the condemnation proceeding upon giving the required bond.[73] The Attorney General has rendered an opinion holding that the state may take property without actual prepayment, and that an appropriation duly passed by the General Assembly probably would be sufficient.[74]

Respective province of the court, the General Assembly and the condemning authority. The construction of all words in the eminent domain clause is for the court. A statutory declaration as to what constitutes a public use does not bind the court.[75] The question of the propriety of delegating the power of eminent domain and the procedure for its exercise is for the General Assembly.[76] The question as to the necessity for a particular taking is, in the first instance, for the condemning authority which is vested with a relatively wide discretion, but is subject to review by the courts in case of an abuse of that discretion.[77]

Section 14. No ex post facto law, or law impairing the obligation of contracts, or making any irrevocable grant of special privileges or immunities, shall be passed.

Ex post facto laws. The prohibition against *ex post facto* laws is limited to legislation relating to criminal matters,[78] which operates to the possible prejudice of an accused person as to an act committed prior to its passage. The indeterminate sentence law can be given a prospective effect only since, if applied retroactively, it prejudices the accused by abolishing his right to have the jury fix the punishment.[79] A statute increasing a penalty of $50.00 to one not exceeding $100.00 against railroad companies for failing to sound a bell or whistle at street crossings is void as to offenses committed prior to its passage.[80] But the General Assembly may reduce a penalty as to offenses already committed.[81] However, when it is doubtful whether the penalties of a new law are more severe than under the prior law, it has been said that the second act is not *ex post facto*, but the defendant will be permitted to select which act shall be applied to his case.[82] A law prohibiting the re-marriage of divorced persons within a certain period is not *ex post facto*.[83]

Impairment of contracts. This section prohibits legislation impairing the obligations of contracts which have been entered into prior to the passage of the legislation. But there is no constitutional objection to a law regulating future contracts.[84] Thus the General Assembly may require

[73] Mitchell v I. & St. L. R. R. Co., 68 Ill. 286 (1873).
[74] Report Attorney General, 1917-18, p. 729.
[75] Nesbitt v Trumbo, 39 Ill. 110 (1866); Gaylord v Sanitary District, 204 Ill. 576 (1903).
[76] City of Chicago v Lehmann, 262 Ill. 468 (1914); Gillette v Aurora Ry. Co., 228 Ill. 261 (1907).
[77] Burke v Sanitary District, 152 Ill. 125 (1894); Village of Depue v Banschback, 273 Ill. 574 (1916); P. F. W. & C. Ry. Co. v Sanitary District, 218 Ill. 286 (1905); C. & W. I. R. R. Co. v City of Chicago, 255 Ill. 136 (1912).
[78] Coles v County of Madison, 1 Ill. 154 (1826).
[79] Johnson v People, 173 Ill. 131 (1898).
[80] Wilson v O. & M. Ry. Co., 64 Ill. 542 (1872).
[81] C. & A. R. R. Co. v Adler, 56 Ill. 344 (1870).
[82] Kossakowski v People, 177 Ill. 563 (1899).
[83] Olsen v People, 219 Ill. 40 (1905).
[84] Burdick v People, 149 Ill. 600 (1894).

that deeds and mortgages to be valid shall be acknowledged.[85] This section will not protect against impairment a contract to do an act prohibited by a bill passed by the General Assembly and signed by the Governor, but not yet in full effect as a law at the time the contract was made.[86]

The Supreme Court has held that a court may not by judicial decision impair the obligation of a contract any more than the General Assembly may by statute.[87] This view is based on what is probably an erroneous conception of the holding of the United States Supreme Court which court has later expressly held (along with many state courts) that the constitutional provision prohibits impairment of contracts by action of a legislative character only.[88]

A law may provide for its adoption by the vote of the electorate in particular districts and also for its subsequent rejection in the same manner. A vote discarding the law is practically the same as to the district affected, as a repeal of the law by the General Assembly. Contracts, therefore, made while such a law is in force will be protected against impairment resulting from the rejection of the law by the action of the district. Thus it was held that the obligation of a contract for the construction of a building in a school district under an act adopted by vote, could not be impaired by a subsequent election discontinuing the school district.[89]

Contracts made by the state are within the protection of this constitutional provision and may not be impaired by legislation seeking to abrogate or change them. Thus where a contract to do certain printing for the state specified payment in state paper "at its specie value" the General Assembly may not fix an arbitrary higher valuation for such payment.[90] In a number of cases relating to franchises of special privileges which were granted by the state to corporations or individuals prior to the adoption of the constitution cf 1870, it was held that such franchises constituted contracts which were not subject to impairment by subsequent legislation. As a result of these decisions, subsequent grants were made subject by express terms, to the power reserved to the state to alter, amend or repeal. Irrevocable grants of special privileges or immunities are prohibited in the constitution of 1870 by the last clause of this section. (See discussion subsequent subheading). A railroad having the right under its charter to use and sell its lands as it deemed expedient cannot be compelled by statute to dispose of them within a limited period at a fixed price, particularly when the land in question had been placed as security for bonds issued by the railroad company, since then the statute operates to impair not only the charter rights but also the obligations of the bonds.[91] So the right to maintain a toll road under a charter may not be impaired by the annexation to a city of the land enclosing it.[92] After a county has been authorized to subscribe for stock in a railroad company and levy taxes for that purpose by the charter of the company and has made a subscription and issued its bonds therefor, a subsequent act limiting the taxing power or the means to meet the bonds, impairs the obligation of these contracts.[93] But it has been held that a railroad charter amendment for the extension of the road, consolidation with other roads and the assumption of new and increased responsibilities, does not impair the validity or obligation of contracts for subscription of stock in the corporation,[94] so long as the changes in the charter are merely auxiliary to the original design and not a fun-

[85] Parrott v Kumpf, 102 Ill. 423 (1882).
[86] Dunne v County of Rock Island, 283 Ill. 628 (1918).
[87] Harmon v Auditor of Public Accounts, 123 Ill. 122 (1887).
[88] Bacon v Texas, 163 U. S. 207 (1896).
[89] Chalstran v Board of Education, 244 Ill. 470 (1910).
[90] Blackwell v Auditor of Public Accounts, 1 Ill. 196 (1826).
[91] People v Ketchum, 72 Ill. 212 (1874).
[92] City of Belleville v Turnpike Co., 234 Ill. 428 (1908).
[93] P. D. & E. Ry. Co. v People, 116 Ill. 401 (1886).
[94] Banet v A. & S. R. R. Co., 13 Ill. 504 (1851); T. H. & A. R. R. Co. v Earp, 21 Ill. 291 (1859).

damental change like an amendment which divides the original project into three parts.[95]

The purchase of property at tax sales constitutes a contract, with rights and obligations which may not be taken away or abridged by legislation. Thus if by the purchase, the buyer secures the right to the title or a redemption in specie, an act which authorizes the owner to redeem in United States treasury notes is void.[96] The contract of the sureties on a collector's bond is so materially altered by an act extending the time for the collector's final settlement as to release them from liability.[97] The General Assembly has no power to make the purchasers of the franchise and property of a railroad corporation liable for the debts of the old corporation by a law enacted subsequently to the sale, since by the sale certain rights are obtained which cannot be taken away.[98]

Grants by municipalities to public utility companies giving privileges in the use of streets, are not franchises but licenses which upon acceptance become contracts which can be rescinded or revoked only for cause.[99] And even where the grant is improperly given by resolution instead of by ordinance if the licensee has accepted and acted upon the grant with the tacit approval of the municipality, it is a contract not subject to revocation or impairment.[1]

Anticipation warrants are charges against a tax and are not contracts of the city which are protected by this section against a law which diminishes the taxing power of the city.[2] Nor is the election and induction of a person into a public office a contract within the protection of the constitution,[3] nor the right to participate in a police pension fund.[4] An act passed to validate a mortgage defectively executed cannot be said to impair any contract rights since its effect is merely to make obligatory the intention of the contracting parties.[5]

When a public municipal corporation acting outside its governmental character for purposes of private advantage, has contracted with the state, its position is analogous to individuals or private corporations whose contracts may not be impaired or altered by the state. But its acts in its public or governmental capacity are performed as agent for the state and this section does not prevent complete control as to such matters by the state.[6] Thus a grant of money for internal improvements to counties without railroads may be withdrawn by the state at any time before it has been expended,[7] or the General Assembly may properly direct the payment of money due school townships in other than gold and silver.[8]

A municipality may, with the consent of the other party to a contract, set aside an agreement for service and substitute therefor a new agreement fixing new rates for service, and such action will not be subject to objection as an impairment of the contract rights of the residents of the municipality to receive service at the original rates.[9]

The contract rights of the individual, like all property rights, are not absolute but are held subject to certain paramount rights of the state and this section is not construed to secure rights under contracts at the expense of the necessary sovereign powers which protect and secure the general welfare. All contracts whether made by the state or individuals are subject to be in-

[95] Supervisors of Fulton County v M. & W. Ry. Co., 21 Ill. 338 (1859).
[96] People v Riggs, 56 Ill. 483 (1870).
[97] Davis v People, 6 Ill. 409 (1844).
[98] Hatcher v T. W. & W. R. R. Co., 62 Ill. 477 (1872).
[99] Chicago Municipal Gas Light Co. v Town of Lake, 130 Ill. 42 (1889); City of Belleville v Citizen's Horse Ry. Co., 152 Ill. 171 (1894); People v Central Union Tel. Co., 192 Ill. 307 (1901).
[1] Village of London Mills v White, 208 Ill. 289 (1904).
[2] Booth v Opel, 244 Ill. 317 (1910).
[3] Donahue v County of Will, 100 Ill. 94 (1881).
[4] Beutel v Foreman, 288 Ill. 106 (1919).
[5] Steger v Traveling Men's Bldg. Assn., 208 Ill. 236 (1904).
[6] People v Power, 25 Ill. 187 (1860).
[7] County of Richland v County of Lawrence, 12 Ill. 1 (1850).
[8] Bush v Shipman, 5 Ill. 186 (1843).
[9] People v Chicago Tel. Co., 245 Ill. 121 (1910).

terfered with by subsequent statutes enacted in the exercise of the police power.

The following regulations for the operation of trains have been sustained as valid police measures though their effect was to limit or alter rights secured by charter from the state; requiring the sounding of warnings at road and street crossings,[10] and the fencing of right-of-ways,[11] the stopping of passenger trains at county seats,[12] and fixing reasonable rates for transportation and preventing discrimination in rates.[13] A railroad company may be compelled to secure a permit to lay a side track on its right-of-way across a street crossing.[14] With regard to ordinances relating to the operation of street railways in the city of Chicago, it was held that they constituted binding contracts in so far as their provisions related to matters other than those affecting the public safety, welfare, comfort or convenience—such as the division of net receipts with the city and an option of purchase to the city. But as to matters properly within the purview of the police power, the General Assembly retains the power to regulate and control.[15] When a charter to a railroad corporation merely requires the corporation in crossing a street or road with its tracks, to restore the road or street to its former state of usefulness, the railroad corporation may not, under guise of police regulation, be made liable for the maintenance of the paving upon a street in a subway beneath its tracks.[16]

The exercise of rights conferred by charter on an insurance company is subject to the power of the state to enact a police measure providing for the dissolution of such company if upon examination its financial condition makes the continued acceptance of risks hazardous,[17] and the General Assembly may provide that an insurance company failing to transact business for one year shall be deemed extinct.[18] An amendment to the city charter of Chicago may operate to annul a section of the charter of Chicago University which prohibited the sale of intoxicating liquor within one mile of the institution.[19] Rates fixed by municipalities by contract or ordinance may be changed by subsequent legislation since the right to prescribe reasonable rates as a part of the police power cannot be divested or bargained away.[20]

In a recent decision of the Supreme Court it was held that a railroad company was prohibited by the public utilities act of 1913 from furnishing free transportation under a prior contract by the terms of which the vendor of certain property was to receive free transportation as part consideration for property sold to the railroad company.[21] Shortly after this decision, the court held that the public utilities act did not impair or annul a contract under which free electrical power was the consideration for the transfer of certain property.[22] And in an earlier case a statute requiring railroads to fence their right-of-way was not permitted to impair rights under a contract authorized by law by which the owner of adjoining land agreed to build and maintain a fence and in the event of failure so to do, the railroad company was not to be liable for damages to stock of such owner.[23]

[10] G. & C. U. R. R. Co. v Loomis, 13 Ill. 548 (1852); I. & St. L. R. R. Co. v Blackman, 63 Ill. 117 (1872); Venner v Chicago City Ry. Co., 246 Ill. 170 (1910).

[11] O. & M. R. R. Co. v McClelland, 25 Ill. 140 (1860); G. & C. U. R. R. Co. v Crawford, 25 Ill. 529 (1861).

[12] C. & A. R. R. Co. v People, 105 Ill. 657 (1883).

[13] Ruggles v People, 91 Ill. 256 (1878); C. & A. R. R. Co. v People, 67 Ill. 11 (1873); C. B. & Q. R. R. Co. v Jones, 149 Ill. 361 (1894).

[14] P. F. W. & C. Ry. Co. v City of Chicago, 159 Ill. 369 (1896).

[15] City of Chicago v O'Connell, 278 Ill. 591 (1917); (recently affirmed by United States Supreme Court).

[16] People v I. C. R. R. Co., 235 Ill. 374 (1908).

[17] Ward v Farwell, 97 Ill. 593 (1881); Chicago Life Ins. Co. v Auditor, 101 Ill. 82 (1881).

[18] Yates v People, 207 Ill. 316 (1904).

[19] Dingman v People, 51 Ill. 277 (1869).

[20] Freeport Water Co. v City of Freeport, 186 Ill. 179 (1900); City of Danville v Danville Water Co., 178 Ill. 299 (1899); Rogers Park Water Co. v Fergus, 178 Ill. 571 (1899).

[21] Hite v C. I. & W. R. R. Co., 284 Ill. 297 (1918).

[22] Schiller Piano Co., v Northern Utilities Co., 288 Ill. 580 (1919).

[23] Lynch v B. & O. S. W. R. R. Co., 240 Ill. 567 (1909).

Contract rights, like all property rights, are subject to eminent domain and the state may for public use and by making compensation therefor, impair and destroy rights granted by charter from the state.[24] See discussion article 11, section 14). The state may in the exercise of its taxing power affect rights under contracts between individuals. Thus under a drainage act, assessments may be levied on property and a lien given for such taxes which is superior to the liens of existing encumbrances.[25] But valid contracts made by special grants by the state or its subdivisions under the constitution of 1848 which exempted property from taxation, are protected against impairment by subsequent legislation by the provision of this section.[26] (See discussion article 9, section 3, subheading, "Effect of the exemption provisions in special charters granted prior to 1870.")

It has been uniformly held that a specific method of enforcing the obligation of a contract is not a part of the obligation and therefore the General Assembly may regulate or change the remedies for the enforcement of existing contracts so long as such change in the extent or nature of existing remedies does not impair the substantive rights and interests under such contracts. A change in the remedy if it goes to the extent of abridging or altering substantive rights is just as much an impairment within the prohibition of this section as a direct violation of the contract.[27] A law which requires that property sold under mortgage foreclosure be appraised and sold for at least two-thirds of the valuation fixed was sustained as to rights accrued under prior contracts by the Illinois Supreme Court,[28] but the decision was reversed by the United States Supreme Court.[29] So an act which takes away all existing remedy leaving no redress impairs the validity of an existing contract as much as if it changed the terms.[30]

The following measures have been held to change the remedy or procedure only and, therefore, to be valid even as to prior contracts: a law permitting a creditor of a bank to proceed to judgment against a stockholder without waiting for execution against the bank;[31] the burnt records act which abolished a presumption as to the regularity of proceedings essential to the validity of tax deeds;[32] a statute permitting redemption from sales under decrees to enforce mechanic's liens;[33] a statute establishing a rule of evidence that the statement of the county collector in applying for judgments for taxes shall be prima facie evidence of the regularity of the assessment and levy of the taxes;[34] a statute making unnecessary the establishing a *devastavit* before bringing suit on a guardian's bond;[35] a requirement as to certain steps to be taken by tax purchasers in giving notice to the owners of property sold;[36] a law giving to owners assessed for local improvements the right of jury trial on question of benefits;[37] a statute permitting the forfeiture of a lease by service of a simple demand notice instead of the common law method of forfeiture;[38] and a statute changing the procedure for condemnation of property by a railroad company.[39] Statutes limiting the time within which the obligations of a contract may be enforced or changing the limita-

[24] Mills v County of St. Clair, 7 Ill. 197 (1845); I. & M. Canal v C. & R. I. R. R. Co., 14 Ill. 314 (1853); M. C. Ry. Co. v C. W. D. Ry. Co., 87 Ill. 317 (1877).
[25] W. E. Ry. Co. v Commissioners of Drainage District, 134 Ill. 384 (1890).
[26] Parmelee v City of Chicago, 60 Ill. 267 (1871); People v Soldiers' Home & Baptist Theological Union, 95 Ill. 561 (1880); Northwestern University v People, 99 U. S. 309 (1878); reversing Northwestern University v People, 80 Ill. 333 (1875).
[27] Fisher v Green, 142 Ill. 80 (1892).
[28] Williams v Waldo, 4 Ill. 264 (1841); Delahay v McConnel, 5 Ill. 157 (1842).
[29] McCracken v Hayward, 2 Howard (U. S.) 608 (1844).
[30] Bruce v Schuyler, 9 Ill. 221 (1847).
[31] Smith v Bryan, 34 Ill. 364 (1864).
[32] Gage v Caraher, 125 Ill. 447 (1888).
[33] Templeton v Horne, 82 Ill. 491 (1876).
[34] Burbank v People, 90 Ill. 554 (1878).
[35] Winslow v People, 117 Ill. 152 (1886).
[36] Gage v Steward, 127 Ill. 207 (1889).
[37] Palmer v City of Danville, 166 Ill. 42 (1897).
[38] Woods v Soucy, 166 Ill. 407 (1897).
[39] C. B. & Q. Ry. Co. v Abbott, 215 Ill. 416 (1905).

tion period have been sustained as to existing contracts or causes of action so long as a reasonable period is afforded for the assertion of the right before the action is barred.[40] A law which takes away the right to sue on causes barred by limitation statutes in the state where they accrued, does not violate the constitutional provision since the obligation of such contracts is already gone by force of the foreign limitation statute.[41]

Irrevocable grants of special privileges or immunities. Section 22 of article 4 provides that "the General Assembly shall not pass local or special laws . . . granting to any corporation, association, or individual any special or exclusive privilege, immunity or franchise". The prohibition is directed expressly to the General Assembly and it has been held that it does not apply to licenses or contracts created by municipalities.[42] Section 14 of article 11, however, says that "no law impairing the obligation of contracts, or making any irrevocable grant of special privilege or immunities, shall be passed." The prohibition against "impairing the obligation of contracts" has been applied to both municipal and state action. But the same word "law" with its second qualifying phrase, "making any irrevocable grant of special privilege or immunities," has been construed not to apply to municipalities.[43] The court erroneously cites the decision based on section 22 of article 4. But the court, in holding that the municipal ordinance in question is not a law which makes an irrevocable grant of special privilege or immunities, does not base its opinion wholly on the construction of the word "law" but also on the ground that the grant, although not for a definite term, was limited to the life of the corporation receiving it and was therefore not an irrevocable grant. The prohibition against an irrevocable grant, according to the construction placed upon it by the court, forbids a grant in perpetuity but not a grant for a limited term of years incapable of being revoked by the state.[44]

Section 15. The military shall be in strict subordination to the civil power.

The calling out of the militia to quell riotous conditions does not suspend the functions of the civil authorities but the military authority is merely in aid of the civil authorities. Consequently civil officers retain all their customary powers and duties.[45]

When it becomes necessary for the state to send aid to the civil authorities to suppress violence and execute the law, the civil authorities, acting as the representatives of the state and exercising governmental functions, are supreme. Their authority over the militia, however is not absolute but is limited to directing specific acts to be performed. As to the mode and manner of accomplishing the act ordered to be done, the militia acts independently of the civil authorities and is answerable to the Governor.[46]

It has been held by the Attorney General that a member of the state militia is subject to arrest by the civil authorities for treason, felony or breach of the peace, even when engaged in active service for the state and the fact of court martial and punishment by the military authorities does not bar

[40] Bradley v Lightcap, 201 Ill. 511 (1903).
[41] Hyman v Bayne, 83 Ill. 256 (1876).
[42] Chicago City Ry. Co. v Story, 73 Ill. 541 (1874).
[43] People v Central Union Tel. Co., 232 Ill. 260 (1908).
[44] St. Clair County Turnpike Co. v People, 82 Ill. 174 (1876); People v Central Union Tel. Co., 232 Ill. 260 (1908).
[45] County of Christian v Merrigan, 191 Ill. 484 (1901)
[46] City of Chicago v Chicago Ball Club, 196 Ill. 54 (1902).

a civil trial for the same offense.[47] (For the constitutional provisions relating to the organization of the militia, see article 12.)

Section 16. No soldier shall, in time of peace, be quartered in any house without the consent of the owner; nor in time of war except in the manner prescribed by law.

Section 17. The people have the right to assemble in a peaceable manner to consult for the common good, to make known their opinions to their representatives, and to apply for redress of grievances.

Section 18. All elections shall be free and equal.

This provision applies to all elections held under authority of law at which qualified electors may vote, including primary elections.[48]

Reasonable safeguards designed to maintain the purity of elections from fraud, such as requiring an unregistered voter to furnish two affidavits in support of his right to vote do not abridge the elective franchise or violate this section.[49]

The constitutional requirement of freedom and equality of elections prohibits intimidation and improper influences and requires that the vote of every elector shall be equal in its influence on the result to every other vote, but it does not demand absolute uniformity of regulation in all parts of the state.[50] But a law which permits the voting of electors who have resided thirty days in some election districts but not in other portions of the state destroys the freedom and equality of elections.[51] So distinctions applying to Cook County alone not justified by the difference in population, such as prohibiting an elector from voting at a party primary if he has voted at another party primary within two years but outside Cook County merely requiring him to state his party affiliation, are violative of this section and void.[52]

Freedom of elections also means that the voters shall be free to exercise the elective franchise for any eligible person of their choice without unwarranted restrictions and hindrances. Thus reasonable regulations such as requiring a candidate to file a petition with a proper percentage of voters, may be imposed but not a requirement for the payment of a fee so large as not to be intended as compensation for services rendered in filing the papers.[53]

A statutory prohibition against a candidate's name appearing more than once on the ballot does not prevent freedom of elections since any elec-

[47] Report Attorney General 1915, p. 229.
[48] People v Election Commissioners, 221 Ill. 9 (1906).
[49] Byler v Asher, 47 Ill. 101 (1868).
[50] People v Hoffman, 116 Ill. 587 (1886); People v Wanek, 241 Ill. 529 (1909).
[51] People v Strassheim, 240 Ill. 279 (1909).
[52] People v Election Commissioners, 221 Ill. 9 (1906).
[53] People v Election Commissioners, 221 Ill. 9 (1906).

tor desiring to vote for that candidate, is afforded the opportunity of doing so.[54]

An act which provides that precinct and ward committeemen shall nominate candidates for their respective parties does not violate the requirement of freedom and equality of elections, even though the committeemen had been elected prior to the passage of the act. Each member of political parties is entitled to participate in the selection of committeemen who thereby become the legal representatives in their respective parties.[55]

But the legislature may not deprive the members of political parties of the right to participate in the selection of party candidates for office, in case of vacancies occurring which require a special election, by giving this power to the managing committee of parties, although such a provision would probably be sustained as to vacancies caused by the death or withdrawal of candidates since lack of time would make impracticable nomination by the convention method.[56]

Section 19. Every person ought to find a certain remedy in the laws for all injuries and wrongs which he may receive in his person, property or reputation; he ought to obtain, by law, right and justice freely and without being obliged to purchase it, completely and without denial, promptly and without delay.

Certain remedy. The refusal by the courts to entertain an action to recover damages alleged to have been sustained by the malicious institution of a civil suit, while such civil suit remains pending, is not a withholding of a certain remedy.[57] The workmen's compensation act provided for a hearing and the payment of compensation in the case of an employee injured by a person other than his employer. This provision was held not a deprivation of a remedy, since the act merely created an additional remedy and, in effect, permitted an election as to the remedy to be pursued.[58] This section does not guarantee a remedy for an injury to the political right to have election ballots lawfully counted since elections belong to the political branch of the government and in the absence of provision for contests by that branch, the courts have no jurisdiction.[59] An exception to this is found, however, in the case of elections relating to the removal of county seats.[60]

Statutory provisions which grant to one party to a suit the right to a review which is restricted or denied to the other party, do not afford the certain remedy which this section guarantees.[61]

This section does not require the Supreme Court to give a detailed opinion on every point raised or to answer every contention that may be made by counsel in the argument of a case.[62]

Right to justice without being obliged to purchase it. Statutes requiring cost bonds from litigants[63] or the payment in advance of jury fees[64]

[54] People v Czarnecki, 266 Ill. 372 (1915).
[55] People v Sweitzer, 282 Ill. 171 (1918).
[56] Rouse v Thompson, 228 Ill. 522 (1907).
[57] Bonney v King, 201 Ill. 47 (1903).
[58] Johnson v Choate, 284 Ill. 214 (1918).
[59] Douglas v Hutchinson, 183 Ill. 323 (1899).
[60] Boren v Smith, 47 Ill. 482 (1868).
[61] Hecker v I. C. R. R. Co., 231 Ill. 574 (1908); Hayward v Sencenbaugh, 235 Ill. 580 (1908).
[62] Speight v People, 87 Ill. 595 (1877).
[63] Gesford v Critzer, 7 Ill. 698 (1845); Casey v Horton, 36 Ill. 234 (1864).
[64] Morrison Hotel Co. v Kirsner, 245 Ill. 431 (1910).

have been sustained in civil cases, as reasonable provisions to protect officers of justice against loss of compensation for their services. But the court has held invalid a law requiring a person to show he was not delinquent for taxes in order to question a tax title,[65] and a statute requiring the payment of redemption money and interest as a condition to attacking the validity of a tax deed.[66]

Section 20. A frequent recurrence to the fundamental principles of civil government is absolutely necessary to preserve the blessings of liberty.

There has been no occasion for a construction or interpretation of this plain admonition to governmental authority. It has been referred to by the Supreme Court in holding unreasonable and oppressive a city ordinance which prohibits the getting on or off moving cars or trains of cars without first securing permission from persons in charge.[67] In another case, the court held invalid a statutory provision which conferred authority upon a court to direct a commissioner owning lands in a drainage district subject to assessment, to act with other commissioners in assessing benefits upon the land in the district. One of the fundamental principles referred to by this section, the court said, is that impartial tribunals shall be provided for the adjudication of rights.[68]

[65] Wilson v McKenna, 52 Ill. 43 (1869).
[66] Reed v Tyler, 56 Ill. 288 (1870); Senichka v Lowe, 74 Ill. 274 (1874).
[67] Wice v C. & N. W. Ry. Co., 193 Ill. 351 (1901).
[68] Drainage Commissioners v Smith, 233 Ill. 417 (1908).

ARTICLE III—DISTRIBUTION OF POWERS.

The powers of the government of this State are divided into three distinct departments—the legislative, executive and judicial; and no person, or collection of persons, being one of these departments, shall exercise any power properly belonging to either of the others, except as hereinafter expressly directed or permitted.

In general. The powers of the three departments of government may be briefly defined as follows: The legislative department determines what the law shall be; the executive department executes or administers the law; and the judicial department construes and applies the law.

This article of the constitution does not mean that each department of government is absolutely separate and distinct from the others. The spheres of activity of each department overlap to a certain extent, and the action of one department within its own sphere will be sustained even though it may, to a certain degree, exercise powers primarily within the sphere of another department. In the early case of Field v People,[1] it was said: "The first and second sections of the first article of the constitution divide the powers of government into three departments, the legislative, executive and judicial, and declare that neither of these departments shall exercise any of the powers properly belonging to either of the others, except as expressly permitted. This is a declaration of a fundamental principle; and although one of vital importance, it is to be understood in a limited and qualified sense. It does not mean that the legislative, executive and judicial power, should be kept so entirely separate and distinct as to have no connection or dependence, the one upon the other; but its true meaning, both in theory and practice, is, that the whole power of two or more of these departments shall not be lodged in the same hands, whether of one or many. That this is the sense in which this maxim was understood by the authors of our government and those of the general and state governments, is evidenced by the constitutions of all. In every one, there is a theoretical or practical recognition of this maxim, and at the same time a blending and admixture of different powers. This admixture in practice, so far as to give each department a constitutional control over the other, is considered, by the wisest statesmen, as essential in a free government, as a separation. This clause, then, is the broad theoretical line of demarcation, between the three great departments of government."

In State of Illinois v Illinois Central Railroad Company[2] the court, in considering this article, said: "The legislative, executive and judicial powers are not to be kept so entirely separate and distinct as to have no connection or interdependence. In every constitution there is a blending and admixture of different powers. 'This admixture, in practice, so far as to give each department a constitutional control over the others, is considered by the wisest statesmen as essential in a free government as a separation.' In Cooley on Torts that author says: 'Official duties are supposed to be susceptible of classification under the three heads of legislative, executive and judicial, corresponding to the three departments of government bearing the same designations; but the classification cannot

[1] 3 Ill. 79 (1839).
[2] 246 Ill. 188 (1910).

be very exact and there are many officers whose duties cannot properly, or at least exclusively, be arranged under either of these heads.' Certain administrative officers are frequently charged with duties that partake of the character of all three of the departments but which cannot be classed as belonging essentially to either. Administrative and executive officers are frequently called upon, in the performance of their duties, to exercise judgment and discretion, to investigate, deliberate and decide, and yet it has been held that they do not exercise judicial power, within the meaning of the constitutional provision."

It is apparent, therefore, that one department is not usurping the powers of another department merely because that department in the performance of a certain act exercises powers similar to those exercised by one or both of the other departments. This does not mean, of course, that one department may exercise the powers that essentially belong to another department. But if a department in the performance of an act properly within its domain, must, incidentally, exercise a power belonging primarily to another department, it is not prevented from doing so by the doctrine of separation of powers. The power to regulate railroad rates is essentially legislative, but it is clear that in fixing such rates the General Assembly, in a measure, exercises judicial functions.[3] An administrative agency empowered to issue and revoke licenses to engage in a certain business or profession, must, necessarily, exercise *quasi* judicial powers in determining that a license shall be issued to a certain person, or that a license already issued shall be revoked, but this exercise of a *quasi* judicial power is only incidental to the function of administering the law relating to the regulation of a particular business or calling.[4] And a court is not exercising legislative power contrary to this provision of the constitution when it makes rules to govern the transaction of its business, although there can be no doubt that the making of rules is, in a certain sense, a legislative function.[5]

In some cases it is quite clear that one department is encroaching upon the powers of another. In other cases, however, it is difficult to determine whether the exercise by one department of a power primarily belonging to another department is a clear invasion of the sphere of another department or merely incidental to the performance of an act properly within the domain of the first department; and in such cases, the whole problem becomes largely a question of drawing the line—a question of degree. (See discussion subsequent subheadings.)

It should be noted, however, that this article provides that, "*except as hereinafter expressly directed or permitted,*" no person or persons in one department of government shall exercise any powers properly belonging to another department. By the words "except as hereinafter expressly directed or permitted," the constitution recognizes the fact that certain exceptions are made in that instrument, itself, to the doctrine of separation of powers established by this article. A few illustrations may be of value. Section 9 of article 4 authorizes the General Assembly to imprison persons for contemptuous behavior in its presence. Section 24 of the same article provides that the senate shall hear and determine all impeachments returned or found by the house of representatives. Section 30 of article 6 gives the General Assembly the power to remove judges from office "for cause entered on the journals." All of these functions are judicial in nature but are conferred upon the legislative branch of the government by the constitution itself.

The power to enact laws is clearly a legislative power. But, under section 16 of article 5, the Governor may veto any bill passed by the General

[3] C. M. & St. P. Ry. Co. v. Public Utilities Commission, 268 Ill. 49 (1915).

[4] People v. Apfelbaum, 251 Ill. 18 (1911); Klafter v. State Board of Examiners, 259 Ill. 15 (1913); People v. Brady, 268 Ill. 192 (1915); People v. Stokes, 281 Ill. 159 (1917); see, also, Spiegler v. City of Chicago, 216 Ill. 114 (1905); Block v. City of Chicago, 239 Ill. 251 (1909).

[5] Dodge, Conservator v. Cole, 97 Ill. 338 (1881).

Assembly, in which event the bill cannot become a law unless passed over the veto by a vote of two-thirds of the members elected to each house of the General Assembly. The constitution also authorizes the Governor to call a special session of the General Assembly (article 5, section 8) and to adjourn the General Assembly in the event of a disagreement between the two houses as to the time of adjournment (article 5, section 9).

Section 12 of article 5 provides that "the Governor shall have power to remove any officer whom he may appoint in case of incompetency, neglect of duty or malfeasance in office."[6] Under section 13 of article 5 the Governor has the power to grant reprieves, commutations and pardons.[7] In determining that an officer should be removed because of incompetency, neglect of duty, or malfeasance in office, or that a reprieve, commutation or pardon should be granted, the Governor necessarily exercises powers similar to those granted to the judicial department, although his actions in no event are subject to judicial review.

Encroachments by the legislative department. The General Assembly cannot determine that a debt is owed by one person to another,[8] or that a person has a dower right in certain lands,[9] or declare the forfeiture of a contract or corporate charter,[10] or determine that the condition of a deed is broken,[11] for the reason that all of these are judicial questions with which the legislative body has no power to deal. The General Assembly, while it may pass laws prescribing rules of evidence in suits in the courts, and declare that the existence of a certain fact shall constitute *prima facie* evidence,[12] cannot declare what shall be conclusive evidence in a judicial proceeding for that would be to invade the province of the judiciary.[13] And, though the General Assembly may pass limitation laws barring the right to sue for the recovery of lands after the expiration of a certain number of years, it cannot provide that the title of land, after the expiration of the limitation period, shall vest in the person against whom a cause of action might have been brought prior to the running of the statute of limitations; the determination of the ownership of property is a judicial function.[14]

The passage of validating acts is not necessarily an assumption of judicial power by the General Assembly. Deeds at the time of their execution may be unenforcible because of defective acknowledgments, but the General Assembly may pass a law validating the defective acknowledgments and making the deeds valid, enforcible obligations, unless vested rights have attached in the meantime; and this "is not an exercise of judicial power since it does not purport to settle suits or controversies."[15] In the same manner the General Assembly may validate tax levies and the organization of high school districts without encroaching upon the power of the judiciary.[16] But once the Supreme Court has pronounced judgment with reference to a certain deed, or a certain high school district, the General Assembly cannot validate that deed or high school district, for the effect of such action by the General Assembly would be to vacate or nullify the action of one of the co-ordinate branches of the government.[17] Nor can the General

[6] Wilcox v. People, 90 Ill. 186 (1878).
[7] People v. La Buy, 285 Ill. 141 (1918).
[8] Lane v. Dorman, 4 Ill. 238 (1841); see, also, Shaw v. Dennis, 10 Ill. 405 (1849); County of Richland v. County of Lawrence, 12 Ill. 1 (1850).
[9] Edwards v. Pope, 4 Ill. 465 (1842).
[10] Bruffett v. G. W. R. R. Co., 25 Ill. 353 (1861); see, also, People v. Rose, 207 Ill. 352 (1904).
[11] Board of Education v. Bakewell, 122 Ill. 339 (1887).
[12] Burbank v. People, 90 Ill. 554 (1878).
[13] Shellabarger Elevator Co. v I. C. R. R. Co., 278 Ill. 333 (1917).
[14] Newland v. Marsh, 19 Ill. 376 (1857).
[15] Steger v. T. M. Bldg. & Loan Ass'n., 208 Ill. 236 (1904); U. S. Mortgage Co. v. Gross, 93 Ill. 483 (1879); see, also, Parmelee v. Lawrence, 48 Ill. 331 (1868).
[16] Cowgill v. Long, 15 Ill. 202 (1853); People v. Peltier, 275 Ill. 217 (1916).
[17] C & E. I. R. R. Co. v. People, 219 Ill. 408 (1906); People v. N. Y. Central R. R. Co., 283 Ill. 334 (1918).

Assembly in a validating act direct the abatement of pending suits. "The legislature is without authority to direct what orders shall be entered by a court in pending actions. It may enact statutes and change the law, but the application of the law to particular cases is a judicial function, and the adjudication as to what orders shall be entered in such cases is the exercise of judicial power, which does not belong to the legislature."[18] But this does not mean that the Supreme Court will not give effect to a validating act in a particular case, even though the act was passed after the rendition of judgment in the lower court. In People v Madison,[19] the court said: "We must dispose of the case under the law in force at this time and not as it was when judgment was rendered in the circuit court."

In the case of In re Day,[20] it was held that an attorney at law is an officer of the court and that the power to prescribe the qualifications which will entitle an applicant to a license to practice law is judicial and not legislative. In that case the court said: "The function of determining whether one who seeks to become an officer of the courts and to conduct causes therein is sufficiently acquainted with the rules established by the legislature and the courts governing the rights of parties and under which justice is administered pertains to the courts themselves. They must decide whether he has sufficient legal learning to enable him to apply those rules to varying conditions of fact and to bring the facts and law before the court so that a correct conclusion may be reached. The order of admission is the judgment of the court that he possesses the requisite qualifications, under such restrictions and limitations as may be properly imposed by the legislature for the protection and welfare of the public. The fact that the legislature may prescribe the qualifications of doctors, plumbers, horseshoers and persons following other professions or callings not connected with the judicial system, and may say what shall be evidence of such qualifications, can have no influence on this question. A license to such persons confers no right to put the judicial power in motion or to participate in judicial proceedings." (See discussion subheading, "Independence of departments.")

Encroachments by the executive department. The question of the exercise of legislative powers by the executive department usually arises in connection with statutes conferring such powers upon that department. No cases have arisen in which the executive department has attempted to exercise legislative powers except pursuant to a law passed by the General Assembly. The question then, in so far as the exercise of legislative power is concerned, is one of delegation of legislative power and that question is considered elsewhere in this volume. (See discussion article 4, section 1, subheading, "Delegation of legislative power.")

With reference to the exercise of judicial powers by the executive department, it has been held that the infliction of fines and penalties is a judicial function which cannot be conferred on a person who is in the executive department.[21] (See discussion article 6, section 1, subheading "Exercise of judicial powers.") But this does not mean that the General Assembly may not confer power on the board of pardons to recommend the release and discharge of prisoners in the penal institutions of the state, for the power to recommend is not essentially judicial. In determining whether or not a recommendation shall issue the members of the board of pardons exercise powers similar to those exercised by the judiciary, but the primary purpose

[18] People v. Madison, 280 Ill. 96 (1917); see, also, People v. Wiley, 289 Ill. 173 (1919).

[19] 280 Ill. 96 (1917).

[20] 181 Ill. 73 (1899).

[21] People v. Mallary, 195 Ill. 582 (1902); see, also, Beesman v. City of Peoria, 16 Ill. 484 (1855); Bullock v. Geomble, 45 Ill. 218 (1867); C. C. C. & St. L. Ry. Co. v. People, 212 Ill. 638 (1904).

of the recommendation is that of administering the parole law, a purely executive function.[23]

An act of the General Assembly conferring on the registrar of titles the power to hear and decide controversies with reference to land titles and to issue a certificate which shall be conclusive evidence of ownership, if not contested in the courts within a period of five years, was held void, on the ground that it granted judicial powers to the registrar of titles.[23] Shortly afterward, however, an act conferring substantially similar powers on the registrar of titles was sustained.[24] The workmen's compensation act does not confer judicial powers on the industrial board, although that board is given the power, subject to judicial review, to hear and determine claims of employees against their employers for compensation for personal injuries sustained in the course of employment.[25] And the General Assembly may authorize the removal of county officers and the review of assessments of property for the purposes of taxation by executive or administrative agencies, because the powers thus exercised are not essentially judicial.[26] (See discussion subsequent subheadings, "Appointment of officers" and "Independence of departments.")

Encroachments by the judicial department. The power to determine the boundaries of municipal corporations is purely a legislative power which cannot be conferred on the courts.[27] This, however, does not prevent the General Assembly from giving courts the power to ascertain the existence of certain preliminary facts before the question of organizing a drainage district is submitted to a vote of the people in the territory proposed to be organized as a drainage district.[28] And the General Assembly may designate three judges to sit as a board or commission to fix the boundaries of a sanitary district, for the judges, when sitting as a board or commission, are not acting in their judicial capacity.[29]

While the judiciary will pass on the question whether or not a railroad rate is confiscatory, and thus deprives the railroad owners of their property without due process of law, it has no power to fix such rates, for that is a legislative function.[30] The power to levy taxes is a legislative function which cannot be exercised by the judicial department.[31] And because elections are under legislative control, the courts will not take jurisdiction of election contests unless the power to do so is expressly conferred by statute.[32] (See discussion two following subheadings.)

Appointment of officers. The power to appoint to office is ordinarily regarded as an attribute of the executive or administrative branch of the

[22] George v. People, 167 Ill. 447 (1897); People v. Joyce, 246 Ill. 124 (1910).
[23] People v Chase, 165 Ill. 527 (1897).
[24] People v. Simon, 176 Ill. 165 (1898).
[25] Diebeikis v. Link-Belt Co., 261 Ill. 454 (1914). When this decision was rendered the workmen's compensation act was optional and not compulsory. The decision was based largely on the ground that when the parties elected to be bound by the act, they agreed and consented to the arbitration. Whether or not arbitrators under the present compulsory workmen's compensation act exercise judicial powers has not been decided. In view of the fact, however, that the actions of the arbitrators under the compulsory act are subject to judicial review, it would seem clear that the present workmen's compensation act is not subject to the constitutional objection that the arbitrators exercise judicial powers. See Johnson v. Choate, 284 Ill. 214 (1918).
[26] Donahue v Will County, 100 Ill. 94 (1881); People v Nellis, 249 Ill. 12 (1911); Bureau County v. C. B. & Q. R. R. Co., 44 Ill. 229 (1867); Owners of Lands v. People, 113 Ill. 296 (1885); Maxwell v. People, 189 Ill. 546 (1901); see, also, Rowe v. Bowen, 28 Ill. 116 (1862).
[27] City of Galesburg v. Hawkinson, 75 Ill. 152 (1874); Funkhouser v. Randolph, 287 Ill. 94 (1919).
[28] Blake v. People, 109 Ill. 504 (1884).
[29] People v. Nelson, 133 Ill. 565 (1890).
[30] C. M. & St. P. Ry. Co. v. Public Utilities Commission, 268 Ill. 49 (1915); Public Utilities Commission v. T. R. R. Ass'n., 281 Ill. 181 (1917); see, also, C. B. & Q. R. R. Co. v. Jones, 149 Ill. 361 (1894).
[31] School Directors v. School Directors, 232 Ill. 322 (1908).
[32] Keating v. Stack, 116 Ill. 191 (1886); Lyons v. Becker, 272 Ill. 333 (1916).

government, although the Supreme Court has said that the appointing power does not belong peculiarly to any one department. It has been held that article 3 of the constitution does not prevent the General Assembly from giving the courts the power to appoint park commissioners, drainage commissioners, election commissioners and county mine examining boards.[33] But the courts cannot be given the power to appoint or remove, directly or indirectly, officers of fire departments in cities.[34] It is difficult to perceive a distinction between officers of a fire department on the one hand and park and drainage commissioners on the other. If the appointment by a court of an officer of a fire department would constitute an encroachment on the power of the executive department, it would seem that the appointment by the courts of park and drainage commissioners would also be an exercise of executive power by the judicial department. The Supreme Court, however, distinguishes between the two classes of officers. In City of Aurora v Schoeberlein,[35] the court says: "It has been held competent for the legislature to confer on persons holding judicial offices the power to appoint officers whose selection or appointment cannot be classed as belonging to either of the departments of government; but we do not think there can be any doubt that officers of a fire department belong to the executive branch of the government."

It has also been held that probation officers cannot be appointed by any member of the executive department, but that they must be appointed by the courts or elected by the people. The basis of this holding is that probation officers perform judicial rather than executive or ministerial duties, and that if the power of appointment were vested in the executive department it would constitute an encroachment on the powers of the judiciary.[36] (See discussion last paragraph subheading, "Encroachments by the legislative department.")

Independence of departments. No department can exercise any control over another department. The courts will not issue a writ of *mandamus* against the Governor to compel him to perform any official duty, whether discretionary or ministerial.[37] And the writ will not issue against a board or a commission of which he is a member.[38] The writ will issue, however, if the Governor voluntarily submits to the jurisdiction of the court.[39] The question as to the power of the courts over the Governor seems to have arisen only in cases where it was sought to compel the Governor to perform a duty. Injunction suits have been filed against the Governor and disposed of on their merits without any point being raised as to the power of the courts to restrain an act of the Governor in his official capacity.[40] And it should be noted that the writ of *mandamus* will issue against other executive officers, such as the Secretary of State, State Treasurer and Auditor of Public Accounts.[41] (See discussion article 4, section 26, subheading "Suits against state officers.")

While the judicial department will declare acts of the General Assembly unconstitutional, if in violation of the constitution, it has frequently announced the theory that it will not attempt to tell the General Assembly that a certain law ought to be passed,[42] and that it will not question the

[33] People v. Morgan, 90 Ill. 558 (1878); Owners of Land v. People, 113 Ill. 296 (1885); People v. Hoffman, 116 Ill. 587 (1886); Sherman v. People, 210 Ill. 552 (1904); People v. Evans, 247 Ill. 547 (1910).

[34] City of Aurora v. Schoeberlein, 230 Ill. 496 (1907).

[35] 230 Ill. 496 (1907).

[36] Witter v. Cook County Commissioners, 256 Ill. 616 (1912); see, also, In re Day, 181 Ill. 73 (1899).

[37] People v. Bissell, 19 Ill. 229 (1857).

[38] People v Dunne, 258 Ill. 441 (1913).

[39] People v. Palmer, 64 Ill. 41 (1872); but see People v. Dunne, 258 Ill. 441 (1913).

[40] Hubbard v. Dunne, 276 Ill. 598 (1917); Mitchell v. Lowden, 288 Ill. 327 (1919).

[41] People v. Rose, 167 Ill. 147 (1897); People v. Brady, 262 Ill. 578 (1914).

[42] Correspondence between Governor and Supreme Court, 243 Ill. 9 (1909).

reason or motive of the General Assembly in passing any law.[43] The courts declare that they will give no heed to an argument that a law is unjust and oppressive. If a law does not conflict with the constitution, it must be enforced, for questions of policy and expediency in conection with legislation are to be determined by the General Assembly alone.[44]

In accordance with this theory of the independence of each department, the judiciary will not permit the executive or legislative departments to exercise any control over it. The Supreme Court is under no obligation to draft a primary election bill even though requested by the Governor to do so.[45] (See article 6, section 31.) And the General Assembly cannot tell the courts how to construe a statute.[46]

In People v McCullough[47] the state civil service law was called into question on the ground that it limited the power of the elective executive state officers to appoint the employees in their offices, and was thus an attempt by the General Assembly to exercise control over the executive department. Three judges held that the state civil service law was not an encroachment by the legislative department on the powers of the executive department. Three judges held that it was. The seventh judge held that; in so far as the civil service act interfered with the powers of the executive state officers to appoint employees to assist them in the performance of their constitutional duties, as distinguished from duties imposed upon them by statute, it was an unconstitutional encroachment by the General Assembly upon the powers of these officers. The view of the seventh judge, of course, constituted the decision of the court in that case. In People v Brady[48] the court was called upon to consider the constitutionality of the civil service law as applied to the employees in the office of the clerk of the Supreme Court, who is an officer of the court and elected by the people of the state. Five judges held that the constitution did not prohibit the application of the civil service law to all of the employees in the office of the clerk of the Supreme Court, and made no distinction between constitutional and statutory duties. The apparent effect of this decision is to sustain the power of the General Assembly to provide that the civil service law shall be applicable to all of the employees in the executive and judicial departments regardless of the character of their duties.

Incompatibility of offices. The Attorney General has frequently rendered opinions that this article of the constitution may prevent one person from holding two offices at the same time. Thus, it has been held that a mayor of a city cannot hold the office of county judge or the office of state senator;[49] that a justice of the peace cannot hold the office of alderman in a city council, or member of the board of trustees of a village, or circuit clerk, or town clerk;[50] and that a member of the General Assembly cannot hold the office of probation officer.[51] The basis for these holdings is that in each case the two offices belong to different departments of government, and that to permit one person to hold both offices at the same time would be to authorize that person to exercise the powers of two departments of government contrary to the principle of separation of powers announced by article 3.

[43] People v. Thompson, 155 Ill. 451 (1895); People v. Rose, 203 Ill. 46 (1903).
[44] Board of Supervisors v. State's Attorney, 31 Ill. 68 (1863); People v. Shedd, 241 Ill. 155 (1909); Town of Cicero v. Haas, 244 Ill. 551 (1910).
[45] Correspondence between Governor and Supreme Court, 243 Ill. 9 (1909).
[46] Rockhold v. Canton Benevolent Society, 129 Ill. 440 (1889); but see People v. Bowman, 247 Ill. 276 (1910).
[47] 254 Ill. 9 (1912).
[48] 275 Ill. 261 (1916).
[49] Report Attorney General 1912, p. 1343; 1914, p. 1175.
[50] Report Attorney General 1916, p. 788; 1914, p. 1157; 1915, pp. 782, 789.
[51] Report Attorney General 1916, p. 931.

ARTICLE IV—LEGISLATIVE DEPARTMENT.

Section 1. The legislative power shall be vested in a General Assembly, which shall consist of a Senate and House of Representatives, both to be elected by the people.

In construing this section, two principal questions have presented themselves. These questions are (1) the extent of the legislative power of the General Assembly, and (2) the authority of the General Assembly to delegate the legislative power conferred upon it.

Extent of power of General Assembly. The General Assembly has all powers not denied to it by the Federal or State constitutions.[1] The state constitution is not a grant of power to the General Assembly but is merely a limitation on the power of the General Assembly, and that body is fully authorized to legislate on all subjects unless the constitutions of the United States or the state forbid.[2] Thus the General Assembly, since there is nothing in the constitution which denies it the power to regulate the practice of the courts, may pass a law requiring that an affidavit of merits shall be filed with the defendant's plea in certain classes of suits at law.[3] And for the same reason the General Assembly may provide for the removal, by the county board of supervisors, of county treasurers for misconduct in office,[4] or for the removal, by the Governor, of sheriffs for failure to do all in their power to prevent lynchings,[5] or for the disposal of land owned by a county,[6] or for the levy of a wheel tax by cities.[7] But the General Assembly cannot provide for more than one senatorial apportionment in any ten year period following a Federal census, because the constitution, as construed by the Supreme Court, forbids more than one such apportionment.[8] Nor can the General Assembly make appropriations for the maintenance of the Illinois and Michigan Canal, for the reason that such appropriations, in the opinion of the court, are forbidden by the constitution.[9]

The rule in connection with this matter is easily stated. The difficulty, however, arises in determining whether or not the constitution does in fact limit the power of the General Assembly with respect to certain things. The courts have frequently held that the power of the General Assembly with reference to a certain subject, is limited by the constitution, although the constitutional language contains no express limitation of power—that is, constitutional limitations on legislative power are not always to be found in the express language of the constitution but may arise by implication. For example, the constitution (article 4, section 6) provides that "the General

[1] Harder's Storage Co. v City of Chicago, 235 Ill. 58 (1908); People v Board of Supervisors, 223 Ill. 187 (1906); People v McCormick, 261 Ill. 413 (1914).
[2] Harris v Board of Supervisors, 105 Ill. 445 (1883); People v Hutchinson, 172 Ill. 486 (1898).
[3] Honore v Home National Bank, 80 Ill. 489 (1875).
[4] Donahue v Will County, 100 Ill. 94 (1881).
[5] People v. Nellis, 249 Ill. 12 (1911).
[6] Harris v Board of Supervisors, 105 Ill. 445 (1883).
[7] Harder's Storage Co. v City of Chicago, 235 Ill. 58 (1908).
[8] People v Hutchinson, 172 Ill. 486 (1898).
[9] Burke v Snively, 208 Ill. 328 (1904).

Assembly shall apportion the state every ten years beginning with the year one thousand eight hundred and seventy-one." There is nothing in this language that expressly forbids more than one apportionment in each ten year period following a Federal census. But the Supreme Court has held that this language is a limitation on the power of the General Assembly and that only one apportionment can be made in each ten year period following a Federal census.[10] The whole problem of implied limitations on the power of the General Assembly is a difficult one, and it is not an easy matter to harmonize all of the judicial decisions on the subject.

The constitution (article 5, section 1) provides that the Attorney General "shall perform such duties as may be prescribed by law." It would seem that under this language the General Assembly would have full and complete power to regulate the duties of the Attorney General in any manner that was deemed necessary. But in Fergus v Russel[11] the court held that, even though the Attorney General was not a constitutional officer under the constitution of 1848, the constitution of 1870, in creating the office of Attorney General, endowed that officer with all of the powers and duties of the attorney general known to the common law; and that the General Assembly could not deprive the Attorney General of any of the powers and duties which were exercisable by that officer under the common law. And the same rule has been applied to sheriffs[12], who are county officers created by the constitution (article 10, section 8). It should be pointed out, however, that with respect to the duties of sheriffs the constitution is absolutely silent.

Section 1 of article 7 expressly limits the right of suffrage to males. But it has been held that this section is a limitation of power on the General Assembly only with respect to the officers created by the constitution, and those questions which are required by that instrument to be submitted to the voters; and that the General Assembly may authorize women to vote for all officers created by statute, and on all questions required by statute to be submitted to a vote of the people.[13] On the other hand primary elections, which were unknown when the constitution of 1870 was adopted, and which are pure statutory innovations, are included within the meaning of the word "elections" as used in section 18 of article 2.[14]

Section 6 of article 7 provides that "no person shall be elected or appointed to any office in this state, who is not a citizen of the United States, and who shall not have resided in this state one year next preceding the election or appointment." This section clearly prevents the General Assembly from providing that persons who have resided less than one year in this state shall be eligible to any office. And it would seem that this section does not deprive the General Assembly of the power to provide that no person shall be eligible to a certain office unless he has resided in the state for a period of *five years*. In People v McCormick,[15] however, the court held that the General Assembly, with respect to an office, eligibility to which is not prescribed by other provisions of the constitution, could not

[10] People v Hutchinson, 172 Ill. 486 (1898).

[11] 270 Ill. 304 (1915).

[12] Dahnke v People, 168 Ill. 102 (1897).

[13] Scown v Czarnecki, 264 Ill. 305 (1914); see, also, People v Nelson, 133 Ill. 565 (1890). The case of People v Nellis, 249 Ill. 12 (1911) involves a similar construction of constitutional language. The constitution (article 5, section 12) provides that "the Governor shall have power to remove any officer whom he may appoint . . .". Section 8 of article 10 creates the office of sheriff and provides that the sheriff shall hold office for four years. The first provision might well have been construed as denying to the Governor the power to remove any officer not appointed by him. The second provision could have been construed as denying the right to reduce the sheriff's term of four years. But it was held in the Nellis case that the General Assembly could authorize the Governor, under certain circumstances, to remove sheriffs from office.

[14] People v Board of Election Commissioners, 221 Ill. 9 (1906); Rouse v Thompson, 228 Ill. 522 (1907); People v Strassheim, 240 Ill. 279 (1909); People v Deneen, 247 Ill. 289 (1910).

[15] 261 Ill. 413 (1914).

provide that a person should be ineligible to that office unless he had resided in the state for a certain period, more than one year.

An interesting case in this connection arose under the constitution of 1848. That instrument (article 7, section 6) provided that "the General Assembly shall provide by a general law, for a township organization, under which any county may organize whenever *a majority of the voters of such county at any general election shall so determine*". No provision was made in the constitution with reference to the abandonment of township organization by a county which had adopted the township system. The General Assembly passed a law providing that any county, which had adopted the township system, could abandon it by *a vote of a majority of those participating in a special election.* In holding that this act was void the court said: "Although the constitution makes no express provision for the abandonment of the system, when once adopted according to its provisions, we are not prepared to say that it may not reasonably be construed to allow the legislature to provide for its abrogation; but if they do so, it must be done by pursuing the same course and adopting the same guarantees, to protect the rights of all, which the constitution requires to be observed in the adoption of the system; that is to say, it must be done at a general election, and by a majority of the voters."[16]

These cases may suffice to indicate that qualifications must be made to the statement that the General Assembly has all powers not denied by the constitution. The real question is that as to what powers the Supreme Court will find to be denied by the language of the constitution. In some cases the court has construed constitutional language as containing no denial of power beyond the express language of the constitutional text, as for example, with respect to woman suffrage; in other cases the court has found limitations to exist by implications which are not within the express terms of the constitutional language, as in the cases of Fergus v Russel and People v McCormick.

Delegation of legislative power. The whole of the legislative power of the state is vested in the General Assembly and this power may not be delegated.[17] This, however, does not prevent the General Assembly from delegating to municipalities such legislative power as it may lawfully exercise for the government and regulation of local affairs.[18]

The General Assembly is the law-making power, but it may authorize others to do things which it might properly but cannot understandingly or advantageously do itself. So, the General Assembly may authorize a civil service commission to hold and conduct examinations to determine the fitness and competency of persons seeking employment by the state or its municipalities,[19] or authorize the factory inspector to prescribe the number, location, material, kind, and manner of construction of fire escapes.[20] The General Assembly may also authorize a board or commission to fix and regulate railroad rates.[21]

The General Assembly cannot delegate the power to determine what a law shall be, but may confer authority or discretion as to its execution. Legislative power does not mean that every act of the officers created by the General Assembly must be expressly prescribed by the law-making power. Thus, the General Assembly may grant power to the board of pardons to make rules and regulations for the administration of the parole law;[22] or give to the board of dental examiners the power to make

[16] People v Couchman, 15 Ill. 142 (1853).
[17] People v Board of Election Commissioners, 221 Ill. 9 (1906); Rouse v Thompson, 228 Ill. 522 (1907).
[18] Condon v Village of Forest Park, 278 Ill. 218 (1917); City of Clinton v Wilson, 257 Ill. 580 (1913).
[19] People v Kipley, 171 Ill. 44 (1898).
[20] Arms v Ayer, 192 Ill. 601 (1901).
[21] C. B. & Q. R. R. Co. v Jones, 149 Ill. 361 (1894).
[22] People v Roth, 249 Ill. 532 (1911).

reasonable rules and regulations pertaining to the administration of the dentistry act;[23] or authorize the board of examiners of architects to revoke licenses of architects for gross incompetency or recklessness in the construction of buildings.[24]

While the General Assembly may permit the exercise of some discretion by an administrative agency with reference to the execution of a law, it cannot vest such an agency with an absolute or arbitrary discretion. A law which vests in the discretion of a public officer, unregulated by any rules or conditions, whether it shall be enforced or not, is void, as being an unconstitutional delegation of legislative power. Thus, a law which confers upon a public officer the power, in his discretion, to issue or revoke licenses or permits to engage in a certain business or calling, or to determine, in his discretion, whether or not the law shall be enforced, is unconstitutional, because it delegates legislative power to such officer.[25] (See discussion article 2, section 2, sub-heading "Arbitrary discretion").

And a law must be complete in all its terms and conditions when it leaves the General Assembly The primary election law of 1905 was held void, because it gave the county central committee of each political party the power to determine whether candidates for county offices should be nominated at a primary election, or by delegates chosen at the primary election, and also because it gave the central committee power to determine whether the candidates for county offices should be nominated by a majority or plurality vote.[26] In the opinion of the court, the law was not complete when it left the General Assembly but delegated to the county central committee the power to determine what the law should be.

This section of the constitution does not prevent the General Assembly from passing a law, the ultimate operation of which may, by its own terms, be made to depend upon some contingency, such as the affirmative vote of the electors in a given district,[27] or upon the action of some municipality, commission or other public agency,[28] provided that the law when it leaves the General Assembly is complete. It must be borne in mind, however, that the power to determine the contingency upon which a law shall go into effect cannot be given to a private person or agency, but must be given, if at all, to the people, or a public agency or officer.[29] The Attorney General has held that the General Assembly may pass a law and make its effectiveness depend upon a state wide referendum.[30]

Section 2. An election for members of the General Assembly shall be held on the Tuesday next after the first Monday in November, in the year of our Lord one thousand eight hundred and seventy, and every two years thereafter, in each county, at such places therein as may be provided by law. When vacancies occur in either house, the Governor, or person exercising the powers of Governor, shall issue writs of election to fill such vacancies.

[23] Kettles v People, 221 Ill. 221 (1906).

[24] Klafter v Board of Examiners, 259 Ill. 15 (1913); see, also, Block v People, 239 Ill. 251 (1909) and People v Heise, 257 Ill. 554 (1913).

[25] People v Kane 288 Ill. 235 (1919); Kenyon v Moore, 287 Ill. 233 (1919); Sheldon v Hoyne, 261 Ill. 222 (1914); Noel v People, 187 Ill. 587 (1900); Veto Messages, 1919 p. 9.

[26] People v Board of Election Commissioners, 221 Ill. 9 (1906).

[27] People v McBride, 234 Ill. 146 (1908); Chicago Terminal R. R. Co. v Greer, 223 Ill 104 (1906); People v Reynolds, 10 Ill. 1 (1848); Report Attorney General 1915, p. 464.

[28] Schweiker v Husser, 146 Ill. 399 (1893); Home Insurance Co. v Swigert, 104 Ill. 653 (1882).

[29] Rouse v Thompson, 228 Ill. 522 (1907).

[30] Report Attorney General 1915, p. 464.

The Attorney General in 1916 held that it is a matter of serious doubt whether the Governor has the power to determine that there is a vacancy in the General Assembly because of the lack of qualifications of an incumbent. The basis for this holding is that section 9 of article 4 of the constitution provides that each house shall be the judge of the qualifications of its members. The case presented to the Attorney General was as follows: A senator was elected judge of the municipal court of Chicago, qualified and entered upon his duties. Section 3 of article 4 of the constitution provides that no judge of any court shall be a member of the General Assembly. The question was whether or not the Governor could determine that this senator, having entered upon his duties as a judge of a court, was, under section 3 of article 4, no longer eligible to sit in the Senate, that his office was vacant, and that a special election should be called to fill the vacancy. The Attorney General expressed a serious doubt as to whether or not such action on the part of the Governor would not be in contravention to section 9 of article 4, which gives each house the right to determine the qualifications of its members.[31] (See discussion article 4, section 9.)

Section 3. No person shall be a Senator who shall not have attained the age of twenty-five years, or a Representative who shall not have attained the age of twenty-one years. No person shall be a Senator or a Representative who shall not be a citizen of the United States, and who shall not have been for five years a resident of this State, and for two years next preceding his election a resident within the territory forming the district from which he is elected. No judge or clerk of any court, Secretary of State, Attorney General, State's Attorney, recorder, sheriff, or collector of public revenue, member of either House of Congress, or person holding any lucrative office under the United States or this State, or any foreign government, shall have a seat in the General Assembly: Provided, that appointments in the militia, and the offices of notary public and justice of the peace, shall not be considered lucrative. Nor shall any person holding any office of honor or profit under any foreign government, or under the government of the United States, (except postmasters whose annual compensation does not exceed the sum of three hundred dollars) hold any office of honor or profit under the authority of this State.

Qualifications of members of the General Assembly. The General Assembly has no power to add to the qualifications of the members of that body as fixed by the constitution. For example, the constitution provides that no person shall be a member of the General Assembly who shall not have been for two years next preceding his election, a resident of the territory forming the district from which he is elected. The primary election act of 1905 provided that "in senatorial districts consisting of two counties, no more than two persons of the same political party . . . shall be nominated from any one county . . ." This provision was held void on the ground that, by requiring candidates to come from particular counties of the senatorial district, the provision of the constitution which provides only for residence within the senatorial district was violated.[32]

The question whether or not a member of the General Assembly may hold certain other offices in the state has never been presented to the Su-

[31] Report Attorney General 1916, p. 185.
[32] People v Board of Election Commissioners, 221 Ill. 9 (1906).

preme Court but has been passed on in one appellate court decision and in several opinions of the Attorney General. It has been held that a member of the General Assembly cannot hold the office of judge of the circuit court, or clerk of the municipal court, or mayor of a city, or delegate to a constitutional convention, or member of the board of supervisors.[33] He must resign from one or the other. If a member of the General Assembly shall qualify and enter upon the duties of an office incompatible with his office as a member of the General Assembly, he will be deemed to have resigned his seat in the General Assembly.[34] It has also been held by the Attorney General that a justice of the peace may not, during his term of office, hold a seat in the General Assembly.[35] This holding would seem to be erroneous for the reason that the above section of the constitution expressly provides that the office of justice of the peace shall not be considered a lucrative office such as will bar membership in the General Assembly. In the opinion of the Attorney General an appointment in the militia of the state does not render the appointee ineligible as a member of the General Assembly;[36] and a member of the state central committee, because his office is political and not governmental, may have a seat in the General Assembly.[37] (See discussion article 4, section 2.)

Office under foreign or United States government. A person who holds an office of honor or profit under the government of the United States, is not eligible as a director of the Illinois Institution for the deaf and dumb, a private corporation created by an act of the General Assembly in 1839.[38] Under a decision of the appellate court a postmaster receiving a salary of more than $300 per year, cannot hold the office of member of the board of trustees of a village.[39] In the opinion of the Attorney General a state's attorney cannot hold the office of member of Congress, and neither a postmaster receiving a salary of more than $300 per year, nor a railway mail clerk, may hold the office of town clerk.[40] Acceptance of a commission in the army of the United States by the Lieutenant Governor or a state's attorney would, in the view of the Attorney General, operate to vacate their offices.[41]

Section 4. No person who has been, or hereafter shall be convicted of bribery, perjury or other infamous crime, nor any person who has been or may be a collector or holder of public moneys, who shall not have accounted for and paid over, according to law, all such moneys due from him, shall be eligible to the General Assembly, or to any office of profit or trust in this State.

A person is not a defaulter or guilty of withholding public funds unless he has been adjudged guilty by a court or a competent authority. Until there has been a finding by a court, or other legal authority, that a person is a defaulter he may, if duly elected or appointed and otherwise qualified, hold a public office.[42]

[33] Report Attorney General 1917-18, p. 755; People v Haas, 145 Ill. App. 283 (1908); Report Attorney General 1914, p. 1175; Opinion of Attorney General, March 1, 1919; Report Attorney General 1914, p. 1177.
[34] People v Haas, 145 Ill. App. 283 (1908).
[35] Report Attorney General 1914, p. 1173.
[36] Report Attorney General 1916, p. 285.
[37] Report Attorney General, 1916, p. 933.
[38] Dickson v People, 17 Ill. 191 (1855).
[39] People v Blake, 144 Ill. App. 246 (1908).
[40] Report Attorney General 1915, pp. 785, 786, 788, 791; 1914, p. 1162.
[41] Report Attorney General 1917-18, pp. 757, 800, 811.
[42] Cawley v People, 95 Ill. 249 (1880).

Section 5. Members of the General Assembly, before they enter upon their official duties, shall 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 Illinois, and will faithfully discharge the duties of Senator (or Representative) according to the best of my ability; and that I have not, knowingly or intentionally, paid or contributed anything, or made any promise in the nature of a bribe, to directly or indirectly influence any vote at the election at which I was chosen to fill the said office, and have not accepted, nor will I accept or receive directly or indirectly, any money or other valuable thing, from any corporation, company or person, for any vote or influence I may give or withhold on any bill, resolution or appropriation, or for any other official act." This oath shall be administered by a judge of the supreme or circuit court in the hall of the house to which the member is elected, and the Secretary of State shall record and file the oath subscribed by each member. Any member who shall refuse to take the oath herein prescribed shall forfeit his office, and every member who shall be convicted of having sworn falsely to or of violating, his said oath, shall forfeit his office and be disqualified thereafter from holding any office of profit or trust in this State.

(See article 5, section 25.)

Section 6. The General Assembly shall apportion the State every ten years, beginning with the year one thousand eight hundred and seventy-one, by dividing the population of the State, as ascertained by the federal census, by the number fifty-one, and the quotient shall be the ratio of representation in the Senate. The State shall be divided into fifty-one senatorial districts, each of which shall elect one senator, whose term of office shall be four years. The Senators elected in the year of our Lord one thousand eight hundred and seventy-two, in districts bearing odd numbers, shall vacate their offices at the end of two years, and those elected in districts bearing even numbers, at the end of four years; and vacancies occurring by the expiration of term shall be filled by the election of senators for the full term. Senatorial districts shall be formed of contiguous and compact territory, bounded by county lines, and contain as nearly as practicable an equal number of inhabitants; but no district shall contain less than four-fifths of the senatorial ratio. Counties containing not less than the ratio and three-fourths, may be divided into separate districts, and shall be entitled to two Senators, and to one additional senator for each number of inhabitants equal to the ratio, contained by such counties in excess of twice the number of said ratio.

The question whether the constitutional requirements with reference to compactness of territory and equality of population in senatorial districts have been applied at all, is one which the courts may finally determine. If it is clear that an apportionment act of the General Assembly does not take into consideration those requirements, the act will be held void. On the other hand, if it is apparent that those requirements were taken into consideration, the act will be held valid even though the nearest practicable approximation to perfect compactness of territory and equality of population has not been attained. Accordingly, an act which observed the senatorial ratio required by the constitution, but which provided for some senatorial districts having a population of 25,000 more than others, was sustained because the court was of the opinion that the requirements of compactness of territory and equality of population had not been completely ignored.[43] (See discussion article 6, section 5, sub-heading, "Changes in Supreme Court districts").

The General Assembly can make but one apportionment in each ten year period following a Federal census, but more than one apportionment may be made in a period of ten years. For example there was a Federal census in 1890. In 1893, the General Assembly passed an apportionment act. In 1898, the General Assembly passed another apportionment act. This act was held void because, in the opinion of the Supreme Court, the General Assembly, under this section, can apportion but once in each ten year period after a census, and having apportioned the state in 1893, it could not do so again in 1898.[44] In 1900, there was another census, and in 1901 the General Assembly passed an apportionment act. It was contended that the act of 1901 was void, because it was passed less than ten years after the adoption of the act of 1893, but the act of 1901 was upheld.[45]

There has been no apportionment since 1901, although the constitution expressly provides that the state shall be apportioned every ten years. (See Constitutional Convention Bulletin No. 8).

Sections 7 and 8. The House of Representatives shall consist of three times the number of the members of the Senate, and the term of office shall be two years. Three representatives shall be elected in each Senatorial district at the general election in the year of our Lord one thousand eight hundred and seventy-two, and every two years thereafter. In all elections of representatives aforesaid, each qualified voter may cast as many votes for one candidate as there are representatives to be elected, or may distribute the same, or equal parts thereof, among the candidates, as he shall see fit; and the candidates highest in votes shall be declared elected.[46]

[43] People v Thompson, 155 Ill. 451, (1895); see, also, People v Carlock 198 Ill. 150 (1902).

[44] People v Hutchinson, 172 Ill. 486 (1898).

[45] People v Carlock, 198 Ill. 150 (1902).

[46] Under the terms of section 12 of the schedule, original sections 7 and 8 of this article were to be eliminated if the section relating to minority representation, which was submitted to a separate vote, was adopted by the voters. The separate section was adopted and accordingly replaced original sections 7 and 8, which were as follows:

REPRESENTATIVE.

"Section 7. The population of the State, as ascertained by the Federal census, shall be divided by the number one hundred and fifty-three, and the quotient shall be the ratio of representation in the House of Representatives. Every county or district shall be entitled to one representative, when its population is three-fifths of the ratio; if any county has less than three-fifths of the ratio, it shall be attached to the adjoining county having the least population, to which no other county has for the same reason been attached, and the two shall constitute a separate district. Every county or district having a population

In general. The provisions of the constitution relating to minority representation give the voter the right to cast three votes for one candidate for representative in the General Assembly, one vote for each of three candidates, one and one-half votes for each of two candidates, or one vote for one candidate and two votes for another.[47]

In People v Nelson,[48] it was contended that since the constitution expressly provided for cumulative voting in only two instances, (article 4, sections 7, 8; article 11, section 3) this was, in effect, a denial of power to the General Assembly to provide for cumulative voting in any other kind of an election. The court, however, refused to uphold the contention, and sustained an act of the General Assembly providing for cumulative voting in elections for drainage trustees.

Primary elections. The principal difficulty with reference to the provisions relating to minority representation has arisen in connection with the primary election laws. The primary election law of 1906 provided for the nomination in the primary election of only one candidate for representative in the General Assembly by each political party. If a political party desired to place more than one candidate in the field, the other candidate or candidates could be nominated only by convention. The act of 1906 was held void on the ground that it was in conflict with sections 7 and 8 of article 4. "The right to nominate candidates for representative in the General Assembly is as important a right to the voter as the right to vote for said candidates after they are nominated and is of the same character, and if the constitution, as it does, confers upon the voter the right to vote for one, two or three candidates for representative in the General Assembly, any primary election law, to be valid, which provides for the nomination of candidates for representative in the General Assembly, must give the voter the right to participate in the selection of all candidates of his party for representative in the General Assembly which are to be nominated by his party."[49]

The primary election act of 1908 authorized the senatorial committee of each political party to determine the number of candidates of its party to be nominated in its district for representative in the General Assembly and provided that the voter could cast one vote for each of as many candidates as were to be nominated in accordance with the determination of the senatorial committee. If the committee determined upon one candidate, the voter could vote for only one candidate. If the committee decided to have two candidates, the voter could cast one vote each for two candidates. This act was held void because it deprived the voter of his right to cumulate his votes.[50]

not less than the ratio and three-fifths, shall be entitled to two representatives, and for each additional number of inhabitants, equal to the ratio, one representative. Counties having over two hundred thousand inhabitants may be divided into districts, each entitled to not less than three nor more than five representatives. After the year one thousand eight hundred and eighty, the whole population shall be divided by the number one hundred and fifty-nine, and the quotient shall be the ratio of representation in the House of Representatives for the ensuing ten years, and six additional representatives shall be added for every five hundred thousand increase of population at each decennial census thereafter, and be apportioned in the same manner as above provided.

"Section 8. When a county or district shall have a fraction of population above what shall entitle it to one representative, or more, according to the provisions of the foregoing section, amounting to one-fifth of the ratio, it shall be entitled to one additional representative in the fifth term of each decennial period; when such fraction is two-fifths of the ratio, it shall be entitled to an additional representative in the fourth and fifth terms of said periods; when the fraction is three-fifths of the ratio, it shall be entitled to an additional representative in the first, second and third terms, respectively; when the fraction is four-fifths of the ratio, it shall be entitled to an additional representative in the first, second, third and fourth terms, respectively."

[47] People v Taylor, 257 Ill. 192 (1913).
[48] 133 Ill. 565 (1890).
[49] Rouse v Thompson, 228 Ill. 522 (1907).
[50] People v Strassheim, 240 Ill. 279 (1909).

In People v Deneen,[51] the act of 1910 relating to the nomination of members of the General Assembly was under consideration. Section 11 of that act is as follows: "At least thirty-three (33) days prior to the date of the April primary the senatorial committee of each political party shall meet and by resolution fix and determine the number of candidates to be nominated by their party at the primary for representative in the General Assembly. A copy of said resolution, duly certified by the chairman and attested by the secretary of the committee, shall, within five days thereafter, be filed in the office of the Secretary of State, and in the office of the county clerk of each county in the senatorial district. In all primaries for the nomination of candidates for representatives in the General Assembly each qualified primary elector may cast three votes for one candidate, or may distribute the same or equal parts thereof among two candidates or three candidates, as he shall see fit. And the said candidate or candidates for nomination highest in votes shall be declared nominated for the office to be filled." The democratic senatorial committee of a certain senatorial district decided that the democratic party should have but one candidate for representative in the General Assembly from that district. In the primary election held subsequent to this action by the democratic senatorial committee, one Espey received the third highest number of democratic votes. The state canvassing board refused to certify his name as a democratic candidate from that district. He, thereupon, filed in the Supreme Court an original petition for a writ of *mandamus* to compel the board to certify him as one of the democratic nominees whose name should be placed on the official ballot at the next election. By the decision of a divided court the writ was refused.

Three judges held that section 11 was unconstitutional because it was an attempt by the General Assembly to confer upon a senatorial committee the power to fix and determine the number of candidates for representatives to be nominated by a political party in a senatorial district, thus depriving the voters of their constitutional right to cast three votes for one candidate or to distribute their votes among two or three candidates. These judges were also of the opinion that, if section 11 were construed as not giving power to the senatorial committee to determine the number of candidates of the party, but merely empowering the committee to make a declaration of party policy which would not be binding upon the voters, it was void, because it would nullify the constitutional guaranty of minority representation. They held that, if the electors were at liberty to nominate a greater number of candidates than had been determined upon by the committee, and if in all districts where three candidates were voted for by the qualified electors of each political party, the names of three candidates were required to be placed on the official ballot, the practical effect would be that each political party in each senatorial district would have three candidates in the field and "if each party nominated three candidates, it would frequently, if not generally, happen that the dominant party in a senatorial district would elect three candidates and the minority party would be without representation." Being of the opinion that section 11 was unconstitutional, these judges held that the writ of *mandamus* should not issue.

A fourth judge concurred in the view that the writ of *mandamus* should be denied, but his opinion was based on an entirely different ground. He agreed that if the power of the senatorial committee under section 11 was that of merely making a declaration of party policy, which was not binding on the voters, then the section was unconstitutional, because it would nullify the constitutional guaranty of minority representation. But he was of the opinion that there was no constitutional limitation on the power of the General Assembly to empower the senatorial committee to determine the number of candidates of its party in its senatorial district. He held that a political party has the right to determine the number of its candidates. "The right to cumulate his vote on the question of the election of repre-

[51] 247 Ill. 289 (1910).

sentatives in the General Assembly, is a right secured to the individual voter, while the right of minority representation is a right secured to political parties . . . If the party decides to nominate one candidate for representative in the General Assembly and each member of such party has the right to give one candidate three votes, or if his party decides to nominate two or three candidates and he has the right to divide his three votes between such candidates . . . he has not been deprived of any of his constitutional rights . . ."

The other three judges held that section 11 was constitutional, but that the power of the senatorial committee was only that of declaring a party policy. It was their view that if the committee decided on one or two candidates, but the voters voted for three or more candidates, then the names of the three candidates receiving the highest number of votes must go on the official ballots for use in the election, and that the effect of this would not be to nullify the plan for minority representation. These judges held that the writ of *mandamus* should issue.

The different views of the judges makes it difficult to determine the full purport of the decision in People v Deneen. The court was definitely of the opinion that the General Assembly has no power to pass a law, the effect of which will be to nullify the constitutional provisions concerning minority representation. This seems to be the only point on which at least four judges agreed. The effect of the decision, however, has been to sustain the act of 1910. That act is still in force and nominations of candidates for representatives in the General Assembly are being made in accordance with the views of the fourth judge.

(For a discussion of the history and working out of the provisions relating to minority representation, see Constitutional Conventions in Illinois, Second Edition p. 26; Constitutional Convention Bulletin No. 8).

Section 9. The sessions of the General Assembly shall commence at twelve o'clock noon, on the Wednesday next after the first Monday in January, in the year next ensuing the election of members thereof, and at no other time, unless as provided by this Constitution. A majority of the members elected to each house shall constitute a quorum. Each house shall determine the rules of its proceedings, and be the judge of the election, returns and qualifications of its members, shall choose its own officers; and the Senate shall choose a temporary President to preside when the Lieutenant Governor shall not attend as President or shall act as governor. The Secretary of State shall call the House of Representatives to order at the opening of each new Assembly, and preside over it until a temporary presiding officer thereof shall have been chosen and shall have taken his seat. No member shall be expelled by either house, except by a vote of two-thirds of all the members elected to that house, and no member be twice expelled for the same offense. Each house may punish by imprisonment any person, not a member, who shall be guilty of disrespect to the house by disorderly or contemptuous behavior in its presence. But no such imprisonment shall extend beyond twenty-four hours at one time, unless the person shall persist in such disorderly or contemptuous behavior.

The Supreme Court has never been called upon to construe this section of the constitution. It has been interpreted, however, by the appellate court

and the Attorney General. Each house of the General Assembly is the sole judge of the qualifications of its members.[52] The right to a seat in either house of the General Assembly can be questioned only by the members of that house.[53] A majority of a quorum in either house may seat or unseat members as it sees fit, and its action is not subject to judicial review.[54] This, however, has been held not to deprive a court of the power to determine whether or not a member of the General Assembly has resigned. Thus in People v Haas,[55] a senator was elected clerk of the municipal court of the city of Chicago and entered upon his duties as clerk and the question presented was whether or not a writ of *mandamus* should issue against the county clerk of Cook County to compel that official to notify the Governor that there was a vacancy in the senate. The writ was awarded, the appellate court holding that, while the senate was the sole judge of the qualifications of its members, the courts could, nevertheless, determine whether or not a member of the General Assembly had resigned, and in view of the fact that section 3 of article 4 provides that no clerk of a court shall have a seat in the General Assembly, it was clear that the senator in accepting the office of clerk of the municipal court, resigned his seat in the senate. On the other hand, however, the Attorney General, in 1916, ruled that it was a matter of serious doubt whether or not the Governor had the power to determine that the seat of a senator, who was elected and qualified as a judge of the municipal court, was vacant, and that a special election to fill the vacancy should be called.[56] (See discussion article 4 section 2 and section 3, subheading, "Qualifications of members of the General Assembly.")

In 1915 the Attorney General rendered an opinion holding that the speaker of the house of representatives must be a member of that body.[57]

Section 10. The doors of each house and of committees of the whole shall be kept open, except in such cases as, in the opinion of the house, require secrecy. Neither house shall, without the consent of the other, adjourn for more than two days, or to any other place than that in which the two houses shall be sitting. Each house shall keep a journal of its proceedings, which shall be published. In the Senate at the request of two members, and in the House at the request of five members, the yeas and nays shall be taken on any question, and entered upon the journal. Any two members of either house shall have liberty to dissent from and protest, in respectful language against any act or resolution which they think injurious to the public or to any individual, and have the reasons of their dissent entered upon the journals.

Adjournment. Neither house of the General Assembly can adjourn for more than two days without the consent of the other, and in the event of disagreement between the two houses as to the time of adjournment, the Governor, by virtue of the power conferred upon him by section 9 of article 5, "may, upon the same being certified to him by the house first moving the adjournment, adjourn the General Assembly to such time as he thinks proper, not beyond the first day of the next regular session." The Attorney

[52] Report Attorney General 1916, pp. 135, 178, 287; People v Haas, 145 Ill. App. 283 (1908).
[53] Report Attorney General 1912, pp. 662, 1356.
[54] Report Attorney General 1915, p. 455.
[55] 145 Ill. App. 283 (1908).
[56] Report Attorney General 1916, p. 135.
[57] Report Attorney General 1915, p. 144.

General has held that after the existence of a disagreement has been properly certified to the Governor, the latter is then the sole judge as to whether or not a disagreement exists, and his decision is not subject to review.[58]

In the case of People v Hatch,[59] which arose under the constitution of 1848, it appeared that there were no entries on the journals of either house for a period of ten days, and the journals failed to show any resolution authorizing an adjournment for that period of time. The court held that in view of the provision of the constitution of 1848 forbidding adjournment by one house for more than two days without the consent of the other, it must be presumed that the General Assembly had adjourned *sine die* and could not again convene unless called into special session by the Governor.

Journals. The case of People v. Hatch, above referred to, holds that each house must keep a journal, for the reason that a legislative proceeding cannot be established without a journal. If there is no journal, there is no legislative body. The Hatch case arose under the constitution of 1848, but the provisions of the constitutions of 1848 and 1870 on this subject are similar.

The constitution does not require that the officers of the General Assembly shall sign the journal or that the copying clerk shall certify to the accuracy of his work.[60]

The journals must show that every constitutional requirement in connection with the passage of a bill, has been complied with; otherwise, the bill will be void. In some instances, however, compliance with a constitutional requirement may be inferred from a recital in the journal. (For a more complete statement with reference to this question, see discussion article 4, section 13, subheading, "Necessity for journal entries")

Section 11. The style of the laws of this State shall be; "Be it enacted by the People of the State of Illinois, represented in the General Assembly."

A joint resolution cannot have the force of a law, because it does not have an enacting clause. Thus, a joint resolution which directed the commissioners of state contracts to purchase a certain number of books for distribution among the justices of the peace and township offificers of the state, was held inoperative and void.[61] But an act consisting of several sections need not contain an enacting clause for each section. An enacting clause inserted just before the first section of an act, is no more a part of the first section than it is a part of the other sections.[62]

This section of the constitution was construed strictly by the Attorney General in 1910. In his judgment, a bill is unconstitutional if it contains an enacting clause which varies in any degree from the form specified in the constitution. Thus he held unconstitutional a bill with the following enacting clause: "Be it enacted by the People of the State of Illinois, represented in the *Forty-sixth* General Assembly".[63] (See discussion article 6, section 33.)

Section 12. Bills may originate in either house but may be altered, amended or rejected by the other; and on the final passage

[58] Report Attorney General 1912, p. 73.
[59] 33 Ill. 9 (1863).
[60] M ler v Goodwin, 70 Ill. 659 (1873).
[61] Burritt v Commissioners of State Contracts, 120 Ill. 322 (1887); see Wenner v Thornton, 98 Ill. 156 (1881).
[62] Pierce v Vittum, 193 Ill. 192 (1901).
[63] Report Attorney General 1910, p. 77.

of all bills, the vote shall be by yeas and nays, upon each bill separately, and shall be entered upon the journal; and no bill shall become a law without the concurrence of a majority of the members elected to each house.

Yeas and nays. While the constitution requires that the yeas and nays shall be entered on the journal on the final passage of a bill, the fact that the journal fails to state that there were no negative votes, will not render the bill unconstitutional, if the journal shows that it received a constitutional majority of votes. Under such circumstances, it will be presumed that there were no negative votes.[64]

(For a more complete statement with reference to the necessity for journal entries showing a compliance with constitutional requirements in connection with the passage of bills, see discussion article 4, section 13, subheading "Necessity for journal entries.")

Separate vote on each bill. This section does not require a separate vote on each section or provision of a bill. Thus, the bill providing for a system of hard roads which authorized an expenditure of several millions of dollars, and provided for a tax to defray the expenditures so authorized, is not unconstitutional because only one yea and nay vote was had thereon.[65]

Concurrence by a majority elected. If a bill which is passed by both houses, contains an amendment or a provision not concurred in by one house, it is unconstitutional. A bill cannot become a law without the concurrence of a majority of the members elected to each house.[66] However, it seems that this rule does not apply to titles of bills. On the theory that the title of a bill is not a part thereof but a mere convenience for the purposes of legislation, bills having titles which were not concurred in by a majority of the members elected to both houses, have been sustained.[67] For example, the house of representatives passed a bill entitled, "An Act to prevent the keeping of gaming houses." In the senate, the words, "and to prevent gaming," were added to the title. The house of representatives did not concur in the amendment to the title, but the bill was, nevertheless, sustained.[68]

What is a concurrence? It has been held that a concurrence may be had even though one house does not vote expressly on the question of passing the bill. In People v Edmands,[69] the facts were as follows: The house of representatives passed a bill. The senate adopted certain amendments to the bill and then passed the bill as amended. The house of representatives refused to concur in the senate amendments. The senate then receded from its amendments by a yea and nay vote of 30 to 2. The vote on the motion to recede was entered on the journals. Nothing more was done by either house with reference to the bill, and the bill, as it passed the house of representatives, was acted upon favorably by the Governor. The question presented was whether or not the bill as it passed the house of representatives was a valid law. The court held that it was valid on the ground that when the senate receded from the amendments by a yea and nay vote of more than a majority of the number of senators elected, the vote being entered on the journals, it evidenced an intention on the part of the sen-

[64] People v Bowman, 247 Ill. 276 (1910).
[65] Mitchell v. Lowden, 288 Ill. 327 (1919).
[66] Veto Messages, 1911, p. 16.
[67] Larrison v P. A. and D. R. R. Co., 77 Ill. 11 (1875); Johnson v People, 83 Ill. 431 (1876).
[68] Plummer v People, 74 Ill. 361 (1874).
[69] 252 Ill. 108 (1911).

ate to pass the bill in the form that it passed the house of representatives, and that the vote on the motion to recede was, in effect, a vote by the senate on the final passage of the bill as it passed the house of representatives. Three judges, however, filed a vigorous dissenting opinion, on the ground, that there never was a vote on final passage in the senate and that, therefore, the bill as it passed the house of representatives never became a law. A similar situation arose in the case of People v DeWolf,[70] and the court reached an opposite conclusion, but in that case the motion to recede from amendments was adopted by the votes of less than a constitutional majority.

Section 13. Every bill shall be read at large on three different days, in each house; and the bill and all amendments thereto shall be printed before the vote is taken on its final passage; and every bill having passed both houses, shall be signed by the Speakers thereof. No act hereafter passed shall embrace more than one subject, and that shall be expressed in the title. But if any subject shall be embraced in an act which shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be so expressed; and no law shall be revived or amended by reference to its title only, but the law revived, or the section amended, shall be inserted at length in the new act. And no act of the General Assembly shall take effect until the first day of July next after its passage, unless, in case of emergency, (which emergency shall be expressed in the preamble or body of the act), the General Assembly shall, by a vote of two-thirds of all the members elected to each house, otherwise direct.

Necessity for journal entries. In some jurisdictions the journals cannot be resorted to for the purpose of showing that a bill duly signed by the presiding officers of the two houses of the legislative body was not passed in full compliance with the requirements of the constitution. The basis of this rule is that when a bill is signed by the presiding officers, they certify that all constitutional requirements have been complied with, and under such circumstances, compliance is conclusively presumed. The rule is well settled in Illinois, however, that the signing of a bill by the presiding officers of the two houses of the General Assembly does not raise a conclusive presumption as to its proper passage. The journals of the two houses may be consulted to ascertain whether or not constitutional requirements have been complied with in connection with the passage of bills, such as the requirements with reference to reading, printing, and yea and nay vote to be entered on the journal.[71] It is also well settled that the "parliamentary history of an act or bill in the legislative journals is the only evidence that is recognized by the courts in this state, and the journals cannot be aided or contradicted by other documents or evidence of any kind";[72] and that there is no necessity, in order to make the journals competent evidence, that they be signed by the presiding officers, or that the copying clerk certify as to the accuracy of his work.[73]

In the early case of Spangler v Jacoby,[74] which arose under the constitution of 1848, the court held that every constitutional requirement in

[70] 62 Ill. 253 (1871).
[71] Spangler v Jacoby, 14 Ill. 297 (1853); Nieberger v McCullough, 253 Ill. 312 (1912).
[72] People v Brady, 262 Ill. 578 (1914).
[73] Miller v Goodwin, 70 Ill. 659 (1873).
[74] 14 Ill. 297 (1853).

connection with the passage of a bill, must affirmatively appear from the journals to have been complied with, and in the event of the failure of the journals to show affirmatively a compliance with such requirements, it would be conclusively presumed that the bill was not passed in conformity with the constitution and was, therefore, unconstitutional. Some steps relating to the passage of bills are expressly required by the constitution to be entered on the journals. For example, the present constitution expressly provides that the yea and nay vote on final passage shall be entered on the journals (article 4, section 12), but while the constitution requires that bills shall be read on three different days and shall be printed, together with all amendments, before final passage (article 4, section 13), it does not expressly require that the journals show the reading and printing of bills. The Spangler case made no distinction between these two classes of requirements. Seven years later, however, the court expressly held that only those acts in connection with the passage of bills which are by the constitution expressly required to be entered on the journals, such as the yeas and nays, need be entered on the journals, and that all other requirements will be presumed to have been complied with unless it appears affirmatively from the journals that there was no compliance with respect to them.[75] This later decision, however, was abandoned in the case of Neiberger v McCullough,[76] where the court held that unless it appears from the journals affirmatively that every constitutional requirement in connection with the passage of a bill, whether expressly required by the constitution to be entered on the journals or not, has been complied with, a conclusive presumption would arise that the bill was not passed in conformity with the constitution.

In 1915, the decision in the Neiberger case was modified. In Dragovich v Iroquois Iron Company,[77] the court held that "where the constitution does not expressly require a fact to be recorded on the journals, and it can be inferred from a recital in the journals that such fact existed or such step was taken, then the presumption will be indulged that such fact did exist or such step was taken," and this decision has been followed in the later cases.[78] In the Dragovich case a bill was amended in the house of representatives and the journal contained a statement that the amendments "were ordered printed and engrossed." This was the only entry in the journal concerning the printing of the amendments. The court held that it could be inferred from the entry "were ordered printed and engrossed", that this step had been taken. A somewhat similar situation is presented by the case of People v Brady.[79] There a bill was amended in the senate. The journal contained the following entry: "The bill having been printed was taken up and read at large a third time." The court held that the word "bill" as used in the journal entry, included amendments to the bill and that, therefore, the journal did show that the amendments were printed before final passage. However, if the journals show affirmatively that a certain constitutional requirement has not been complied with then the bill must be held not to have been passed in conformity with the constitution.[80]

The effect of these decisions is that (1) the journals are competent evidence to show that a bill was not passed in conformity with the constitution; (2) that no other evidence is admissible for that purpose; (3) that a step expressly required by the constitution to be entered on the journals must affirmatively appear from the journals to have been taken; and (4) that a step not expressly required by the constitution to be entered on the journals, will be presumed to have been taken, if there is a recital in the jour-

[75] Board of Supervisors v People, 25 Ill. 181 (1860).

[76] 253 Ill. 312 (1912); see, also, McAuliffe v O'Connell, 258 Ill. 186 (1913).

[77] 269 Ill. 478 (1915); see, also, Chicago Telephone Co. v Northwestern Telephone Co., 199 Ill. 324 (1902).

[78] People v LaSalle Street Bank, 269 Ill. 518 (1915); People v Board of Dental Examiners, 278 Ill. 144 (1917).

[79] 262 Ill. 578 (1914).

[80] People v Board of Dental Examiners, 278 Ill. 144 (1917).

nals from which it may be inferred that the step was taken, and if the journals do not expressly show that the step was not taken.

The case of People v Bowman[81] raises some doubt as to the correctness of rule (3). The constitution expressly requires the yea and nay vote on final passage to be entered on the journals (article 4, section 12). In that case a bill on final passage in the senate received 34 favorable votes, more than a constitutional majority. The journal failed to record any negative votes and failed to state that there were no negative votes. The court held, however, that the silence of the journal in that respect was evidence that there were no negative votes, and that the "effect of the record in the journal is that the bill was passed by a vote of thirty-four yeas and no nays."

Reading. Bills must be read on three different days in each house, and a failure to do so will render the bill unconstitutional.[82] This does not mean, however, that amendments to bills must be read on three different days in each house.[83]. In People v LaSalle Street Bank,[84] however, the court, while holding that amendments to bills need not be read on three different days, intimates that if the amendments are not germane to the general subject of the bill as originally introduced, it might be necessary to read the bill as amended on three different days.

(For statement as to the necessity for journal entries showing compliance with constitutional requirement concerning reading, see discussion preceding sub-heading.)

Printing. Bills and amendments thereto must be printed before the vote is taken on final passage. Failure to comply with the constitution in this respect prevents the constitutional passage of a bill.[85] The rule with reference to printing applies to amendments contained in conference committee reports.[86] But the failure to print a conference committee amendment does not necessarily invalidate the whole bill. Unless the unprinted amendment and the remainder of the bill "are so connected and dependent upon each other that it cannot be presumed that the legislature would have passed the one without the other," only the amendment will be held void.[87]

This provision of the constitution, however, does not require the reprinting of a bill and amendments when it is returned to the house in which it originated for concurrence in amendments adopted by the other house. The constitutional provision is complied with when the bill and amendments thereto are printed before final passage in each house. If a bill which was properly printed in the senate before final passage in that branch of the General Assembly, is amended by the house of representatives and properly printed before final passage in the house of representatives, there is no need for reprinting the bill and the house amendments in the senate when the bill is returned to the senate for concurrence in the house amendments.[88]

(For statement as to the necessity for journal entries showing compliance with constitutional requirement concerning printing, see discussion preceding subheading, "Necessity for journal entries").

Signatures of speakers. The provision of the constitution requiring the signatures of the presiding officers is mandatory and not directory. Thus, a bill which is not signed by the Lieutenant Governor, the presiding officer or speaker of the senate, cannot become a law.[89]

[81] 247 Ill. 276 (1910).
[82] I. C. R. R. Co. v People, 143 Ill. 434 (1892); People v Board of Dental Examiners, 278 Ill. 144 (1917): Veto Message No. 12 (1899).
[83] People v Wallace, 70 Ill. 680 (1873); People v Brady, 262 Ill. 578 (1914).
[84] 269 Ill. 518 (1915).
[85] Nieberger v McCullough, 253 Ill. 312 (1912); McAuliffe v O'Connell 258 Ill. 186 (1913); Richardson v Sears, Roebuck & Co. 271 Ill. 325 (1916).
[86] Nieberger v McCullough, 253 Ill. 312 (1912).
[87] People v LaSalle Street Bank, 269 Ill. 518 (1915).
[88] People v McWeeney, 259 Ill. 161 (1913).
[89] Lynch v Hutchinson, 219 Ill. 193 (1906).

Titles. That part of section 13 of article 4 which will be considered in this sub-heading, is as follows: "No act hereafter passed shall embrace more than one subject, and that shall be expressed in the title. But if any subject shall be embraced in an act which shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be so expressed." This constitutional limitation first made its appearance in the constitution of 1848 (article 3, section 23) but its application in the earlier constitution was limited to private and local laws. The purpose of the provision in the second constitution was to restrict the passage of private, local and special legislation. (See Constitutional Conventions in Illinois, Second Edition, pp. 14,18.) The same general rule of construction has been followed with reference to the two constitutional limitations, and for that reason, in the subsequent discussion, no mention will be made of the cases dealing with the provision of the constitution of 1848.

In General.

In most cases in which the validity of a statute is attacked on the ground that it violates this provision of the constitution, the basis of attack is that the body of the act contains provisions not covered by the title; that is, that the act contains a subject not expressed in the title. On this point the Supreme Court has held that an act does not contain a subject not expressed in the title " if all the provisions relate to the one subject indicated in the title and are parts of it, or incident to it, or reasonably connected with it, or in some reasonable sense auxiliary to the object in view".[90] An act does not contain two subjects when all of its provisions are germane to its title. "Any matter or thing which may reasonably be said to be subservient to the general subject or purpose will be germane and may be properly included in the law."[91] "Every act must embrace but a single subject, but it may include other provisions not foreign to the general subject, which legitimately tend to accomplish the legislative purpose as to that subject. An act may contain many provisions and details for the carrying out of its purpose. The object of this provision of the constitution is to prevent the joining in one act of incongruous or unrelated matters. It was not its design to embarrass legislation by making laws unnecessarily restrictive in their scope and operation or to require that its title should set forth a detailed statement or index of the contents of the act." [92]

A provision authorizing a tax levy in an act entitled "An Act to revise the law in relation to firemen's pension funds," is germane to the title and is a subject expressed in the title.[93] Provisions prescribing the methods of assessing property and collecting taxes and fixing the tax rate are all included in the title, "An Act in regard to the assessment and collection of municipal taxes."[94] Provisions establishing a civil service system for counties of a certain class are germane to an act, the title of which is "An Act to revise the law in relation to counties."[95] The Criminal Code, "An Act to revise the law in relation to criminal jurisprudence," authorized a person losing money by gambling, or some third person, to sue for its recovery. It was contended that this provision of the Criminal Code related to civil suits and that the provision was not within the title, but the court held that it was a subject expressed in the title. The provision, in effect, prescribed a punishment for the gambler and, therefore, was within

[90] Ritchie v People, 155 Ill. 98 (1895); see, also, Hudnall v Ham, 172 Ill. 76 (1898); Muel v People, 198 Ill. 258 (1902); People v Huff, 249 Ill. 164 (1911); Mitchell v Lowden, 288 Ill. 327 (1919).

[91] People v Sargent, 254 Ill. 514 (1912); see, also, People v Kirk, 162 Ill. 138 (1896); Boehm v Hertz, 182 Ill. 154 (1899); People v McBride, 234 Ill. 146 (1908); People v Price, 257 Ill. 587 (1913); People v Stokes, 281 Ill. 159 (1917); People v Ankrum, 286 Ill. 319 (1919).

[92] American Badge Co. v Lena Park Improvement Association, 246 Ill. 589 (1910).

[93] People v Huey, 277 Ill. 561 (1917).

[94] Manchester v People, 178 Ill. 285 (1899).

[95] Morrison v People, 196 Ill. 454 (1902).

the meaning of the term "criminal jurisprudence."[96] And "An Act to provide for holding primary elections by political parties" may contain provisions for the election of managing committees for political parties, because the election of such committees is germane to the general subject expressed in the title.[97]

An Act entitled "An Act to provide for the holding of primary elections of delegates to nominating conventions" cannot contain a section providing for primary elections for candidates for office. Such a provision would constitute a subject not expressed in the title.[98] Provisions in an act, the title of which is "An Act providing for the payment by the County of Cook of further compensation to the State's Attorney of said county," depriving the State's Attorney of fees allowed him under another act, are unconstitutional, as being a subject not expressed in the title.[99] And a city cannot be given power to fix gas rates in an act bearing the title, "An Act in relation to gas companies" for that would be a subject not expressed in the title.[1]

The title of an act may be so restricted that it will not include a subject that might well have been included in a broader or more general title. Thus, an act entitled, "An Act to provide for the holding of primary elections of delegates to nominating conventions," was held not broad enough to include provisions authorizing the nomination of candidates for office in primary elections, although the court said that it would have been a simple matter to have framed a title which would have covered both the election of delegates to nominating conventions and the nomination of candidates for office. The court pointed out that while an act entitled, "An Act to define and punish larceny," could not include provisions relating to robbery, an act entitled, "An Act to revise the law in relation to criminal jurisprudence," would cover both larceny and robbery.[2]

A title, however, must not be so broad that it will not give a fair idea of the substance of the body of a bill. "The title to an act and the act must correspond, not literally but substantially, and while the title may be couched in general terms, to be sufficient it must fairly point out the subject matter of the act which is to follow it."[3] In other words, the subject of the act must be fairly expressed in the title. Thus, an act entitled, "An Act for the punishment of crimes against children," is unconstitutional, because "it does not contain an expression, even in the most general terms, of the body of the act . . . One reading this title would have no conception of what might be expected in the body of the act."[4] Comprehensiveness in the title of an act is not objectionable, provided that it is "so framed and worded as fairly to apprise the legislators, and the public in general, of the subject matter of the legislation, so as to reasonably lead to an inquiry into the body of the bill."[5] Thus, the title of the Criminal Code, "An Act to revise the law in relation to criminal jurisprudence," is not objectionable because of its generality.[6]

If an act contains two distinct subjects, it is in violation of this constitutional provision. As has been suggested, the title of an act may be so restricted as to preclude the incorporation in the body of the act of provisions which might well have been included under a more general title. But an act cannot embrace two distinct subjects, irrespective of its title. Thus, an

[96] Larned v Tierman, 110 Ill. 173 (1884).
[97] People v Strassheim, 240 Ill. 279 (1909).
[98] Rouse v Thompson, 228 Ill. 522 (1907).
[99] Galpin v City of Chicago, 269 Ill. 27 (1915).
[1] Veto Message No. 3 (1874); see, also, Sutter v People's Gas Light Co., 284 Ill. 634 (1918); Bailey v People, 190 Ill. 28 (1901); Allardt v People, 197 Ill. 501 (1902); Kennedy v LeMoyne, 188 Ill. 255 (1900); Snell v City of Chicago, 133 Ill. 413 (1890); Leach v People 122 Ill. 420 (1887); People v Mellen 32 Ill. 181 (1863); Veto Messages 1919, p. 8.
[2] Rouse v Thompson, 228 Ill. 522 (1907).
[3] Rouse v Thompson, 228 Ill. 522 (1907).
[4] Milne v People, 224 Ill. 125 (1906).
[5] Milne v People 224 Ill. 125 (1906); People v Roth, 249 Ill. 532 (1911); Tarantina v L. & N. R. R. Co., 254 Ill. 624 (1912).
[6] Fuller v People, 92 Ill. 182 (1879).

act which conferred upon the city of Chicago the power and authority to sell surplus electricity and to fix the rates and charges for gas or electricity furnished to the people of that city by private individuals or corporations, was held void because it embraced two distinct subjects both of which were expressed in the title.[7] However, the mere fact that the title of an act is detailed, or in the nature of an index to the contents of the body of the act, does not necessarily mean that the act, even though it relates to and amplifies the details mentioned in the title, contains more than one subject. An act does not embrace two subjects merely because its subject matter is expressed in the title with more than necessary particularity; that is, each detail mentioned in such a title need not be construed as constituting a distinct subject in itself, if all the details have a reasonable relationship to one general subject. The motor vehicle law of 1911 contained the following title: "An Act defining motor vehicles and providing for the regulation of the same and of motor bicycles, and uniform rules regulating the use and speed thereof; prohibiting the use of motor vehicles without the consent of the owner and the offer or acceptance of any bonus or discount or other consideration for the purchase of supplies or parts for any such motor vehicle or for work or repairs done thereon by others, and defining chauffeurs and providing for the examination and licensing thereof, and to repeal certain acts therein named." It was contended that each clause of this title was a distinct subject and that since the body of the act dealt with all of the clauses, the act was void because it embraced more than one subject. The court, however, sustained the act. "The mere mentioning in the title of related particulars is not stating a generality of subjects. The act in question relates to one general subject [motor vehicles] and that subject is expressed perhaps, with unnecessary particularity in the title."[8]

What is the effect of including more than one subject in an act? If an act contains two subjects, only one of which is expressed in the title, the act is void only to the extent of the subject not contained in the title.[9] But if an act contains two subjects, both of which are expressed in the title, then the whole act is void. "The court being powerless to elect between the two subjects so as to preserve one while the other fails, the entire act must fail by reason of being in contravention of the constitutional limitation".[10]

If the title to an act expresses more than one subject, but the body of the act relates to only one subject, the subject expressed in the title and not embraced in the act may be regarded as surplusage. The constitutional prohibition against more than one subject is not directed against the title but is directed against the act.[11]

Amendatory Acts.

Much that has already been said with reference to titles of acts, applies to titles of acts which are expressly amendatory of existing acts. The subject matter of an express amendatory act must be germane to the title of the act amended. In other words, an act which expressly amends another act, may be as broad as the original act, and any provision that might have been inserted in the original act when it was passed, may be included in the amendatory act.[12] Apparently, however, this rule applies only in the event that the amendatory act purports to amend the whole of an existing act. If an act is entitled, "An Act to amend an act concerning local improvements," any provision may be included in the amendatory act which might have been inserted in the original act.[13] But if the act is entitled, "An Act to amend section 2 of 'An Act to revise the law in relation to township organization,'" its provisions must be germane not only to the title of

[7] Sutter v People's Gas Light Co., 284 Ill. 634 (1918).
[8] People v Sargent, 254 Ill. 514 (1912).
[9] People v Nelson, 133 Ill. 565 (1890); Ritchie v People, 155 Ill. 98 (1895); Sutter v People's Gas Light Co., 284 Ill. 634 (1918); but see Galpin v City of Chicago, 269 Ill. 27 (1915).
[10] Sutter v People's Gas Light Co., 284 Ill. 634 (1918).
[11] People v McBride, 234 Ill. 146 (1908).
[12] Sny Island Drainage District v Shaw, 252 Ill. 142 (1911); Gage v City of Chicago, 203 Ill. 26 (1903).
[13] Gage v City of Chicago, 203 Ill. 26 (1903).

the original act, but to the subject matter of original section 2.[14] Provisions which are not germane to the title may not be included in an express amendatory act, but the title of the original act, if more restrictive than need be, may be amended so as to make it broad enough to include provisions which would not have been germane in the first instance.[15]

The title to an express amendatory act need not be absolutely correct. If the reference to the act to be amended is sufficient for identification, that is all that is required. The intention of the General Assembly will be given effect if possible.[16] Thus, "An Act to amend the Criminal Code," etc., is not void because there is no existing act entitled "Criminal Code." It is perfectly clear that the General Assembly referred to "An Act to revise the law in relation to criminal jurisprudence," which is generally spoken of as the Criminal Code.[17] References in a title to the paragraph or chapter numbers of Hurd's Revised Statutes instead of the correct section numbers of the act sought to be amended, will not defeat an amendatory act, if the intention to amend a certain act or sections of an act is clear.[18] And so an amendatory act is not unconstitutional merely because its title gives an incorrect date for the act to be amended. If it is clear what act was intended to be amended, the amending act will be given effect in accordance with the intention of the General Assembly.[19]

However, it has been held by the Attorney General that an amendatory act entitled, "An Act to amend sections 5 and 6 of an act entitled, 'An Act,'" etc., will not cover an amendment to section 3 of the act sought to be amended. The title expressly excludes the idea of amending section 3.[20] And, "An Act to amend section 2 of an act entitled 'An Act,'" etc., is a title not broad enough to permit the adding of additional sections to the old act.[21] Nor is it permissible, according to an opinion rendered by the Attorney General in 1908, in amending a section of an act which has already been amended, to refer in the title of the second amendatory act only to the title of the first amendatory act.[22]

An act which is independent in form but which will have the effect of amending an existing statute need not express in its title that its effect will be to amend an existing statute. It is only the subject of an act which is required by the constitution to be expressed in the title, and not the effect of the act.[23]

Municipal Ordinances.

The provisions of the constitution relating to titles of acts has no application to municipal ordinances.[24]

Revival and amendment by reference. The language of the constitution to be considered in this sub-heading is: "And no law shall be revived or amended by reference to its title only, but the law revived or the section amended, shall be inserted at length in the new act".

Revival by reference.

The provision of the constitution relating to the revival of a law by reference to its title only has caused no difficulty. There never has been

[14] Donnersberger v Prendergast, 128 Ill. 229 (1889); Dolese v Pierce, 124 Ill. 140 (1888).
[15] People v City of Chicago, 256 Ill. 558 (1912).
[16] People v Braun, 246 Ill. 428 (1910); Otis v People, 196 Ill. 542 (1902).
[17] People v Van Bever, 248 Ill. 136 (1911).
[18] Patton v People, 229 Ill. 512 (1907).
[19] People v Penman, 271 Ill. 82 (1915); Patton v People, 229 Ill. 512 (1907). For other cases relating to this general subject see School Directors v School Directors, 73 Ill. 249 (1874); L. & N. R. R. Co., v City of East St. Louis, 134 Ill. 656 (1890); Village of Melrose Park v Dunnebecke, 210 Ill. 422 (1904).
[20] Report Attorney General 1899-1900, p. 86.
[21] Veto Message Senate Journal 1907-08, p. 1760.
[22] Report Attorney General 1908, p. 51.
[23] Timm v Harrison, 109 Ill. 593 (1884); Mix v I. C. R. R. Co., 116 Ill. 502 (1886); Board of Trade v Cowen, 252 Ill. 554 (1911); but see Veto Message No. 8 (1893).
[24] Harris v People, 218 Ill. 439 (1905).

a direct violation of this provision. Governor Palmer held that if a law is repealed, the repeal of the repealing law will not have the effect of restoring the original law, because that would be to revive a law without setting it out at length as required by the constitution.[25] But if a law or a section of an act is repealed by an act which is subseqeuently held unconstitutional, the old law or section will stand unrepealed.[26]

Amendment by reference.

Prior to the adoption of the constitution of 1870, statutes were frequently amended by acts in substantially the following form: "Be it enacted, etc. That section 1 of an Act entitled, etc., is amended by inserting before the word 'county' the word 'city'." If the amendment desired was the substitution of one word for another or the striking out of a word or phrase, it was usually accomplished by an act of the same general character. Such an amendatory act was, of course, unintelligible unless compared with the section amended. The purpose of this constitutional provision was to remedy a defect in the form of express amendatory acts by requiring such acts to set forth at length the section or sections as amended. Confined to that purpose, this provision would have caused no difficulty. It makes trouble only when applied to acts which are independent in form and do not purport to amend existing laws.

From 1870 to 1900 the Supreme Court declined to apply this provision of the constitution to acts which were not expressly amendatory in form. In People v Wright,[27] the court in refusing to apply the provision to an independent act said: "The mischief designed to be remedied was, the enactment of amendatory statutes in terms so blind that legislators themselves were sometimes deceived in regard to their effect, and the public, from the difficulty in making the necessary examination and comparison, failed to become apprised of the changes made in the laws. An amendatory act, which purported only to insert certain words, or to substitute one phrase for another, in an act or section, which was only referred to, but not republished, was well calculated to mislead the careless as to its effect, and was, perhaps, sometimes drawn in that form for that express purpose. Endless confusion was thus introduced into the law, and the constitution wisely prohibited such legislation. But an act, complete in itself, is not within the mischief designed to be remedied by this provision, and can not be held to be prohibited by it without violating its plain intent." This rule was consistently adhered to[28] until the decision of the court in the case of People v Knopf.[29] In that case, the court laid down the rule that if an independent act constitutes a complete and entire act of legislation on the subject with which it purports to deal, it will be deemed not subject to the constitutional prohibition, notwithstanding the fact that it may repeal or modify existing laws, but if the purpose of the independent act is to amend the existing law or to add new provisions to the existing law, then it is clearly amendatory of statutes then in force, and the provisions of the laws then in force, which are so amended, must be set forth at length in the act as amended. This rule, however, was not applied in the Knopf case, although the independent act then under consideration was apparently in direct conflict with it. But in People v Board of Election Commissioners,[30] the court held void an independent act on the ground that it was not complete in itself, and that it amended an existing statute, without setting forth at length the provisions amended.

Since 1900, the court has applied this provision of the constitution to many independent acts. Some of the acts have been sustained;[31] others have

[25] Veto Message House Journal 1871, p. 484.
[26] People v Butler Street Foundry and Iron Co., 201 Ill. 236 (1903).
[27] 70 Ill. 388 (1873).
[28] Geisen v Heiderich, 104 Ill. 537 (1882); Timm v Harrison, 109 Ill. 593 (1884); School Directors v School Directors, 135 Ill. 464 (1891); People v Loeffler, 175 Ill. 585 (1898).
[29] 183 Ill. 410 (1900).
[30] 221 Ill. 9 (1906).
[31] Erford v City of Peoria, 229 Ill. 546 (1907); People v Jones, 242 Ill. 188 (1909); Hollingsworth v C. & C. Coal Co., 243 Ill. 98 (1909); People v Van Bever, 248 Ill. 136 (1911); People v C. W. & I. R. R. Co., 256 Ill. 388 (1912); Scown v Czarnecki, 264 Ill. 305 (1914); People v Sweitzer, 266 Ill. 89 (1914); People v

been held unconstitutional.[33] The decisions are based on the ground that the acts are or are not complete in themselves. In many cases it is difficult to distinguish between acts held void and acts held valid. In People v Crossley,[34] the court promulgated the following rules with reference to this matter: "(1) An Act which is complete within itself and does not purport, either in its title or in the body thereof, to amend or revive any other act, is valid even though it may by implication modify or repeal prior existing statutes. (2) An act, though otherwise complete within itself, which purports to amend or revive a prior statute by reference to its title only, and does not set out at length the statute amended or revived, is invalid, regardless of all other questions. (3) An Act which is incomplete in itself and in which new provisions are commingled with old ones, so that it is necessary to read the two acts together in order to determine what the law is, is an amendatory act and invalid under the constitution, and it is unimportant, in such case, that the act does not purport to amend or revive any other statute."

Unfortunately, these rules are not capable of definite application. Whether or not an act is a complete act of legislation on the subject with which it purports to deal, is, of course, a question for the court. No one can be sure that an independent act, which affects, in any degree, an existing act is not in violation of the constitutional provision until the court has determined that it is not.

An express amendatory act may violate this provision of the constitution, even though it sets forth in full the section amended or added. In Galpin v City of Chicago,[34] an act purported to add to an existing act a new section, to be known as section 9a. The additional section was set forth in full, but its effect was to amend section 8 of the original act, and the amendatory act was held unconstitutional because section 8 was not set forth in full in the new act.

An act may incorporate by reference, the provisions of another act, and this will not be in violation of this provision of the constitution. Thus, an act relating to the organization of high school districts may provide that the board of education for such districts shall be elected in accordance with the provisions of the general school law, a separate act.[35]

The constitution requires that an amended section shall be set out at length, as amended, but it does not require the original section to be set forth also in its original form in the amendatory act.[36] Nor does it require a repealed section to be set forth in full in the repealing act.[37]

In an opinion of the Attorney General it is held that an act designed to amend only a paragraph or subdivision of an existing section is void, unless the whole section, as amended, is set forth at length. The setting out of the

School Directors. 257 Ill. 172 (1913); Holmgren v City of Moline, 269 Ill. 248 (1915); Mortell v Clark, 272 Ill. 201 (1916); Public Utilities Commission v C. & W. T. Ry. Co., 275 Ill. 555 (1916); People v Day, 277 Ill. 543 (1917); People v Sweitzer, 282 Ill. 171 (1918); Monarch Discount Co., v C. & O. Ry. Co., 285 Ill. 233 (1918); People v Ankrum, 286 Ill. 319 (1919). See City of Chicago v Reeves 220 Ill. 274 (1906).

[32] Badenoch v City of Chicago, 222 Ill. 71 (1906); O'Connell v McClenathan, 248 Ill. 350 (1911); Brooks v Hatch, 261 Ill. 179 (1913); People v Stevenson, 272 Ill. 325 (1916); Board of Education v Haworth, 274 Ill. 538 (1916).

[33] 261 Ill. 78 (1913).

[34] 269 Ill. 27 (1915).

[35] People v Stitt, 280 Ill. 553 (1917); see, also, People v McBride, 234 Ill. 146 (1908); People v Crossley, 261 Ill. 78 (1913); Zeman v Dolan, 279 Ill. 295 (1917); but see Veto Messages 1917, p. 75.

[36] Chambers v People, 113 Ill. 509 (1885); Manchester v People, 178 Ill. 285 (1899); City of Marion v Campbell, 266 Ill. 256 (1915).

[37] Freitag v Union Stock Yards, 262 Ill. 551 (1914).

paragraph or subdivision, as amended, will not suffice. The constitution requires the section, as amended, to be inserted at length in the new act.[38]

(For further discussion of the subject of amendment by reference, see Constitutional Conventions in Illinois, Second Edition, pp. 112-125).

Date of going into effect. That part of section 13 of article 4 which will be considered in this subheading, reads as follows: "And no act of the General Assembly shall take effect until the first day of July next after its passage, unless, in case of emergency (which emergency shall be expressed in the preamble or body of the act), the General Assembly shall, by a vote of two-thirds of all the members elected to each house, otherwise direct."

While a bill becomes a law as soon as it is signed by the Governor, it does not become effective until July 1 following its passage, unless it is passed as an emergency measure by a vote of two-thirds of all the members elected to each house,[39] and this rule applies to appropriation acts in just the same manner as it applies to other acts.[40] It has been held, however, that if an act not passed as an emergency measure, creates an office which is to be filled by the appointment of the Governor, the appointment by the Governor may be made at any time after he signs the bill creating the office, even though the date of the appointment is prior to July 1 following the passage of the bill.[41] And it has been held that persons, having notice of the passage and approval of an act, cannot evade its provisions by entering into a contract, forbidden by that act, during the period between the date of the approval of the act by the Governor and July 1 following its passage.[42]

There is one situation, however, in which a bill which is not passed as an emergency measure may go into effect as soon as it is acted upon favorably by the Governor, even though the date of the Governor's action is prior to July 1 following the passage of the bill. The constitution (article 6, section 13) provides that circuit court judicial districts shall be altered only at the session of the General Assembly next preceding the election of circuit judges. The constitution also provides that circuit judges shall be elected in June, 1873 and every six years thereafter (article 6, section 14). Since the General Assembly convenes in January of the odd numbered years (article 4, sections 2, 9), that body will always be in session in the same year as circuit judges are elected. The circuit court districts must be changed, if at all, at the session of the General Assembly beginning in January of the year in which circuit judges are elected.[43] If a law changing the boundaries of circuit court districts does not go into effect until July 1 following the passage thereof, it is clear that such boundaries can never be changed except by an emergency law, for the circuit judges must be elected in June. The constitution does not contemplate that a law changing the boundaries of circuit court districts shall be passed by an emergency vote of two-thirds of the members elected to each house of the General Assembly, and, therefore, such a law goes into effect as soon as it is acted upon favorably by the Governor, even though it is passed by less than a two-thirds vote.[44]

This clause of the constitution apparently does not prevent the General Assembly from providing in a law that it shall not go into effect until some time after July 1 following its passage. Thus, the public utilities act of 1913 and the motor vehicle act of 1919 both contain clauses providing that the acts shall not take effect until January 1 following passage. And the Attorney General has held that the General Assembly may pass a

[38] Veto Messages 1909, p. 43; see, also, Veto Message Senate Journal 1915, p. 1674.

[39] People v Inglis, 161 Ill. 256 (1896).

[40] Report Attorney General 1915, p. 195.

[41] People v Inglis, 161 Ill. 256 (1896).

[42] Dunne v County of Rock Island, 283 Ill. 628 (1918); see, also, Report Attorney General 1917-18, p. 872.

[43] People v Rose, 166 Ill. 422 (1897).

[44] People v Rose, 166 Ill. 422 (1897).

law and make its effectiveness subject to a referendum at an election to be held some months after July 1 following the passage of the law, without violating this provision of the constitution.[45] It should also be noted that under the terms of the constitution, itself, certain laws do not become effective until approved by a vote of the people. (See discussion article 4, section 18, subheading, "Debts"; see, also, discussion article 11, section 5, sub-heading, "Referendum requirements"; see, also, article 4, section 33; article 14, sections 1, 2; separate section relating to canals.)

This clause construed in connection with section 16 of article 5, has given rise to a rather serious controversy which has not been decided by the Supreme Court. Section 16 of article 5, after directing that all bills passed by the General Assembly, shall be presented to the Governor for his approval or veto, provides that "any bill which shall not be returned by the Governor within ten days (Sundays excepted) after it shall have been presented to him, shall become a law in like manner as if he had signed it, unless the General Assembly shall by their adjournment prevent its return, in which case it shall be filed with his objections in the office of the Secretary of State, within ten days after such adjournment, or become a law." The General Assembly passes a bill on June 25 and adjourns *sine die* on June 26. The Governor neither signs nor vetoes the bill and files it with the Secretary of State after July 1, but within ten days after June 26. When does such a law become effective? The Attorney General, in 1915, held that it became effective from the date on which the certificate of the Secretary of State was attached thereto.[46] Others, however, have contended that such a law does not become effective until July 1 following its filing with the Secretary of State. But suppose that the Governor neither signs nor vetoes the bill and files it with the Secretary of State on June 29. Does it then become an effective law on July 1? This, of course, depends on the question whether or not the Governor can waive the full ten days allowed him by the constitution for the consideration of bills. If he cannot waive the full ten days, then the bill cannot become effective until after July 1, although it is filed on June 29. In People v Rose, [47] the court held that the Governor cannot waive the full ten days, and this means ten-days after the adjournment and not ten days after the passage of the bill, because the constitution provides that, in the event of the adjournment of the General Assembly before the expiration of the ten days, the Governor shall have ten days after adjournment. If this is true, it would seem that the Attorney General's opinion of 1915 is not necessarily correct. If such a bill cannot become a law until ten days after adjournment, even though filed with the Secretary of State before the expiration of the ten days, the Secretary of State cannot by immediately attaching his certificate to the bill, cause it to become an effective law before the expiration of the ten days. That would mean that a measure became effective before it became a law. (See discussion article 5, section 16, sub-heading, "Date of going into effect.")

Section 14. Senators and representatives shall, in all cases, except treason, felony or breach of the peace, be privileged from arrest during the session of the General Assembly, and in going to and returning from the same; and for any speech or debate in either house, they shall not be questioned in any other place.

This section of itself does not give the members of the General Assembly the right or privilege to be exempt from service of civil process,

[45] Report Attorney General 1915, p. 464.
[46] Report Attorney General 1915, p. 397; see, also Report Attorney General 1917-18, p. 573.
[47] 167 Ill. 147 (1897); but see People v McCullough, 210 Ill. 488 (1904).

but it does not deprive the General Assembly of the power to exempt from such service, by general law, members of the General Assembly and other persons in the same class.[48]

Section 15. No person elected to the General Assembly shall receive any civil appointment within this State from the Governor, the Governor and Senate, or from the General Assembly, during the term for which he shall have been elected; and all such appointments and all votes given for any such members for any such office or appointment, shall be void; nor shall any member of the General Assembly be interested, either directly or indirectly, in any contract with the State, or any county thereof, authorized by any law passed during the term for which he shall have been elected, or within one year after the expiration thereof.

In the opinion of the Attorney General, a member of the General Assembly during his term of office cannot serve on a commission empowered to exercise executive functions.[49] Membership on such a commission, while it may not be an office,[50] is nevertheless, a civil appointment.[51] But in his view this section probably does not prohibit the General Assembly from creating by law, an investigation commission, composed of members of the General Assembly, charged with the duty of inquiring into certain subjects or questions and reporting the results of its investigations to the succeeding General Assembly, because such a commission in no proper sense exercises executive functions.[52]

In 1884 the Attorney General held that the appointment by the railroad and warehouse commission of a state senator as weigh-master was not in violation of the constitution.[53] It does not appear, however, that the Attorney General considered this section of the constitution in rendering his opinion. It seems that he merely held that such an appointment was not in violation of section 10 of article 5. (See article 4, section 25; article 8, section 4).

Section 16. The General Assembly shall make no appropriation of money out of the treasury in any private law. Bills making appropriations for the pay of members and officers of the General Assembly, and for the salaries of the officers of the government, shall contain no provision on any other subject.

Private laws. The provision relating to appropriations in private laws does not deprive the General Assembly of its power to pass acts making appropriations to pay just claims against the state. An act which does nothing more than make an appropriation to an individual to pay his claim against the state, does not violate this section of the constitution. "The meaning of the provision 'that the General Assembly shall make no appro-

[48] Phillips v Browne, 270 Ill. 450 (1915).
[49] Veto Messages 1907, p. 24; Report Attorney General 1915, p. 13.
[50] Bunn v People, 45 Ill. 397 (1867).
[51] Veto Messages Senate Journal (1st Spec. Session) 1915-16, p. 83.
[52] Report Attorney General 1915, p. 13.
[53] Report Attorney General 1884, p. 17.

priation of money out of the treasury in any private law' we do not understand to be that no appropriation can be made to a private person or individual, but it means that no appropriation for any purpose shall be made out of the treasury in any private law."[54]

Pay of state officers. Acts making appropriations for the salaries of members of the General Assembly and state officers, or any one of them, can contain no other provision. An act creating the office of state factory inspector, and prescribing the powers and duties of the office, cannot contain an appropriation to pay the salary of such officer, although it may contain an appropriation to defray the ordinary expenses of the office thus created.[55] And an act creating free employment agencies cannot contain an appropriation for the salaries of the superintendents of these agencies.[56] The prohibition as to other provisions in an act making an appropriation for the pay of state officers applies to appropriations for other purposes just as it does to any other substantive legislation. An act making an appropriation for the salaries of state officers cannot contain appropriations for the wages of state employees, or for the operating expenses of any state institution, and an act making appropriations for the ordinary and contingent expenses of the state government cannot include appropriations for the salaries of state officers.[57]

This provision of the constitution has caused considerable difficulty in making appropriations. It is oftentimes very difficult to determine whether a person engaged in the state service is an officer or employee. The constitution (article 5, section 24) defines an office as a public position created by the constitution or law, continuing during the pleasure of the appointing power, or for a fixed time, with a successor elected or appointed, and an employment as an agency for a temporary purpose, which ceases when that purpose is accomplished. The Supreme Court in Fergus v Russel[58] lays down the rules by which it may be determined whether a person in the state service is an officer or employee, but the rules add little, if anything, to the constitutional definition.[59] (See discussion article 5, section 24, subheading, "Salaries of state officers.")

What is the effect of including other provisions in an act making appropriations for one or more state officers? If the appropriations are merely incidental to the other provisions, then only the appropriations are void.[60] If the main purpose of the bill is to make appropriations for state officers, then the other provisions are void and the appropriations for state officers will stand.[61] However, if the title of such an act expresses both subjects, the whole act will fall, because it will then violate the constitutional provision (article 4, section 13) relating to titles.[62]

A question sometimes arises as to whether or not an act dealing with other substantive legislation makes an appropriation for the salary of a state officer. Section 11 of the parole law of 1899 provided as follows. "There shall be allowed to each member of the board of pardons the sum of $1,500 per year to compensate him for services performed under this act, said

[54] Fergus v Russel, 277 Ill. 20 (1917).

[55] Ritchie v People, 155 Ill. 98 (1895).

[56] Mathews v People, 202 Ill. 389 (1903); see, also, People v Olson, 280 Ill. 610 (1917); Report Attorney General 1910, pp. 195, 234; 1912, p. 1013; 1914, p. 285.

[57] Fergus v Russel, 270 Ill. 304 (1915).

[58] 270 Ill. 304 (1915). The opinion of the Supreme Court in this case can be better understood by referring to the opinion of the lower court in the same case. The opinion of the lower court may be found in the Report of the Attorney General 1916 pp. 16-24.

[59] See Report Attorney General 1915, p. 47; Bunn v People, 45 Ill. 397 (1867); see, also, State Board of Agriculture v Brady, 266 Ill. 592 (1915); Illinois Farmers' Institute v Brady, 267 Ill. 98 (1915).

[60] Ritchie v People, 155 Ill. 98 (1895); Mathews v People, 202 Ill. 389 (1903); Fergus v Russel, 270 Ill. 304 (1915).

[61] Fergus v Russel, 270 Ill. 304 (1915).

[62] Ritchie v People, 155 Ill. 98 (1895); People v Joyce, 246 Ill. 124 (1910); People v Olson, 280 Ill. 610 (1917).

sum to be payable monthly on certificate of the board approved by the Governor, and payable out of any money in the treasury not otherwise appropriated." It was contended that this was an appropriation for the salary of a state officer, but the court held that section 11 was merely a direction and not an appropriation.[63] Three judges dissented from this view, however, on the ground that it was in conflict with the decision in Mathews v People.[64]

This section of the constitution applies only to appropriations payable out of the state treasury. It does not apply to appropriations made by a municipality.[65]

Section 17. No money shall be drawn from the treasury except in pursuance of an appropriation made by law, and on the presentation of a warrant issued by the Auditor thereon; and no money shall be diverted from any appropriation made for any purpose, or taken from any fund whatever, either by joint or separate resolution. The Auditor shall, within sixty days after the adjournment of each session of the General Assembly, prepare and publish a full statement of all money expended at such session, specifying the amount of each item, and to whom and for what paid.

Appropriations by law. Money cannot be withdrawn from the treasury under a joint resolution.[66] Money belonging to the state, no matter how acquired, whether as fees for services rendered by the state or otherwise, must be paid into the state treasury and can be withdrawn only in pursuance of an appropriation made by law. Fees collected by a state officer for services rendered by him as such officer cannot be expended by him for the maintenance and operation of his office but must be paid into the state treasury.[67] Money paid into the state treasury as a result of an error cannot, in the opinion of the Attorney General, be refunded except under an appropriation made by law.[68] And it has also been held by the Attorney General that money directed to be paid into the state treasury under an Act of Congress, can be withdrawn from the treasury only under an appropriation made by law, even though the money must be used for a specific purpose.[69]

Auditor's warrant. A provision of a statute authorizing the payment of money out of the state treasury on the warrant of a county judge is void.[70] Money can be withdrawn from the treasury only on the warrant of the Auditor of Public Accounts.

The Auditor of Public Accounts is the official examiner of the accounts and claims against the state, and "it is not within the power of the General Assembly to deprive the Auditor of Public Accounts of the power conferred upon him by the constitution to audit claims and charges against the state created in pursuance of an appropriation made by law."[71] If a sum of money is appropriated to a state agency, it has no right to demand that the Auditor of Public Accounts issue a warrant for the total amount payable to that

[63] People v Joyce, 246 Ill. 124 (1910).
[64] 202 Ill. 389 (1903).
[65] City of Chicago v Wolf, 221 Ill. 130 (1906).
[66] Burritt v Commissioners of State Contracts, 120 Ill. 322 (1887).
[67] Whittemore v People, 227 Ill. 453 (1907); Board of Trade v Cowen, 252 Ill. 554 (1911); People v Sargent, 254 Ill. 514 (1912); Report Attorney General 1912, pp. 929, 1013.
[68] Report Attorney General 1910, p. 196; 1914; p. 224.
[69] Report Attorney General 1914, p. 194.
[70] People v. Evans, 247 Ill. 547 (1910).
[71] People v. Brady, 277 Ill. 124 (1917).

agency. That would deprive the Auditor of his right to audit all claims against the state. The agency may incur obligations, and if approved by the Auditor, it will be his duty to issue his warrants against the appropriation for the payment thereof. But the General Assembly may provide that vouchers against appropriations shall be approved by the Governor, or some other officer, before being submitted to the Auditor for the latter's approval, and this in no way interferes with the power of the Auditor to audit all bills before the payment thereof by the state.[72]

Diversion of appropriations. An appropriation cannot be diverted by a joint resolution of the General Assembly,[73] and this clause, while it relates to the diversion of an appropriation by a joint or separate resolution, has been construed by the Attorney General to prevent the use of money for a purpose other than that for which the money was appropriated. Thus, an appropriation for $200 for a secretary, cannot be used for any purpose except that of paying the salary of a secretary.[74]

Section 18. Each General Assembly shall provide for all the appropriations necessary for the ordinary and contingent expenses of the government until the expiration of the first fiscal quarter after the adjournment of the next regular session, the aggregate amount of which shall not be increased without a vote of two-thirds of the members elected to each house, nor exceed the amount of revenue authorized by law to be raised in such time; and all appropriations, general or special, requiring money to be paid out of the State treasury, from funds belonging to the State, shall end with such fiscal quarter: Provided, the State may, to meet casual deficits or failures in revenues, contract debts, never to exceed in the aggregate two hundred and fifty thousand dollars; and moneys thus borrowed shall be applied to the purpose for which they were obtained, or to pay the debt thus created, and to no other purpose; and no other debt except for the purpose of repelling invasion, suppressing insurrection, or defending the State in war, (for payment of which the faith of the State shall be pledged), shall be contracted, unless the law authorizing the same shall, at a general election, have been submitted to the people, and have received a majority of the votes cast for members of the General Assembly at such election. The General Assembly shall provide for the publication of said law for three months, at least, before the vote of the people shall be taken upon the same; and provision shall be made, at the time, for the payment of the interest annually, as it shall accrue by a tax levied for the purpose, or from other sources of revenue; which law, providing for the payment of such interest by such tax, shall be irrepealable until such debt be paid: And, provided, further, that the law levying the tax shall be submitted to the people with the law authorizing the debt to be contracted.

[72] People v Lowden, 285 Ill. 618 (1918).
[73] Burritt v Commissioners of State Contracts, 120 Ill. 322 (1887).
[74] Report Attorney General 1917-18, p. 40; 1914, p. 741.

Appropriations for expenses of government. It is the duty of the General Assembly to make appropriations for the expenses of the government of the state. A state officer cannot incur obligations beyond the amount of appropriations made for his office, and pay them out of fees collected by his office.[75]

Increasing the aggregate amount of appropriations. Appropriations made at a special session of the General Assembly obviously have the effect of increasing the aggregate amount of appropriations made at the preceding regular session of the General Assembly, and, in the opinion of the Attorney General, bills making such appropriations must, therefore, be passed by a two-thirds vote.[76] Under the same reasoning all deficiency appropriation bills must be passed by a two-thirds vote.

Exceeding the revenue. The word "revenue" as used in this section includes all sources of revenue, and is not limited to revenue raised by taxation.[77]

Appropriations must be for a specific sum; otherwise it would be impossible to ascertain whether or not the aggregate amount of appropriations exceeded the amount authorized to be raised. Thus, an appropriation to the State Treasurer of "such sums as may be necessary" to refund taxes, is void.[78] Moreover, section 16 of article 5 expressly requires appropriations to be made in specific sums. (See discussion article 5, section 16, subheading, "Necessity for itemization").

Lapse of appropriations. All appropriations whether general or special, cease or lapse at the expiration of the first fiscal quarter after the adjournment of the next General Assembly,[79] and the Auditor of Public Accounts has no authority, nor can he be compelled by a writ of *mandamus*, to issue a warrant against an appropriation after it has lapsed.[80] Continuing appropriations are, therefore, forbidden by this section of the constitution.

Debts. The General Assembly cannot contract a debt in excess of $250,000 unless the law contracting the debt is submitted to and approved by the voters. Such a law must be published three months at least before the vote of the people thereon, but there is no need for a separate law providing for its publication. The General Assembly may provide for its publication in the law itself, by resolution or by a separate law.[81]

The General Assembly must provide for the payment of the interest on the debt proposed to be created, and it may do this by levying a tax for that purpose. But if a tax is levied, the law levying the tax must be submitted to the people with the law authorizing the creation of the debt. However, there is no need for two separate laws. The law creating the debt may also provide for the tax levy.[82]

A law creating a debt in excess of $250,00, to be adopted, must receive a majority of the votes cast for members of the General Assembly at the general election at which it is submitted. Under the minority representation system (article 4, sections 7, 8) each voter has three votes for members of the

[75] Whittemore v People, 227 Ill. 453 (1907).
[76] Veto Messages 1911-12, p. 34.
[77] Fergus v Brady, 277 Ill. 272 (1917).
[78] Fergus v Russel, 270 Ill. 304 (1915). Report Attorney General 1910, p. 125.
[79] People v Lippincott, 64 Ill. 256 (1872); People v Swigert, 107 Ill. 494 (1883).
[80] People v Brown, 281 Ill. 390 (1917); People v Board of Trustees, 283 Ill. 494 (1918).
[81] Mitchell v Lowden, 288 Ill. 327 (1919).
[82] Mitchell v Lowden, 288 Ill. 327 (1919).

house of representatives. If the provision which requires that such a law, in order to be adopted, must receive a majority of all votes cast for members of the General Assembly is given a literal construction, it is apparent that no law creating a debt in excess of $250,000 could be adopted. This provision, therefore, must be interpreted to mean that such a law is adopted if it receives a number of votes equal to a majority of the number of voters voting for members of the General Assembly.[53]

In 1908 an amendment to the constitution (separate section relating to the canal) was adopted authorizing a bond issue of $20,000,000 to defray the cost of constructing a deep waterway. In the opinion of the Attorney General an act of the General Assembly authorizing the issuance of bonds under that amendment to the constitution need not be submitted to the people under the provisions of this section of the constitution.[54]

(For an historical statement with reference to the limitation on the power of the General Assembly to contract debts, see Constitutional Conventions in Illinois, Second Edition, pp. 13, 28, 42.)

Section 19. The General Assembly shall never grant or authorize extra compensation, fee or allowance to any public officer, agent, servant or contractor, after service has been rendered or a contract made, nor authorize the payment of any claim, or part thereof, hereafter created against the State under any agreement or contract made without express authority of law; and all such unauthorized agreements or contracts shall be null and void: Provided, the General Assembly may make appropriations for expenditures incurred in suppressing insurrection or repelling invasion.

Extra compensation. A firemen's pension law is not in violation of this provision of the constitution. Such a law does not authorize extra compensation even as to those persons who were in the service prior to its adoption. Payments made thereunder are in the nature of deferred payments to insure long continued service.[55]

Express authority of law. An agency or arm of the state government can incur only such obligations as it is authorized by law to create.[56] The authority of such an agency to incur obligations, even though within the general scope of the functions imposed upon it by law, is, with a few exceptions, limited to the amount of the existing appropriations made to that agency; and, generally if the appropriations are insufficient to meet the obligation incurred, the contract creating the obligation is void as being made without express authority of law.[57] What is express authority of law? "That authority is express which confers power to do a particular, identical thing set forth and declared exactly, plainly and directly, with well defined limits, and the only exception under which a contract exceeding the amount appropriated for the purpose may be valid is where it is so expressly authorized by law. An express authority is one given in direct terms, definitely and explicitly, and not left to inference or to implication, as distinguished from authority which is general, implied or not directly stated or given. An example of such express authority is found in one of the deficiency appropriations to the Southern Illinois penitentiary which has

[53] Mitchell v Lowden, 288 Ill. 327 (1919).
[54] Report Attorney General 1915, p. 62.
[55] People v Abbott, 274 Ill. 380 (1916); Hughes v Traeger, 264 Ill. 612 (1914).
[56] Townsend v Gash, 267 Ill. 578 (1915); Veto Message Senate Journal 1887, p. 974.
[57] Fergus v Brady, 277 Ill. 272 (1917); Report Attorney General 1914, p. 677.

been paid, and serves only as an illustration. The authorities in control of the penitentiary are required by law to receive, feed, clothe and guard prisoners convicted of crime and placed in their care, involving the expenditure of money, which may vary on account of the cost of clothing, food and labor, beyond the control of the authorities, and which could not be accurately estimated in advance for that reason or by determining the exact number of inmates. To extend the meaning of the constitutional requirement that there shall be express autnority of law for the creation of a debt or the making of an agreement or contract in excess of an appropriation for the purpose beyond the meaning we have given to it would destroy and nullify the provisions of the constitution. The power of the General Assembly to make appropriations for any purpose is not exhausted by one appropriation but additional appropriations may be made before an indebtedness is incurred, as occasion may require."[88]

If a statute prescribes the methods and conditions under which a contract with the state shall be executed, the provisions must be complied with in every particular, or the contract will be void as not being made with express authority of law. Thus, if a statute requires that printing contracts with the state shall be let to the lowest bidder after a full opportunity for competition, no printing contract with the state will be valid unless there has been an opportunity for competition, and if one printer obtains such a contract as the result of an agreement or understanding with other printing establishments that there shall be no competition, the contract is void.[89]

Section 20. The State shall never pay, assume or become responsible for the debts or liabilities of, or in any manner give, loan or extend its credit to, or in aid of any public or other corporation, association or individual.

This section does not prohibit appropriations from the state treasury to private corporations or associations, if the money appropriated is to be spent for a public purpose. The state may make use of private agencies in carrying out its governmental functions. Thus, an appropriation to the Illinois State Normal University, a private corporation, is valid,[90] and so is an appropriation to the State Beekeepers' Association.[91] But an appropriation for the expenses of a legislative committee created by resolution to sit after the adjournment *sine die* of the General Assembly is void, because the General Assembly has no legal existence after such adjournment, and the committee is but a group of private individuals whose expenses cannot be paid by the state without violating this provision of the constitution.[92]

The provisions of the road and bridge law authorizing the state, under certain terms and conditions, to pay one-half the cost of constructing roads in such counties as will avail themselves of the offer by paying the other half of the cost, does not violate this section of the constitution. The construction of roads is a public purpose and the state, if it saw fit, could construct the roads and pay the total cost out of the state treasury.[93]

[88] Fergus v Brady, 277 Ill. 272 (1917).
[89] Dement v Rokker, 126 Ill. 174 (1888).
[90] Boehm v Hertz, 182 Ill. 154 (1899); see, also, State Board of Agriculture v Brady, 266 Ill. 592 (1915); Illinois Farmers' Institute v Brady, 267 Ill. 98 (1915).
[91] Report Attorney General 1910, p. 114. See Report Attorney General 1910, p. 756; Veto Messages 1919, p. 31.
[92] Fergus v Russel, 270 Ill. 304 (1915).
[93] Martens v Brady, 264 Ill. 178 (1914).

The wife abandonment act of 1913 is not unconstitutional, because it authorizes the court, in the event of the conviction of the defendant, to direct that a part or the whole of the fine imposed be paid to the abandoned wife. This section of the constitution was not intended to affect the disposition of money obtained as a result of the infliction of penalties for the violation of the criminal laws.[94]

The right of the General Assembly to authorize the payment of additional compensation to an officer for additional duties imposed upon him is not affected by this section, and the General Assembly may provide for such additional compensation, if other sections of the constitution, such as those forbidding an increase in salary during the term of office, are not violated.[95]

Section 21. The members of the General Assembly shall receive for their services the sum of five dollars per day, during the first session held under this Constitution, and ten cents for each mile necessarily traveled in going to and returning from the seat of government, to be computed by the Auditor of Public Accounts; and thereafter such compensation as shall be prescribed by law, and no other allowance or emolument, directly or indirectly, for any purpose whatever; except the sum of fifty dollars per session to each member, which shall be in full for postage, stationery, newspapers, and all other incidental expenses and perquisites; but no change shall be made in the compensation of members of the General Assembly during the term for which they may have been elected. The pay and mileage allowed to each member of the General Assembly shall be certified by the Speakers of their respective houses and entered on the journals, and published at the close of each session.

In General. The provisions of this section forbidding any change in the compensation of members of the General Assembly is one of a series of similar provisions in the constitution of 1870. Special laws changing the "fees, percentage or allowance of public officers during the term for which said officers are elected or appointed" are forbidden (article 4, section 22). The salaries of the elective executive state officers cannot be changed during their official terms (article 5, section 23). The salary or compensation of judges of the Supreme and circuit courts, and of the circuit and superior courts of Cook County, cannot be changed during the terms for which they are elected (article 6, sections 7, 16, 25.) And the same prohibition exists with reference to municipal (article 9, section 11) and county officers (article 10, section 10). The Supreme Court has said that when all of these provisions are construed together, it is apparent that the members of the convention of 1869-70 intended that the fees, salary or compensation of no public officer, who should be elected for a definite or fixed term, should be changed in any manner during his term of office.[96] If this was the intention of the framers of the constitution of 1870, it might have been accomplished by a single section designed to cover or embrace all public officers elected or appointed for a definite or fixed term. For example, when the constitutional framers agreed to prohibit the extension of the term of office of any public officer, they did not seek to accomplish their purpose by a series of prohibitions but merely provided (article 4, section

[94] People v Heise, 257 Ill 443 (1913).
[95] City of Chicago v Wolf, 221 Ill. 130 (1906).
[96] Wolf v Hope, 210 Ill. 50 (1904).

28) that "no law shall be passed which shall operate to extend the term of any public officer after his election or appointment."

However, it must be remembered that while the Supreme Court has held that all officers "occupying offices created by the laws of the state in and for any of the political subdivisions of the state" are municipal officers whose salaries cannot be altered during their term of office (see discussion under subsequent subheading entitled "Municipal officers") it has not held that the salaries of appointive state officers, such as the directors of the several departments created by the "Civil Administrative Code," who are to hold office for a definite term of four years, may not be changed during their terms of office. And since the constitutional limitation on the power of the General Assembly to change the salaries of state officers (article 5, section 23) applies only to the elective state officers created by article 5, it is by no means certain that the salaries of appointive state officers may not be changed during their terms, even though they are appointed for a definite or fixed term.

Do these constitutional provisions mean that the salary of a public officer cannot be increased after his election or appointment, even though his term of office has not yet begun? The Supreme Court has said: "It must be conceded on principle, that there is just as much reason for a constitutional provision prohibiting an increase in the salaries of officers who have been elected to office, and who are sure of holding office, but whose terms have not commenced, as there is prohibiting an increase in salaries of those actually in office. The relators in this case had been elected before the bill increasing their salaries was passed by the legislature, and as to them and their associates elected at the same time it must be said that such enactment is clearly and unmistakably contrary to the spirit and intent of the constitution."[97] However, the court in that case also held that the bill increasing the salaries of the officers seeking to obtain the increase became a law after the terms of the officers had commenced. Hence, its statement that these constitutional limitations apply to an officer, who has been elected, but whose term has not yet begun, may not have been necessary to the decision. But regardless of the correct holding on this point, it has been held that, in so far as the judges of circuit courts and the judges of the circuit and superior courts of Cook County are concerned, the provisions forbidding changes in salaries apply to the terms of office and not to the individuals in office. (See discussion subsequent subheading "Judicial officers"). And it has also been held that the fixing of an officer's salary after he has actually entered upon the duties of his office, is not forbidden, if the salary was not fixed at all prior to the time of his election or appointment, or prior to the time that he entered upon his duties.[98]

The salary of an officer, who in an *ex officio* capacity, holds another office, cannot be increased during his term on the ground that his *ex officio* position carries with it additional duties.[99] Thus, the constitution forbids an increase in the salary of a county treasurer during his term, even though in the meantime he is called upon to perform *ex officio*, the duties of the office of supervisor of assessments,[1] although the county board probably could make additional allowances to the treasurer for the increased expenses of his office in connection with the performance of his new duties as supervisor of assessments.[2]

Members of the General Assembly. An appropriation of $2,500 to the Secretary of State for the telephone tolls of members of the General Assembly is void, because it conflicts with the provisions of this section which

[97] People v Sweitzer, 280 Ill. 436 (1917).

[98] Purcell v Parks, 82 Ill. 346 (1876). See Report Attorney General 1914, p. 900.

[99] Kilgore v People, 76 Ill. 548 (1875); see, also, Whittemore v People, 227 Ill. 453 (1907).

[1] Foote v Lake County, 206 Ill. 185 (1903).

[2] Parker v County of Richland, 214 Ill. 165 (1905).