, by incorporation as a city, or by annexation to a city. The assembly may authorize the levying of taxes, charges, or assessments within a service area to finance the special services.

§ 6. Unorganized Boroughs

The legislature shall provide for the performance of services it deems necessary or advisable in unorganized boroughs, allowing for maximum local participation and responsibility. It may exercise any power or function in an unorganized borough which the assembly may exercise in an organized borough.

§ 7. Cities

Cities shall be incorporated in a manner prescribed by law, and shall be a part of the borough in which they are located. Cities shall have the powers and functions conferred by law or charter. They may be merged, consolidated, classified, reclassified, or dissolved in the manner provided by law.

§ 8. Council

§ 8. Council

The governing body of a city shall be the council.

§ 9. Charters

The qualified voters of any borough of the first class or city of the first class may adopt, amend, or repeal a home rule charter in a manner provided by law. In the absence of such legislation, the governing body of a borough or city of the first class shall provide the procedure for the preparation and adoption or rejection of the charter. All charters, or parts or amendments of charters, shall be submitted to the qualified voters of the borough or city, and shall become effective if approved by a majority of those who vote on the specific question.

§ 10. Extended Home Rule

The legislature may extend home rule to other boroughs and cities.

§ 11. Home Rule Powers

A home rule borough or city may exercise all legislative powers not prohibited by law or by charter.

§ 12. Boundaries

A local boundary commission or board shall be established by law in the executive branch of the state government. The commission or board may consider any proposed local government boundary change. It may present proposed changes to the legislature during the first ten days of any regular session. The change shall become effective forty-five days after presentation or at the end of the session, whichever is earlier, unless disapproved by a resolution concurred in by a majority of the members of each house. The commission or board, subject to law, may establish procedures whereby boundaries may be adjusted by local action.

§ 13. Agreements; Transfer of Powers

Agreements, including those for cooperative or joint administration of any functions or powers, may be made by any local government with any other local government, with the State, or with the United States, unless otherwise provided by law or charter. A city may transfer to the borough in which it is located any of its powers or functions unless prohibited by law or charter, and may in like manner revoke the transfer.

§ 14. Local Government Agency

An agency shall be established by law in the executive branch of the state government to advise and assist local governments. It shall review their activities, collect and publish local government information, and perform other duties prescribed by law.

§ 15. Special Service Districts

Special service districts existing at the time a borough is organized shall be integrated with the government of the borough as provided by law.

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Constitution Of The State Of Arkansas Of 1874.

Article 12. Municipal and Private Corporations.

§ 3. Cities and towns - Organization under general laws.

The General Assembly shall provide, by general laws, for the organization of cities (which may be classified) and incorporated towns; and restrict their power of taxation, assessment, borrowing money and contracting debts, so as to prevent the abuse of such power.

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Constitution Of The State Of Arkansas Of 1874.

Article 12. Municipal and Private Corporations.

§ 4. Limitation on legislative and taxing power - Local bond issues.

No municipal corporation shall be authorized to pass any laws contrary to the general laws of the state; nor levy any tax on real or personal property to a greater extent, in one year, than five mills on the dollar of the assessed value of the same; Provided: That, to pay indebtedness existing at the time of the adoption of this Constitution, an additional tax of not more than five mills on the dollar, may be levied.

The fiscal affairs of counties, cities and incorporated towns shall be conducted on a sound financial basis, and no county court or levying board or agent of any county shall make or authorize any contract or make any allowance for any purpose whatsoever in excess of the revenue from all sources for the fiscal year in which said contract or allowance is made; nor shall any county judge, county clerk, or other county officer, sign or issue any scrip warrant or make any allowance in excess of the revenue from all sources for the current fiscal year; nor shall any city council, board of aldermen, board of public affairs, or commissioners, of any city of the first or second class, or any incorporated town, enter into any contract or make any allowance for any purpose whatsoever, or authorize the issuance of any contract or warrants, scrip or other evidences of indebtedness in excess of the revenue for such city or town for the current fiscal year; nor shall any mayor, city clerk, or recorder, or any other officer or officers, however designated, of any city of the first or second class or incorporated town sign or issue scrip, warrant or other certificate of indebtedness of excess of the revenue from all sources for the current fiscal year.

Provided, however, to secure funds to pay indebtedness outstanding at the time of the adoption of this amendment, counties, cities, and incorporated towns may issue interest bearing certificates of indebtedness or bonds with interest coupons for the payment of which a county or city tax, in addition to that now authorized, not exceeding three mills may be levied for the time as provided by law until such indebtedness is paid.

Where the annual report of any city or county in the State of Arkansas shows that scrip, warrants or other certificate of indebtedness had been issued in excess of the total revenue for that year, the officer or officers of the county or city or incorporated town who authorized, signed or issued such scrip, warrants or other certificates of indebtedness shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be fined in any sum not less than five hundred dollars nor more than ten thousand dollars, and shall be removed from office. [As amended by Const. Amend. 10.]

Publisher's Notes. Ark. Const. Amend. 10 added the last three paragraphs.

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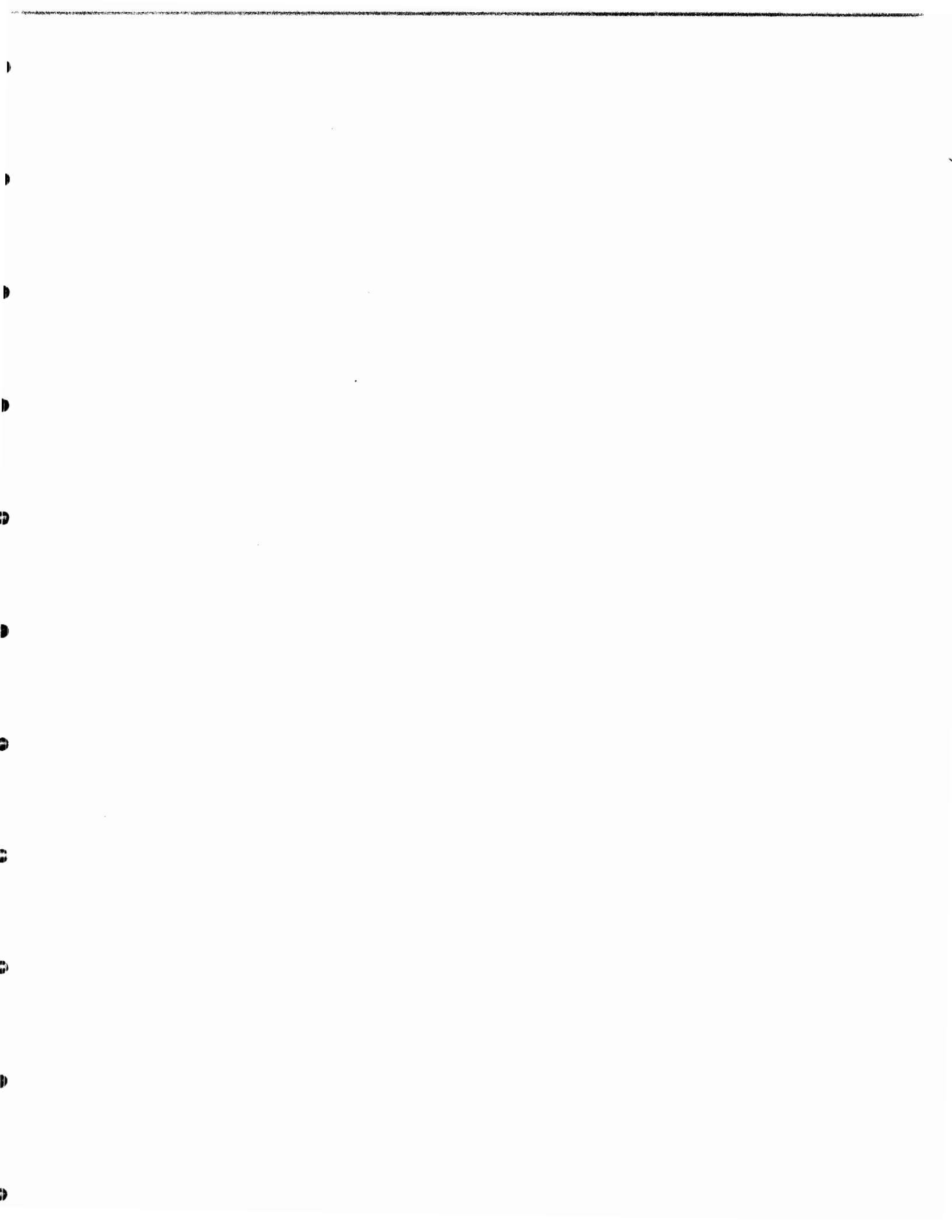
Constitution Of The State Of Arkansas Of 1874.

Article 12. Municipal and Private Corporations.

§ 6. General incorporation laws - Charters - Revocation.

Corporations may be formed under general laws; which laws may, from time to time, be altered or repealed. The General Assembly shall have the power to alter, revoke or annul any charter of incorporation now existing and revocable at the adoption of this Constitution, or any that may hereafter be created, whenever, in their opinion, it may be injurious to the citizens of this State; in such manner, however, that no injustice shall be done to the corporators.

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state. The general assembly shall implement this principle by appropriate legislation.

SEC. 2. The state shall maintain a system of higher education, including The University of Connecticut, which shall be dedicated to excellence in higher education. The general assembly shall determine the size, number, terms and method of appointment of the governing boards of The University of Connecticut and of such constituent units or coordinating bodies in the system as from time to time may be established.

SEC. 3. The charter of Yale College, as modified by agreement with the corporation thereof, in pursuance of an act of the general assembly, passed in May, 1792, is hereby confirmed.

SEC. 4. The fund, called the SCHOOL FUND, shall remain a perpetual fund, the interest of which shall be inviolably appropriated to the support and encouragement of the public schools throughout the state, and for the equal benefit of all the people thereof. The value and amount of said fund shall be ascertained in such manner as the general assembly may prescribe, published, and recorded in the comptroller's office; and no law shall ever be made, authorizing such fund to be diverted to any other use than the encouragement and support of public schools, among the several school societies, as justice and equity shall require.

ARTICLE NINTH. OF IMPEACHMENTS.

SEC. 1. The house of representatives shall have the sole power of impeaching.

SEC. 2. All impeachments shall be tried by the senate. When sitting for that purpose, they shall be on oath or affirmation. No person shall be convicted without the concurrence of at least two-thirds of the members present. When the governor is impeached, the chief justice shall preside.

SEC. 3. The governor, and all other executive and judicial officers, shall be liable to impeachment; but judgments in such cases shall not extend further than to removal from office, and disqualification to hold any office of honor, trust or profit under the state. The party convicted, shall, nevertheless, be liable and subject to indictment, trial and punishment according to law.

SEC. 4. Treason against the state shall consist only in levying war against it, or adhering to its enemies, giving them aid and comfort. No person shall be convicted of treason, unless on the testimony of at least two witnesses to the same overt act, or on confession in open court. No conviction of treason, or attainder, shall work corruption of blood, or forfeiture.

ARTICLE TENTH. OF HOME RULE.

SEC. 1. The general assembly shall by general law delegate such legislative authority as from time to time it deems appropriate to towns, cities and boroughs relative to the powers, organization, and form of government of such political subdivisions. The general assembly shall from time to time by general law determine the maximum terms of office of the various town, city and borough elective offices. After July 1, 1969, the general assembly shall enact no special legislation relative to the powers, organization, terms of elective offices or form of government of any single town, city or borough, except as to (a) borrowing power, (b) validating acts, and (c) formation, consolidation or dissolution of any town, city or borough, unless in the delegation of legislative authority by general law the general assembly shall have failed to prescribe the powers necessary to effect the purpose of such special legislation.

SEC. 2. The general assembly may prescribe the methods by which towns, cities

and boroughs may establish regional governments and the methods by which towns, cities, boroughs and regional governments may enter into compacts. The general assembly shall prescribe the powers, organization, form, and method of dissolution of any government so established.

ARTICLE ELEVENTH.
GENERAL PROVISIONS.

SEC. 1. Members of the general assembly, and all officers, executive and judicial, shall, before they enter on the duties of their respective offices, take the following oath or affirmation, to wit:

You do solemnly swear (or affirm, as the case may be) that you will support the constitution of the United States, and the constitution of the state of Connecticut, so long as you continue a citizen thereof; and that you will faithfully discharge, according to law, the duties of the office of.....to the best of your abilities. So help you God.

SEC. 2. Neither the general assembly nor any county, city, borough, town or school district shall have power to pay or grant any extra compensation to any public officer, employee, agent or servant, or increase the compensation of any public officer or employee, to take effect during the continuance in office of any person whose salary might be increased thereby, or increase the pay or compensation of any public contractor above the amount specified in the contract.

(Sec. 2 amended in 1982. See Art. XIX of Amendments to the Constitution of the State of Connecticut.)

SEC. 3. In order to insure continuity in operation of state and local governments in a period of emergency resulting from disaster caused by enemy attack, the general assembly shall provide by law for the prompt and temporary succession to the powers and duties of all public offices, the incumbents of which may become unavailable for carrying on their powers and duties.

SEC. 4. Claims against the state shall be resolved in such manner as may be provided by law.

SEC. 5. The rights and duties of all corporations shall remain as if this constitution had not been adopted; with the exception of such regulations and restrictions as are contained in this constitution. All laws not contrary to, or inconsistent with, the provisions of this constitution shall remain in force, until they shall expire by their own limitation, or shall be altered or repealed by the general assembly, in pursuance of this constitution. The validity of all bonds, debts, contracts, as well of individuals as of bodies corporate, or the state, of all suits, actions, or rights of action, both in law and equity, shall continue as if no change had taken place. All officers filling any office by election or appointment shall continue to exercise the duties thereof, according to their respective commissions or appointments, until their offices shall have been abolished or their successors selected and qualified in accordance with this constitution or the laws enacted pursuant thereto.

ARTICLE TWELFTH.*
OF AMENDMENTS TO THE CONSTITUTION.

Amendments to this constitution may be proposed by any member of the senate or house of representatives. An amendment so proposed, approved upon roll call by a yeas vote of at least a majority, but by less than three-fourths, of the total membership of each house, shall be published with the laws which may have been passed at the same session and be continued to the regular session of the general assembly elected at the general election to be held on the Tuesday after the first Monday of November in the next even-numbered year. An amendment so proposed, approved upon roll call by a yeas vote of at least three-fourths of the total membership of each house, or any amendment which, having been continued from the previous general assembly, is again approved upon roll call by a yeas vote



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ARTICLE. IX CORPORATIONS

§ 1. Creation, amendment, renewal or revival by general law; exceptions; revocation or forfeitures of charters; requisites for enactment of corporation laws.

Section 1. No corporation shall hereafter be created, amended, renewed or revived by special act, but only by or under general law, nor shall any existing corporate charter be amended, renewed or revived by special act, but only by or under general law; but the foregoing provisions shall not apply to municipal corporations, banks or corporations for charitable, penal, reformatory, or educational purposes, sustained in whole or in part by the State. The General Assembly shall, by general law, provide for the revocation or forfeiture of the charters of all corporations for the abuse, misuse, or non-user of their corporate powers, privileges or franchises. Any proceeding for such revocation or forfeiture, shall be taken by the Attorney-General, as may be provided by law. No general incorporation law, nor any special act of incorporation, shall be enacted without the concurrence of two-thirds of all the members elected to each House of the General Assembly.

§ 2. Acceptance of Constitution by existing corporations as prerequisite for amendment or renewal of charter.

Section 2. No corporation in existence at the adoption of this Constitution shall have its charter amended or renewed without first filing, under the corporate seal of said corporation, and duly attested, in the office of the Secretary of State, an acceptance of the provisions of this Constitution.

§ 3. Issuance of stock.

Repealed 74 Del. Laws, c. 281, June 30, 2004

§ 4. Rights, privileges, immunities and estates.

Section 4. The rights, privileges, immunities and estates of religious societies and corporate bodies, except as herein otherwise provided, shall remain as if the Constitution of this State had not been altered.

§ 5. Designation, by foreign corporation, of agent for service of process.

Section 5. No foreign corporation shall do any business in this State through or by branch offices, agents or representatives located in this State, without having an authorized agent or agents in the State upon whom legal process may be served.

§ 6. Taxation of stock owned by persons or corporations without the State.



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TITLE 22

Municipalities

CHAPTER 8. HOME RULE

Subchapter I. General Provisions

§ 801. Definitions.

As used in this chapter:

(1) "Charter amendment" means language which will amend, adopt or repeal a municipal charter.

(2) "Chief executive officer" means the mayor if such there be or, if there be none, then it means the president of the legislative body of a municipal corporation or, if there be none, then it means the presiding officer of the legislative body of a municipal corporation.

(3) "Municipal corporation" includes all cities, towns and villages created before or after December 28, 1961, under any general or special law of this State for general governmental purposes which possess legislative, administrative and police powers for the general exercise of municipal functions and which carry on such functions through a set of elected and other officials.

(4) "Qualified voter" means those persons who, under the terms of a municipal charter, shall be authorized to vote in elections within that municipal corporation.

22 Del. C. 1953, § 801; 53 Del. Laws, c. 260.;

§ 802. Applicability of chapter; grant of power.

Every municipal corporation in this State containing a population of at least 1,000 persons as shown by the last official federal decennial census may proceed as set forth in this chapter to amend its municipal charter and may, subject to the conditions and limitations imposed by this chapter, amend its charter so as to have and assume all powers which, under the Constitution of this State, it would be competent for the General Assembly to grant by specific enumeration and which are not denied by statute. This grant of power does not include the power to enact private or civil law governing civil relationships except as an incident to an exercise of an independent municipal power, nor does it include power to define and provide for the punishment of a felony.

22 Del. C. 1953, § 802; 53 Del. Laws, c. 260.;

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TITLE 22

Municipalities

CHAPTER 8. HOME RULE

Subchapter VI. Limitations and Exceptions

§ 835. Amendments prohibited.

(a) This chapter shall not permit the amending of a municipal charter so as to:

(1) Permit the changing of any term of any elected official until the incumbent has completed the term to which the incumbent was elected;

(2) Permit any charter amendment in contravention of any general statute of this State;

(3) Change the qualifications of those entitled to vote at municipal elections;

(4) Change the date for holding of municipal elections;

(5) Enlarge or otherwise alter the power or procedure whereby a municipal corporation may enlarge its boundaries;

(6) Prohibit, restrict or license ownership, transfer, possession or transportation of firearms or components of firearms or ammunition, except that the discharge of a firearm may be regulated; provided that any regulation or ordinance incorporates the justification defenses as found in Title 11. Nothing contained herein shall be construed to invalidate existing municipal ordinances.

(b) No municipal corporation charter which permits nonresident persons to vote in any municipal election or to hold any municipal office shall be amended, pursuant to this chapter, so as to eliminate or limit the right of nonresident persons to vote or hold office, nor shall the percentage of nonresident officials allowed or required be changed.

(c) No municipal corporation charter which provides a method of appeal to the Superior Court for any matter shall be amended, pursuant to this chapter, so as to eliminate or restrict any such appeal.

22 Del. C. 1953, § 835; 53 Del. Laws, c. 260; 65 Del. Laws, c. 133, § 1; 70 Del. Laws, c. 186, § 1.;



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THE CONSTITUTION OF THE STATE OF HAWAII

ARTICLE VIII

LOCAL GOVERNMENT

CREATION; POWERS OF POLITICAL SUBDIVISIONS

Section 1. The legislature shall create counties, and may create other political subdivisions within the State, and provide for the government thereof. Each political subdivision shall have and exercise such powers as shall be conferred under general laws. [Ren and am Const Con 1978 and election Nov 7, 1978]

LOCAL SELF-GOVERNMENT; CHARTER

Section 2. Each political subdivision shall have the power to frame and adopt a charter for its own self-government within such limits and under such procedures as may be provided by general law. Such procedures, however, shall not require the approval of a charter by a legislative body.

Charter provisions with respect to a political subdivision's executive, legislative and administrative structure and organization shall be superior to statutory provisions, subject to the authority of the legislature to enact general laws allocating and reallocating powers and functions.

A law may qualify as a general law even though it is inapplicable to one or more counties by reason of the provisions of this section. [Am Const Con 1968 and election Nov 5, 1968; ren and am Const Con 1978 and election Nov 7, 1978]

TAXATION AND FINANCE

Section 3. The taxing power shall be reserved to the State, except so much thereof as may be delegated by the legislature to the political subdivisions, and except that all functions, powers and duties relating to the taxation of real property shall be exercised exclusively by the counties, with the exception of the county of Kalawao. The legislature shall have the power to apportion state revenues among the several political subdivisions. [Ren and am Const Con 1978 and election Nov 7, 1978]

MANDATES; ACCRUED CLAIMS

Section 4. No law shall be passed mandating any political subdivision to pay any previously accrued claim. [Ren Const Con 1978 and election Nov 7, 1978]

TRANSFER OF MANDATED PROGRAMS

Section 5. If any new program or increase in the level of service under an existing program shall be mandated to any of the political subdivisions by the legislature, it shall provide that the State share in the cost. [Add Const Con 1978 and election Nov 7, 1978]

STATEWIDE LAWS



provided by law. He shall have those duties and powers provided by law and those provided by county ordinance.

(b) The President of the Cook County Board shall be elected from the County at large and shall be the chief executive officer of the County. If authorized by county ordinance, a person seeking election as President of the Cook County Board may also seek election as a member of the Board.

(c) Each county shall elect a sheriff, county clerk and treasurer and may elect or appoint a coroner, recorder, assessor, auditor and such other officers as provided by law or by county ordinance. Except as changed pursuant to this Section, elected county officers shall be elected for terms of four years at general elections as provided by law. Any office may be created or eliminated and the terms of office and manner of selection changed by county-wide referendum. Offices other than sheriff, county clerk and treasurer may be eliminated and the terms of office and manner of selection changed by law. Offices other than sheriff, county clerk, treasurer, coroner, recorder, assessor and auditor may be eliminated and the terms of office and manner of selection changed by county ordinance.

(d) County officers shall have those duties, powers and functions provided by law and those provided by county ordinance. County officers shall have the duties, powers or functions derived from common law or historical precedent unless altered by law or county ordinance.

(e) The county treasurer or the person designated to perform his functions may act as treasurer of any unit of local government and any school district in his county when requested by any such unit or school district and shall so act when required to do so by law.

(Source: Illinois Constitution.)

SECTION 5. TOWNSHIPS

The General Assembly shall provide by law for the formation of townships in any county when approved by county-wide referendum. Townships may be consolidated or merged, and one or more townships may be dissolved or divided, when approved by referendum in each township affected. All townships in a county may be dissolved when approved by a referendum in the total area in which township officers are elected.

(Source: Illinois Constitution.)

SECTION 6. POWERS OF HOME RULE UNITS

(a) A County which has a chief executive officer elected by the electors of the county and any municipality which has a population of more than 25,000 are home rule units. Other municipalities may elect by referendum to become home rule units. Except as limited by this Section, a home rule unit may exercise any power and perform any function pertaining to its government and affairs including, but not limited to, the power to regulate for the protection of the public health, safety, morals and welfare; to license; to tax; and to incur debt.

(b) A home rule unit by referendum may elect not to be a home rule unit.

(c) If a home rule county ordinance conflicts with an

ordinance of a municipality, the municipal ordinance shall prevail within its jurisdiction.

(d) A home rule unit does not have the power (1) to incur debt payable from ad valorem property tax receipts maturing more than 40 years from the time it is incurred or (2) to define and provide for the punishment of a felony.

(e) A home rule unit shall have only the power that the General Assembly may provide by law (1) to punish by imprisonment for more than six months or (2) to license for revenue or impose taxes upon or measured by income or earnings or upon occupations.

(f) A home rule unit shall have the power subject to approval by referendum to adopt, alter or repeal a form of government provided by law, except that the form of government of Cook County shall be subject to the provisions of Section 3 of this Article. A home rule municipality shall have the power to provide for its officers, their manner of selection and terms of office only as approved by referendum or as otherwise authorized by law. A home rule county shall have the power to provide for its officers, their manner of selection and terms of office in the manner set forth in Section 4 of this Article.

(g) The General Assembly by a law approved by the vote of three-fifths of the members elected to each house may deny or limit the power to tax and any other power or function of a home rule unit not exercised or performed by the State other than a power or function specified in subsection (1) of this section.

(h) The General Assembly may provide specifically by law for the exclusive exercise by the State of any power or function of a home rule unit other than a taxing power or a power or function specified in subsection (1) of this Section.

(i) Home rule units may exercise and perform concurrently with the State any power or function of a home rule unit to the extent that the General Assembly by law does not specifically limit the concurrent exercise or specifically declare the State's exercise to be exclusive.

(j) The General Assembly may limit by law the amount of debt which home rule counties may incur and may limit by law approved by three-fifths of the members elected to each house the amount of debt, other than debt payable from ad valorem property tax receipts, which home rule municipalities may incur.

(k) The General Assembly may limit by law the amount and require referendum approval of debt to be incurred by home rule municipalities, payable from ad valorem property tax receipts, only in excess of the following percentages of the assessed value of its taxable property: (1) if its population is 500,000 or more, an aggregate of three percent; (2) if its population is more than 25,000 and less than 500,000, an aggregate of one percent; and (3) if its population is 25,000 or less, an aggregate of one-half percent. Indebtedness which is outstanding on the effective date of this Constitution or which is thereafter approved by referendum or assumed from another unit of local government shall not be included in the foregoing percentage amounts.

(l) The General Assembly may not deny or limit the power of home rule units (1) to make local improvements by special assessment and to exercise this power jointly with other



Kentucky Constitution

Section 156b

General Assembly authorized to permit municipal home rule for cities.

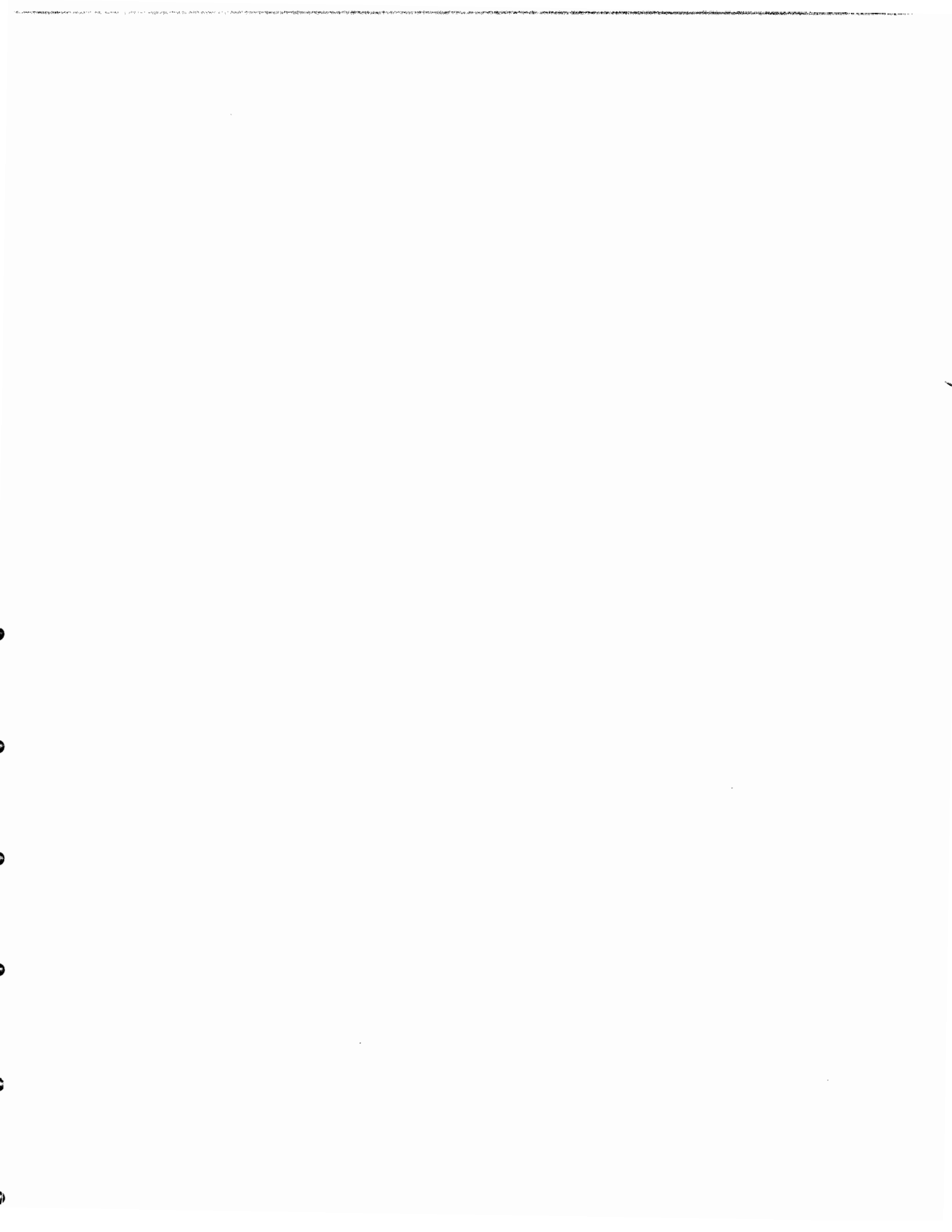
The General Assembly may provide by general law that cities may exercise any power and perform any function within their boundaries that is in furtherance of a public purpose of a city and not in conflict with a constitutional provision or statute.

Text as Ratified on: November 8, 1994

History: Creation proposed by 1994 Ky. Acts ch. 168, sec. 1.

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CONSTITUTION OF MARYLAND

ARTICLE XI-E

MUNICIPAL CORPORATIONS.

(added by Chapter 53, Acts of 1954, ratified Nov. 2, 1954)

SECTION 1. Except as provided elsewhere in this Article, the General Assembly shall not pass any law relating to the incorporation, organization, government, or affairs of those municipal corporations which are not authorized by Article 11-A of the Constitution to have a charter form of government which will be special or local in its terms or in its effect, but the General Assembly shall act in relation to the incorporation, organization, government, or affairs of any such municipal corporation only by general laws which shall in their terms and in their effect apply alike to all municipal corporations in one or more of the classes provided for in Section 2 of this Article. It shall be the duty of the General Assembly to provide by law the method by which new municipal corporations shall be formed.

SEC. 2. The General Assembly, by law, shall classify all such municipal corporations by grouping them into not more than four classes based on population as determined by the most recent census made under the authority of the United States or the State of Maryland. No more than one such grouping of municipal corporations into four (or fewer) classes shall be in effect at any time, and the enactment of any such grouping of municipal corporations into four (or fewer) classes shall repeal any such grouping of municipal corporations into four (or fewer) classes then in effect. Municipal corporations shall be classified only as provided in this section and not otherwise.

SEC. 3. Any such municipal corporation, now existing or hereafter created, shall have the power and authority, (a) to amend or repeal an existing charter or local laws relating to the incorporation, organization, government, or affairs of said municipal corporation heretofore enacted by the General Assembly of Maryland, and (b) to adopt a new charter, and to amend or repeal any charter adopted under the provisions of this Article.

SEC. 4. The adoption of a new charter, the amendment of any charter or local laws, or the repeal of any part of a charter or local laws shall be proposed either by a resolution of the legislative body of any such municipal corporation or by a petition containing the signatures of at least five per cent of the registered voters of a municipal corporation and filed with the legislative body of said municipal corporation. The General Assembly shall amplify the provisions of this section by general law in any manner not inconsistent with this Article.

SEC. 5. Notwithstanding any other provision in this Article, the General Assembly may enact, amend, or repeal local laws placing a maximum limit on the rate at which property taxes may be imposed by any such municipal corporation and regulating the maximum amount of debt which may be incurred by any municipal corporation. However, no such local law shall become effective in regard to a municipal corporation until and unless it shall have been approved at a regular or special municipal election by a majority of the voters of that municipal corporation voting on the question. No such municipal corporation shall levy any type of tax, license fee, franchise tax or fee which was not in effect in such municipal corporation on January 1, 1954, unless it shall receive the express authorization of the General Assembly for such purpose, by a general law which in its terms and its effect applies alike to all municipal corporations in one or more of the classes provided for in Section 2 of this Article. All charter provisions enacted under the authority of Section 3 of this Article shall be subject to any local laws enacted by the General Assembly and approved by the municipal voters under the provisions of this section.

SEC. 6. All charter provisions, or amendments thereto, adopted under the provisions of this Article, shall be subject to all applicable laws enacted by the General Assembly; except that any local laws, or amendments thereto, relating to the incorporation, organization, government, or affairs of any municipal corporation and enacted before this Article becomes effective, shall be subject to any charter provisions, or amendments thereto, adopted under the provisions of this Article. Any local law, or amendments thereto, relating to the incorporation, organization, government, or affairs of any municipal corporation and in effect at the time this Article becomes effective, shall be subject to any applicable State law enacted after this Article becomes effective. All laws enacted by the General Assembly and in effect at the time this Article becomes effective, shall remain in effect until amended or repealed in accordance with the provisions of this

Constitution. Nothing in this Article shall be construed to authorize any municipal corporation, by any amendment or addition to its charter, to permit any act which is prohibited by the laws of this State concerning the observance of the Sabbath Day or the manufacture, licensing or sale of alcoholic beverages.

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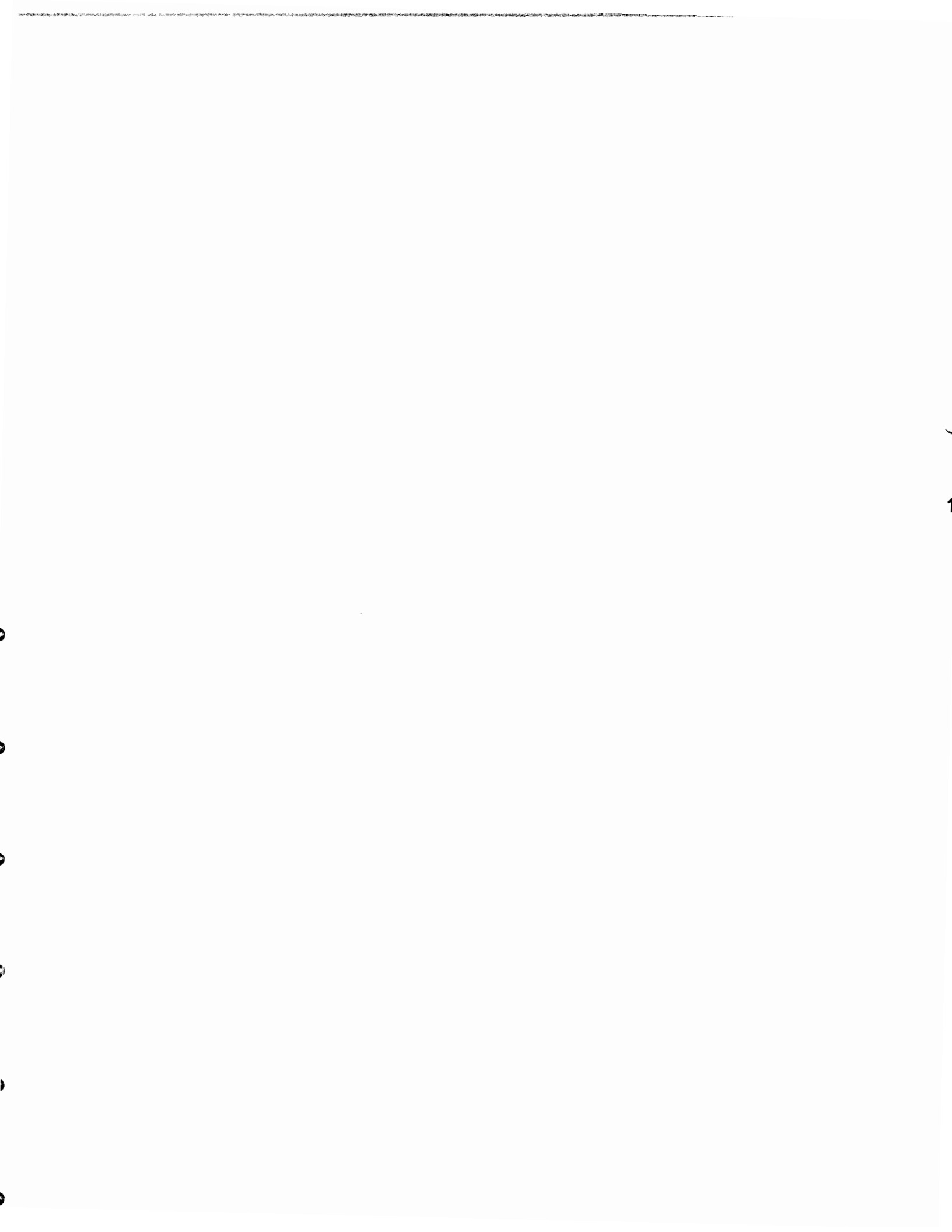
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Article LXXXIX. Article II of the Articles of Amendment to the Constitution of the Commonwealth, as amended by Article LXX of said Articles of Amendment, is hereby annulled and the following is adopted in place thereof:

Article II. Section 1. Right of Local Self-Government. - It is the intention of this article to reaffirm the customary and traditional liberties of the people with respect to the conduct of their local government, and to grant and confirm to the people of every city and town the right of self-government in local matters, subject to the provisions of this article and to such standards and requirements as the general court may establish by law in accordance with the provisions of this article.

Section 2. Local Power to adopt, revise or amend Charters. - Any city or town shall have the power to adopt or revise a charter or to amend its existing charter through the procedures set forth in sections three and four. The provisions of any adopted or revised charter or any charter amendment shall not be inconsistent with the constitution or any laws enacted by the general court in conformity with the powers reserved to the general court by section eight.

No town of fewer than twelve thousand inhabitants shall adopt a city form of government, and no town of fewer than six thousand inhabitants shall adopt a form of government providing for a town meeting limited to such inhabitants of the town as may be elected to meet, deliberate, act and vote in the exercise of the corporate powers of the town.

Section 3. Procedure for Adoption or Revision of a Charter by a City or Town. - Every city and town shall have the power to adopt or revise a charter in the following manner: A petition for the adoption or revision of a charter shall be signed by at least fifteen per cent of the number of legal voters residing in such city or town at the preceding state election. Whenever such a petition is filed with the board of registrars of voters of any city or town, the board shall within ten days of its receipt determine the sufficiency and validity of the signatures and certify the results to the city council of the city or board of selectmen of the town, as the case may be. As used in this section, the phrase "board of registrars of voters" shall include any local authority of different designation which performs the duties of such registrars, and the phrase "city council of the city or board of selectmen of the town" shall include local authorities of different designation performing the duties of such council or board. Objections to the sufficiency and validity of the signatures on any such petition as certified by the board of registrars of voters shall be made in the same manner as provided by law for objections to nominations for city or town offices, as the case may be.

Within thirty days of receipt of certification of the board of registrars of voters that a petition contains sufficient valid signatures, the city council of the city or board of selectmen of the town shall by order provide for submitting to the voters of the city or town the question of adopting or revising a charter, and for the nomination and election of a charter commission.

If the city or town has not previously adopted a charter pursuant to this section, the question submitted to the voters shall be: "Shall a commission be elected to frame a charter for (name of city or town)?" If the city or town has previously adopted a charter pursuant to this section, the question submitted to the voters shall be: "Shall a commission be elected to revise the charter of (name of city or town)?"

The charter commission shall consist of nine voters of the city or town, who shall be elected at large without party or political designation at the city or town election next held at least sixty days after the order of the city council of the city or board of selectmen of the town. The names of candidates for such commission shall be listed alphabetically on the ballot used at such election. Each voter may vote for nine candidates.

The vote on the question submitted and the election of the charter commission shall take place at the same time. If the vote on the question submitted is in the affirmative, the nine candidates receiving the highest number of votes shall be declared elected.

Within [ten months] after the election of the members of the charter commission, said commission shall submit the charter or revised charter to the city council of the city or the board of selectmen of the town, and such council or board shall provide for publication of the charter and for its submission to the voters of the city or town at the next city or town election held at least two months after such submission by the charter commission. If the charter or revised charter is approved by a majority of the voters of the city or town voting thereon, it shall become effective upon the date fixed in the charter. [See Amendments, Art. CXIII.]

Section 4. Procedure for Amendment of a Charter by a City or Town. - Every city and town shall have the power to amend its charter in the following manner: The legislative body of a city or town may, by a two-thirds vote, propose amendments to the charter of the city or town; provided, that [1] amendments of a city charter may be proposed only with the concurrence of the mayor in every city that has a mayor, and [2] any change in a charter relating in any way to the composition, mode of election or appointment, or terms of office of the legislative body, the mayor or city manager or the board of selectmen or town manager shall be made only by the procedure of charter revision set forth in section three.

All proposed charter amendments shall be published and submitted for approval in the same manner as provided for adoption or revision of a charter.

Section 5. Recording of Charters and Charter Amendments. - Duplicate certificates shall be prepared setting forth any charter that has been adopted or revised and any charter amendments approved, and shall be signed by the city or town clerk. One such certificate shall be deposited in the office of the secretary of the commonwealth and the other shall be recorded in the records of the city or town and deposited among its archives. All courts may take judicial notice of charters and charter amendments of cities and towns.

Section 6. Governmental Powers of Cities and Towns. - Any city or town may, by the adoption, amendment, or repeal of local ordinances or by-laws, exercise any power or function which the general court has power to confer upon it, which is not inconsistent with the constitution or laws enacted by the general court in conformity with powers reserved to the general court in conformity with powers reserved to the general court by section eight, and which is not denied, either expressly or by clear implication, to the city or town by its charter. This section shall apply to every city and town, whether or not it has adopted a charter pursuant to section three.

Section 7. Limitations on Local Powers. - Nothing in this article shall be deemed to grant to any city or town the power to (1) regulate elections other than those prescribed by sections three and four; (2) to levy, assess and collect taxes; (3) to borrow money or pledge the credit of the city or town; (4) to dispose of park land; (5) to enact private or civil law governing civil relationships except as an incident to an exercise of an independent municipal power; or (6) to define and provide for the punishment of a felony or to impose imprisonment as a punishment for any violation of law; provided, however, that the foregoing enumerated powers may be granted by the general court in conformity with the constitution and with the powers reserved to the general court by section eight; nor shall the provisions of this article be deemed to diminish the powers of the judicial department of the commonwealth.

Section 8. Powers of the General Court. - The general court shall have the power to act in relation to cities and towns, but only by general laws which apply alike to all cities or to all towns, or to all cities and towns, or to a class of not fewer than two, and by special laws enacted (1) on petition filed or

approved by the voters of a city or town, or the mayor and city council, or other legislative body, of a city, or the town meeting of a town, with respect to a law relating to that city or town; (2) by a two-thirds vote of each branch of the general court following a recommendation by the governor; (3) to erect and constitute metropolitan or regional entities, embracing any two or more cities or towns or cities and towns, or established with other than existing city or town boundaries, for any general or special public purpose or purposes, and to grant to these entities such powers, privileges and immunities as the general court shall deem necessary or expedient for the regulation and government thereof; or (4) solely for the incorporation or dissolution of cities or towns as corporate entities, alteration of city or town boundaries, and merger or consolidation of cities and towns, or any of these matters.

Subject to the foregoing requirements, the general court may provide optional plans of city or town organization and government under which an optional plan may be adopted or abandoned by majority vote of the voters of the city or town voting thereon at a city or town election; provided, that no town of fewer than twelve thousand inhabitants may be authorized to adopt a city form of government, and no town of fewer than six thousand inhabitants may be authorized to adopt a form of town government providing for town meeting limited to such inhabitants of the town as may be elected to meet, deliberate, act and vote in the exercise of the corporate powers of the town.

This section shall apply to every city and town whether or not it has adopted a charter pursuant to section three.

Section 9. Existing Special Laws. - All special laws relating to individual cities or towns shall remain in effect and have the force of an existing city or town charter, but shall be subject to amendment or repeal through the adoption, revision or amendment of a charter by a city or town in accordance with the provisions of sections three and four and shall be subject to amendment or repeal by laws enacted by the general court in conformity with the powers reserved to the general court by section eight.

Article XC. Section 1. Article II of section I of Chapter I of Part the Second of the constitution is hereby amended by striking out the second paragraph and inserting in place thereof the following paragraph:-

And in order to prevent unnecessary delays, if any bill or resolve shall not be returned by the governor within ten days after it shall have been presented, the same shall have the force of a law.

Section 2. Article I of the Articles of Amendment to the Constitution is hereby annulled and the following is adopted in place thereof:--

Article I. If any bill or resolve shall be objected to, and not approved by the governor, and if the general court shall adjourn within ten days after the same shall have been laid before the governor for his approbation, and thereby prevent his returning it with his objections, as provided by the constitution, such bill or resolve shall not become a law, nor have force as such.

Section 3. Article LVI of the Articles of Amendments to the Constitution is hereby annulled and the following is adopted in place thereof:--

Article LVI. The governor, within ten days after any bill or resolve shall have been laid before him, shall have the right to return it to the branch of the general court in which it originated with a recommendation that any amendment or amendments specified by him be made therein. Such bill or resolve shall thereupon be before the general court and subject to amendment and re-enactment. If such bill or resolve is re-enacted in any form it shall again be laid before the governor for his action, but he shall have no right to return the same a second time with a recommendation to amend.

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TITLE VII. CITIES, TOWNS AND DISTRICTS

CHAPTER 39. MUNICIPAL GOVERNMENT

CITY GOVERNMENT

Chapter 39: Section 1. Allocation of powers

Section 1. Except as otherwise provided by law, city councils shall have the powers of towns; boards of aldermen shall have the powers, perform the duties and be subject to the liabilities of selectmen, except with respect to appointments, and the mayor shall have the powers, perform the duties and be subject to the liabilities of selectmen with respect to appointments, but all his appointments shall be subject to confirmation and rejection by the aldermen, and upon the rejection of a person so appointed the mayor shall within one month thereafter make another appointment. In cities having a single legislative board other than a board of aldermen, such board shall, so far as appropriate and not inconsistent with the express provisions of any general or special law, have the powers, perform the duties and be subject to the liabilities of the board of aldermen.

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PART I. ADMINISTRATION OF THE GOVERNMENT

TITLE VII. CITIES, TOWNS AND DISTRICTS

CHAPTER 40. POWERS AND DUTIES OF CITIES AND TOWNS

Chapter 40: Section 1. Nature and scope

Section 1. Cities and towns shall be bodies corporate, and, except as otherwise expressly provided, shall have the powers, exercise the privileges and be subject to the duties and liabilities provided in the several acts establishing them and in the acts relating thereto. Except as otherwise expressly provided, cities shall have all the powers of towns and such additional powers as are granted to them by their charters or by general or special law, and all laws relative to towns shall apply to cities.

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PART I. ADMINISTRATION OF THE GOVERNMENT

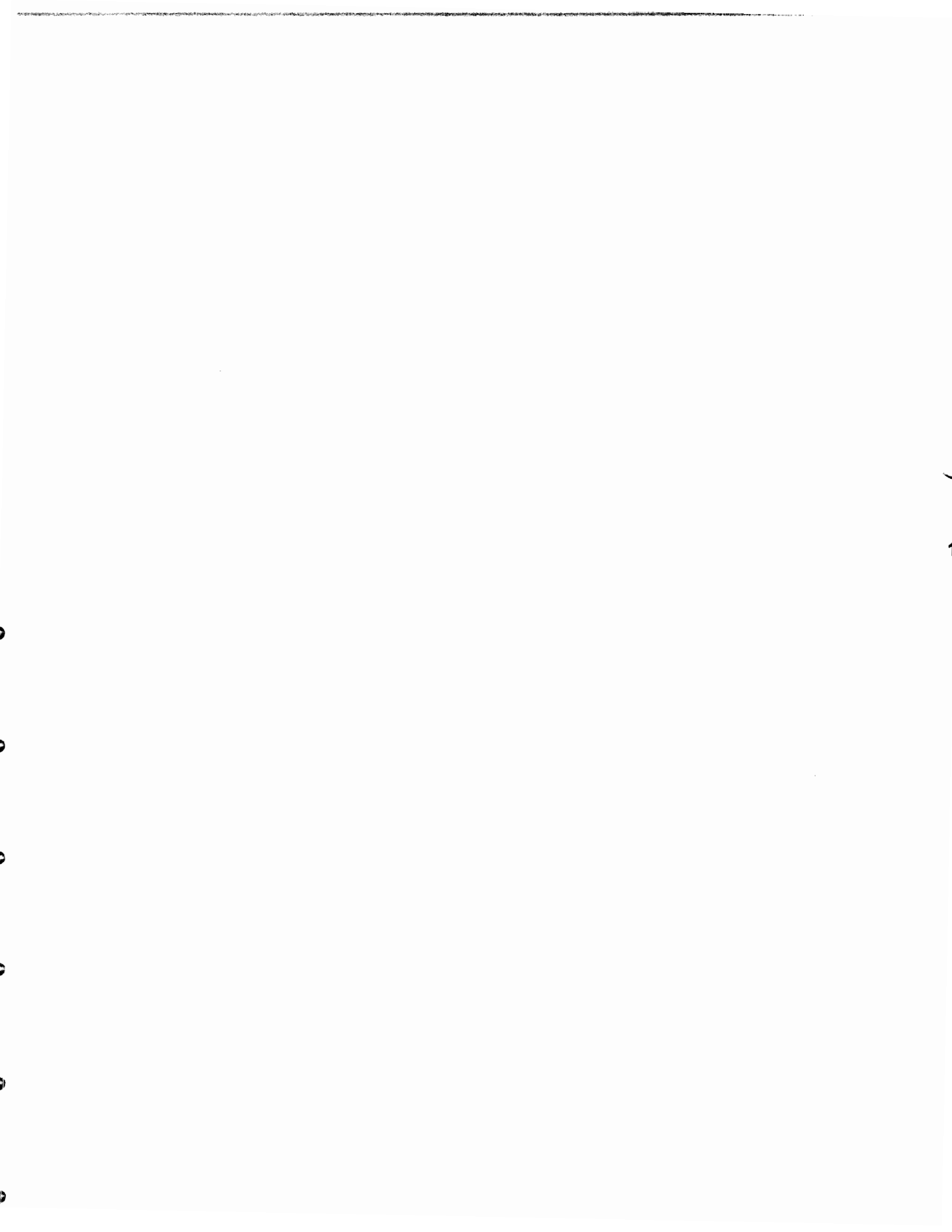
TITLE VII. CITIES, TOWNS AND DISTRICTS

CHAPTER 40. POWERS AND DUTIES OF CITIES AND TOWNS

PURPOSES FOR WHICH TOWNS MAY APPROPRIATE MONEY

Chapter 40: Section 5. Authorization

Section 5. A town may at any town meeting appropriate money for the exercise of any of its corporate powers; provided, however, that a town shall not appropriate or expend money for any purpose, on any terms, or under any conditions inconsistent with any applicable provision of any general or special law.



§ 17 Townships; corporate character, powers and immunities.

Sec. 17. Each organized township shall be a body corporate with powers and immunities provided by law.

History: Const. 1963, Art. VII, §17, Eff. Jan. 1, 1964.
Former Constitution: See Const. 1908, Art. VIII, §16.

§ 18 Township officers; term, powers and duties.

Sec. 18. In each organized township there shall be elected for terms of not less than two nor more than four years as prescribed by law a supervisor, a clerk, a treasurer, and not to exceed four trustees, whose legislative and administrative powers and duties shall be provided by law.

History: Const. 1963, Art. VII, §18, Eff. Jan. 1, 1964.
Former Constitution: See Const. 1908, Art. VIII, §18.

§ 19 Township public utility franchises.

Sec. 19. No organized township shall grant any public utility franchise which is not subject to revocation at the will of the township, unless the proposition shall first have been approved by a majority of the electors of such township voting thereon at a regular or special election.

History: Const. 1963, Art. VII, §19, Eff. Jan. 1, 1964.
Former Constitution: See Const. 1908, Art. VIII, §19.

§ 20 Townships, dissolution; villages as cities.

Sec. 20. The legislature shall provide by law for the dissolution of township government whenever all the territory of an organized township is included within the boundaries of a village or villages notwithstanding that a village may include territory within another organized township and provide by law for the classification of such village or villages as cities.

History: Const. 1963, Art. VII, §20, Eff. Jan. 1, 1964.

§ 21 Cities and villages; incorporation, taxes, indebtedness.

Sec. 21. The legislature shall provide by general laws for the incorporation of cities and villages. Such laws shall limit their rate of ad valorem property taxation for municipal purposes, and restrict the powers of cities and villages to borrow money and contract debts. Each city and village is granted power to levy other taxes for public purposes, subject to limitations and prohibitions provided by this constitution or by law.

History: Const. 1963, Art. VII, §21, Eff. Jan. 1, 1964.
Former Constitution: See Const. 1908, Art. VIII, §20.

§ 22 Charters, resolutions, ordinances; enumeration of powers.

Sec. 22. Under general laws the electors of each city and village shall have the power and authority to frame, adopt and amend its charter, and to amend an existing charter of the city or village heretofore granted or enacted by the legislature for the government of the city or village. Each such city and village shall have power to adopt resolutions and ordinances relating to its municipal concerns, property and government, subject to the constitution and law. No enumeration of powers granted to cities and villages in this constitution shall limit or restrict the general grant of authority conferred by this section.

History: Const. 1963, Art. VII, §22, Eff. Jan. 1, 1964.
Former Constitution: See Const. 1908, Art. VIII, §21.

§ 23 Parks, boulevards, cemeteries, hospitals.

Sec. 23. Any city or village may acquire, own, establish and maintain, within or without its corporate limits, parks, boulevards, cemeteries, hospitals and all works which involve the public health or safety.

History: Const. 1963, Art. VII, §23, Eff. Jan. 1, 1964.
Former Constitution: See Const. 1908, Art. VIII, §22.

§ 24 Public service facilities.

Sec. 24. Subject to this constitution, any city or village may acquire, own or operate, within or without its corporate limits, public service facilities for supplying water, light, heat, power, sewage disposal and transportation to the municipality and the inhabitants thereof.



Minnesota Constitution

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ARTICLE XII SPECIAL LEGISLATION; LOCAL GOVERNMENT

Section 1. **PROHIBITION OF SPECIAL LEGISLATION; PARTICULAR SUBJECTS.** In all cases when a general law can be made applicable, a special law shall not be enacted except as provided in section 2. Whether a general law could have been made applicable in any case shall be judicially determined without regard to any legislative assertion on that subject. The legislature shall pass no local or special law authorizing the laying out, opening, altering, vacating or maintaining of roads, highways, streets or alleys; remitting fines, penalties or forfeitures; changing the names of persons, places, lakes or rivers; authorizing the adoption or legitimation of children; changing the law of descent or succession; conferring rights on minors; declaring any named person of age; giving effect to informal or invalid wills or deeds, or affecting the estates of minors or persons under disability; granting divorces; exempting property from taxation or regulating the rate of interest on money; creating private corporations, or amending, renewing, or extending the charters thereof; granting to any private corporation, association, or individual any special or exclusive privilege, immunity or franchise whatever or authorizing public taxation for a private purpose. The inhibitions of local or special laws in this section shall not prevent the passage of general laws on any of the subjects enumerated.

Sec. 2. **SPECIAL LAWS; LOCAL GOVERNMENT.** Every law which upon its effective date applies to a single local government unit or to a group of such units in a single county or a number of contiguous counties is a special law and shall name the unit or, in the latter case, the counties to which it applies. The legislature may enact special laws relating to local government units, but a special law, unless otherwise provided by general law, shall become effective only after its approval by the affected unit expressed through the voters or the governing body and by such majority as the legislature may direct. Any special law may be modified or superseded by a later home rule charter or amendment applicable to the same local government unit, but this does not prevent the adoption of subsequent laws on the same subject. The legislature may repeal any existing special or local law, but shall not amend, extend or modify any of the same except as provided in this section.

Sec. 3. **LOCAL GOVERNMENT; LEGISLATION AFFECTING.** The legislature may provide by law for the creation, organization, administration, consolidation, division and dissolution of local government units and their functions, for the change of boundaries thereof, for their elective and appointive officers including qualifications for office and for the transfer of county seats. A county boundary may not be changed or county seat transferred until approved in each county affected by a majority of the voters voting on the question.

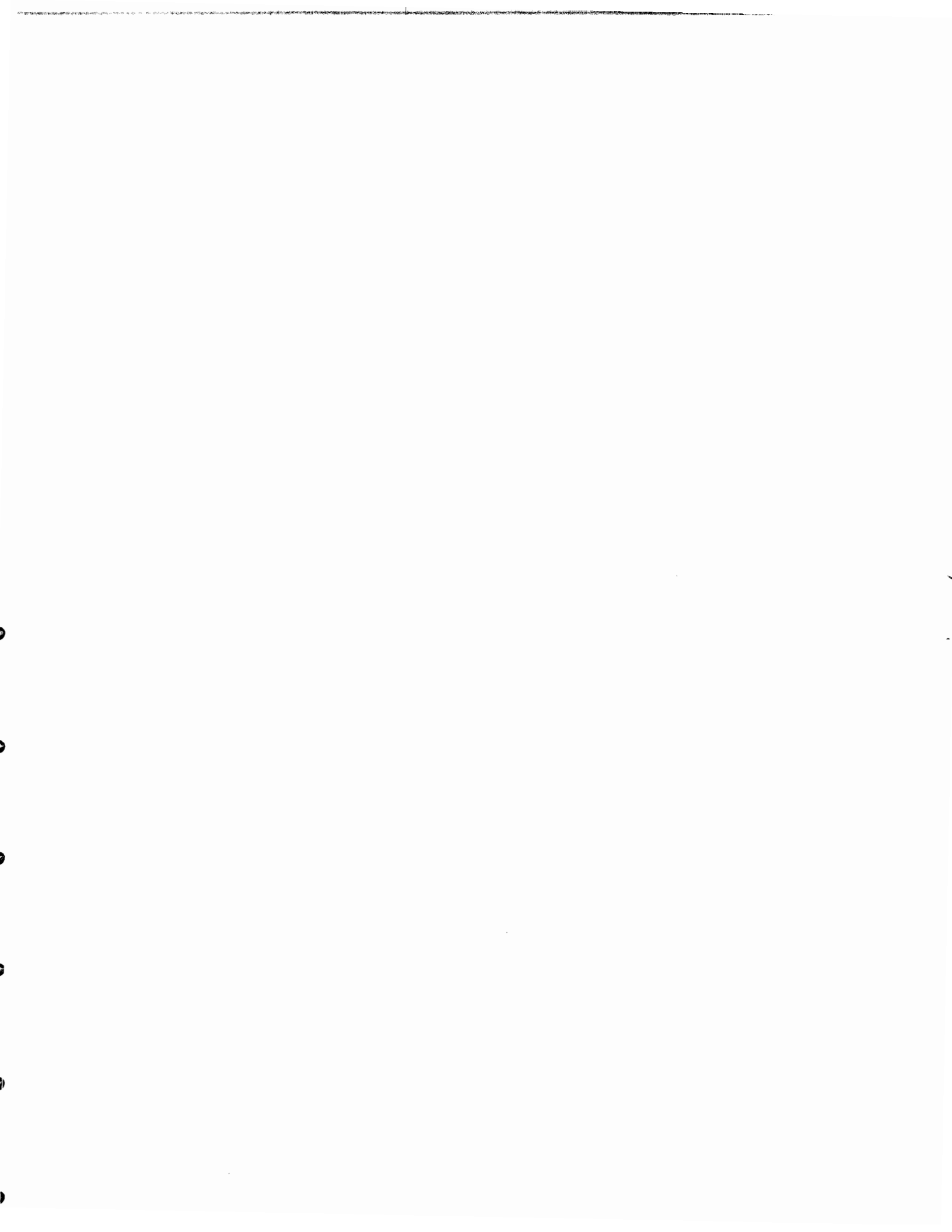
Sec. 4. **HOME RULE CHARTER.** Any local government unit when authorized by law may adopt a home rule charter for its government. A charter shall become effective if approved by such majority of the voters of the local government unit as the legislature prescribes by general law. If a charter provides for the consolidation or separation of a city and a county, in whole or in part, it shall not be effective without approval of the voters both in the city and in the remainder of the county by the majority required by law.

Sec. 5. **CHARTER COMMISSIONS.** The legislature shall provide by law for charter commissions. Notwithstanding any other constitutional limitations the legislature may require that commission members be freeholders, provide for their appointment by judges of the district court, and permit any member to hold any other elective or appointive office other than judicial. Home rule charter amendments may be proposed by a charter commission or by a petition of five percent of the voters of the local government unit as determined by law and shall not become effective until approved by the voters by the majority required by law. Amendments may be proposed and adopted in any other manner provided by law. A local government unit may repeal its home rule charter and adopt a statutory form of government or a new charter upon the same majority vote as is required by law for the adoption of a charter in the first instance.

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Missouri Constitution

Article VI LOCAL GOVERNMENT Section 19(a)

August 28, 2009

Power of charter cities, how limited.

Section 19(a). Any city which adopts or has adopted a charter for its own government, shall have all powers which the general assembly of the state of Missouri has authority to confer upon any city, provided such powers are consistent with the constitution of this state and are not limited or denied either by the charter so adopted or by statute. Such a city shall, in addition to its home rule powers, have all powers conferred by law.

(Adopted October 5, 1971)

(1976) Held, Kansas City, being a charter city, "has authority to grant city funds to school districts, or portions of school districts, lying within its corporate limits." *Enright v. Kansas City (Mo. Banc)*, 536 S.W.2d 17.

(2000) Proposed city charter amendments, requiring two-thirds voter approval on every tax increment financing measure and abrogating city power of eminent domain incident to any tax increment financing redevelopment plan or project, violated state statutes and thus were unconstitutional. *State ex rel. Hazelwood Yellow Ribbon Committee v. Klos*, 35 S.W.3d 457 (Mo.App.E.D.).



Missouri General Assembly



- (b) The board consists of seven members appointed by the governor, and confirmed by the senate, to overlapping terms, as provided by law. The governor and superintendent of public instruction are ex officio non-voting members of the board.
- (c) The board shall appoint a commissioner of higher education and prescribe his term and duties.
- (d) The funds and appropriations under the control of the board of regents are subject to the same audit provisions as are all other state funds.
- (3) (a) There is a board of public education to exercise general supervision over the public school system and such other public educational institutions as may be assigned by law. Other duties of the board shall be provided by law.
- (b) The board consists of seven members appointed by the governor, and confirmed by the senate, to overlapping terms as provided by law. The governor, commissioner of higher education and state superintendent of public instruction shall be ex officio non-voting members of the board.

Section 10. State university funds. The funds of the Montana university system and of all other state institutions of learning, from whatever source accruing, shall forever remain inviolate and sacred to the purpose for which they were dedicated. The various funds shall be respectively invested under such regulations as may be provided by law, and shall be guaranteed by the state against loss or diversion. The interest from such invested funds, together with the rent from leased lands or properties, shall be devoted to the maintenance and perpetuation of the respective institutions.

Section 11. Public land trust, disposition. (1) All lands of the state that have been or may be granted by congress, or acquired by gift or grant or devise from any person or corporation, shall be public lands of the state. They shall be held in trust for the people, to be disposed of as hereafter provided, for the respective purposes for which they have been or may be granted, donated or devised.

(2) No such land or any estate or interest therein shall ever be disposed of except in pursuance of general laws providing for such disposition, or until the full market value of the estate or interest disposed of, to be ascertained in such manner as may be provided by law, has been paid or safely secured to the state.

(3) No land which the state holds by grant from the United States which prescribes the manner of disposal and minimum price shall be disposed of except in the manner and for at least the price prescribed without the consent of the United States.

(4) All public land shall be classified by the board of land commissioners in a manner provided by law. Any public land may be exchanged for other land, public or private, which is equal in value and, as closely as possible, equal in area.

**ARTICLE XI
LOCAL GOVERNMENT**

Section

- 1. Definition.
- 2. Counties.
- 3. Forms of government.
- 4. General powers.
- 5. Self-government charters.
- 6. Self-government powers.
- 7. Intergovernmental cooperation.
- 8. Initiative and referendum.
- 9. Voter review of local government.

Section 1. Definition. The term "local government units" includes, but is not limited to, counties and incorporated cities and towns. Other local government units may be established by law.

Section 2. Counties. The counties of the state are those that exist on the date of ratification of this constitution. No county boundary may be changed or county

seat transferred until approved by a majority of those voting on the question in each county affected.

Section 3. Forms of government. (1) The legislature shall provide methods for governing local government units and procedures for incorporating, classifying, merging, consolidating, and dissolving such units, and altering their boundaries. The legislature shall provide such optional or alternative forms of government that each unit or combination of units may adopt, amend, or abandon an optional or alternative form by a majority of those voting on the question.

(2) One optional form of county government includes, but is not limited to, the election of three county commissioners, a clerk and recorder, a clerk of district court, a county attorney, a sheriff, a treasurer, a surveyor, a county superintendent of schools, an assessor, a coroner, and a public administrator. The terms, qualifications, duties, and compensation of those offices shall be provided by law. The Board of county commissioners may consolidate two or more such offices. The Boards of two or more counties may provide for a joint office and for the election of one official to perform the duties of any such office in those counties.

Section 4. General powers. (1) A local government unit without self-government powers has the following general powers:

- (a) An incorporated city or town has the powers of a municipal corporation and legislative, administrative, and other powers provided or implied by law.
 - (b) A county has legislative, administrative, and other powers provided or implied by law.
 - (c) Other local government units have powers provided by law.
- (2) The powers of incorporated cities and towns and counties shall be liberally construed.

Section 5. Self-government charters. (1) The legislature shall provide procedures permitting a local government unit or combination of units to frame, adopt, amend, revise, or abandon a self-government charter with the approval of a majority of those voting on the question. The procedures shall not require approval of a charter by a legislative body.

- (2) If the legislature does not provide such procedures by July 1, 1975, they may be established by election either:
- (a) Initiated by petition in the local government unit or combination of units; or
 - (b) Called by the governing body of the local government unit or combination of units.
- (3) Charter provisions establishing executive, legislative, and administrative structure and organization are superior to statutory provisions.

Section 6. Self-government powers. A local government unit adopting a self-government charter may exercise any power not prohibited by this constitution, law, or charter. This grant of self-government powers may be extended to other local government units through optional forms of government provided for in section 3.

Section 7. Intergovernmental cooperation. (1) Unless prohibited by law or charter, a local government unit may

- (a) cooperate in the exercise of any function, power, or responsibility with,
 - (b) share the services of any officer or facilities with,
 - (c) transfer or delegate any function, power, responsibility, or duty of any officer to one or more other local government units, school districts, the state, or the United States.
- (2) The qualified electors of a local government unit may, by initiative or referendum, require it to do so.

Section 8. Initiative and referendum. The legislature shall extend the initiative and referendum powers reserved to the people by the constitution to the qualified electors of each local government unit.

Section 9. Voter review of local government. (1) The legislature shall, within four years of the ratification of this constitution, provide procedures requiring each local government unit or combination of units to review its structure and submit one alternative form of government to the qualified electors at the next general or special election.

- (2) The legislature shall require an election in each local government to determine

whether a local government will undertake a review procedure once every ten years after the first election. Approval by a majority of those voting in the decennial general election on the question of undertaking a local government review is necessary to mandate the election of a local government study commission. Study commission members shall be elected during any regularly scheduled election in local governments mandating their election.

History: Amd. Const. Amend. No. 6, approved Nov. 7, 1978.

ARTICLE XII DEPARTMENTS AND INSTITUTIONS

Section

1. Agriculture.
2. Labor.
3. Institutions and assistance.
4. Montana tobacco settlement trust fund.

Section 1. Agriculture. (1) The legislature shall provide for a Department of Agriculture and enact laws and provide appropriations to protect, enhance, and develop all agriculture.

(2) Special levies may be made on livestock and on agricultural commodities for disease control and indemnification, predator control, and livestock and commodity inspection, protection, research, and promotion. Revenue derived shall be used solely for the purposes of the levies.

Section 2. Labor. (1) The legislature shall provide for a Department of Labor and Industry, headed by a Commissioner appointed by the governor and confirmed by the senate.

(2) A maximum period of 8 hours is a regular day's work in all industries and employment except agriculture and stock raising. The legislature may change this maximum period to promote the general welfare.

Section 3. Institutions and assistance. (1) The state shall establish and support institutions and facilities as the public good may require, including homes which may be necessary and desirable for the care of veterans.

(2) Persons committed to any such institutions shall retain all rights except those necessarily suspended as a condition of commitment. Suspended rights are restored upon termination of the state's responsibility.

(3) The legislature may provide such economic assistance and social and rehabilitative services for those who, by reason of age, infirmities, or misfortune are determined by the legislature to be in need.

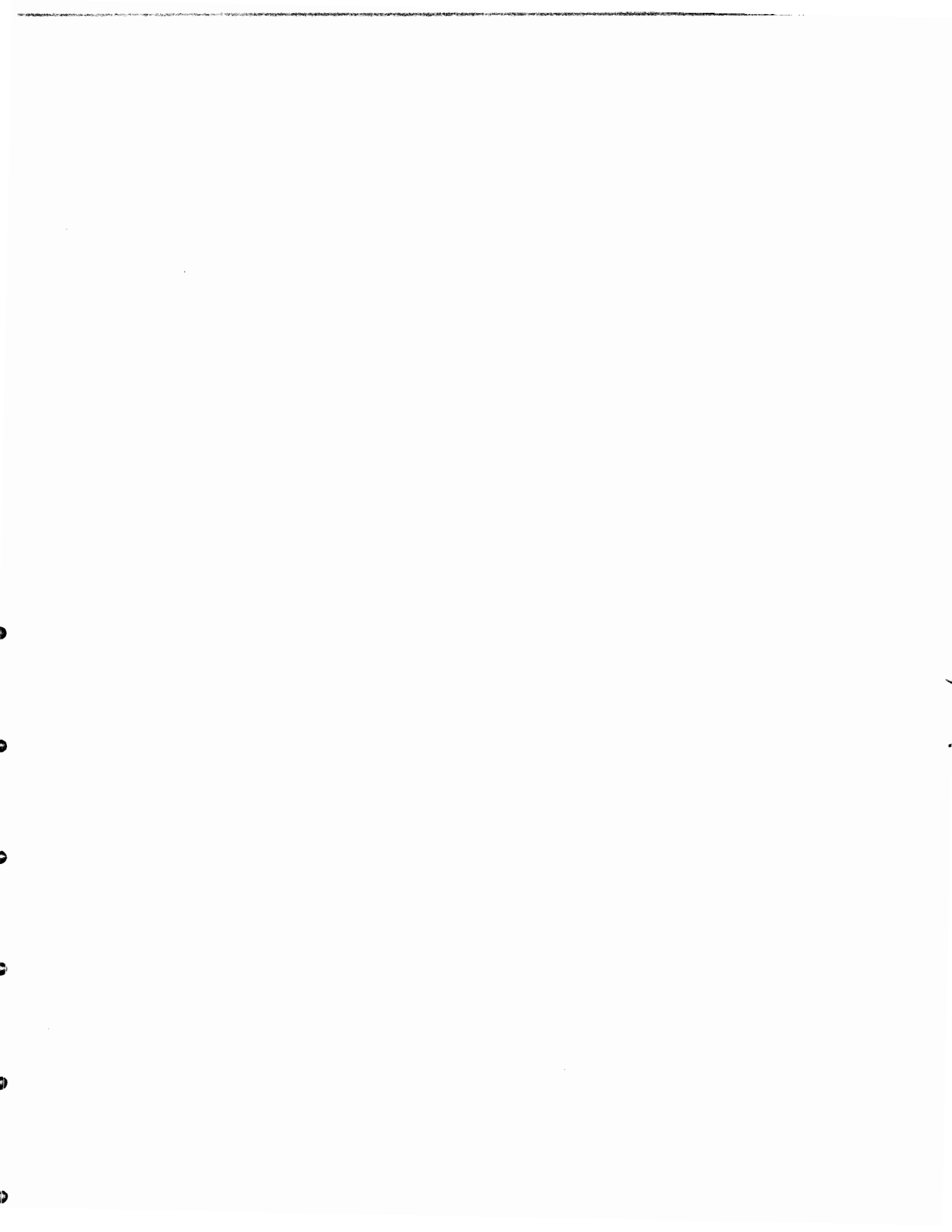
(4) The legislature may set eligibility criteria for programs and services, as well as for the duration and level of benefits and services.

History: Amd. Const. Amend. No. 18, approved Nov. 8, 1988.

Section 4. Montana tobacco settlement trust fund. (1) The legislature shall dedicate not less than two-fifths of any tobacco settlement proceeds received on or after January 1, 2001, to a trust fund, nine-tenths of the interest and income of which may be appropriated. One-tenth of the interest and income derived from the trust fund on or after January 1, 2001, shall be deposited in the trust fund. The principal of the trust fund and one-tenth of the interest and income deposited in the trust fund shall remain forever inviolate unless appropriated by a vote of two-thirds of the members of each house of the legislature.

(2) Appropriations of the interest, income, or principal from the trust fund shall be used only for tobacco disease prevention programs and state programs providing benefits, services, or coverage that are related to the health care needs of the people of Montana and may not be used for other purposes.

(3) Appropriations of the interest, income, or principal from the trust fund shall not be used to replace state or federal money used to fund tobacco disease prevention programs and state programs that existed on December 31, 1999, providing benefits, services, or coverage of the health care needs of the people of Montana.



appointing authority shall fill the vacancy for the unexpired term. The additional members of a temporary commission must be appointed when a review is required, and their terms expire when the review has been completed.

9. An appointing authority shall not appoint to the permanent Commission more than:

(a) One resident of any county.

(b) One member of the same political party.

No member of the permanent Commission may be a member of a commission on judicial selection or the Commission on Judicial Discipline.

(Proposed addition passed by the 2007 Legislature; effective November 23, 2010, if agreed to and passed by the 2009 Legislature and approved and ratified by the voters at the 2010 General Election. See Statutes of Nevada 2007, p. 3601.)

ARTICLE. 7. - Impeachment and Removal from Office.

- SEC. 1. Impeachment: Trial; conviction.
2. Officers subject to impeachment.
3. Removal of Supreme Court justice or district judge. [Effective through November 22, 2010, and after that date unless the proposed amendment is agreed to and passed by the 2009 Legislature and approved and ratified by the voters at the 2010 General Election.]
3. Removal of justices of Supreme Court, judges of court of appeals and judges of district courts. [Effective November 23, 2010, if the proposed amendment is agreed to and passed by the 2009 Legislature and approved and ratified by the voters at the 2010 General Election.]
4. Removal of other civil officers.

Section. 1. **Impeachment: Trial; conviction.** The Assembly shall have the sole power of impeaching. The concurrence of a majority of all the members elected, shall be necessary to an impeachment. All impeachments shall be tried by the Senate, and when sitting for that purpose, the Senators shall be upon Oath or Affirmation, to do justice according to Law and Evidence. The Chief Justice of the Supreme court, shall preside over the Senate while sitting to try the Governor or Lieutenant Governor upon impeachment. No person shall be convicted without the concurrence of two thirds of the Senators elected.

Sec. 2. **Officers subject to impeachment.** The Governor and other state and judicial officers, except justices of the peace shall be liable to impeachment for misdemeanor or malfeasance in office; but judgment in such case shall not extend further than removal from office and disqualification to hold any office of honor, profit, or trust under this State. The party whether convicted or acquitted, shall, nevertheless, be liable to indictment, trial, judgment and punishment according to law.

Sec. 3. **Removal of Supreme Court justice or district judge.** [Effective through November 22, 2010, and after that date unless the proposed amendment is agreed to and passed by the 2009 Legislature and approved and ratified by the voters at the 2010 General Election.] For any reasonable cause to be entered on the journals of each House, which may, or may not be sufficient grounds for impeachment, the Chief Justice and associate justices of the Supreme Court and judges of the district courts shall be removed from office on the vote of two thirds of the members elected to each branch of the Legislature, and the justice or judge complained of, shall be served with a copy of the complaint against him, and shall have an opportunity of being heard in person or by counsel in his defense, provided, that no member of either branch of the Legislature shall be eligible to fill the vacancy occasioned by such removal.

Sec. 3. **Removal of justices of Supreme Court, judges of court of appeals and judges of district courts.** [Effective November 23, 2010, if the proposed amendment is agreed to and passed by the 2009 Legislature and approved and ratified by the voters at the 2010 General Election.] For any reasonable cause to be entered on the journals of each House, which may or may not be sufficient grounds for impeachment, the justices of the Supreme Court, the judges of the court of appeals, if established by the Legislature, and the judges of the district courts must be removed from office on the vote of two thirds of the members elected to each branch of the Legislature. The justice or judge complained of must be served with a copy of the complaint against him and have an opportunity of being heard in person or by counsel in his defense. No member of either branch of the Legislature is eligible to fill the vacancy occasioned by such removal.

(Proposed amendment passed by the 2007 Legislature; effective November 23, 2010, if agreed to and passed by the 2009 Legislature and approved and ratified by the voters at the 2010 General Election. See Statutes of Nevada 2007, p. 3560.)

Sec. 4. **Removal of other civil officers.** Provision shall be made by law for the removal from Office of any Civil Officer other than those in this Article previously specified, for Malfeasance, or Nonfeasance in the Performance of his duties.

ARTICLE. 8. - Municipal and Other Corporations.

- SEC. 1. Corporations formed under general laws; municipal corporations formed under special acts.
2. Corporate property subject to taxation; exemptions.
3. Individual liability of corporators.
4. Regulation of corporations incorporated under territorial law.
5. Corporations may sue and be sued.
6. Circulation of certain bank notes or paper as money prohibited.
7. Eminent domain by corporations.
8. Municipal corporations formed under general laws.
9. Gifts or loans of public money to certain corporations prohibited.
10. Loans of public money to or ownership of stock in certain corporations by county or municipal corporation prohibited.

Section. 1. **Corporations formed under general laws; municipal corporations formed under special acts.** The

Legislature shall pass no Special Act in any manner relating to corporate powers except for Municipal purposes; but corporations may be formed under general laws; and all such laws may from time to time, be altered or repealed.

Sec: 2. Corporate property subject to taxation; exemptions. All real property, and possessory rights to the same, as well as personal property in this State, belonging to corporations now existing or hereafter created shall be subject to taxation, the same as property of individuals; Provided, that the property of corporations formed for Municipal, Charitable, Religious, or Educational purposes may be exempted by law.

Sec: 3. Individual liability of corporators. Dues from corporations shall be secured by such means as may be prescribed by law; Provided, that corporators in corporations formed under the laws of this State shall not be individually liable for the debts or liabilities of such corporation.

Sec: 4. Regulation of corporations incorporated under territorial law. Corporations created by or under the laws of the Territory of Nevada shall be subject to the provisions of such laws until the Legislature shall pass laws regulating the same, in pursuance of the provisions of this Constitution[.]

Sec: 5. Corporations may sue and be sued. Corporations may sue and be sued in all courts, in like manner as individuals.

Sec. 6. Circulation of certain bank notes or paper as money prohibited. No bank notes or paper of any kind shall ever be permitted to circulate as money in this State, except the Federal currency, and the notes of banks authorized under the laws of Congress.

Sec: 7. Eminent domain by corporations. No right of way shall be appropriated to the use of any corporation until full compensation be first made or secured therefor.

Section 8. Municipal corporations formed under general laws. The legislature shall provide for the organization of cities and towns by general laws and shall restrict their power of taxation, assessment, borrowing money, contracting debts and loaning their credit, except for procuring supplies of water; *provided, however*, that the legislature may, by general laws, in the manner and to the extent therein provided, permit and authorize the electors of any city or town to frame, adopt and amend a charter for its own government, or to amend any existing charter of such city or town.

[Amended in 1924. Proposed and passed by the 1921 legislature; agreed to and passed by the 1923 legislature; and approved and ratified by the people at the 1924 general election. See: Statutes of Nevada 1921, p. 420; Statutes of Nevada 1923, p. 403.]

Sec: 9. Gifts or loans of public money to certain corporations prohibited. The State shall not donate or loan money, or its credit, subscribe to or be, interested in the Stock of any company, association, or corporation, except corporations formed for educational or charitable purposes.

Sec: 10. Loans of public money to or ownership of stock in certain corporations by county or municipal corporation prohibited. No county, city, town, or other municipal corporation shall become a stockholder in any joint stock company, corporation or association whatever, or loan its credit in aid of any such company, corporation or association, except, railroad corporations[,] companies or associations.

ARTICLE. 9. - Finance and State Debt.

- SEC. 1. Fiscal year.
2. Annual tax for state expenses; trust funds for industrial accidents, occupational diseases and public employees' retirement system; administration of public employees' retirement system.
3. State indebtedness: Limitations and exceptions.
4. Assumption of debts of county, city or corporation by state.
5. Proceeds from fees for licensing and registration of motor vehicles and excise taxes on fuel reserved for construction, maintenance and repair of public highways; exception.

Section. 1. Fiscal year. The fiscal year shall commence on the first day of July of each year.

[Amended in 1930. Proposed and passed by the 1927 legislature; agreed to and passed by the 1929 legislature; and approved and ratified by the people at the 1930 general election. See: Statutes of Nevada 1927, p. 346; Statutes of Nevada 1929, p. 429.]

Sec. 2. Annual tax for state expenses; trust funds for industrial accidents, occupational diseases and public employees' retirement system; administration of public employees' retirement system.

1. The legislature shall provide by law for an annual tax sufficient to defray the estimated expenses of the state for each fiscal year; and whenever the expenses of any year exceed the income, the legislature shall provide for levying a tax sufficient, with other sources of income, to pay the deficiency, as well as the estimated expenses of such ensuing year or two years.

2. Any money paid for the purpose of providing compensation for industrial accidents and occupational diseases, and for administrative expenses incidental thereto, and for the purpose of funding and administering a public employees' retirement system, must be segregated in proper accounts in the state treasury, and such money must never be used for any other purposes, and they are hereby declared to be trust funds for the uses and purposes herein specified.

3. Any money paid for the purpose of funding and administering a public employees' retirement system must not be loaned to the state or invested to purchase any obligations of the state.

4. The public employees' retirement system must be governed by a public employees' retirement board. The board shall employ an executive officer who serves at the pleasure of the board. In addition to any other employees authorized by the



NEW JERSEY STATE CONSTITUTION 1947 (UPDATED THROUGH AMENDMENTS ADOPTED IN NOVEMBER, 2008)**ARTICLE IV LEGISLATIVE****SECTION VII****SECTION VII**

1. No divorce shall be granted by the Legislature.

2. No gambling of any kind shall be authorized by the Legislature unless the specific kind, restrictions and control thereof have been heretofore submitted to, and authorized by a majority of the votes cast by, the people at a special election or shall hereafter be submitted to, and authorized by a majority of the votes cast thereon by, the legally qualified voters of the State voting at a general election, except that, without any such submission or authorization:

A. It shall be lawful for bona fide veterans, charitable, educational, religious or fraternal organizations, civic and service clubs, senior citizen associations or clubs, volunteer fire companies and first-aid or rescue squads to conduct, under such restrictions and control as shall from time to time be prescribed by the Legislature by law, games of chance of, and restricted to, the selling of rights to participate, the awarding of prizes, in the specific kind of game of chance sometimes known as bingo or lotto, played with cards bearing numbers or other designations, 5 or more in one line, the holder covering numbers as objects, similarly numbered, are drawn from a receptacle and the game being won by the person who first covers a previously designated arrangement of numbers on such a card, when the entire net proceeds of such games of chance are to be devoted to educational, charitable, patriotic, religious or public-spirited uses, and in the case of senior citizen associations or clubs to the support of such organizations, in any municipality, in which a majority of the qualified voters, voting thereon, at a general or special election as the submission thereof shall be prescribed by the Legislature by law, shall authorize the conduct of such games of chance therein;

B. It shall be lawful for the Legislature to authorize, by law, bona fide veterans, charitable, educational, religious or fraternal organizations, civic and service clubs, senior citizen associations or clubs, volunteer fire companies and first-aid or rescue squads to conduct games of chance of, and restricted to, the selling of rights to participate, and the awarding of prizes, in the specific kinds of games of chance sometimes known as raffles, conducted by the drawing for prizes or by the allotment of prizes by chance, when the entire net proceeds of such games of chance are to be devoted to educational, charitable, patriotic, religious or public-spirited uses, and in the case of senior citizen associations or clubs to the support of such organizations, in any municipality, in which such law shall be adopted by a majority of the qualified voters, voting thereon, at a general or special election as the submission thereof shall be prescribed by law and for the Legislature, from time to time, to restrict and control, by law, the conduct of such games of chance;

C. It shall be lawful for the Legislature to authorize the conduct of State lotteries restricted to the selling of rights to participate therein and the awarding of prizes by drawings when the entire net proceeds of any such lottery shall be for State institutions and State aid for education; provided, however, that it shall not be competent for the Legislature to borrow, appropriate or use, under any pretense whatsoever, lottery net proceeds for the confinement, housing, supervision or treatment of, or education programs for, adult criminal offenders or juveniles adjudged delinquent or for the construction, staffing, support, maintenance or operation of an adult or juvenile correctional facility or institution;

D. It shall be lawful for the Legislature to authorize by law the establishment and operation,

under regulation and control by the State, of gambling houses or casinos within the boundaries, as heretofore established, of the city of Atlantic City, county of Atlantic, and to license and tax such operations and equipment used in connection therewith. Any law authorizing the establishment and operation of such gambling establishments shall provide for the State revenues derived therefrom to be applied solely for the purpose of providing funding for reductions in property taxes, rental, telephone, gas, electric, and municipal utilities charges of eligible senior citizens and disabled residents of the State, and for additional or expanded health services or benefits or transportation services or benefits to eligible senior citizens and disabled residents, in accordance with such formulae as the Legislature shall by law provide. The type and number of such casinos or gambling houses and of the gambling games which may be conducted in any such establishment shall be determined by or pursuant to the terms of the law authorizing the establishment and operation thereof;

E. It shall be lawful for the Legislature to authorize, by law, (1) the simultaneous transmission by picture of running and harness horse races conducted at racetracks located within or outside of this State, or both, to gambling houses or casinos in the city of Atlantic City and (2) the specific kind, restrictions and control of wagering at those gambling establishments on the results of those races. The State's share of revenues derived therefrom shall be applied for services to benefit eligible senior citizens as shall be provided by law; and

F. It shall be lawful for the Legislature to authorize, by law, the specific kind, restrictions and control of wagering on the results of live or simulcast running and harness horse races conducted within or outside of this State. The State's share of revenues derived therefrom shall be used for such purposes as shall be provided by law.

Article IV, Section VII, paragraph 2 amended effective December 2, 1999.

3. The Legislature shall not pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, or depriving a party of any remedy for enforcing a contract which existed when the contract was made.

4. 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. This paragraph shall not invalidate any law adopting or enacting a compilation, consolidation, revision, or rearrangement of all or parts of the statutory law.

5. 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. 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.

6. The laws of this State shall begin in the following style: "Be it enacted by the Senate and General Assembly of the State of New Jersey."

7. No general law shall embrace any provision of a private, special or local character.

8. No private, special or local law shall be passed unless public notice of the intention to apply therefor, and of the general object thereof, shall have been previously given. Such notice shall be given at such time and in such manner and shall be so evidenced and the evidence thereof shall be so preserved as may be provided by law.

9. The Legislature shall not pass any private, special or local laws:

- (1) Authorizing the sale of any lands belonging in whole or in part to a minor or minors or other persons who may at the time be under any legal disability to act for themselves.
- (2) Changing the law of descent.
- (3) Providing for change of venue in civil or criminal causes.
- (4) Selecting, drawing, summoning or empaneling grand or petit jurors.
- (5) Creating, increasing or decreasing the emoluments, term or tenure rights of any public officers or employees.
- (6) Relating to taxation or exemption therefrom.
- (7) Providing for the management and control of free public schools.
- (8) Granting to any corporation, association or individual any exclusive privilege, immunity or franchise whatever.
- (9) Granting to any corporation, association or individual the right to lay down railroad tracks.
- (10) Laying out, opening, altering, constructing, maintaining and repairing roads or highways.
- (11) Vacating any road, town plot, street, alley or public grounds.
- (12) Appointing local officers or commissions to regulate municipal affairs.
- (13) Regulating the internal affairs of municipalities formed for local government and counties, except as otherwise in this Constitution provided.

The Legislature shall pass general laws providing for the cases enumerated in this paragraph, and for all other cases which, in its judgment, may be provided for by general laws. The Legislature shall pass no special act conferring corporate powers, but shall pass general laws under which corporations may be organized and corporate powers of every nature obtained, subject, nevertheless, to repeal or alteration at the will of the Legislature.

10. Upon petition by the governing body of any municipal corporation formed for local government, or of any county, and by vote of two-thirds of all the members of each house, the Legislature may pass private, special or local laws regulating the internal affairs of the municipality or county. The petition shall be authorized in a manner to be prescribed by general law and shall specify the general nature of the law sought to be passed. Such law shall become operative only if it is adopted by ordinance of the governing body of the municipality or county or by vote of the legally qualified voters thereof. The Legislature shall prescribe in such law or by general law the method of adopting such law, and the manner in which the ordinance of adoption may be enacted or the vote taken, as the case may be.

11. The provisions of this Constitution and of any law concerning municipal corporations formed for local government, or concerning counties, shall be liberally construed in their favor. The powers of counties and such municipal corporations shall include not only those granted in express terms but also those of necessary or fair implication, or incident to the powers expressly conferred, or essential thereto, and not inconsistent with or prohibited by this Constitution or by law.

12. Notwithstanding any other provision of this Constitution and irrespective of any right or interest in maintaining confidentiality, it shall be lawful for the Legislature to authorize by law the disclosure to the general public of information pertaining to the identity, specific and general whereabouts, physical characteristics and criminal history of persons found to have committed a sex offense. The scope, manner and format of the disclosure of such information shall be determined by or pursuant to the terms of the law authorizing the disclosure.

Article IV, Section VII, paragraph 12 added effective December 7, 2000.

SECTION VIII

1. Members of the Legislature shall, before they enter on the duties of their respective offices, take and subscribe the following oath or affirmation: "I do solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution of the State of New Jersey, and that I will faithfully discharge the duties of Senator (or member of the General Assembly) according to the best of my ability." Members-elect of the Senate or General Assembly are empowered to administer said oath or affirmation to each other.

2. Every officer of the Legislature shall, before he enters upon his duties, take and subscribe the following oath or affirmation: "I do solemnly promise and swear (or affirm) that I will faithfully, impartially and justly perform all the duties of the office of, to the best of my ability and understanding; that I will carefully preserve all records, papers, writings, or property entrusted to me for safekeeping by virtue of my office, and make such disposition of the same as may be required by law."

ARTICLE V EXECUTIVE





Sec. 6. [Municipal home rule.]

A. For the purpose of electing some or all of the members of the governing body of a municipality:

- (1) the legislature may authorize a municipality by general law to be districted;
- (2) if districts have not been established as authorized by law, the governing body of a municipality may, by resolution, authorize the districting of the municipality. The resolution shall not become effective in the municipality until approved by a majority vote in the municipality; and
- (3) if districts have not been established as authorized by law or by resolution, the voters of a municipality, by a petition which is signed by not less than five percent of the registered qualified electors of the municipality and which specified the number of members of the governing body to be elected from districts, may require the governing body to submit to the registered qualified electors of the municipality, at the next regular municipal election held not less than sixty days after the petition is filed, a resolution requiring the districting of the municipality by its governing body. The resolution shall not become effective in the municipality until approved by a majority vote in the municipality. The signatures for a petition shall be collected within a six-months period.

B. Any member of the governing body of a municipality representing a district shall be a resident of, and elected by, the registered qualified electors of that district.

C. The registered qualified electors of a municipality may adopt, amend or repeal a charter in the manner provided by law. In the absence of law, the governing body of a municipality may appoint a charter commission upon its own initiative or shall appoint a charter commission upon the filing of a petition containing the signatures of at least five percent of the registered qualified electors of the municipality. The charter commission shall consist of not less than seven members who shall draft a proposed charter. The proposed charter shall be submitted to the registered qualified electors of the municipality within one year after the appointment of the charter commission. If the charter is approved by a majority vote in the municipality, it shall become effective at the time and in the manner provided in the charter.

D. A municipality which adopts a charter may exercise all legislative powers and perform all functions not expressly denied by general law or charter. This grant of powers shall not include the power to enact private or civil laws governing civil relationships except as incident to the exercise of an independent municipal power, nor shall it include the power to provide for a penalty greater than the penalty provided for a petty misdemeanor. No tax imposed by the governing body of a charter municipality, except a tax authorized by general law, shall become effective until approved by a majority vote in the charter municipality.

E. The purpose of this section is to provide for maximum local self-government. A liberal construction shall be given to the powers of municipalities. (As added November 3, 1970.)



The Constitution of the State of New York

discretion, may provide that such determination, if approved by the state comptroller, shall be conclusive. Any amounts determined to be deemed indebtedness of any county, city, other than the city of New York, village or school district in accordance with the provisions of this section as in force and effect prior to January first, nineteen hundred fifty-two, shall not be deemed to be indebtedness on and after such date.

(b) Whenever any county, city, other than the city of New York, village or school district which is coterminous with, or partly within, or wholly within, a city having less than one hundred twenty-five thousand inhabitants according to the latest federal census provides by direct budgetary appropriation for any fiscal year for the payment in such fiscal year or in any future fiscal year or years of all or any part of the cost of an object or purpose for which a period of probable usefulness has been determined by law, the taxes required for such appropriation shall be excluded from the tax limitation prescribed by section ten of this article unless the legislature otherwise provides. (New. Adopted by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938; amended by vote of the people November 8, 1949, and by vote of the people November 6, 1951.)

[Powers of local governments to be restricted; further limitations on contracting local indebtedness authorized]

§12. It shall be the duty of the legislature, subject to the provisions of this constitution, to restrict the power of taxation, assessment, borrowing money, contracting indebtedness, and loaning the credit of counties, cities, towns and villages, so as to prevent abuses in taxation and assessments and in contracting of indebtedness by them. Nothing in this article shall be construed to prevent the legislature from further restricting the powers herein specified of any county, city, town, village or school district to contract indebtedness or to levy taxes on real estate. The legislature shall not, however, restrict the power to levy taxes on real estate for the payment of interest on or principal of indebtedness theretofore contracted. (New. Adopted by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938. Amended by vote of the people November 5, 1963.)

ARTICLE IX*

LOCAL GOVERNMENTS

Bill of rights for local governments.

Section 1. Effective local self-government and intergovernmental cooperation are purposes of the people of the state. In furtherance thereof, local governments shall have the following rights, powers, privileges and immunities in addition to those granted by other provisions of this constitution:

(a) Every local government, except a county wholly included within a city, shall have a legislative body elective by the people thereof. Every local government shall have power to adopt local laws as provided by this article.

(b) All officers of every local government whose election or appointment is not provided for by this constitution shall be elected by the people of the local government, or of some division thereof, or appointed by such officers of the local government as may be provided by law.

(c) Local governments shall have power to agree, as authorized by act of the legislature, with the federal government, a state or one or more other governments within or without the state, to provide cooperatively, jointly or by contract any facility, service, activity or undertaking which each participating local government has the power

* New article adopted by amendment approved by vote of the people November 5, 1963. Former Article IX repealed, except for sections 5, 6 and 8 which were relettered subdivisions (a), (b) and (c) respectively of new section 13 of Article XIII.

to provide separately. Each such local government shall have power to apportion its share of the cost thereof upon such portion of its area as may be authorized by act of the legislature.

(d) No local government or any part of the territory thereof shall be annexed to another until the people, if any, of the territory proposed to be annexed shall have consented thereto by majority vote on a referendum and until the governing board of each local government, the area of which is affected, shall have consented thereto upon the basis of a determination that the annexation is in the over-all public interest. The consent of the governing board of a county shall be required only where a boundary of the county is affected. On or before July first, nineteen hundred sixty-four, the legislature shall provide, where such consent of a governing board is not granted, for adjudication and determination, on the law and the facts, in a proceeding initiated in the supreme court, of the issue of whether the annexation is in the over-all public interest.

(e) Local governments shall have power to take by eminent domain private property within their boundaries for public use together with excess land or property but no more than is sufficient to provide for appropriate disposition or use of land or property which abuts on that necessary for such public use, and to sell or lease that not devoted to such use. The legislature may authorize and regulate the exercise of the power of eminent domain and excess condemnation by a local government outside its boundaries.

(f) No local government shall be prohibited by the legislature (1) from making a fair return on the value of the property used and useful in its operation of a gas, electric or water public utility service, over and above costs of operation and maintenance and necessary and proper reserves, in addition to an amount equivalent to taxes which such service, if privately owned, would pay to such local government, or (2) from using such profits for payment of refunds to consumers or for any other lawful purpose.

(g) A local government shall have power to apportion its cost of a governmental service or function upon any portion of its area, as authorized by act of the legislature.

(h)(1) Counties, other than those wholly included within a city, shall be empowered by general law, or by special law enacted upon county request pursuant to section two of this article, to adopt, amend or repeal alternative forms of county government provided by the legislature or to prepare, adopt, amend or repeal alternative forms of their own. Any such form of government or any amendment thereof, by act of the legislature or by local law, may transfer one or more functions or duties of the county or of the cities, towns, villages, districts or other units of government wholly contained in such county to each other or when authorized by the legislature to the state, or may abolish one or more offices, departments, agencies or units of government provided, however, that no such form or amendment, except as provided in paragraph (2) of this subdivision, shall become effective unless approved on a referendum by a majority of the votes cast thereon in the area of the county outside of cities, and in the cities of the county, if any, considered as one unit. Where an alternative form of county government or any amendment thereof, by act of the legislature or by local law, provides for the transfer of any function or duty to or from any village or the abolition of any office, department, agency or unit of government of a village wholly contained in such county, such form or amendment shall not become effective unless it shall also be approved on the referendum by a majority of the votes cast thereon in all the villages so affected considered as one unit.

(2) After the adoption of an alternative form of county government by a county, any amendment thereof by act of the legislature or by local law which abolishes or creates an elective county office, changes the voting or veto power of or the method of removing an elective county officer during his or her term of office, abolishes, curtails or transfers to another county officer or agency any power of an elective county

The Constitution of the State of New York

officer or changes the form or composition of the county legislative body shall be subject to a permissive referendum as provided by the legislature. (Amended by vote of the people November 6, 2001.)

Powers and duties of legislature; home rule powers of local governments; statute of local governments.

§2. (a) The legislature shall provide for the creation and organization of local governments in such manner as shall secure to them the rights, powers, privileges and immunities granted to them by this constitution.

(b) Subject to the bill of rights of local governments and other applicable provisions of this constitution, the legislature:

(1) Shall enact, and may from time to time amend, a statute of local governments granting to local governments powers including but not limited to those of local legislation and administration in addition to the powers vested in them by this article. A power granted in such statute may be repealed, diminished, impaired or suspended only by enactment of a statute by the legislature with the approval of the governor at its regular session in one calendar year and the re-enactment and approval of such statute in the following calendar year.

(2) Shall have the power to act in relation to the property, affairs or government of any local government only by general law, or by special law only (a) on request of two-thirds of the total membership of its legislative body or on request of its chief executive officer concurred in by a majority of such membership, or (b) except in the case of the city of New York, on certificate of necessity from the governor reciting facts which in the judgment of the governor constitute an emergency requiring enactment of such law and, in such latter case, with the concurrence of two-thirds of the members elected to each house of the legislature.

(3) Shall have the power to confer on local governments powers not relating to their property, affairs or government including but not limited to those of local legislation and administration, in addition to those otherwise granted by or pursuant to this article, and to withdraw or restrict such additional powers.

(c) In addition to powers granted in the statute of local governments or any other law, (i) every local government shall have power to adopt and amend local laws not inconsistent with the provisions of this constitution or any general law relating to its property, affairs or government and, (ii) every local government shall have power to adopt and amend local laws not inconsistent with the provisions of this constitution or any general law relating to the following subjects, whether or not they relate to the property, affairs or government of such local government, except to the extent that the legislature shall restrict the adoption of such a local law relating to other than the property, affairs or government of such local government:

(1) The powers, duties, qualifications, number, mode of selection and removal, terms of office, compensation, hours of work, protection, welfare and safety of its officers and employees, except that cities and towns shall not have such power with respect to members of the legislative body of the county in their capacities as county officers.

(2) In the case of a city, town or village, the membership and composition of its legislative body.

(3) The transaction of its business.

(4) The incurring of its obligations, except that local laws relating to financing by the issuance of evidences of indebtedness by such local government shall be consistent with laws enacted by the legislature.

(5) The presentation, ascertainment and discharge of claims against it.

(6) The acquisition, care, management and use of its highways, roads, streets, avenues and property.

(7) The acquisition of its transit facilities and the ownership and operation thereof.

(8) The levy, collection and administration of local taxes authorized by the legislature and of assessments for local improvements, consistent with laws enacted by the legislature.

(9) The wages or salaries, the hours of work or labor, and the protection, welfare and safety of persons employed by any contractor or sub-contractor performing work, labor or services for it.

(10) The government, protection, order, conduct, safety, health and well-being of persons or property therein.

(d) Except in the case of a transfer of functions under an alternative form of county government, a local government shall not have power to adopt local laws which impair the powers of any other local government.

(e) The rights and powers of local governments specified in this section insofar as applicable to any county within the city of New York shall be vested in such city. (Amended by vote of the people November 6, 2001.)

Existing laws to remain applicable; construction; definitions.

§3. (a) Except as expressly provided, nothing in this article shall restrict or impair any power of the legislature in relation to:

(1) The maintenance, support or administration of the public school system, as required or provided by article XI of this constitution, or any retirement system pertaining to such public school system,

(2) The courts as required or provided by article VI of this constitution, and

(3) Matters other than the property, affairs or government of a local government.

(b) The provisions of this article shall not affect any existing valid provisions of acts of the legislature or of local legislation and such provisions shall continue in force until repealed, amended, modified or superseded in accordance with the provisions of this constitution.

(c) Rights, powers, privileges and immunities granted to local governments by this article shall be liberally construed.

(d) Whenever used in this article the following terms shall mean or include:

(1) "General law." A law which in terms and in effect applies alike to all counties, all counties other than those wholly included within a city, all cities, all towns or all villages.

(2) "Local government." A county, city, town or village.

(3) "People." Persons entitled to vote as provided in section one of article two of this constitution.

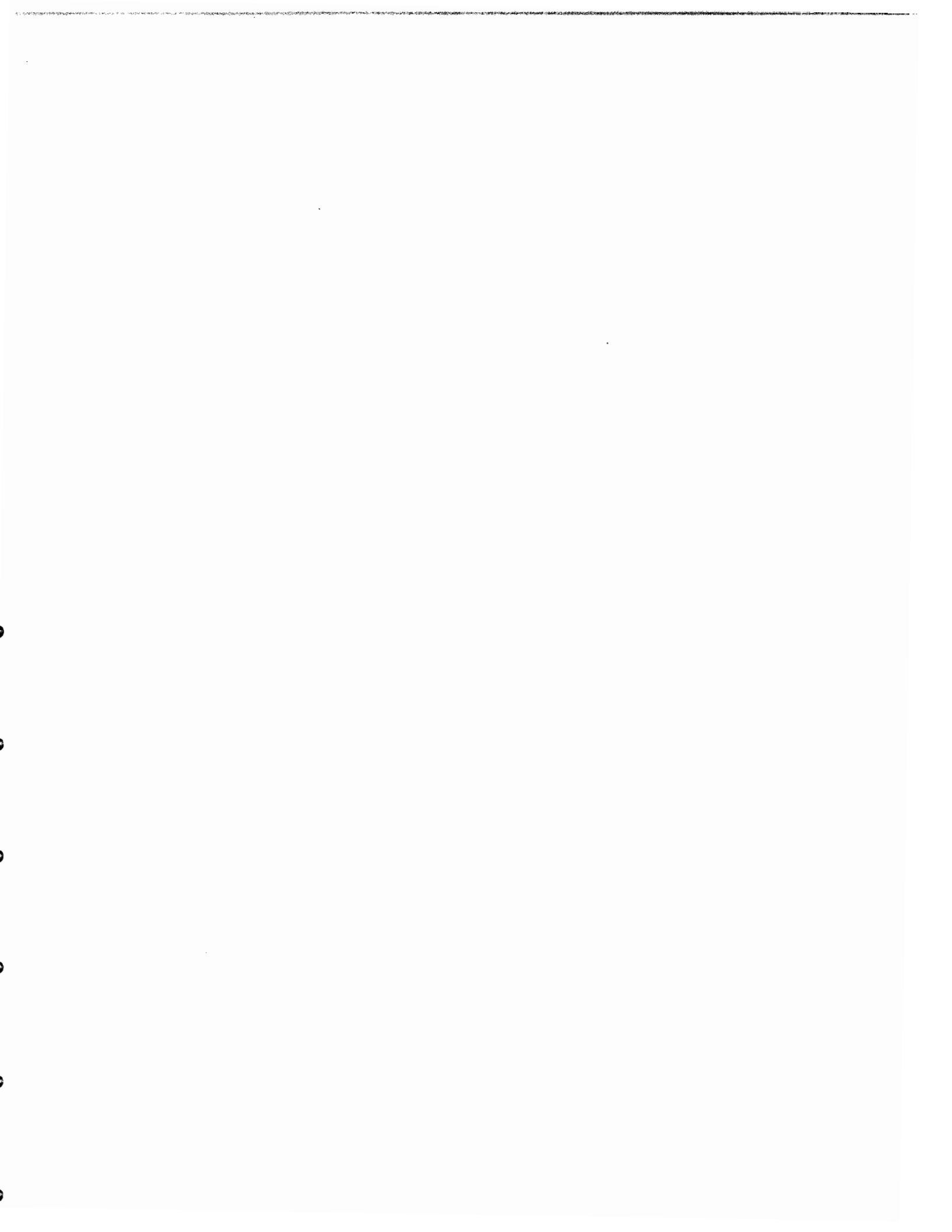
(4) "Special law." A law which in terms and in effect applies to one or more, but not all, counties, counties other than those wholly included within a city, cities, towns or villages.

ARTICLE X

CORPORATIONS

[Corporations; formation of]

Section 1. Corporations may be formed under general law; but shall not be created by special act, except for municipal purposes, and in cases where, in the judgment of the legislature, the objects of the corporation cannot be attained under general laws. All general laws and special acts passed pursuant to this section may be altered from time to time or repealed. (Formerly §1 of Art. 8. Renumbered by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938.)



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§ 18.03 Powers

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Municipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws.

(Adopted September 3, 1912.)

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§ 18.07 Home rule [[View Article Table of Contents](#)]

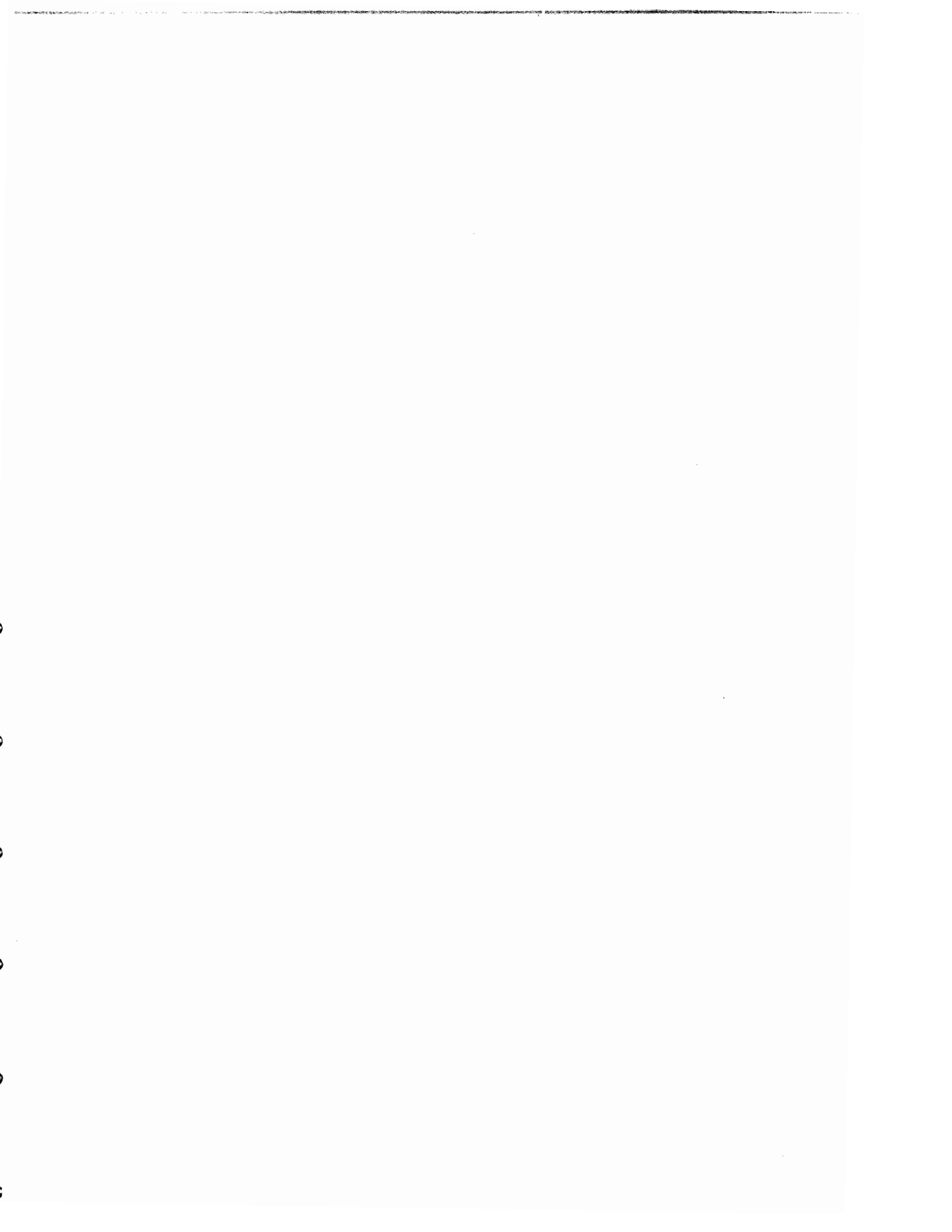
Any municipality may frame and adopt or amend a charter for its government and may, subject to the provisions of section 3 of this article, exercise thereunder all powers of local self-government.

(Adopted September 3, 1912.)

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other pollution from the streams of the Commonwealth, the provision of State financial assistance to political subdivisions and municipal authorities of the Commonwealth of Pennsylvania for the construction of sewage treatment plants, the restoration of abandoned strip-mined areas, the control and extinguishment of surface and underground mine fires, the alleviation and prevention of subsidence resulting from mining operations, and the acquisition of additional lands and the reclamation and development of part and recreational lands acquired pursuant to the authority of Article VII, section 15 of this Constitution, subject to such conditions and liabilities as the General Assembly may prescribe.

Special Emergency Legislation Section 17.

(a) Notwithstanding any provisions of this Constitution to the contrary, the General Assembly shall have the authority to enact laws providing for tax rebates, credits exemptions, grants-in-aid, State supplementations, or otherwise provide special provisions for individuals, corporations, associations or nonprofit institutions, including nonpublic schools (whether sectarian or nonsectarian) in order to alleviate the danger, damage, suffering or hardship faced by such individuals, corporations, associations, institutions or nonpublic schools as a result of Great Storms or Floods of September 1971, of June 1972, or of 1974, or of 1975 or of 1976.

(b) Notwithstanding the provisions of Article III, section 29 subsequent to a Presidential declaration of an emergency or of a major disaster in any part of this Commonwealth, the General Assembly shall have the authority by a vote of two-thirds of all members elected to each House to make appropriations limited to moneys required for Federal emergency or major disaster relief. This subsection may apply retroactively to any Presidential declaration of an emergency or of a major disaster in 1976 or 1977.

Article IX LOCAL GOVERNMENT

Local Government Section 1.

The General Assembly shall provide by general law for local government within the Commonwealth. Such general law shall be uniform as to all classes of local government regarding procedural matters.

Home Rule Section 2.

Municipalities shall have the right and power to frame and adopt home rule charters. Adoption, amendment or repeal of a home rule charter shall be by referendum. The General Assembly shall provide the procedure by which a home rule charter may be framed and its adoption, amendment or repeal presented to these electors. If the General Assembly does not so provide, a home rule charter or a procedure for framing and presenting a home rule charter may be presented to the electors by initiative or by the governing body of the municipality. A municipality which has a home rule charter may exercise any power or perform any function not denied by this Constitution, by its home rule charter or by the General Assembly at any time.

Optional Plans Section 3.



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Constitution of the State of Rhode Island and Providence Plantations

ARTICLE XIII

HOME RULE FOR CITIES AND TOWNS

Section 1. Intent of article. – It is the intention of this article to grant and confirm to the people of every city and town in this state the right of self government in all local matters.

Section 2. Local legislative powers. – Every city and town shall have the power at any time to adopt a charter, amend its charter, enact and amend local laws relating to its property, affairs and government not inconsistent with this constitution and laws enacted by the general assembly in conformity with the powers reserved to the general assembly.

Section 3. Local legislative bodies. – Notwithstanding anything contained in this article, every city and town shall have a legislative body composed of one or two branches elected by vote of its qualified electors.

Section 4. Powers of general assembly over cities and towns. – The general assembly shall have the power to act in relation to the property, affairs and government of any city or town by general laws which shall apply alike to all cities and towns, but which shall not affect the form of government of any city or town. The general assembly shall also have the power to act in relation to the property, affairs and government of a particular city or town provided that such legislative action shall become effective only upon approval by a majority of the qualified electors of the said city or town voting at a general or special election, except that in the case of acts involving the imposition of a tax or the expenditure of money by a town the same shall provide for the submission thereof to those electors in said town qualified to vote upon a proposition to impose a tax or for the expenditure of money.

Section 5. Local taxing and borrowing powers. – Nothing contained in this article shall be deemed to grant to any city or town the power to levy, assess and collect taxes or to borrow money, except as authorized by the general assembly.

Section 6. Charter commissions. – Every city and town shall have the power to adopt a charter in the following manner: Whenever a petition for the adoption of a charter signed by fifteen percent of the qualified electors of a city, or in a town by fifteen percent, but not less than one hundred in number, of those persons qualified to vote on any proposition to impose a tax or for the expenditure of money shall be filed with the legislative body of any city or town the same shall be referred forthwith to the canvassing authority which shall within ten days after its receipt determine the sufficiency thereof and certify the results to the legislative body of said city or town. Within sixty days thereafter the legislative body of a city shall submit to its qualified electors and the legislative body of a town shall submit to the electors of said town qualified to vote upon a proposition to impose a tax or for the expenditure of money the following question: "Shall a commission be appointed to frame a charter?" and the legislative body of any city or town shall provide by ordinance or resolution a method for the nomination and election of a charter commission to frame a charter consisting in a city of nine qualified electors and in a town of nine electors of said town qualified to vote upon a proposition to impose a tax or for the expenditure of money who shall be elected at large without party or political designation and who shall be listed alphabetically on the ballot used for said election. Such ordinance or resolution shall provide for the submission of the question and the election of the charter commission at the same time. Upon approval of the question submitted the nine candidates who individually receive the greater number of votes shall be declared elected and shall constitute the charter commission.

Section 7. Adoption of charters. – Within one year from the date of the election of the charter commission the charter framed by the commission shall be submitted to the legislative body of the city or town which body shall provide for publication of said charter and shall provide for the submission of said charter to the electors of a city or town qualified to vote for general state officers at the general election next succeeding thirty days from the date of the submission of the charter by the charter commission. If said charter is approved by a majority of said electors voting thereon, it shall become effective upon the date fixed therein.

Section 8. Amendments to charters. – The legislative body of any city or town may propose amendments to a charter which amendments shall be submitted for approval in the same manner as provided in this article for the adoption of a charter except that the same may be submitted at a special election, and provided further that in the case of a town, amendments concerning a proposition to impose a tax or for the expenditure of money, shall be submitted at a special or regular financial town meeting.

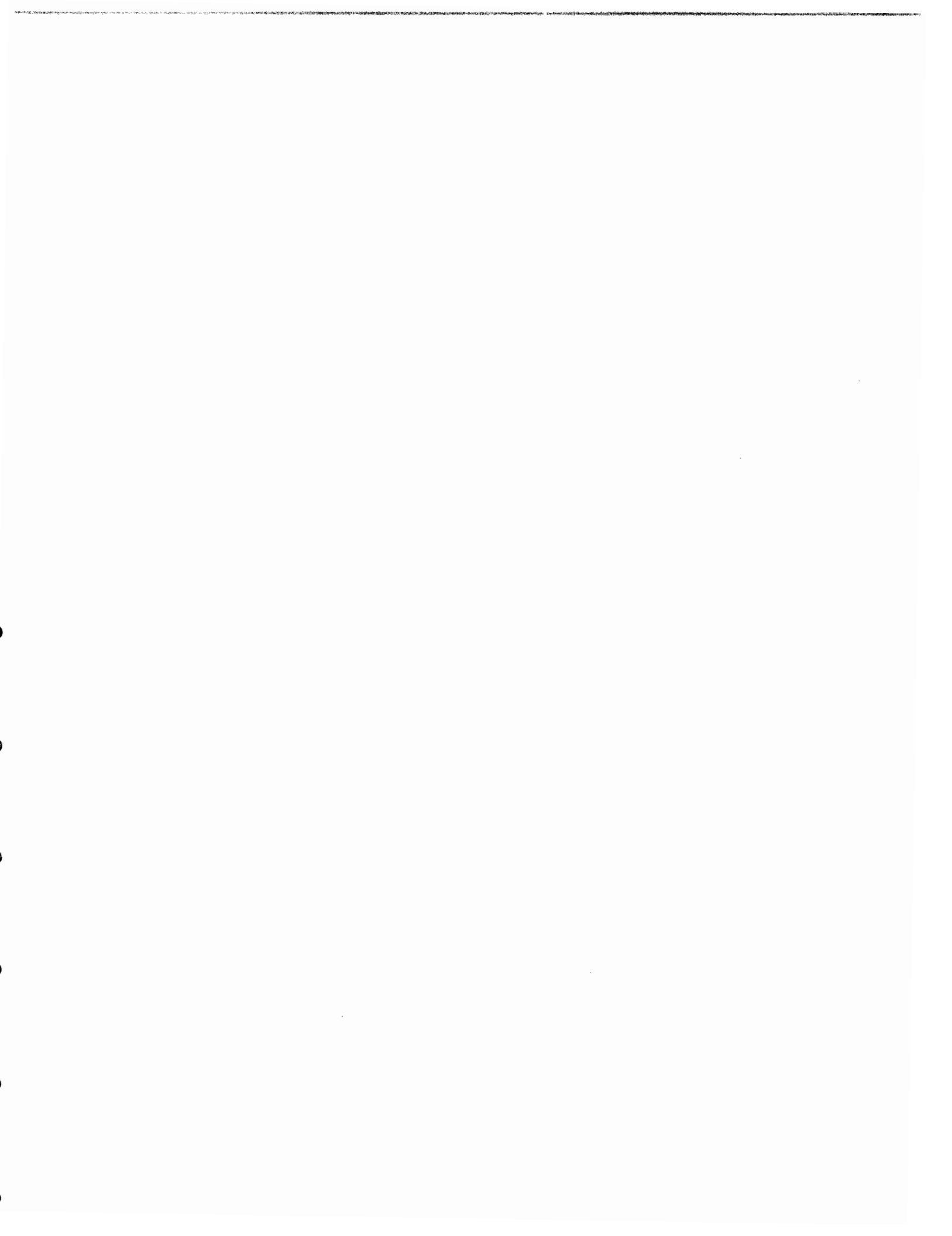
Section 9. Filing of charter petitions to bicameral legislative bodies. – Whenever the legislative body of any city or town consists of more than one branch, a petition for the adoption of a charter as provided in this article may be filed with either branch of said legislative body.

Section 10. Charter certificates – Signing – Recordation – Deposit – Judicial notice. – Duplicate certificates shall be made setting forth the charter adopted and any amendments approved and the same shall be signed by a majority of the canvassing authority; one of such certified copies shall be deposited in the office of the secretary of state and the other after having been recorded in the records of the city or town shall be deposited among the archives of the said city or town and all courts shall take judicial notice thereof.

Section 11. Judicial powers unaffected by article. – The judicial powers of the state shall not be diminished by the provisions of this article.

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ARTICLE XI.

Miscellaneous Provisions.

Section 1. All laws and ordinances now in force and use in this state, not in consistent with this Constitution, shall continue in force and use until they shall expire, be altered or repealed by the Legislature; but ordinances contained in any former Constitution or schedule thereto are hereby abrogated.

Section 2. Nothing contained in this Constitution shall impair the validity of any debts or contracts, or affect any rights of property or any suits, actions, rights of action or other proceedings in Courts of Justice.

Section 3. 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 all 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 thereon, and referred to the General Assembly then next to be chosen; and shall be published six months previous to the time of making such choice; and if in the General Assembly then next chosen as aforesaid, such proposed amendment or amendments shall be agreed to by two-thirds of all the members elected to each house, then it shall be the duty of the General Assembly to submit such proposed amendment or amendments to the people at the next general election in which a governor is to be chosen. And if the people shall approve and ratify such amendment or amendments by a majority of all the citizens of the state voting for governor, voting in their favor, such amendment or amendments shall become a part of this Constitution. When any amendment or amendments to the Constitution shall be proposed in pursuance of the foregoing provisions the same shall at each of said sessions be read three times on three several days in each house.

The Legislature shall have the right by law to submit to the people, at any general election, the question of calling a convention to alter, reform, or abolish this Constitution, or to alter, reform or abolish any specified part or parts of it; and when, upon such submission, a majority of all the voters voting upon the proposal submitted shall approve the proposal to call a convention, the delegates to such convention shall be chosen at the next general election and the convention shall assemble for the consideration of such proposals as shall have received a favorable vote in said election, in such mode and manner as shall be prescribed. No change in, or amendment to, this Constitution proposed by such convention shall become effective, unless within the limitations of the call of the convention, and unless approved and ratified by a majority of the qualified voters voting separately on such change or amendment at an election to be held in such manner and on such date as may be fixed by the convention. No such convention shall be held oftener than once in six years.

Section 4. The Legislature shall have no power to grant divorces; but may authorize the Courts of Justice to grant them for such causes as may be specified by law; but such laws shall be general and uniform in their operation throughout the state.

Section 5. The Legislature shall have no power to authorize lotteries for any purpose, and shall pass laws to prohibit the sale of lottery tickets in this state, except that the legislature may authorize a state lottery if the net proceeds of the lottery's revenues are allocated to provide financial assistance to citizens of this state to enable such citizens to attend post-secondary educational institutions located within this state. The excess after such allocations from such net proceeds from the lottery would be appropriated to:

- (1) Capital outlay projects for K-12 educational facilities; and
- (2) Early learning programs and after school programs.

Such appropriation of funds to support improvements and enhancements for educational programs and purposes and such net proceeds shall be used to supplement, not supplant, non-lottery educational resources for education programs and purposes.

All other forms of lottery not authorized herein are expressly prohibited unless authorized by a two-thirds vote of all members elected to each house of the General Assembly for an annual event operated for the benefit of a 501(c)(3) organization located in this state, as defined by the 2000 United States Tax Code or as may be amended from time to time.

A state lottery means a lottery of the type such as in operation in Georgia, Kentucky and Virginia in 2000, and the amendment to Article XI, Section 5 of the Constitution of the State of Tennessee provided for herein does not authorize games of chance associated with casinos, including, but not limited to, slot machines, roulette wheels, and the like.

The state lottery authorized in this section shall be implemented and administered uniformly throughout the state in such manner as the legislature, by general law, deems appropriate.

Section 6. The Legislature shall have no power to change the names of persons, or to pass acts adopting or legitimatizing persons, but shall, by general laws, confer this power on the courts.

Section 7. The General Assembly shall define and regulate interest, and set maximum effective rates thereof.

If no applicable statute is hereafter enacted, the effective rate of interest collected shall not exceed ten (10%) percent per annum.

All provisions of existing statutes regulating rates of interest and other charges on loans shall remain in full force and effect until July 1, 1980, unless earlier amended or repealed.

Section 8. The Legislature shall have no power to suspend any general law for the benefit of any particular individual, nor to pass any law for the benefit of individuals inconsistent with the general laws of the land; nor to pass any law granting to any individual or individuals, rights, privileges, immunities, [immunities] or exemptions other than such as may be, by the same law extended to any member of the community, who may be able to bring himself within the provisions of such law. No corporation shall be created or its powers increased or diminished by special laws but the General Assembly shall provide by general laws for the organization of all corporations, hereafter created, which laws may, at any time, be altered or repealed, and no such alteration or repeal shall interfere with or divest rights which have become vested.

Section 9. The Legislature shall have the right to vest such powers in the Courts of Justice, with regard to private and local affairs, as may be expedient.

The General Assembly shall have no power to pass a special, local or private act having the effect of removing the incumbent from any municipal or county office or abridging the term or altering the salary prior to the end of the term for which such public officer was selected, and any act of the General Assembly private or local in form or effect applicable to a particular county or municipality either in its governmental or its proprietary capacity shall be void and of no effect unless the act by its terms either requires the approval of a two-thirds vote of the local legislative body of the municipality or county, or requires approval in an election by a majority of those voting in said election in the municipality or county affected.

Any municipality may by ordinance submit to its qualified voters in a general or special election the question: "Shall this municipality adopt home rule?"

In the event of an affirmative vote by a majority of the qualified voters voting thereon, and until the repeal thereof by the same procedure, such municipality shall be a home rule municipality, and the General Assembly shall act with respect to such home rule municipality only by laws which are general in terms and effect.

Any municipality after adopting home rule may continue to operate under its existing charter, or amend the same, or adopt and thereafter amend a new charter to provide for its governmental and proprietary powers, duties and functions, and for the form, structure, personnel and organization of its government, provided that no charter provision except with respect to compensation of municipal personnel shall be effective if inconsistent with any general act of the General Assembly and provided further that the power of taxation of such municipality shall not be enlarged or increased except by general act of the General Assembly. The General Assembly shall by general law provide the exclusive methods by which municipalities may be created, merged, consolidated and dissolved and by which municipal boundaries may be altered.

A charter or amendment may be proposed by ordinance of any home rule municipality, by a charter commission provided for by act of the General Assembly and elected by the qualified voters of a home rule municipality voting thereon or, in the absence of such act of the General Assembly, by a charter commission of seven (7) members, chosen at large not more often than once in two (2) years, in a municipal election pursuant to petition for such election signed by qualified voters of a home rule municipality not less in number than ten (10%) percent of those voting in the then most recent general municipal election.

It shall be the duty of the legislative body of such municipality to publish any proposal so made and to submit the same to its qualified voters at the first general state election which shall be held at least sixty (60) days after such publication and such proposal shall become effective sixty (60) days after approval by a majority of the qualified voters voting thereon.

The General Assembly shall not authorize any municipality to tax incomes, estates, or inheritances, or to impose any other tax not authorized by Sections 28 or 29 of Article II of this Constitution. Nothing herein shall be construed as invalidating the provisions of any municipal charter in existence at the time of the adoption of this amendment.

The General Assembly may provide for the consolidation of any or all of the governmental and corporate functions now or hereafter vested in municipal corporations with the governmental and corporate functions now or hereafter vested in the counties in which such municipal corporations are located; provided, such consolidations shall not become effective until submitted to the qualified voters residing within the municipal corporation and in the county outside thereof, and approved by a majority of those voting within the municipal corporation and by a majority of those voting in the county outside the municipal corporation.

Section 10. A well regulated system of internal improvement is calculated to develop the resources of the state, and promote the happiness and prosperity of her citizens, therefore it ought to be encouraged by the General Assembly.

Section 11. There shall be a homestead exemption from execution in an amount of five thousand dollars or such greater amount as the General Assembly may establish. The General Assembly shall also establish personal property exemp-

tions. The definition and application of the homestead and personal property exemptions and the manner in which they may be waived shall be as prescribed by law.

Section 12. The state of Tennessee recognizes the inherent value of education and encourages its support. The General Assembly shall provide for the maintenance, support and eligibility standards of a system of free public schools. The General Assembly may establish and support such post-secondary educational institutions, including public institutions of higher learning, as it determines.

Section 13. The General Assembly shall have power to enact laws for the protection and preservation of game and fish, within the state, and such laws may be enacted for and applied and enforced in particular counties or geographical districts, designated by the General Assembly.

Section 14. [Repealed.]

Section 15. No person shall in time of peace be required to perform any service to the public on any day set apart by his religion as a day of rest.

Section 16. The declaration of rights hereto prefixed is declared to be a part of the Constitution of the state, and shall never be violated on any pretense whatever. And to guard against transgression of the high powers we have delegated, we declare that everything in the bill of rights contained, is excepted out of the general powers of the government, and shall forever remain inviolate.

Section 17. No county office created by the Legislature shall be filled otherwise than by the people or the County Court.

Section 18. The historical institution and legal contract solemnizing the relationship of one man and one woman shall be the only legally recognized marital contract in this state. Any policy or law or judicial interpretation, purporting to define marriage as anything other than the historical institution and legal contract between one man and one woman, is contrary to the public policy of this state and shall be void and unenforceable in Tennessee. If another state or foreign jurisdiction issues a license for persons to marry and if such marriage is prohibited in this state by the provisions of this section, then the marriage shall be void and unenforceable in this state.

Schedule.

Section 1. That no inconvenience may arise from a change of the Constitution, it is declared that the governor of the state, the members of the General Assembly and all officers elected at or after the general election of March one thousand eight hundred and seventy, shall hold their offices for the terms prescribed in this Constitution.

Officers appointed by the courts shall be filled by appointment, to be made and to take effect during the first term of the court held by judges elected under this Constitution.

All other officers shall vacate their places thirty days after the day fixed for the election of their successors under this Constitution.

The secretary of state, comptroller and treasurer shall hold their offices until the first session of the present General Assembly occurring after the ratification of this Constitution and until their successors are elected and qualified.

The officers then elected shall hold their offices until the fifteenth day of January one thousand eight hundred and seventy three.

Section 2. At the first election of judges under this Constitution there shall be elected six judges of the Supreme Court, two from each grand division of the state, who shall hold their offices for the term herein prescribed.

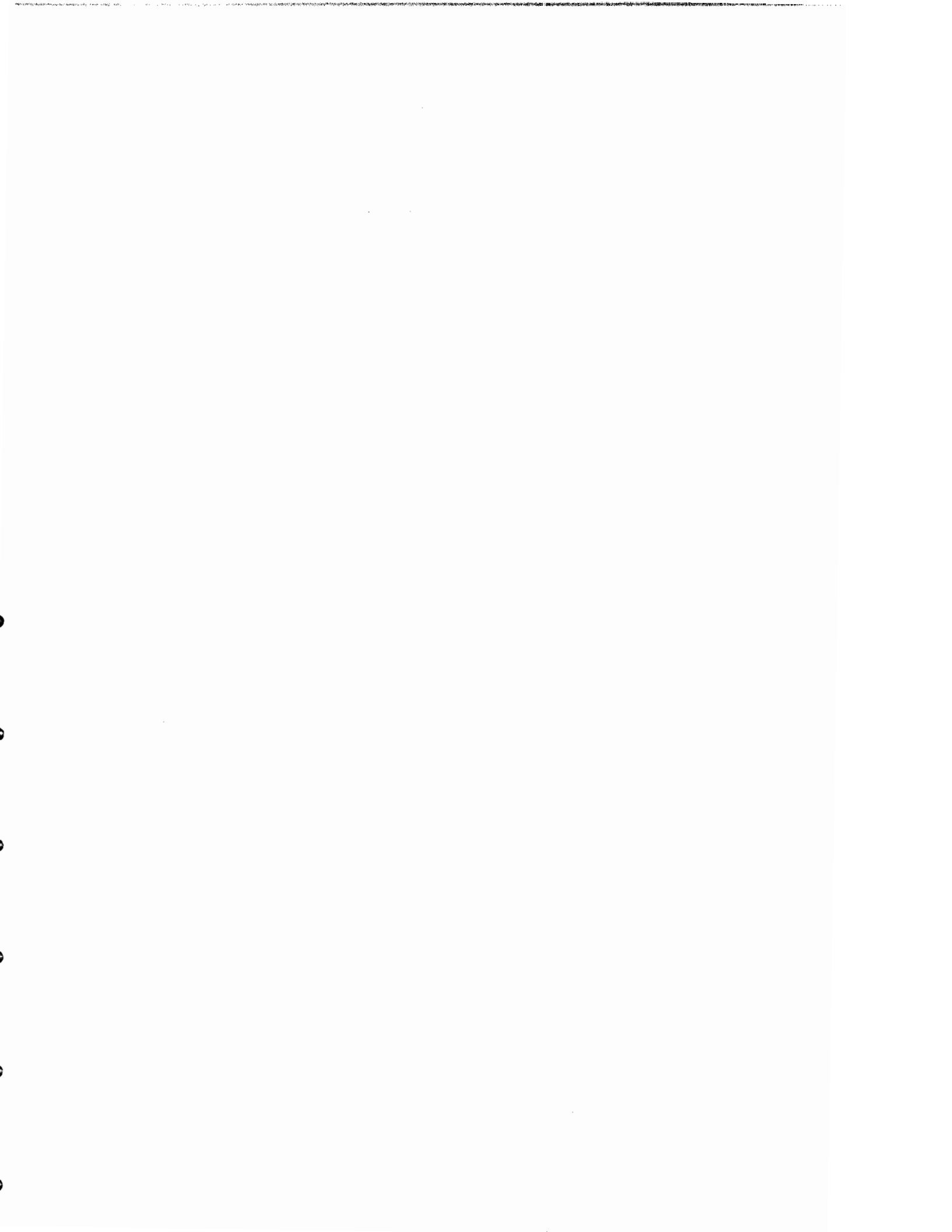
In the event any vacancy shall occur in the office of either of said judges at any time after the first day of January one thousand eight hundred seventy three; it shall remain unfilled and the court shall from that time be constituted of five judges. While the court shall consist of six judges they may sit in two sections, and may hear and determine causes in each at the same time, but not in different grand divisions at the same time.

When so sitting the concurrence of two judges shall be necessary to a decision.

The attorney general and reporter for the state shall be appointed after the election and qualification of the judges of the Supreme Court herein provided for.

Section 3. Every judge and every officer of the executive department of this state, and every sheriff holding over under this Constitution, shall, within twenty days after the ratification of this Constitution is proclaimed, take an oath to support the same, and the failure of any officer to take such oath shall vacate his office.

Section 4. The time which has elapsed from the sixth day of May one thousand eight hundred and sixty one until the first day of January one thousand eight hundred and sixty seven shall not be computed, in any cases affected by the statutes of limitation, nor shall any writ of error be affected by such lapse of time.



county commissioners, sheriffs, county clerks, treasurers, prosecuting attorneys, and other county, township or precinct and district officers as public convenience may require, and shall prescribe their duties, and fix their terms of office. It shall regulate the compensation of all such officers, in proportion to their duties, and for that purpose may classify the counties by population. And it shall provide for the strict accountability of such officers for all fees which may be collected by them, and for all public moneys which may be paid to them, or officially come into their possession.

SECTION 6 VACANCIES IN TOWNSHIP, PRECINCT OR ROAD DISTRICT OFFICE. The board of county commissioners in each county shall fill all vacancies occurring in any township, precinct or road district office of such county by appointment, and officers thus appointed shall hold office till the next general election, and until their successors are elected and qualified. [AMENDMENT 52, part, 1967 Senate Joint Resolution No. 24, part. Approved November 5, 1968.]

Governmental continuity during emergency periods: Art. 2 Section 42.

Vacancies in legislature and in partisan county elective office: Art. 2 Section 15.

Original text – Art. 11 Section 6 VACANCIES IN COUNTY, ETC., OFFICES, HOW FILLED – *The board of county commissioners in each county shall fill all vacancies occurring in any county, township, precinct or road district office of such county by appointment, and officers thus appointed shall hold office till the next general election, and until their successors are elected and qualified.*

SECTION 7 TENURE OF OFFICE LIMITED TO TWO TERMS. [Repealed by AMENDMENT 22, 1947 House Joint Resolution No. 4, p 1385. Approved November 2, 1948.]

Original text – Art. 11 Section 7 TENURE OF OFFICE LIMITED TO TWO TERMS – *No county officer shall be eligible to hold his office more than two terms in succession.*

SECTION 8 SALARIES AND LIMITATIONS AFFECTING. The salary of any county, city, town, or municipal officers shall not be increased except as provided in section 1 of Article XXX or diminished after his election, or during his term of office; nor shall the term of any such officer be extended beyond the period for which he is elected or appointed. [AMENDMENT 57, art, 1971 Senate Joint Resolution No. 38, part, p 1829. Approved November, 1972.]

Original text – Art. 11 Section 8 SALARIES AND LIMITATIONS AFFECTING – *The legislature shall fix the compensation by salaries of all county officers, and of constables in cities having a population of five thousand and upwards; except that public administrators, surveyors and coroners may or may not be salaried officers. The salary of any county, city, town, or municipal officers shall not be increased or diminished after his election, or during his term of office; nor shall the term of any such officer be extended beyond the period for which he is elected or appointed.*

SECTION 9 STATE TAXES NOT TO BE RELEASED OR COMMUTED. No county, nor the inhabitants thereof, nor the property therein, shall be released or discharged from its or their proportionate share of taxes to be levied for state purposes, nor shall commutation for such taxes be authorized in any form whatever.

SECTION 10 INCORPORATION OF MUNICIPALITIES. Corporations for municipal purposes shall not be created by special laws; but the legislature, by general laws, shall provide for the incorporation, organization and classification in proportion to population, of cities and towns, which laws may be altered, amended or repealed. Cities and towns heretofore organized, or incorporated may become organized under such general laws whenever a majority of the electors voting at a general election, shall so determine, and shall organize in conformity therewith; and cities or towns heretofore or hereafter organized, and all charters thereof framed or adopted by authority of this Constitution shall be subject to and controlled by general laws. Any city containing a population of ten thousand inhabitants, or more, shall be permitted to frame a charter for its own government, consistent with and subject to the Constitution and laws of this state, and for such purpose the legislative authority of such city may cause an election to be had at which election there shall be chosen

by the qualified electors of said city, fifteen freeholders thereof, who shall have been residents of said city for a period of at least two years preceding their election and qualified electors, whose duty it shall be to convene within ten days after their election, and prepare and propose a charter for such city. Such proposed charter shall be submitted to the qualified electors of said city, and if a majority of such qualified electors voting thereon ratify the same, it shall become the charter of said city, and shall become the organic law thereof, and supersede any existing charter including amendments thereto, and all special laws inconsistent with such charter. Said proposed charter shall be published in the daily newspaper of largest general circulation published in the area to be incorporated as a first class city under the charter or, if no daily newspaper is published therein, then in the newspaper having the largest general circulation within such area at least once each week for four weeks next preceding the day of submitting the same to the electors for their approval, as above provided. All elections in this section authorized shall only be had upon notice, which notice shall specify the object of calling such election, and shall be given as required by law. Said elections may be general or special elections, and except as herein provided shall be governed by the law regulating and controlling general or special elections in said city. Such charter may be amended by proposals therefor submitted by the legislative authority of such city to the electors thereof at any general election after notice of said submission published as above specified, and ratified by a majority of the qualified electors voting thereon. In submitting any such charter, or amendment thereto, any alternate article or proposition may be presented for the choice of the voters, and may be voted on separately without prejudice to others. [AMENDMENT 40, 1963 ex.s. Senate Joint Resolution No. 1, p 1526. Approved November 3, 1964.]

Original text – Art. 11 Section 10 INCORPORATION OF MUNICIPALITIES – Corporations for municipal purposes shall not be created by special laws; but the legislature, by general laws, shall provide for the incorporation, organization and classification in proportion to population, of cities and towns, which laws may be altered, amended or repealed. Cities and towns heretofore organized, or incorporated may become organized under such general laws whenever a majority of the electors voting at a general election, shall so determine, and shall organize in conformity therewith; and cities or towns heretofore or hereafter organized, and all charters thereof framed or adopted by authority of this Constitution shall be subject to, and controlled by general laws. Any city containing a population of twenty thousand inhabitants, or more, shall be permitted to frame a charter for its own government, consistent with and subject to the Constitution and laws of this state, and for such purpose the legislative authority of such city may cause an election to be had at which election there shall be chosen by the qualified electors of said city, fifteen freeholders thereof, who shall have been residents of said city for a period of at least two years preceding their election and qualified electors, whose duty it shall be to convene within ten days after their election, and prepare and propose a charter for such city. Such proposed charter shall be submitted to the qualified electors of said city, and if a majority of such qualified electors voting thereon ratify the same, it shall become the charter of said city, and shall become the organic law thereof, and supersede any existing charter including amendments thereto, and all special laws inconsistent with such charter. Said proposed charter shall be published in two daily newspapers published in said city, for at least thirty days prior to the day of submitting the same to the electors for their approval, as above provided. All elections in this section authorized shall only be had upon notice, which notice shall specify the object of calling such election, and shall be given for at least ten days before the day of election, in all election districts of said city. Said elections may be general or special elections, and except as herein provided shall be governed by the law regulating and controlling general or special elections in said city. Such charter may be amended by proposals therefor submitted by the legislative authority of such city to the electors thereof at any general election after notice of said submission published as above specified, and ratified by a majority of the qualified electors voting thereon. In submitting any such charter, or amendment thereto, any alternate article or proposition may be presented for the choice of the voters, and may be voted on separately without prejudice to others.

Authority to incur and limit of indebtedness: Art. 8 Section 6.

SECTION 11 POLICE AND SANITARY REGULATIONS. Any county, city, town or township may make and enforce within its limits all such local police, sanitary and other regulations as are not in conflict with general laws.

SECTION 12 ASSESSMENT AND COLLECTION OF TAXES IN MUNICIPALITIES. The legislature shall have no power to impose taxes upon counties, cities, towns or other municipal corporations, or upon the inhabitants or property thereof, for county, city, town, or other municipal purposes, but



97-12-003. Changing county seats.

The legislature shall provide by general law for changing county seats in organized counties, but it shall have no power to remove the county seat of any organized county.

97-12-004. Township organization.

The legislature shall provide by general law for a system of township organization and government, which may be adopted by any county whenever a majority of the citizens thereof voting at a general election shall so determine.

97-12-005. County officers.

The legislature shall provide by law for the election of such county officers as may be necessary.

97-13-001. Incorporation; alteration of boundaries; merger; consolidation; dissolution; determination of local affairs; classification; referendum; liberal construction.

(a) The legislature shall provide by general law, applicable to all cities and towns,

(i) For the incorporation of cities,

(ii) For the methods by which city and town boundaries may be altered, and

(iii) For the procedures by which cities and towns may be merged, consolidated or dissolved; provided that existing laws on such subjects and laws pertaining to civil service, retirement, collective bargaining, the levying of taxes, excises, fees, or any other charges, whether or not applicable to all cities and towns on the effective date of this amendment, shall remain in effect until superseded by general law and such existing laws shall not be subject to charter ordinance.

(b) All cities and towns are hereby empowered to determine their local affairs and government as established by ordinance passed by the governing body, subject to referendum when prescribed by the legislature, and further subject only to statutes uniformly applicable to all cities and towns, and to statutes prescribing limits of indebtedness. The levying of taxes, excises, fees, or any other charges shall be prescribed by the legislature. The legislature may not establish more than four (4) classes of cities and towns. Each city and town shall be governed by all other statutes, except as it may exempt itself by charter ordinance as hereinafter provided.

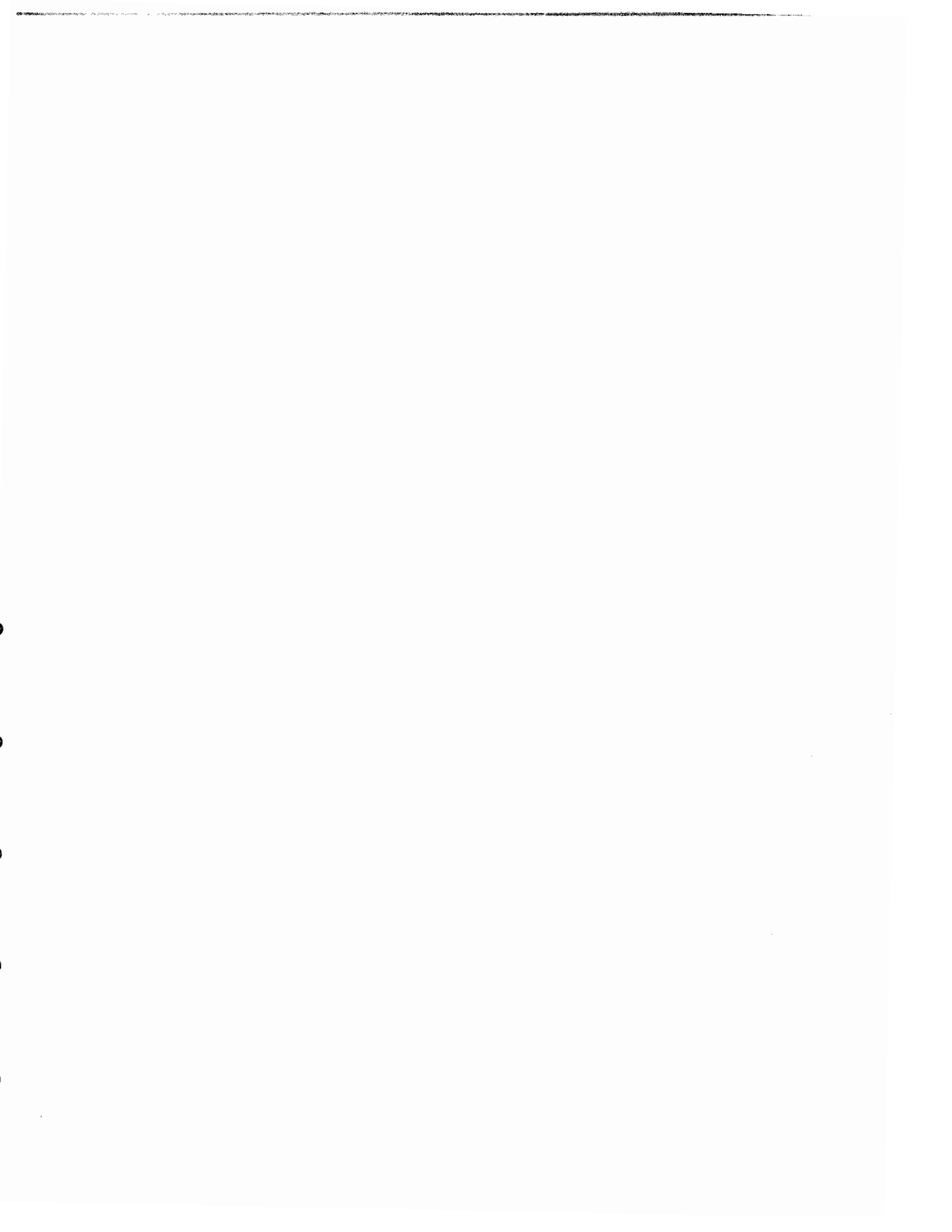
(c) Each city or town may elect that the whole or any part of any statute, other than statutes uniformly applicable to all cities and towns and statutes prescribing limits of indebtedness, may not apply to such city or town. This exemption shall be by charter ordinance passed by a two-thirds (2/3) vote of all members elected to the governing body of the city or town. Each such charter ordinance shall be titled and may provide that the whole or any part of any statute, which would otherwise apply to such city or town as specifically designated in the ordinance shall not apply to such city or town. Such ordinance may provide other provisions on the same subject. Every charter ordinance shall be published once each week for two consecutive weeks in the official city or town newspaper, if any, otherwise in a newspaper of general circulation in the city or town. No charter ordinance shall take effect until the sixtieth (60th) day after its final publication. If prior thereto, a petition, signed by a number of qualified electors of the city or town, equaling at least ten per cent (10%) of the number of votes cast at the last general municipal election, shall be filed in the office of the clerk of such city or town, demanding that such ordinance be submitted to referendum, then the ordinance shall not take effect unless approved by a majority of the electors voting thereon. Such referendum election shall be called within thirty (30) days and held within ninety (90) days after the petition is filed. An ordinance establishing procedures, and fixing the date of such election shall be passed by the governing body and published once each week for three (3) consecutive weeks in the official city or town newspaper, if any, otherwise in a newspaper of general circulation in the city or town. The question on the ballot shall be: "Shall Charter Ordinance No. Entitled (stating the title of the ordinance) take effect?". The governing body may submit, without a petition, any charter ordinance to referendum election under the procedures as previously set out. The charter ordinance shall take effect if approved by a majority of the electors voting thereon. An approved charter ordinance, after becoming effective, shall be recorded by the clerk in a book maintained for that purpose with a certificate of the procedures of adoption. A certified copy of the ordinance shall be filed with the secretary of state, who shall keep an index of such ordinances. Each charter ordinance enacted shall prevail over any prior act of the governing body of the city or town, and may be repealed or amended only by subsequent charter ordinance, or by enactments of the legislature applicable to all cities and towns.

(d) The powers and authority granted to cities and towns, pursuant to this section, shall be liberally construed for the purpose of giving the largest measure of self-government to cities and towns.

97-13-002. Consent of electors necessary.

No municipal corporation shall be organized without the consent of the majority of the electors residing within the district proposed to be so incorporated, such consent to be ascertained in the manner and under such regulations as may be prescribed by law.

97-13-003. Restriction on powers to levy taxes and contract debts.



Information Maintained by the Office of Code Revision Indiana Legislative Services Agency
IC 36-1-3

Chapter 3. Home Rule

IC 36-1-3-1

Application of chapter

Sec. 1. This chapter applies to all units.

As added by Acts 1980, P.L.211, SEC.1. Amended by P.L.251-1993, SEC.1.

IC 36-1-3-2

Policy

Sec. 2. The policy of the state is to grant units all the powers that they need for the effective operation of government as to local affairs.

As added by Acts 1980, P.L.211, SEC.1.

IC 36-1-3-3

Rule of law; resolution of doubt as to existence of power of a unit

Sec. 3. (a) The rule of law that any doubt as to the existence of a power of a unit shall be resolved against its existence is abrogated.

(b) Any doubt as to the existence of a power of a unit shall be resolved in favor of its existence. This rule applies even though a statute granting the power has been repealed.

As added by Acts 1980, P.L.211, SEC.1.

IC 36-1-3-4

Rule of law; powers of unit

Sec. 4. (a) The rule of law that a unit has only:

- (1) powers expressly granted by statute;
- (2) powers necessarily or fairly implied in or incident to powers expressly granted; and
- (3) powers indispensable to the declared purposes of the unit;

is abrogated.

(b) A unit has:

- (1) all powers granted it by statute; and
- (2) all other powers necessary or desirable in the conduct of its affairs, even though not granted by statute.

(c) The powers that units have under subsection (b)(1) are listed in various statutes. However, these statutes do not list the powers that units have under subsection (b)(2); therefore, the omission of a power from such a list does not imply that units lack that power.

As added by Acts 1980, P.L.211, SEC.1.

IC 36-1-3-5

Powers of unit; exercise; township exception

Sec. 5. (a) Except as provided in subsection (b), a unit may exercise any power it has to the extent that the power:

- (1) is not expressly denied by the Indiana Constitution or by statute; and
- (2) is not expressly granted to another entity.

(b) A township may not exercise power the township has if another unit in which all or part of the township is located exercises that same power.

As added by Acts 1980, P.L.211, SEC.1. Amended by P.L.251-1993, SEC.2.

IC 36-1-3-6

Specific manner for exercising a power; constitutional or statutory provision; ordinance; resolution

Sec. 6. (a) If there is a constitutional or statutory provision requiring a specific manner for exercising a power, a unit wanting to exercise the power must do so in that manner.

(b) If there is no constitutional or statutory provision requiring a specific manner for exercising a power, a unit wanting to exercise the power must either:

(1) if the unit is a county or municipality, adopt an ordinance prescribing a specific manner for exercising the power;

(2) if the unit is a township, adopt a resolution prescribing a specific manner for exercising the power; or

(3) comply with a statutory provision permitting a specific manner for exercising the power.

(c) An ordinance under subsection (b)(1) must be adopted as follows:

(1) In a municipality, by the legislative body of the municipality.

(2) In a county subject to IC 36-2-3.5 or IC 36-3-1, by the legislative body of the county.

(3) In any other county, by the executive of the county.

(d) A resolution under subsection (b)(2) must be adopted by the legislative body of the township.

As added by Acts 1980, P.L.211, SEC.1. Amended by Acts 1981, P.L.17, SEC.2; P.L.251-1993, SEC.3.

IC 36-1-3-7

Review or regulation of exercise of power by a unit

Sec. 7. State and local agencies may review or regulate the exercise of powers by a unit only to the extent prescribed by statute.

As added by Acts 1980, P.L.211, SEC.1.

IC 36-1-3-8

Powers specifically withheld

Sec. 8. (a) Subject to subsection (b), a unit does not have the following:

(1) The power to condition or limit its civil liability, except as expressly granted by statute.

(2) The power to prescribe the law governing civil actions between private persons.

(3) The power to impose duties on another political subdivision, except as expressly granted by statute.

(4) The power to impose a tax, except as expressly granted by

statute.

(5) The power to impose a license fee greater than that reasonably related to the administrative cost of exercising a regulatory power.

(6) The power to impose a service charge or user fee greater than that reasonably related to reasonable and just rates and charges for services.

(7) The power to regulate conduct that is regulated by a state agency, except as expressly granted by statute.

(8) The power to prescribe a penalty for conduct constituting a crime or infraction under statute.

(9) The power to prescribe a penalty of imprisonment for an ordinance violation.

(10) The power to prescribe a penalty of a fine as follows:

(A) More than ten thousand dollars (\$10,000) for the violation of an ordinance or a regulation concerning air emissions adopted by a county that has received approval to establish an air program

under IC 13-17-12-6.

(B) For a violation of any other ordinance:

(i) more than two thousand five hundred dollars (\$2,500) for a first violation of the ordinance;
and

(ii) except as provided in subsection (c), more than seven thousand five hundred dollars (\$7,500) for a second or subsequent violation of the ordinance.

(11) The power to invest money, except as expressly granted by statute.

(12) The power to order or conduct an election, except as expressly granted by statute.

(b) A township does not have the following, except as expressly granted by statute:

(1) The power to require a license or impose a license fee.

(2) The power to impose a service charge or user fee.

(3) The power to prescribe a penalty.

(c) Subsection (a)(10)(B)(ii) does not apply to the violation of an ordinance that regulates traffic or parking.

As added by Acts 1980, P.L.211, SEC.1. Amended by Acts 1981, P.L.17, SEC.3; P.L.123-1987, SEC.2; P.L.3-1987, SEC.540; P.L.3-1990, SEC.122; P.L.251-1993, SEC.4; P.L.164-1995, SEC.14; P.L.1-1996, SEC.84; P.L.200-2005, SEC.4.

IC 36-1-3-9

Territorial jurisdiction; exception; petition

Sec. 9. (a) The area inside the boundaries of a county comprises its territorial jurisdiction. However, a municipality has exclusive jurisdiction over bridges (subject to IC 8-16-3-1), streets, alleys, sidewalks, watercourses, sewers, drains, and public grounds inside its corporate boundaries, unless a statute provides otherwise.

(b) The area inside the corporate boundaries of a municipality comprises its territorial jurisdiction, except to the extent that a statute expressly authorizes the municipality to exercise a power in areas

outside its corporate boundaries.

(c) Whenever a statute authorizes a municipality to exercise a power in areas outside its corporate boundaries, the power may be exercised:

(1) inside the corporate boundaries of another municipality, only if both municipalities, by ordinance, enter into an agreement under IC 36-1-7; or

(2) in a county other than the county in which the municipal hall is located, but not inside the corporate boundaries of another municipality, only if both the municipality and the other county, by ordinance, enter into an agreement under IC 36-1-7.

(d) If the two (2) units involved under subsection (c) cannot reach an agreement, either unit may petition the circuit or superior court of the county to hear and determine the matters at issue. The clerk of the court shall issue notice to the other unit as in other civil actions, and the court shall hold the hearing without a jury. There may be a change of venue from the judge but not from the county. The petitioning unit shall pay the costs of the action.

As added by Acts 1980, P.L.211, SEC.1.



Westlaw

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C

Supreme Court of Nebraska.
William NIKLAUS, for the benefit and on behalf of
the City of Lincoln, Nebraska, etc., Appellant,

v.

Frank J. MILLER, Treasurer of the City of Lincoln,
Appellee.
No. 33563.

Nov. 12, 1954.

Taxpayer's suit to enjoin city treasurer from making payments under contract for construction of city reservoir. The District Court, Lancaster County, White, J., dismissed action and denied plaintiff's motion for new trial, and plaintiff appealed. The Supreme Court, Wenke J., held, inter alia, that even if fair labor standards statute requirement that governmental subdivisions require contractors to file statements of compliance with statute applied to home rule charter city contract for construction of water reservoir, it would be deemed, in absence of proof to the contrary, that city officials had complied with the statute.

Affirmed.

West Headnotes

[1] Municipal Corporations 268 ↪994

268 Municipal Corporations

268XIV Taxpayers' Suits and Other Remedies
268k991 Restraining Action by Municipality
or Officers

268k994 k. Incurring Indebtedness or Expenditure. Most Cited Cases

A resident taxpayer, as such, and without proof of peculiar interest or injury to himself, may enjoin illegal expenditure of money by a public board or officer.

[2] Municipal Corporations 268 ↪994

268 Municipal Corporations

268XIV Taxpayers' Suits and Other Remedies

268k991 Restraining Action by Municipality
or Officers

268k994 k. Incurring Indebtedness or Expenditure. Most Cited Cases

Resident taxpayer, as such, and without proof of interest or injury to himself, had standing to maintain action to enjoin expenditure of money under allegedly illegal contract for construction of city reservoir.

[3] Municipal Corporations 268 ↪332

268 Municipal Corporations

268IX Public Improvements

268IX(C) Contracts

268k332 k. Form and Requisites of Proposals or Bids. Most Cited Cases

Municipal Corporations 268 ↪336(1)

268 Municipal Corporations

268IX Public Improvements

268IX(C) Contracts

268k334 Acceptance or Rejection of Proposals or Bids

268k336 Award to Lowest Bidder

268k336(1) k. In General. Most Cited Cases

Although time was of vital importance, specifications for competitive bidding on contract for construction of municipal reservoir were not required to specify time for completion, and this matter could be considered in conjunction with and as part of the other elements entering into determination of who was the lowest responsible bidder.

[4] Municipal Corporations 268 ↪63.15(2)

268 Municipal Corporations

268II Governmental Powers and Functions in
General

268k63 Judicial Supervision

268k63.15 Particular Powers and Func-

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tions

268k63.15(2) k. Public Improvements;
 Redevelopment. Most Cited Cases
 (Formerly 268k63.1(5), 268k63(1))

Tribunals having charge of letting contracts for public work do not act ministerially only in passing upon question of responsibility of bidders, but exercise official discretion, which is judicial in its nature and vested in the tribunal, not in the courts.

[5] Municipal Corporations 268 ↪63.15(1)

268 Municipal Corporations

268II Governmental Powers and Functions in
 General

268k63 Judicial Supervision

268k63.15 Particular Powers and Func-
 tions

268k63.15(1) k. In General. Most
 Cited Cases

(Formerly 268k63.1(4), 268k63(1))

Where there is a showing that administrative body, in accepting certain bid for contract, acted from honest convictions in exercising its judgment, based upon facts, and, as it believed, for best interest of municipality, it is not the province of a court to interfere and substitute its judgment for that of administrative body, in absence of a showing that body had acted arbitrarily, or from favoritism, ill will, fraud, collusion or other such motive.

[6] Evidence 157 ↪83(1)

157 Evidence

157II Presumptions

157k83 Official Proceedings and Acts

157k83(1) k. In General. Most Cited Cases

It is presumed that a public administrative body acts in good faith, with honest motives and for the purpose of promoting the public good and protecting the public interest.

[7] Municipal Corporations 268 ↪63.15(2)

268 Municipal Corporations

268II Governmental Powers and Functions in
 General

268k63 Judicial Supervision

268k63.15 Particular Powers and Func-
 tions

268k63.15(2) k. Public Improvements;
 Redevelopment. Most Cited Cases

(Formerly 268k63.1(5), 268k63(1))

Where there were other considerations besides price involved in letting contract for construction of city reservoir, and it appeared that city council, in accepting second lowest bid, acted upon honest convictions, based upon the facts which were before it and in belief that action it took was for best interests of city, and there was no showing that council acted arbitrarily, or from favoritism, ill will, fraud, collusion or any other such motives, court would not interfere and substitute its judgment for that of the council.

[8] Appeal and Error 30 ↪197(1)

30 Appeal and Error

30V Presentation and Reservation in Lower
 Court of Grounds of Review

30V(B) Objections and Motions, and Rulings
 Thereon

30k191 Pleading

30k197 Issues, Proof, and Variance

30k197(1) k. In General. Most
 Cited Cases

Questions which were not raised by plaintiff's pleadings in action to enjoin city's payment under contract, but which were raised orally at opening of trial and passed on by trial court, would be considered by reviewing court.

[9] Municipal Corporations 268 ↪79

268 Municipal Corporations

268III Legislative Control of Municipal Acts,
 Rights, and Liabilities

268k77 Operation and Effect of Legislative
 Acts

268k79 k. Conflict with Charter or Act of
 Incorporation. Most Cited Cases

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A provision of a city home rule charter takes precedence over state statutes only in instances where subject matter is of strictly local municipal concern, but as to such subjects, charter cities operate free and independent of state legislation. R.R.S.1943, §§ 73-101 to 73-105, 73-102, Const. art. 11, § 2.

[10] Municipal Corporations 268 ↪65

268 Municipal Corporations

268III Legislative Control of Municipal Acts, Rights, and Liabilities

268k65 k. Local Legislation. Most Cited Purpose of home rule charter provision of Constitution was to render charter cities as nearly independent of state legislation as possible. Const. art. 11, § 2.

[11] Constitutional Law 92 ↪2521

92 Constitutional Law

92XX Separation of Powers

92XX(C) Judicial Powers and Functions

92XX(C)2 Encroachment on Legislature

92k2499 Particular Issues and Applications

92k2521 k. Municipalities. Most Cited Cases

(Formerly 92k70.1(1), 92k70(1))

Whether an act of the legislature pertains to a matter of local or state wide concern is a question for courts when conflict of authority between act and municipal legislation arises. Const. art. 11, § 2.

[12] Municipal Corporations 268 ↪79

268 Municipal Corporations

268III Legislative Control of Municipal Acts, Rights, and Liabilities

268k77 Operation and Effect of Legislative Acts

268k79 k. Conflict with Charter or Act of Incorporation. Most Cited Cases

Construction of city reservoir was a matter of local and municipal concern, in relation to which city

home rule charter prevailed over and rendered inapplicable the fair labor standards statute which applies to cities and villages generally. R.R.S.1943, §§ 73-101 to 73-105; Const. art. 11, § 2.

[13] Evidence 157 ↪83(2)

157 Evidence

157II Presumptions

157k83 Official Proceedings and Acts

157k83(2) k. Of Municipalities and Officers in General. Most Cited Cases

Even if fair labor standards statute requirement that governmental subdivisions require contractors to file statements of compliance with statute applied to home rule charter city contract for construction of water reservoir, it would be deemed, in absence of proof to the contrary, that city officials had complied with the statute. R.R.S.1943, § 73-102.

[14] Evidence 157 ↪83(1)

157 Evidence

157II Presumptions

157k83 Official Proceedings and Acts

157k83(1) k. In General. Most Cited Cases In absence of evidence showing misconduct or disregard of law, regularity of official acts is presumed.

[15] Contracts 95 ↪167

95 Contracts

95II Construction and Operation

95II(A) General Rules of Construction

95k167 k. Existing Law as Part of Contract. Most Cited Cases

The law of the state in which a contract is made and is to be performed is considered as written into and a part of and governing the contract.

[16] Labor and Employment 231H ↪2299

231H Labor and Employment

231HXIII Wages and Hours

231HXIII(B) Minimum Wages and Overtime

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231HXIII(B)4 Operation and Effect of Regulations

231Hk2297 Contracts

231Hk2299 k. Incorporation of Regulations. Most Cited Cases

(Formerly 232Ak1264 Labor Relations)

Even if fair labor standards statute provision relating to governmental contracts applied to contract for construction of reservoir for home rule charter city, contract, which contained clause providing that contractor should comply with all laws and ordinances, would not be deemed invalid, on collateral attack in taxpayer's suit, for failure to include required fair labor standards provision. R.R.S.1943, § 73-102.

****825** *Syllabus by the Court.*

***301** 1. A resident taxpayer, as such, and without proof of peculiar interest or injury to himself, may enjoin the illegal expenditure of money by a public board or officer.

2. Tribunals having charge of the letting of contracts for public works, in passing upon the question of the responsibility of bidders as determined from all the elements entering into that question, do not act ministerially only but exercise an official discretion. The action of the board in that respect is judicial in its nature, and the exercise of that discretion is vested in the board and not in the courts.

3. Where there is a showing that the administrative body, in exercising its judgment, acted upon honest convictions, based upon facts, and as it believed for the best interests of its municipality, and where there is no showing that the body acted arbitrarily, or from favoritism, ill will, fraud, collusion, or other such motives, it is not the province of the court to interfere and substitute its judgment for that of the administrative body.

4. It is presumed that a public administrative body acts in good faith, with honest motives, and for the purpose of promoting the public good and protect-

ing the public interest.

5. Under our Constitution a home rule charter must be consistent with and subject to the Constitution and laws of this state. This means that a provision of a city home rule charter takes precedence over ***302** state statutes only in instances where the subject matter is of strictly local municipal concern. As to all subjects of strictly local municipal concern such charter cities operate free and independent of state legislation.

6. It is well established that the law of the state in which a contract is made and is to be performed is considered as written into and becomes a part of and governs the contract.

****826** Herbert W. Baird, Lincoln, for appellant.

John H. Comstock and Jack M. Pace, Lincoln, for appellee.

Heard before SIMMONS, C. J., and CARTER, MESSMORE, YEAGER, CHAPPELL, WENKE, and BOSLAUGH, JJ.

WENKE, Justice.

This is an appeal from the district court for Lancaster County. William Niklaus, as a resident, citizen, and taxpayer of the city of Lincoln brought the action against the city's treasurer, Frank J. Miller. The purpose of the action is to enjoin the treasurer of the city from making payments to anyone under and by virtue of a contract entered into by the city with Dobson Brothers Construction Company. Trial was had which resulted in the action being dismissed. Plaintiff thereupon filed a motion for new trial and has perfected this appeal from the overruling thereof.

This action relates to a written contract entered into on October 21, 1953, by the City of Lincoln with Dobson Brothers Construction Company whereby the latter agreed to construct a 5,000,000 gallon reservoir at the city's Fifty-first Street pumping station at a cost to the city of \$246,746. The city en-

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gineer's estimate of the cost of the work was \$313,200.

The first question raised is, can appellant, solely as a citizen, resident, and taxpayer of the city of Lincoln, maintain this action? The contract involved created a general obligation on the part of the city in the sum *303 of \$246,746 which amount it agreed it would pay in cash to Dobson Brothers Construction Company upon their completion and the city's acceptance of the work, payment to be made in accordance with the provisions of the contract.

[1] We have often held that: '* * * in this jurisdiction the law has long been settled beyond debate that a resident taxpayer, as such, and without proof of peculiar interest or injury to himself, may enjoin the illegal expenditure of money by a public board or officer.' Woodruff v. Welton, 70 Neb. 665, 97 N.W. 1037, 1038. See, also, Martin v. City of Lincoln, 155 Neb. 845, 53 N.W.2d 923; Fischer v. Marsh, 113 Neb. 153, 202 N.W. 422; Tukey v. City of Omaha, 54 Neb. 370, 74 N.W. 613, 69 Am.St.Rep. 711; McElhinney v. City of Superior, 32 Neb. 744, 49 N.W. 705.

[2] These cases rest on the sound principle that each taxpayer has such an individual and common interest in public funds as to entitle him to maintain an action to prevent their unauthorized appropriation. We find appellant can maintain the action.

In his petition appellant alleged Clark Jeary, Mayor of the city of Lincoln at the time the contract was entered into, had such an interest in the Universal Surety Company as a director, stockholder, and employee thereof, and in the Dobson Brothers Construction Company as a regular employee thereof, that his interest in the contract was a violation of Article VII, section 3, of the Home Rule Charter of the city of Lincoln. It should here be stated that the Universal Surety Company furnished the 'Performance Bond' for the Dobson Brothers Construction Company as required by the city's 'Instructions to Bidders.'

Article VII, section 3, of the city's Home Rule Charter provides, insofar as here material, as follows: 'No officer of the city shall be interested directly or indirectly in any contract to which the city or anyone for its benefit is a party; and such interest in any contract*304 shall avoid the obligation thereof on the part of the city.'

**827 This issue seems to have been abandoned on appeal. However, in fairness to the mayor and the other members of the city council, we think it only right to state the appellant produced no evidence to sustain this charge. It is entirely without merit.

[3] Should the specifications for competitive bidding have specified the time within which the work must be completed, since time was of vital importance? In this respect the Instructions to Bidders provided: '*Time of Completion.* The time of completion of the work is a basic consideration of the contract and the construction period named in the proposal will be taken into consideration in making the award of contract.'

Nothing is pointed out in the provisions of the city's charter which would specifically so require and, in the absence thereof, the following, quoted from Best v. City of Omaha, 138 Neb. 325, 293 N.W. 116, 119, would seem to be controlling: 'The city council may, therefore, determine which course is for the best interest of its municipality, and, if it so desires, permit bids to be proposed in which the bidder fixes the time for completion. This permits the city council to consider the time of completion in conjunction with and as a part of the other elements that enter into the determination of who is the lowest responsible bidder.'

Appellant contends the contract was not let to either the 'lowest responsible bidder' or the 'lowest and best bid' for the work.

Nine bids were received, all of which were below the city engineer's estimate of \$313,200. The lowest bid was that of Roberts Construction Company of \$242,469 with completion in 270 days or late in

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August 1954. The next lowest bid was that of Dobson Brothers Construction Company of \$246,746 with completion in 200 days or the early part of June 1954.

Because Dobson Brothers Construction Company had *305 their equipment and men available for immediate use, because their foreman was experienced in this exact type of work, and because their completion date would make the reservoir available for use during the peak period of the 1954 summer season, the city council, by resolution No. A-37247 adopted on October 21, 1953, accepted the proposed bid of Dobson Brothers Construction Company and authorized the mayor to enter into a contract in accordance therewith. The mayor did and it is the contract herein involved.

Article IV, section 19, of the city's Home Rule Charter provides, in part, as follows: 'Before the city council shall enter into any contract or authorize any expenditures involving over \$500, they shall cause to be made and filed an estimate of the total cost thereof, together with detailed plans and specifications, which, if approved by the city council, shall be kept subject to public inspection and the work or improvement shall be done substantially in accordance therewith. No contract shall be entered for a price exceeding such estimate, and the city council shall, except in cases of emergency, advertise for bids and cause the amount of such estimate to be published therein.'

A fair construction of this provision would impose a duty upon the council to accept the lowest bid in the absence of facts which, in the honest exercise of its discretion, would cause it to conclude that a contrary course would be in the best interests of the city.

[4] As stated in *State ex rel. Nebraska Bldg. & Inv. Co. v. Board of Commissioners*, 105 Neb. 570, 181 N.W. 530, 532: 'The tribunals having charge of the letting of these contracts for public work in passing upon the question of the responsibility of bidders, as determined from all those elements entering into

that question, do not act ministerially only, but exercise an official discretion. The action of the board in that respect is judicial in its nature, and the exercise of that discretion is vested in the board, and not in the courts.' See, also, *306 *State ex rel. Union Fuel Co. v. City of Lincoln*, 68 Neb. 597, 94 N.W. 719.

The following principles in this regard were laid down in *Best v. City of Omaha*, supra:

*828 'Public administrative bodies possess a discretionary power in awarding contracts, in considering the responsibility of bidders, and in determining questions of public advantage and welfare.

[5] 'Where there is a showing that the administrative body, in exercising its judgment, acts from honest convictions, based upon facts, and as it believes for the best interests of its municipality, and where there is no showing that the body acts arbitrarily, or from favoritism, ill will, fraud, collusion, or other such motives, it is not the province of a court to interfere and substitute its judgment for that of the administrative body.

[6] 'It is presumed that a public administrative body acts in good faith, with honest motives, and for the purpose of promoting the public good and protecting the public interest.

'It is not the policy of the law to prevent a public administrative body from properly exercising its discretion in administering the affairs committed to its charge for the best interests of the municipality that it represents.

'In the absence of controlling legislative or judicial direction, when acting within the limits of the general powers which it possesses, a public administrative body has the power to determine questions of public policy that concern primarily its municipality.'

There was a further question as to the propriety of the council considering the bid of Roberts Construction Company. Roberts Construction Company

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had interlocking ownership and management with the Olson Construction Company, who had also bid and was third low. It appears the Olson Construction Company had the right to dictate to the Roberts Construction Company the amount of its bid.

*307 In its Instruction to Bidders the city provided as follows: ' *Only one Proposal*. No bidder may submit more than one (1) proposal. Two proposals under different names will not be received from one firm or association.'

[7] The record shows the council, in exercising its judgment in regard to the bids made, acted upon honest convictions, based upon the facts which were before it. It believed the action it took was for the best interests of the city. There is no showing that the council acted arbitrarily, or from favoritism, ill will, fraud, collusion, or any other such motives. In this situation it is not the province of this court to interfere and substitute its judgment for that of the council.

Appellant further raises the following questions: Do the provisions of Chapter 73-101 to 73-105, R.R.S.1943, apply to contracts for the construction of public improvements entered into by the city of Lincoln? If they do, are such provisions directory or mandatory? If mandatory, is the contract entered into by the city in violation thereof void?

[8] These questions were not raised by appellant's pleadings filed in the district court. They were, however, orally raised by appellant at the opening of the trial and passed on by the trial court. In view thereof we shall consider them to be here for our determination.

Section 73-102, R.R.S.1943, insofar as here material, provides: 'All governing authorities of the State of Nebraska, and governmental subdivisions thereof, * * * shall, in awarding contracts for public works, require all contractors bidding on public works to file with such authority a statement that he is complying with, and will continue to comply with, fair labor standards in the pursuit of his busi-

ness and in the execution of the contract on which he is bidding. The governing authorities shall also require to be written into each and every contract for public works, in addition to such other provisions as are necessary and prescribed by law, a provision *308 that in the execution of such contract fair labor standards shall be maintained; * * *.'

Section 73-104, R.R.S.1943, provides: 'Fair labor standards,' as used in **829sections 73-102 and 73-103 shall be construed to mean such a scale of wages and conditions of employment as are paid and maintained by at least fifty per cent of the contractors in the same business or field of endeavor as the contractor filing such statement.'

Section 73-105, R.R.S.1943, provides, insofar as here material, that: 'Any person violating any of the provisions of sections 73-101 to 73-104 shall likewise be subject to a fine of not less than twenty-five dollars nor more than two hundred and fifty dollars.'

The statute, taken as a whole, is on its face, a general law and of state-wide application. It is the appellant's thought, because of the penalty provided therein for any violation of the provisions thereof, that a contract founded on such violation is void even though the act does not pronounce it to be such. He cites *Berka v. Woodward*, 125 Cal. 119, 57 P. 777, 45 L.R.A., 420, 73 Am.St.Rep. 31, and *Ferle v. City of Lansing*, 189 Mich. 501, 155 N.W. 591, L.R.A.1917C, 1096, in support thereof.

[9] The city of Lincoln is a city of the first class operating under a home rule charter adopted pursuant to the powers granted it by the Nebraska Constitution. Under our Constitution a home rule charter must be consistent with and subject to the Constitution and laws of this state. This means that a provision of a city home rule charter takes precedence over state statutes only in instances where the subject matter is of strictly local municipal concern. As to all subjects of strictly local municipal concern such charter cities operate free and independent of state legislation. See, *Axberg v. City of Lincoln*,

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141 Neb. 55, 2 N.W.2d 613, 141 A.L.R. 894; Carlberg v. Metcalfe, 120 Neb. 481, 234 N.W. 87; Salsbury v. City of Lincoln, 117 Neb. 465, 220 N.W. 827; *309 Consumers' Coal Co. v. City of Lincoln, 109 Neb. 51, 189 N.W. 643.

[10][11] As stated in Axberg v. City of Lincoln, supra [141 Neb. 55, 2 N.W.2d 614]: 'The purpose of the home rule charter provision of the Constitution was to render the cities adopting such charter provisions as nearly independent of state legislation as was possible. Under it a city may provide for the exercise of every power connected with the proper and efficient government of the municipality where the legislature has not entered the field. Where the legislature has enacted a law affecting municipal affairs, but which is also of state concern, the law takes precedence over any municipal action taken under the home rule charter. But where the legislative act deals with a strictly local municipal concern, it can have no application to a city which has adopted a home rule charter. Whether or not an act of the legislature pertains to a matter of local or state-wide concern becomes a question for the courts when a conflict of authority arises.'

[12] We said, and correctly, in Pester v. City of Lincoln, 127 Neb. 440, 255 N.W. 923, 924, that: 'The extension of the water main * * * were matters of local and municipal concern. Consequently the home rule charter prevails over the statute applying to cities and villages generally. Consumers' Coal Co. v. City of Lincoln, 109 Neb. 51, 189 N.W. 643; Sandell v. City of Omaha, 115 Neb. 861, 215 N.W. 135; State [ex rel. City of Lincoln] v. Johnson, 117 Neb. 301, 220 N.W. 273; Salsbury v. City of Lincoln, 117 Neb. 465, 220 N.W. 827.' The same would be true here where the construction of a reservoir is involved. The statute as to 'Fair Labor Standards' has no application to the subject matter herein involved.

But even assuming, for the purpose of discussion, that the statutory provisions have application, we do not think appellant's contentions should be sustained. The statute, section 73-102, R.R.S.1943,

makes two requirements: (a) That when a contract or bids on public works the governmental subdivision shall, before awarding a contract therefor, require him to file with it a statement*310 to the effect that he is complying with, and will continue to comply with, fair labor standards in the pursuit of his business and in the execution of the contract on which he is bidding; and (b) that such governing authorities shall also **830 require to be written into each and every contract for public works a provision that in the execution of such contract fair labor standards shall be maintained.

[13][14] The burden of proof was on the appellant to establish the statute had not been complied with. He offered no proof that the first requirement was not complied with. In the absence of such proof it must be presumed the public officials performed their duty. As stated in Campbell Co. v. City of Harvard, 123 Neb. 539, 243 N.W. 653, 654: 'In absence of evidence showing misconduct or disregard of law, regularity of official acts is presumed.'

[15] As to the second requirement no such express language is found in the contract. However, we have often said: 'It is well established that the law of the state in which a contract is made and is to be performed is considered as written into and becomes a part of and governs the contract; * * *.' Watts v. Long, 116 Neb. 656, 218 N.W. 410, 413, 59 A.L.R. 728. See McWilliams v. Griffin, 132 Neb. 753, 273 N.W. 209, 110 A.L.R. 1039.

Not only does the law so provide but the contract contains the following: '*Laws and Ordinances.* The contractor shall keep himself full informed of all existing and current regulations of the Owner, and County, State, and National Laws which in any way limit or control the actions or operations of those engaged upon the work, or affecting the materials supplied to or by them. He shall at all times observe and comply with all ordinances, laws, and regulations, and shall protect and indemnify the Owner and the Owner's officers and agents against any claims or liability arising from or based on any violation of the same.'

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[16] By this provision the city has guaranteed the fulfillment*311 of both the spirit and the letter of every statute affecting the contract as effectually as it would have been done had the provision of the statute been expressly followed. Under the circumstances here presented, this being in the nature of a collateral attack, we do not find the contract to be void.

There are other issues raised in regard to this last question which are not entirely without merit but, in view of our holdings, need not be determined. We find the action of the trial court dismissing the action to be correct. It is therefore affirmed.

Affirmed.

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STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS

DECISION ON ADMINISTRATIVE APPEAL

RE: PUBLIC WORKS CASE NO. 2007-018

ZOO IMPROVEMENTS

CITY OF MERCED

I. INTRODUCTION

On December 17, 2007, the Director of the Department of Industrial Relations (“Department”) issued a public works coverage determination (“Determination”) finding that the construction of the Ed-Zoo-Cation Center at the Applegate Park Zoo (“Project”) constitutes a public work, but that the City of Merced’s (“City”) chartered city status exempts it from the requirement to pay prevailing wages.

On January 16, 2008, the Northern California Electrical Construction Industry Labor-Management Cooperative Trust (“Cooperative Trust”) filed a “petition for review” of the Director’s determination, including a request for hearing. The “petition for review” is deemed a timely administrative appeal pursuant to California Code of Regulations, title 8, section 16002.5.

With regard to the request for hearing, California Code of Regulations, title 8, section 16002.5(b) provides that the decision to hold a hearing is within the Director’s sole discretion. While Cooperative Trust has asserted some additional facts in its appeal, they are at best tangential to the issues in dispute, and the material facts remain undisputed. Because the issues raised in the appeal are predominantly legal ones, no hearing is necessary. This appeal, therefore, is decided on the basis of the administrative record, and the request for hearing is denied.

All of the submissions have been considered carefully. Except as noted below, they raise no new issues not already addressed in the Determination. For the reasons set forth in the Determination, which is incorporated herein, and for the additional reasons stated below, the appeal is denied and the Determination is affirmed.

II. CONTENTIONS OF THE PARTIES

The Department advised Cooperative Trust that a hearing would not be held, and invited it to submit any additional evidence it wished to have considered. In response, Cooperative Trust submitted "Offers of Proof," setting forth a mixture of factual assertions and arguments, which are summarized as follows:¹

1. City did not initially claim a charter city exemption in its communications with Cooperative Trust, but invoked that exemption only after Cooperative Trust obtained documents showing that Project was not 100 percent privately funded.
2. The Zoo Policy quoted in footnote one shows that "funding and other financial support for the Zoo comes from sources outside the City of Merced."
3. The Zoo is a regional rescue facility to which animals are given by the California Department of Fish and Game.²

¹ In addition, Cooperative Trust asserts that the Determination failed to acknowledge a document entitled "Applegate Park Zoo Group Tour and Group Non-Tour Policy," which states in part:

The City, at taxpayers' expense provides the Zoo. The admission fees collected fall considerably short of meeting operating expenses. Operation of the Gift Shop including collection of the admission fees and volunteers and sponsorships from individuals and businesses in Merced County accomplish most zoo improvements. Profits from gift sales, memberships in the Merced Zoological Society, contributions by the Society and various fundraisers during the year help to meet this shortfall. Therefore it is not possible to offer any discounts.

All of the native wild animals in our zoo are non-releasable. Most come to us from wildlife rescue centers or the California Department of Fish and Game. Many are handicapped and require human care to survive in a controlled environment. They are here to provide public education and awareness of California's wildlife heritage.

² Cooperative Trust asserts that the Zoo is subject to various California Fish and Game regulations, and further must meet the U.S. Department of Interior Fish & Wildlife Service's permit requirements.

4. The Zoo is a tourist attraction touted by the local Chamber of Commerce and intended for use by members of the public, including those who are not residents of the City of Merced.
5. Funding for the Zoo is not primarily municipal because the account from which Zoo funds are disbursed is a repository for various public moneys, including funds received from the state.
6. Project is classified as a "City Zoo Improvement" by both City and the Director, and cannot be separated from the Zoo itself for the purpose of avoiding application of prevailing wage requirements.
7. The Zoo has sought and received accreditation from the American Zoo and Aquarium Association, and has a Class C Exhibitor's license.³ The City's applications to such outside accrediting and licensing entities serve to defeat City's claim that the Zoo is "solely a municipal affair."
8. A sign on state property along Highway 99 reads:

"Applegate Park
Zoo Museum
NEXT EXIT"⁴

The sign was provided by Caltrans and supports the position that the Zoo is a regional destination.

City's responses to these "offers of proof" are summarized as follows:

1. Because of City's chartered city status, it must determine whether prevailing wage requirements apply before a project goes out to bid. Chartered city status was not "invoked" in response to documents provided to Cooperative Trust showing that the Rossotti fund would not be sufficient to fund the entire Project.

³ As stated in the Determination, the Zoo in fact is unaccredited. Cooperative Trust has made no showing to the contrary.

⁴ A photograph of this sign had previously been sent via Internet to the Department's investigator. Cooperative Trust requested that the Department's file be "amended" to include the photograph. A printout of the photograph has been placed in the file.

2. Funding sources were previously raised by Cooperative Trust and addressed in the Determination.
3. City is unaware of the Zoo being designated as a "regional" rescue facility and the relevance of any such designation. The title appears to be one bestowed by Cooperative Trust.
4. The Determination addressed the communications from the Chamber of Commerce, a private nonprofit organization designed to promote economic viability for the community. How it does so is not for the City to decide. Any benefit to the Zoo from tourists is incidental to its intended purpose. The Determination correctly characterized the Zoo as a local attraction like any other city park that is occasionally visited by non-residents.
5. Cooperative Trust's assertion is unclear, and City therefore denies it. Additionally, the funds from which Zoo moneys are dispersed is irrelevant; the issue is the source of Project funds.
6. The bid documents refer to Project as the "Applegate Park Ed-Zoo-Cation Center." The Director's reference to "Zoo Improvements" is irrelevant, and simply a title for ease of reference.
7. The accreditation issue has already been considered by the Director.
8. As is common with most localities, there are numerous signs along the freeway identifying the City, particular exits, items of interest, etc. Such signs are designed to assist not only out-of-town travelers, but also local residents who travel on the freeway. While some non-residents may visit the Zoo, that is incidental to its fundamental purpose as a local attraction within a municipal park.

III. DISCUSSION

The analysis set forth in the Determination is incorporated by reference herein. As stated in the Determination, City awarded and executed the contract; City paid for the Project using municipal and private funds; the Project is of a local character. As such,

under the factors set forth in *Southern California Roads Co. v. McGuire* (1934) 2 Cal.2d 115, the Project is a municipal affair. Regarding Cooperative Trust's assertions number two and five regarding funding, nothing in the Zoo Policy indicates that construction was paid for with extra-municipal public funds. Regarding Cooperative Trust's assertions number three, four, six, seven and eight regarding the Project's nature and purpose, the fact that the animals are regulated, that the Zoo may attract tourists, that the Ed-Zoo-Cation Center is part of the Zoo, that the Zoo's accreditation or lack thereof is determined by a national organization, and that a sign on the highway points to the Zoo is immaterial. Even assuming all of the facts asserted by Cooperative Trust are correct, they do not point to a contrary legal conclusion. Finally, regarding Cooperative Trust's assertion number one that City has waived its right to assert the chartered city exemption, Cooperative Trust provides no authority.

Cooperative Trust attaches great significance to the fact that the Zoo receives animals from the California Department of Fish and Game, citing *Ex Parte Bailey* (1909) 155 Cal. 472. That century-old case, however, does not present any issue as to the powers of chartered cities, and has little, if any, factual relevance to the present case. At issue in *Bailey* was an ordinance by the Town of Santa Monica restricting net and seine fishing in the Pacific Ocean near the town's wharves, docks and piers. *Id.* at pp. 473-474. In holding the ordinance to be in conflict with the general laws of the state, the court stated:

Nothing is better settled than the doctrine that the *ownership of wild game, not reduced to actual possession by private parties*, of which the fish in our waters constitute a part, is in the people of the state in their collective sovereign capacity. [Citation omitted.] The people of the town of Santa Monica have no such proprietary interest in the fish swimming in the waters of the Pacific Ocean within the corporate limits of the town, as authorizes them to protect and preserve them therein, simply that they may be taken by those fishing from the wharves. Until actually reduced to possession, the fish belong to all the people of the state in common, and those engaged in the exercise of the common right to take them from what is a public highway, open to all people alike, cannot be impeded in the slightest degree in the exercise of that right solely for the purpose of making the wharves, etc., of the town a more advantageous place from which to fish.

Id. at pp. 474-475 (emphasis added).

“Game,” in the context used in *Bailey*, means “[w]ild animals, birds, or fish hunted for food or sport.” *The American Heritage Dictionary of the English Language* (New College Ed. 1979) at p. 541. Even if the animals in the Zoo were to be considered “wild game,” they have been “reduced to actual possession” by the Zoo. Accordingly, *Bailey* has no relevance to the present case. To conclude otherwise, one would have to conclude that *Bailey* stands for the proposition that the captive animals in the Zoo are subject to state hunting regulations to the exclusion of municipal protection. As stated by City, the Project is not about who “owns” the animals on exhibit, where they are housed, or whether a municipality has authority to legislate constraints that interfere with the enjoyment by the people of wild animals.

Cooperative Trust’s various factual and legal assertions are insufficient to overcome the well-established principle, stated in the Determination, that the disposition and use of a city’s park lands is a municipal affair. *Simons v. City of Los Angeles* (1976) 63 Cal.App.3d 455, 468; *Hiller v. City of Los Angeles* (1961) 197 Cal.App.2d 685, 689; *Wiley v. City of Berkeley* (1955) 136 Cal.App.2d 10. As stated in *Hiller*:

The disposition and use of park lands is a municipal affair (*Wiley v. City of Berkeley*, 136 Cal.App.2d 10 [288 P.2d 123]; *Mallon v. City of Long Beach*, 44 Cal.2d 199 [282 P.2d 481]), and a charter city “has plenary powers with respect to municipal affairs not expressly forbidden to it by the state Constitution or the terms of the charter.” (*City of Redondo Beach v. Taxpayers, Property Owners, etc. City of Redondo Beach*, 54 Cal.2d 126, 137 [5 Cal.Rptr. 10, 352 P.2d 170].)⁵

Hiller, supra, 197 Cal.App.2d at p. 689.

Cooperative Trust argues, however, that the Project is not purely a municipal affair because “[t]he extraterritorial effects of the Zoo and its rescue functions are no less than the extraterritorial effects enunciated in *City of Santa Clara v. Von Raesfeld* (1970) 3

⁵ The above passage from *Hiller* was quoted with approval in *Simons, supra*, 63 Cal.App.3d at p. 468, a subsequent case involving Elysian Park. Immediately preceding the *Hiller* quotation is a discussion of the distinction between municipal affairs and matters of statewide concern: “In general, statutes which are enacted by the state Legislature are limited in their reach to general law cities and inapplicable to charter cities. ... The power of a charter city over exclusively municipal affairs is all embracing, restricted and limited only by the city’s charter, and free from any interference by the state through the general laws” *Ibid.* (citations omitted).

Cal. 3d 239. To the contrary, *Von Raesfeld* involved revenue bonds to be issued to finance the City of Santa Clara's share of a regional water pollution control facility in which several other cities were participating. The court noted that the \$30 million facility could not be built without Santa Clara's financial participation, and stated: "Furthermore, the sewage treatment facilities will protect not only the health and safety of [Santa Clara] inhabitants, but the health of all inhabitants of the San Francisco Bay Area. Accordingly, the matter is not a municipal affair." *Id.* at p. 247. Contrary to Cooperative Trust's assertion, it has shown no similar extraterritorial effect for this Project.

The other cases cited by Cooperative Trust are similarly inapposite. It cites *Shaltz v. Union School District* (1943) 58 Cal.App.2d 599, 607 for the proposition that every presumption is in favor of the validity of prevailing wage laws. While this is a correct statement of law, it has no application to this case. The dispute here is not about the *validity* of the statutory scheme, but only whether it is applicable to this Project. For the same reason, *Metropolitan Water District v. Whitsett* (1932) 215 Cal. 400 is also inapposite.

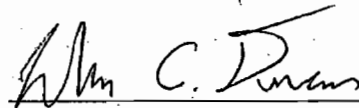
Finally, Cooperative Trust states: "Although case authority does exist stating that prevailing wages are not matters of statewide concern, the cases that come to that conclusion do not address Article XIV of the Constitution, nor do they survive scrutiny based on such a Constitutional analysis. The California Supreme Court in ... *City of Long Beach v. DIR* (2004) 34 Cal.4th 942 seems to suggest that the matter is ripe for further judicial review." The authority acknowledged by Cooperative Trust does, indeed, exist. "The prevailing wage law, a general law, does not apply to the public works projects of a chartered city, as long as the projects in question are within the realm of 'municipal affairs.'" *Vial v. City of San Diego* (1981) 122 Cal.App.3d 346, 348, citing *City of Pasadena v. Charleville* (1932) 215 Cal. 384, 392. *City of Long Beach* does state that: "We leave open for consideration at another time ... whether the [prevailing wage law] is a matter of such 'statewide concern' that it would override a charter city's interests in conducting its municipal affairs." *City of Long Beach v. DIR, supra*, 34 Cal.4th at p. 947. The fact that the courts may revisit the issue in the future does not,

however, empower this Department to ignore existing judicial precedent. *Vial* remains controlling precedent, and the Department is bound by its holding.

IV. CONCLUSION

In summary, for the reasons set forth in the Determination, as augmented by this Decision on Administrative Appeal, the appeal is denied and the Determination is affirmed. This Decision constitutes the final administrative action in this matter.

Dated: 5/2/08



John C. Duncan, Director

