and the proceeds thereof, shall be faithfully applied to the objects for which such gifts or grants were made." This section of article 8 relates to donations of property for school purposes made prior to the adoption of the present constitution. But the property of schools, which is included within the meaning of section 2, is, by virtue of the section itself, exempt from general taxation and from special assessments and special taxation. (See discussion article 8, section 2.)

Effect of the exemption provisions in special charters granted prior to 1870. Section 3 of article 9 of the constitution of 1848 provided that "the property of the state and counties, both real and personal, and such other property as the General Assembly may deem necessary for school, religious and charitable purposes, may be exempted from taxation." Under this provision the General Assembly in granting special charters to school, religious and charitable corporations, frequently inserted provisions therein exempting such corporations from all or a part of their taxes. In the early cases after the adoption of the constitution of 1870 the Supreme Court of Illinois held that the General Assembly under the constitution of 1848 had no power to "exempt from taxation property owned by educational, religious, or charitable corporations which was not itself used directly in aid of the purposes for which such corporations were created, but which was held for profit merely, although the profits were devoted to the proper purposes of such corporations."[87] But this holding was reversed by the United States Supreme Court which held that the General Assembly, under the constitution of 1848, had full power to exempt from taxation any or all property owned by such corporations, and that having done so in their charters a binding contract was created.[88] The Supreme Court of this state then adopted the view of the United States Supreme Court.[89] The provisions of these special charters relating to exemption from taxation are construed strictly, however, and unless it clearly appears that the property claimed to be exempt is included within the exemption provisions of the charters the claim will be denied.[90]

However, there was no authority, under the constitution of 1848, to exempt the property of school, religious and charitable corporations from special assessments. (See discussion subsequent subheading, "Special assessments and special taxation").

Commutations—Illinois Central Railroad Company. Commutation of taxes means the right, privilege or duty of paying a specific sum of money or something else of value in lieu of taxes on property in proportion to the value of the property. Since the effect of commutation of taxes is to relieve certain property from the liability to pay taxes in proportion to value, the obvious effect is to exempt that property from taxation in the ordinary and usual sense of that word. Under the constitution of 1848 it was held that there was no prohibition on the power of the General Assembly to provide for the commutation of taxes. (See discussion article 9, section 6, subheading, "Commutation of state taxes"). And, while section 6 of this article apparently forbids the commutation of state taxes, it must be conceded that the opinion of the court, in the case of Raymond v Hartford Fire Insurance Company,[91] seems to hold that the General Assem-

[87] Northwestern University v People, 86 Ill. 141 (1877).
[88] Northwestern University v People, 99 U. S. 309 (1878).
[89] People v Soldier's Home, 95 Ill. 561 (1880); In re Northwestern University, 206 Ill. 64 (1903); Northwestern University v Hanberg, 237 Ill. 185 (1908).
[90] Bloomington Cemetery Association v People, 170 Ill. 377 (1897); People v Theological Union, 171 Ill. 304 (1898); People v Bennett Medical College, 248 Ill. 608 (1911); Chicago Theological Seminary v Illinois, 188 U. S. 662 (1903).
[91] 196 Ill. 329 (1902).

bly, under the last clause of section 1 of article 9, may nevertheless provide for the taxation of the property of certain persons and corporations for state purposes by a method otherwise than in proportion to value. (See discussion of that case article 9, section 1, center subheading "Uniformity"; see, also, discussion article 9, section 6, subheading "Commutation of state taxes," and discussion article 9, section 9, subheading, "Commutation of municipal taxes").

The Illinois Central Railroad Company was incorporated under a special act of the General Assembly in 1851. The special charter, while making detailed provision for the taxation of the property of the railroad company, expressly provides that the company shall pay not less than seven per cent of its gross receipts into the state treasury in lieu of all other taxes. (Private Laws 1851, p. 61). The effect of these provisions was to exempt the property of the railroad company from property taxes. The special charter of the railroad was expressly affirmed and recognized by the present constitution. (See separate section relating to the Illinois Central Railroad).

The exemption from ordinary taxes applies, however, only to the charter lines mentioned in the special charter. Other lines of the railroad not mentioned in the charter and not necessarily incidental to the operation of the charter lines are subject to taxation in the same manner as other property.[92] But switch tracks, turn-outs and bridges necessary to the proper operation of the charter lines are property within the exemption provisions of the special charter no matter when constructed, and are not subject to taxation in the usual manner.[93] And it would seem that any other property of the company, even though not used directly in the transportation of persons or freight, is exempt if that property is reasonably necessary for the proper and efficient operation of the charter lines. Thus, a stone quarry belonging to the railroad company, and used for the purpose of acquiring necessary stone in the repair of the roadbed of the charter lines is exempt from ordinary taxation.[94] But a grain elevator of the company leased to private parties, and apparently not necessary for the efficient operation of the charter lines, is subject to taxation in the same manner as other property.[95] Nor is a steamboat of the company used for transporting passengers and freight across the Ohio river exempt from the usual tax on property even though the only purpose of the boat was to facilitate the business of the charter lines south of the Ohio river. The court took the view that the charter of the company did not contemplate transportation by water and that, therefore, the operation of the steamboat was not incidental or indispensable to the efficient conduct of the charter lines.[96] (See discussion article 9, section 6, subheading, "Commutation of state taxes").

The property of the Illinois Central Railroad Company, however, is not exempt from special assessments and special taxation. (See discussion following subheading.)

[92] State of Illinois v I. C. R. R. Co., 246 Ill. 188 (1910). The charter lines and non-charter lines of the railroad company are operated as one system, and it is sometimes very difficult to determine the gross receipts of the charter lines. This case also discusses the methods by which the gross receipts of the charter lines are to be ascertained. See, also, People v I. C. R. R. Co., 273 Ill. 220 (1916).

[93] State Board of Equalization v People, 229 Ill. 430 (1907).

[94] People v I. C. R. R. Co. 231 Ill. 151 (1907).

[95] In re Swigert, 119 Ill. 83 (1886); I. C. R. R. Co. v People, 119 Ill. 137 (1886).

[96] I. C. R. R. Co. v Irvin, 72 Ill. 452 (1874). The special charter also granted large tracts of land to the railroad company and with reference to these lands it was provided that "the lands selected under said act of Congress, and hereby authorized to be conveyed, shall be exempt from all taxation under the laws of this state until sold and conveyed by said corporation or trustees." For judicial decisions construing this provision, see Gilkerson v Brown, 61 Ill. 486 (1871); I. C. R. R. Co. v Goodwin, 94 Ill. 262 (1880); Champaign County v Reed, 100 Ill. 304 (1881); Champaign County v Reed, 106 Ill. 389 (1883).

Special assessments and special taxation. This section of article 9, expressly authorizes the exemption from taxation of the property of the state, counties and other municipal corporations, property used exclusively by agricultural and horticultural societies, and property used exclusively for school, religious, cemetery and charitable purposes. But what is meant by "taxation"? Does that term include special assessments and special taxation? It has been held that there is no constitutional authority for the exemption of such property from special assessments and special taxation.[97] The property of the state, however, is exempt from special assessments and special taxation, because section 26 of article 4 provides that the state "shall never be made defendant in any court of law or equity."[98] (See discussion article 4, section 26, subheading, "Suits against the state in its own name.")

The General Assembly under the constitution of 1848 had no power to exempt property from special assessments.[99] (See discussion preceding subheading "Effect of the exemption provisions in special charters granted prior to 1870.")

The property of the charter lines of the Illinois Central Railroad Company may be granted exemption from general taxation but not from special assessments or special taxation.[1] (See discussion preceding sub-heading.)

Property donated to schools prior to 1870, and included within the meaning of section 2 of article 8, is exempt from general taxation and special assessments or special taxation. (See discussion article 8, section 2.)

Section 4. The General Assembly shall provide, in all cases where it may be necessary to sell real estate for the non-payment of taxes or special assessments, for State, county, municipal, or other purposes, that a return of such unpaid taxes or assessments shall be made to some general officer, of the county, having authority to receive State and county taxes; and there shall be no sale of said property for any of said taxes or assessments but by said officer, upon the order of judgment of some court of record.

Effect on existing legislation. This section of the constitution had the effect of abrogating all existing statutes in conflict with it. Thus, that portion of the special charter of the city of Chicago which authorized the city collector to sell real estate for the non-payment of taxes was held inapplicable with respect to taxes levied after the adoption of the constitution, for the reason that the city collector was not a general county officer.[2]

Property subject to sale. While there is no constitutional authority for the exemption of property owned by counties from special assessments (see discussion article 9, section 3, subheading, "Special assessments and special taxation,") such property is not subject to sale for failure to pay delinquent assessments.[3]

[97] South Park Commissioners v Wood, 270 Ill. 263 (1915); see, also, County of McLean v City of Bloomington 106 Ill. 209 (1883); County of Adams v City of Quincy, 130 Ill. 566 (1889); City of Chicago v City of Chicago, 207 Ill. 37 (1904); Report Attorney General 1914, p. 779.

[98] In re City of Mt. Vernon, 147 Ill. 359 (1893).

[99] City of Chicago v Baptist Theological Union, 115 Ill. 245 (1885).

[1] Illinois Central Railroad Co. v City of Decatur, 126 Ill. 92 (1888); Illinois Central Railroad Co. v City of Decatur, 147 U. S. 190 (1893).

[2] Hills v City of Chicago, 60 Ill. 86 (1871); Garrick v Chamberlain, 97 Ill. 620 (1881).

[3] County McLean v City of Bloomington, 106 Ill. 209 (1883); Report Attorney General 1910, p. 583.

Power of the General Assembly. While this section is a limitation upon the power of the General Assembly, it does not prevent that body from making such regulations as may be deemed necessary regarding the terms of court at which applications for judgments against delinquent real estate shall be made; and the General Assembly may provide that applications for judgments against real estate for the non-payment of special assessments shall be made at a term of court other than that at which applications are made for judgments against real estate for the non-payment of general taxes.[4]

The General Assembly may also provide that when real estate is sold for the failure to pay taxes a penalty prescribed by statute may be added to the amount due for unpaid taxes.[5] And, while no real estate can be sold for the non-payment of taxes except upon the order of a court of record, the General Assembly may provide for the extension of a fixed statutory penalty against delinquent real estate by a ministerial officer.[6]

This section applies only to sales of real estate for the non-payment of taxes. It does not apply to a sale of real estate under an execution even though the execution was issued on a judgment obtained in an action *in personam* for failure to pay taxes on the land sold under the execution. In such a case a sale by the sheriff, although he is not, under the revenue laws, a general county officer "having authority to receive state and county taxes", is valid.[7] An owner of property, however, cannot be made personally liable for special assessments or special taxation for local improvements.[8]

According to an opinion of the Attorney General rendered in 1917 it would seem that this section of the constitution prevents the elimination of the so-called "tax buyer". In the view of that officer there can be no valid tax sale unless an opportunity for competitive bidding is afforded.[9]

Section 5. The right of redemption from all sales of real estate, for the non-payment of taxes or special assessments of any character, whatever, shall exist in favor of owners and persons interested in such real estate, for a period of not less than two years from such sales thereof. And the General Assembly shall provide, by law, for reasonable notice to be given to the owners or parties interested, by publication or otherwise, of the fact of the sale of the property for such taxes or assessments, and when the time of redemption shall expire: Provided, that occupants shall in all cases be served with personal notice before the time of redemption expires.

Period of redemption. In all cases of the sale of real estate for the non-payment of taxes or special assessments the owners or persons interested must be allowed two years from the date of the sale in which to redeem the property.[10] But this is true only in case the proceeding against the real estate is a proceeding *in rem*—that is, an application for judgment against the real estate itself for the unpaid taxes levied against it, and not a proceeding against the owner of the real estate personally to enforce the payment of the unpaid taxes levied against his land. And so, if the General Assembly provides for an action *in personam* against an owner of real estate for fail-

[4] Leindecker v People, 98 Ill. 21 (1881).
[5] Chambers v People, 113 Ill. 509 (1885). This was not the rule under the constitution of 1848. See Scammon v City of Chicago, 44 Ill. 269 (1867).
[6] Chambers v People, 113 Ill. 509 (1885).
[7] Douthett v Kettle, 104 Ill. 356 (1882); Langlois v People, 212 Ill. 75 (1904); see, also, Clark v Zaleski 253 Ill. 63 (1912); Ziccarelli v Stuckhart, 277 Ill. 26 (1917).
[8] Craw v Village of Tolono, 96 Ill. 255 (1880).
[9] Veto Messages 1917, p. 34.
[10] Gage v Bailey, 100 Ill. 530 (1881); Gage v Davis, 129 Ill. 236 (1889).

ure to pay the taxes on his real estate, that same real estate may be sold by the sheriff under an execution issued on the judgment *in personam* against the owner, and the owner has no constitutional right to a two year period of redemption from the sale on execution.[11]

There is, however, no personal liability against an owner of property for special assessments or special taxes for local improvements levied against his property.[12]

Persons entitled to redeem. Obviously the owner of real estate sold for the non-payment of taxes is entitled to redeem from the tax sale. But who are "parties interested in such real estate" that may redeem? A mere stranger to the property cannot redeem.[13] But a mortgagee of land sold for unpaid taxes may redeem, and may even file a bill in equity to set aside a defective tax deed.[14] And this is true even though there is apparently no constitutional requirement that mortgagees of real estate sold for non-payment of taxes shall be notified of the date when the period of redemption expires. (See discussion following sub-heading.)

Notice of expiration of period of redemption. There can be no valid tax deed unless, before the expiration of the period of redemption, personal notice has been served on the occupant or occupants of the real estate sought to be conveyed by the deed.[15] And a tax deed based on a notice which incorrectly states the date on which the period of redemption expires cannot be sustained, although it must be admitted that the decisions turn on the point that the statute regulating the giving of such notices requires that the date of expiration of the redemption period be correctly set forth.[16]

The constitution contemplates that the notice shall be served on the owners, occupants or parties interested at the time of the service of the notice and not on those who were owners, occupants or parties interested at the time of the sale for unpaid taxes.[17] But, while the court has not expressly passed on the point, it seems that the General Assembly has full discretion to determine who shall be regarded as "parties interested" requiring notice, and that the General Assembly may provide that only owners and occupants shall be notified. Thus, it has been held that a mortgagee of land sold for unpaid taxes is not, under present statutes, entitled to notice of the date of the expiration of the redemption period.[18]

The service on owners and occupants of reasonable notice as to when the time for redemption expires is indispensable under the constitution. But, except as to occupants, who must be served with personal notice, the General Assembly is unrestricted as to the form of notice or the manner of the service thereof. As to those who are not occupants the General Assembly may provide for personal notice, or notice by publication, or any other form of reasonable notice.[19]

The question as to the sufficiency of the notice required by the constitution usually arises in connection with suits to set aside tax deeds. And, since the statutes with reference to notice generally contain conditions in addition to those required by the constitution, the validity of a tax deed

[11] Douthett v Kettle, 104 Ill. 356 (1882); Langlois v People 212 Ill. 75 (1904); see, also, Clark v Zaleski, 253 Ill. 63 (1912); Ziccarelli v Stuckhart, 277 Ill. 26 (1917).

[12] Craw v Village of Tolono, 96 Ill. 255 (1880).

[13] Houston v Buer, 117 Ill. 324 (1886).

[14] Miller v Cook, 135 Ill. 190 (1890); Burton v Perry, 146 Ill. 71 (1893); Glos v Evanston Building and Loan Ass'n., 186 Ill. 586 (1900).

[15] Palmer v Riddle, 180 Ill. 461 (1899); Frew v Taylor, 106 Ill. 159 (1883).

[16] Wilson v McKenna, 52 Ill. 43 (1869); Wisner v Chamberlain, 117 Ill. 568 (1886). In Gage v Davis, 129 Ill. 236 (1889) it was held, under a certain statute, that, if the last day of the period of redemption falls on Sunday, that day must be excluded in computing the two years.

[17] Gonzalia v Bartelsman, 143 Ill. 634 (1892).

[18] Smyth v Neff, 123 Ill. 310 (1888); Glos v Evanston Building and Loan Ass'n., 186 Ill. 586 (1900).

[19] Garrick v Chamberlin, 97 Ill. 620 (1881); Frew v Taylor, 106 Ill. 159 (1883).

most frequently turns upon the construction of the statutes. The rule is well settled that a tax deed will be set aside unless the statute under which it was obtained has been complied with strictly. "A tax title is *stricti juris*. It is a purely technical, as contradistinguished from a meritorious title, and depends for its validity upon a strict compliance with the statute, and . . a court of chancery will not aid a purchaser at a tax sale."[20]

However, the person seeking to set aside a tax deed may be required to reimburse the holder thereof for all legal taxes paid by the latter.[21]

Section 6. The General Assembly shall have no power to release or discharge any county, city, township, town or district, whatever, or the inhabitants thereof, or the property therein, from their or its proportionate share of taxes to be levied for State purposes, nor shall commutation for such taxes be authorized in any form whatsoever.

Release and discharge from state taxes. Prior to the adoption of the constitution of 1870 the General Assembly had, in some instances, passed acts releasing and discharging the persons and property in certain counties or municipalities from state taxes. For example, in 1861 the General Assembly passed an act providing that all property in the city of Shawneetown should be exempt from state taxes for a period of twenty years, and authorized the city council of that city to levy, during that period, taxes equal to the amount of the state taxes, the proceeds to be used in constructing embankments to protect the city against overflow. When the convention of 1869-70 assembled, the Supreme Court had not yet expressly passed on the question of the validity of such legislation. It is true that in 1868 the court had sustained an act which directed that, for a period of five years, all state taxes in a certain part of St. Clair county should, after the collection thereof as state taxes but before the same were paid into the state treasury, be turned over to the treasurer of a certain corporation, and used to defray the cost of constructing levees and embankments for the protection of the lands in that part of St. Clair county so released from state taxes, in the event of the overflow of the Mississippi river.[22] But the decision was based on the express ground that there was no release from state taxes. The court took the view that the effect of the act was merely to divert state taxes after the collection thereof, and before the same were paid into the state treasury, and not to release any persons or property from the payment of state taxes. (See discussion article 9, section 7). And in 1872, shortly after the adoption of the present constitution, the act of 1861 in aid of the city of Shawneetown, was held void, as being in conflict with the constitution of 1848.[23] But the provision of the present constitution forbidding the release and discharge from state taxes was adopted for the express purpose of forbidding such legislation. (Debates, p. 1196-8).

Irrespective, however, of the validity, under the constitution of 1848, of legislation which sought to release state taxes, the effect of this provision of the present constitution was to nullify all legislation of that character.[24]

[20] Miller v Cook, 135 Ill. 190 (1890); see, also, People v Banks, 272 Ill. 502 (1916); Gage v Reid, 118 Ill. 35 (1886).
[21] Miller v Cook, 135 Ill. 190 (1890); Kuhn v Glos, 257 Ill. 289 (1913). See Reed v Tyler, 56 Ill. 288 (1870).
[22] People v Miner, 46 Ill. 384 (1868).
[23] People v Barger, 62 Ill. 452 (1872).
[24] People v Lippincott, 65 Ill. 548 (1872); Ramsey v Hoeger, 76 Ill. 432 (1875).

In Board of Education v Haworth,[25] the facts were as follows: The general school law provided for the levy of a state tax for school purposes, to be known as the state school fund. After making certain deductions, the law provided for the distribution of the state taxes so collected, to the several counties of the state, on the basis of the number of persons under the age of twenty-one years in each county, and for the distribution of the share of each county to the several townships in that county on the same basis. In 1915 the General Assembly passed a law providing for the payment of the tuition of high school pupils residing in districts having no high schools. The act of 1915 directed the county superintendent of schools of each county, before distributing that county's share of the state school fund among the townships therein, to deduct from the total amount received from the state school fund, an amount sufficient to pay the cost of the tuition of all pupils of that county residing in school districts having no high school, but attending a high school in some other school district. In holding void the act of 1915, the court said: "The effect of the act is to exempt owners of property in districts not providing four years of recognized high school work from paying taxes proportionate to the value of their taxable property as compared with the taxable property of other districts, to the extent that the state tax is appropriated to a local and corporate purpose. The result is to release the districts from the payment of taxes for such purpose, and that is a violation of section 6 of article 9 of the constitution, which provides that the General Assembly shall have no power to release or discharge any county, city, township, town or district whatever, or the inhabitants thereof or the property therein, of their or its proportionate share of taxes to be levied for state purposes, nor shall commutation for such taxes be authorized in any form whatsoever. The state-wide school tax is a tax for a state purpose, to be apportioned to and distributed by the Auditor among the counties and by the county superintendent of schools among the districts in the county, and by the act in question the school district maintaining no high school is released from taxation for the local and corporate purpose of paying tuition of its pupils residing in the district and attending schools outside of the district."

Commutation of state taxes. By commutation of state taxes is meant the duty, right or privilege of paying a specific sum of money or something else of value in lieu of state taxes levied and collected in the usual mode. It is not an exemption from all taxes but is an exemption from paying taxes in accordance with the rule under which persons and corporations generally pay taxes. And, since the general property tax is established in this state, it is an exemption from the payment of taxes in proportion to the value of property.

Under the constitution of 1818 it was held that the General Assembly had full and complete power to commute state and local taxes, and the act exempting the state bank of Illinois from all taxation, state and local, in consideration of the payment annually into the state treasury of a sum of money equal to one-half of one per cent of the bank's capital stock was sustained.[26] And the General Assembly had the same power under the constitution of 1848. In Illinois Central Railroad Company v McLean County,[27] the provision of the special charter of the Illinois Central Railroad Company exempting the corporation from the payment of all taxes, state and local, in consideration of the payment by it into the state treasury of a certain percentage of its gross receipts, was held valid. The effect of these decisions was to give the General Assembly the power to commute local taxes in consideration of the payment of money into the state treasury,

[25] 274 Ill. 538 (1916). See People v C. & N. W. Ry. Co. 286 Ill. 384 (1919); Veto Messages 1919, p. 39.
[26] State Bank of Illinois v People, 5 Ill. 303 (1843)
[27] 17 Ill. 291 (1855)

without providing that the municipalities which lost their right to tax the property of these corporations should receive any thing to compensate them for their loss.

It was also held under the constitution of 1848 that the General Assembly could commute local taxes without at the same time commuting the state taxes of the same persons or property. In Hunsaker v Wright,[28] an act of the General Assembly was sustained which provided that the inhabitants of the city of Cairo should be exempt from performing labor on the roads beyond the city limits, or taxes to procure labor for that purpose, and that the property in the city should be released from taxes for county purposes, if the city should care for its own paupers and pay the expenses of the circuit court of Alexander county in connection with the trial of criminal cases in which residents or citizens of the city of Cairo were defendants. And the court, in that case, made it clear that, while the General Assembly was the sole judge as to whether or not the value of the burden imposed in lieu of taxes was equivalent to the amount of taxes released, the legislative authority could not exempt persons and property in certain communities from the burden of paying local taxes without exacting something in the nature of an equivalent burden.

The purpose of this section of the constitution was to prohibit the commutation of state taxes. It does not prohibit the commutation of municipal taxes.[29] However, the Supreme Court in a comparatively recent case, intimated that sections 9 and 10 of this article have the effect of denying to the General Assembly the power to commute any municipal taxes, except county taxes; or, at least, of preventing the commutation of municipal taxes without providing that the municipalities thus deprived of their right to tax certain property, shall receive something in return for the loss of property taxes.[30]

And while this section seems to forbid absolutely the commutation of state taxes, the court, in its opinion in Raymond v Hartford Fire Insurance Company,[31] said that the property of any person or corporation included within the last clause of section 1 of this article, may be taxed otherwise than in proportion to value, the rule by which other property generally is taxed. In that case it was said that an act of the General Assembly, which provided that foreign fire insurance companies should pay two per cent of their gross premiums received for business done in this state in lieu of all taxes on personal property, both state and local, was not in conflict with this section. However, the statements of the court in this regard were not necessary to the decision in that case for the act of the General Assembly was held to be in violation of sections 9 and 10 of this article. (See discussion article 9, section 9, sub-heading, "Commutation of municipal taxes").

This section does not abrogate the provisions of the special charter of the Illinois Central Railroad Company relating to commutation of taxes with respect to the property used in connection with the charter lines of that company. The separate section of the present constitution relating to the Illinois Central Railroad Company expressly re-affirms those provisions. (See discussion article 9, section 3, subheading "Commutation—Illinois Central Railroad Company").

The Attorney General has held that this section prohibits any state officer in charge of the collection of state taxes from releasing any person or corporation of any portion of the total amount of state taxes due on his or its property.[32]

[28] 30 Ill. 146 (1863); see, also, Board of Supervisors v Campbell, 42 Ill. 490 (1867). See O'Kane v Treat 25 Ill. 557 (1861); Town of Pleasant v Kost, 29 Ill. 490 (1863); Cooper v Ash, 76 Ill. 11 (1875); Hayward v People, 145 Ill. 55 (1893).

[29] Wetherell v Devine, 116 Ill. 631 (1886); Raymond v Hartford Fire Insurance Co. 196 Ill. 329 (1902).

[30] Raymond v Hartford Fire Insurance Co. 196 Ill. 329 (1902).

[31] 196 Ill. 329 (1902).

[32] Report Attorney General 1917-18, p. 1061.

Section 7. All taxes levied for State purposes shall be paid into the State treasury.

Prior to 1870, the General Assembly had sometimes passed laws releasing and discharging the persons and property in certain counties or municipalities from state taxes. Section 6 of this article was adopted for the purpose of preventing such legislation. However, in 1868 the Supreme Court had held that an act, which provided for the return to a certain community of the state taxes collected in that community, before the same were paid into the state treasury, was not a release from state taxes, but merely a diversion of such taxes before the payment thereof into the state treasury.[33] (See discussion article 9, section 6, sub-heading "Release and discharge from state taxes"). This section of the constitution, no doubt, was adopted for the purpose of nullifying that decision and to prevent the evasion of the provisions of section 6 of this article. (Debates, pp. 1196-8.)

In 1872 the Supreme Court held that an act of the General Assembly, passed in 1869, which directed that the state taxes collected in certain townships in Randolph county should, before the payment thereof into the state treasury, be turned over to a certain navigation company, to be used for the purpose of making improvements on the Mississippi river, was in direct conflict with this section of the constitution and, therefore, void.[34]

Section 8. County authorities shall never assess taxes, the aggregate of which shall exceed seventy-five cents per one hundred dollars' valuation, except for the payment of indebtedness existing at the adoption of this Constitution, unless authorized by a vote of the people of the county.

In general. This section of the constitution is not a limitation on the power of counties to incur debts. The only constitutional limitation on the power of counties to become indebted is found in section 12 of this article.[35] (See discussion article 9, section 12). Nor does it impose any limitation on the power of the General Assembly to provide for the assessment of property, or to determine the manner of ascertaining the valuation of property against which county taxes may be levied.[36]

And this section does not make it incumbent upon the county board, in levying a tax for county purposes, to specify in the tax levy resolution the purposes for which the proceeds of the tax are to be used.[37]

Power of counties to levy taxes. Without a favorable vote of the people, counties cannot levy taxes in excess of seventy-five cents on the one hundred dollars valuation, except for an indebtedness existing at the time of the adoption of the constitution. But this does not mean that counties have unrestricted power to levy taxes equal to seventy-five cents on each one hundred dollars valuation. County taxes can be levied only under legislative authorization. While the General Assembly cannot, except for pre-existing indebtedness, authorize the levy of county taxes in excess of the limitation of seventy-five cents, without a vote of the people, that

[33] People v Miner, 46 Ill. 384 (1868).
[34] People v Lippincott, 65 Ill. 548 (1872).
[35] Coles County v Gochring, 209 Ill. 142 (1904).
[36] C. B. & Q. R. R. Co. v People, 213 Ill. 458 (1905)
[37] People v W. C. R. R. Co., 219 Ill. 94 (1905).

body may, if it sees fit, provide that the county boards shall have no power to levy taxes in excess of a certain amount which is less than seventy-five cents on the one hundred dollars valuation.[38] However, a levy of county taxes in excess of the amount permitted by the constitution or statute does not render the whole levy void; only the excess is illegal.[39]

What are county taxes within the meaning of the constitution? The mother's pension fund tax is a county tax and must be included within the limitation of seventy-five cents on the one hundred dollars valuation; county boards cannot impose the mother's pension fund tax in addition to a tax levy of seventy-five cents on the one hundred dollars valuation without a vote of the people.[40] It is a county tax because under the law the mother's pension fund is administered by the county. Town taxes do not become county taxes merely because the amount of town taxes required to be levied is certified by the town authorities to the county board and ordered by that body to be extended by the county clerk on the tax books.[41] But road and bridge taxes in counties not under township organization and not divided into road districts, are county taxes, although in counties under township organization such taxes are town taxes and are not included in the limitation of seventy-five cents on the one hundred dollars valuation;

In ordering the submission to the voters of the question of levying taxes in excess of the limitation of seventy-five cents, the county board should state either the number of years that taxes are proposed to be levied at a certain rate in excess of seventy-five cents on the one hundred dollars valuation, or the amount of money desired to be raised by taxes in excess of the usual rate. "It is indispensable to a good and valid order of the board that it should disclose to the voters either the length of time the levies at the excessive rate shall continue, or the amount which is to be raised by such excess in the rate of taxation."[42]

In 1915 the General Assembly passed an act authorizing county boards to establish county tuberculosis sanitariums in counties where the proposition of establishing such sanitariums was voted on favorably by the people. The act also provided for a tax levy to obtain funds for the operation and maintenance of such sanitariums. In People v Wabash Railway Company," the question was presented whether or not a favorable vote on the question of adopting the act of 1915 was equivalent to a favorable vote on the question of levying the taxes authorized by the act of 1915, in addition to seventy-five cents on the one hundred dollars valuation. The court held that the vote on the question of establishing a county tuberculosis sanitarium could not be regarded as a vote on the question of levying taxes in excess of the limitation of seventy-five cents and that, therefore, the tax authorized by the act of 1915 must be included in the limitation of seventy-five cents, unless the people later voted favorably on the question of levying the sanitarium tax in addition to the usual rate.

Women cannot vote on the question of levying county taxes in excess of seventy-five cents on the one hundred dollars valuation.[45] (See discussion article 7, section 1, subheading, "Woman suffrage").

Indebtedness existing at the time of the adoption of the constitution. Except for indebtedness existing at the time of the adoption of the present constitution counties cannot levy taxes in excess of the limitation of seventy-five cents, unless authorized by a vote of the people. An obligation which was authorized and created before the adoption of the constitution of 1870 is a pre-existing indebtedness, even though the bonds or

[38] Booth v Opel, 244 Ill. 317 (1910).
[39] Mix v People, 72 Ill. 241 (1874).
[40] People v C. V. & C. Ry. Co., 266 Ill. 557 (1915).
[41] W. St. L. & P. Ry. Co. v McCleave, 108 Ill. 368 (1884).
[42] Wright v W. St. L & P. Ry. Co., 120 Ill. 511 (1887).
[43] P. & P. U. Ry. Co. v People, 198 Ill. 318 (1902).
[44] 286 Ill. 15 (1918).
[45] Report Attorney General 1915, p. 310.

other evidences of the obligation were not issued until after its adoption.[46] With reference to pre-existing indebtedness the power to levy taxes in excess of the limitation of seventy-five cents continues until the indebtedness is extinguished. The mere fact that, in the years immediately after the adoption of the constitution, taxes in excess of the limitation of seventy-five cents were levied in an amount sufficient to satisfy the pre-existing indebtedness of a county but were, after their collection, diverted to other purposes, does not prevent the county board from again levying taxes in excess of seventy-five cents on the one hundred dollars valuation for the purpose of paying such indebtedness.[47]

Section 9. The General Assembly may vest the corporate authorities of cities, towns, and villages, with power to make local improvements by special assessment or by special taxation of contiguous property, or otherwise. For all other corporate purposes, all municipal corporations may be vested with authority to assess and collect taxes; but such taxes shall be uniform, in respect to persons and property, within the jurisdiction of the body imposing the same.

Municipalities that may be authorized to levy taxes. Under the constitution of 1818 the General Assembly had the power arbitrarily to create municipal corporations of any kind or character and to invest such municipal corporations with the power to levy taxes.[48] Section 5 of article 9 of the constitution of 1848 provided that "the corporate authorities of counties, townships, school districts, cities, towns and villages may be vested with power to assess and collect taxes for corporate purposes, such taxes to be uniform in respect to persons and property within the jurisdiction of the body imposing the same," and it was held that, under that section, the General Assembly could not confer the power to levy municipal taxes on any corporate authorities other than those of counties, townships, school districts, cities, towns and villages. The enumeration of certain municipal corporations was held to be an exclusion of all municipal corporations not mentioned in that section.[49] But this section of the present constitution expressly provides that (except as to local improvements) "all municipal corporations may be vested with authority to assess and collect taxes." There is, in this section, no enumeration of municipal corporations that may be given the power to impose general taxes for corporate purposes. The rule established under the constitution of 1848, therefore, has no application at this time, and the General Assembly, in so far as the creation of different types or classes of municipal corporations with power to levy

[46] Chiniquy v People, 78 Ill. 570 (1875).
[47] County of Pope v Sloan, 92 Ill. 177 (1879).
[48] Shaw v Dennis, 10 Ill. 405 (1849); see discussion of this case in Wilson v Board of Trustees, 133 Ill. 443 (1890), pp. 459-65.
[49] People v Salomon, 51 Ill. 37 (1869). This case is interesting because, while the court announced the rule that only the corporate authorities of the municipalities enumerated in section 5 of article 9 of the constitution of 1848 could be given the power to levy taxes for corporate purposes, it nevertheless sustained an act establishing three towns as a park district and authorizing a board of park commissioners appointed by the Governor to levy taxes for park purposes on the property in the park district. The court took the view that this was not an attempt to confer a taxing power on a park district, a municipality not mentioned in section 5 of article 9, but that the act merely created the board of park commissioners the corporate authorities for the park purposes of the towns formed into a park district, and that, since towns were enumerated in section 5 of article 9, the constitutional provision was not violated. See discussion of this case in Wilson v Board of Trustees, 133 Ill. 443 (1890) pp. 459-65; see, also, Madison County v People, 58 Ill. 456 (1871); People v McAdams, 82 Ill. 356 (1876).

and collect general taxes for corporate purposes is concerned, is completely unrestricted. Thus, the General Assembly may authorize the establishment of sanitary districts with the power to levy general taxes for corporate purposes.[50]

Corporate purposes. This section of the constitution provides that municipal corporations *may* be vested with the power to levy taxes for corporate purposes. The constitutional provision is not self-executing, and the power of municipalities to levy taxes for corporate purposes depends upon legislation. Municipal corporations can not levy taxes unless authorized to do so by an act of the General Assembly.[51] This section of the constitution, however, is a limitation on the power of the General Assembly. The legislative authority cannot authorize the levy of local taxes except for corporate purposes. The question then arises as to what is a corporate purpose. "A tax for a corporate purpose is one to be expended in a manner which will promote the general prosperity and welfare of the municipality which levies it." [52] "Those purposes have been defined to be such purposes as are germane to the objects of the welfare of the municipality, or, at least, have a legitimate connection with those objects and a manifest relation thereto." [53]

Under the constitution of 1848 it was held that taxes levied by counties and townships for the payment of bounties to volunteer soldiers in the Civil War were taxes for corporate purposes.[54] And, under that constitution taxes levied by counties, townships, cities, towns and villages to pay bonds issued by such municipalities in aid of railroads were held to be taxes for corporate purposes,[55] although taxes levied by a school district for a similar purpose were not for corporate purposes.[56] But taxes levied by municipal corporations to obtain money for donations to private manufacturing corporations, or for the purchase of the capital stock of such private corporations, were held to be not for corporate purposes.[57] The separate section of the present constitution relating to municipal subscriptions to railroads or private corporations prohibits donations to or subscriptions to the capital stock of railroad and private corporations by municipal corporations.

In Livingston County v Weider[58] it was held that the constitution of 1848 forbade the levy of taxes by a county to obtain funds to aid the construction of the state reform school even though the purpose of the donation of funds was to secure the location of the institution in that county. Two years later, however, the court held that a tax levied by the city of Carbondale to pay bonds issued in aid of the construction of a state normal school to be located in that city was for a corporate purpose and, therefore, not forbidden by the constitution of 1848.[59] The court drew a distinction

[50] Wilson v Board of Trustees, 133 Ill. 443 (1890).
[51] Condon v Village of Forest Park, 278 Ill. 218 (1917); Bissell v City of Kankakee, 64 Ill. 249 (1872).
[52] Taylor v Thompson, 42 Ill. 9 (1866).
[53] Stone v City of Chicago, 207 Ill. 492 (1904).
[54] Taylor v Thompson, 42 Ill. 9 (1866); State of Illinois v Sullivan, 43 Ill. 412 (1867).
[55] Johnson v County of Stark, 24 Ill. 75 (1860); C. D. & V. R. R. Co. v Smith, 62 Ill. 268 (1871).
[56] People v Dupuyt, 71 Ill. 651 (1874); People v Trustees of Schools, 78 Ill. 136 (1875).
[57] Mather v City of Ottawa, 114 Ill. 659 (1885); see, also, Bissell v City of Kankakee, 64 Ill. 249 (1872); English v People, 96 Ill. 566 (1880). It is interesting to note that while all of these cases were based on the constitution of 1848, the decisions were rendered after the adoption of the present constitution which forbids municipal aid to private corporations. (See separate section relating to municipal subscriptions to railroads or private corporations).
[58] 64 Ill. 427 (1872).
[59] Burr v City of Carbondale, 76 Ill. 455 (1875).

between the state reform school case and the state normal school case on the ground that, in the former, the question of donating funds had not been submitted to the voters, while, in the latter, the people of the city of Carbondale had voted favorably on the question of issuing bonds in aid of the normal schools.

The question whether or not a certain local tax is a tax for a corporate purpose under the constitution of 1870 has not often arisen. It has been held that a tax levied in a school district not maintaining a high school to pay the tuition of pupils residing in that district but attending a high school in another school district, is a tax for a corporate purpose, which may be authorized by the General Assembly.[60] A city may levy a tax to defray the cost of holding elections in the city, or to pay judgments obtained against it in the courts.[61] A statute which authorizes the collection of municipal taxes, previously held invalid, is not void as authorizing a local tax for other than a corporate purpose, although such back taxes, when collected, cannot possibly be used for the purposes for which they were originally intended. "Because the taxes are not now needed for, and will not be applied to, the particular corporate purpose for which they were required at the time they were attempted to be levied and collected . . . it does not follow that when collected they will not be applied to some municipal purpose. They would belong to the corporation, and would, like any other surplus, remain in the treasury subject to future appropriations for municipal purposes, and thereby lighten future taxation and thus operate in the equalization of the burden of taxation."[62] And municipalities may be authorized to include in their tax levies an item to cover the cost of collection and probable losses in collection, for an item of that character constitutes a corporate purpose.[63]

Corporate authorities. This section of the constitution expressly provides that the General Assembly may vest the corporate authorities of cities, towns and villages with the power to make local improvements by special assessments or by special taxation of contiguous property. But with respect to general taxes, it provides that "for all other corporate purposes all municipal corporations may be vested with authority to assess and collect taxes." In providing for the levy of general taxes by municipal corporations the constitutional provision does not refer to corporate authorities. It is probable, however, that the framers of the constitution did not intend to distinguish between special assessments and special taxation on the one hand, and general taxation on the other, with respect to the persons who could be authorized to impose them. In any event the courts have made no distinction in this regard. The constitution of 1848 (article 9, section 5) provided that "the corporate authorities of counties, townships, school districts, cities, towns and villages may be vested with power to assess and collect taxes for corporate purposes, such taxes to be uniform in respect to persons and property, within the jurisdiction of the body imposing the same." Under this provision it was held in many cases that only the corporate authorities of the municipalities therein enumerated could be empowered to levy general taxes for corporate purposes.[64] And the same general rule has been applied in all cases arising under the constitution of 1870. Only the corporate authorities of a municipal corporation may levy taxes for corporate purposes.[65]

[60] Cook v Board of Directors, 266 Ill. 164 (1914).
[61] Wetherell v Devine, 146 Ill. 631 (1886); Stone v City of Chicago, 207 Ill. 492 (1904).
[62] Fairfield v People, 94 Ill. 244 (1879).
[63] Village of Hyde Park v Ingalls, 87 Ill. 11 (1877); see, also, Ryan v People 117 Ill. 486 (1886).
[64] People v Mayor of City of Chicago, 51 Ill. 17 (1869); Harward v St. Clair Drainage Co., 51 Ill. 130 (1869).
[65] Cornell v People, 107 Ill. 372 (1883); People v Block, 276 Ill. 286 (1916).

Who are corporate authorities? "As the object of this constitutional clause was to prevent the legislature from granting the power of local taxation to persons over whom the population to be taxed could exercise no control, it is evident that, by the phrase 'corporate authorities,' must be understood those municipal officers who are either directly elected by such population, or appointed in some mode to which they have given their assent."[66] Under the constitution of 1848 it was held that the General Assembly could not create a drainage district and vest the power to levy taxes for the corporate purposes of that district in a private corporation designated in the act establishing the district.[67] It was also held that the General Assembly could not create a park district in a town and vest the taxing power in a board of commissioners appointed by the General Assembly.[68] Nor could it arbitrarily provide that five persons should constitute a body corporate to conduct a primary school with power to levy taxes on the property within a certain district.[69] However, it was not necessary, under the constitution of 1848, that the corporate authorities of a municipal corporation should be directly elected by the people of that municipality. The General Assembly could provide for the appointment of the taxing authorities of a municipality and, if the people of the municipality assented to the mode of appointment prescribed, the taxing authorities designated became corporate authorities within the meaning of the constitution. In People v Salomon[70] an act of the General Assembly providing that the taxing authorities of a certain park district composed of three towns should be appointed by the Governor was sustained because the people of the park district had voted favorably on the question of adopting the act. In that case the people subject to taxation consented to the appointment by the Governor of the taxing authorities. But once the mode of appointment of corporate authorities was approved by the people to be taxed, it was not within the power of the General Assembly, at a later time, to change the method of appointment without the consent of the people interested.

In Cornell v People[71] the facts were as follows: An Act of the General Assembly provided that the taxing authorities of a park district composed of three towns should be appointed by the judges of the circuit court. This act was submitted to the people of the proposed park district and adopted. Later the General Assembly passed an act providing that the taxing authorities of the park district should be appointed by the Governor. The later act was not submitted to the people subject to taxation, and was held void on the ground that it provided for the appointment of taxing authorities in a manner not assented to by the people of the park district. "It may be that the Governor is quite as competent to select honest and capable commissioners as the circuit judge of Cook County; but that does not affect the question. Had the people of the district seen proper to reject the act when it was submitted for their adoption or rejection, the act could not have been imposed upon them. They saw proper to adopt it as it was, with the plain provision that the corporate authorities should be appointed by the circuit judge of Cook County. It cannot be said they would have given their assent to the act if the appointing power had been left in the hands of the Governor. They may have had the most cogent reasons for consenting to an act where the appointing power was left in the hands of a public officer residing in their own county, occupying a position which of itself would place him above any and all political influences which might be brought to bear upon a political officer of the

[66] Harward v St. Clair Drainage Co., 51 Ill. 130 (1869).
[67] Harward v St. Clair Drainage Co., 51 Ill. 130 (1869); Board of Directors v Houston, 71 Ill. 318 (1874).
[68] People v Mayor of City of Chicago, 51 Ill. 17 (1869).
[69] People v McAdams, 82 Ill. 356 (1876). For other similar cases see Hessler v Drainage Commissioners, 53 Ill. 105 (1870); Lovingston v Wider, 53 Ill. 302 (1870); Wider v City of East St. Louis, 55 Ill. 133 (1870); Gage v Graham, 57 Ill. 144 (1870); Snell v City of Chicago, 133 Ill. 413 (1890).
[70] 51 Ill. 37 (1869).
[71] 107 Ill. 372 (1883).

state entrusted with the appointing power. But however this may be, they never assented to any other or different mode of appointment of the corporate authorities, and until they have done so they can not be bound to accept them."

The rule with reference to corporate authorities is the same under the constitution of 1870 as it was under the constitution of 1848. "The clause in the constitution of 1870, adopted in the light of this construction, must be construed in the same manner as was construed the kindred clause in the constitution of 1848."[72] Corporate authorities must be elected by the people to be taxed or appointed in some mode to which the people subject to taxation have given their assent, and the method of appointment, once approved by the people, cannot be changed without their consent.[73] The board of election commissioners in a city which has, by popular vote, adopted the city election act may incur obligations pursuant to that act and require the city to pay the same, even though the commissioners are appointed by the county judge of the county in which the city is situated.[74] By adopting the act creating the election commissioners, the people of the city consent to the appointment of these officers by the county judge, and they are, therefore, the corporate authorities of that city for the purpose of incurring election expenses to be paid by that municipality. But the General Assembly cannot authorize a drainage district to construct a ditch or channel across a highway and require the highway commissioners of the township or road district in which the highway is located to build a bridge across the channel of the drainage district at the expense of the township or road district.[75] The effect of a law of that character would be to authorize the drainage commissioners, who are not the corporate authorities of the township or road district, to impose taxes for corporate purposes on the people of the township or road district. The mere fact that in this case the drainage commissioners do not levy a tax for road and bridge purposes on the property within the township or road district does not alter the situation. The drainage commissioners are given the power to impose a debt upon the township or road district, and the township or road district could not satisfy that debt without levying a tax for that purpose. The effect is the same as if the drainage commissioners were given the express power to levy a tax on the property in the township or road district for road and bridge purposes. In either event the people in the township or road district would be called upon to pay a tax not levied as an exercise of the judgment and discretion of the duly constituted corporate authorities of the township or road district. Debts for corporate purposes which can be met only by funds raised by taxation cannot be imposed upon any municipal corporation against the will or without the consent of either the people of the municipality or its corporate authorities.[76]

(For a further statement with reference to this subject, see discussion following subheading.)

Power of General Assembly to impose taxes on municipal corporations for corporate purposes. Taxes for the corporate purposes of a municipality can be levied only by the corporate authorities of the municipality. (See discussion under preceding subheading). Section 10 of this article provides that "the General Assembly shall not impose taxes upon munici-

[72] Cornell v People, 107 Ill. 372 (1883).

[73] Cornell v People, 107 Ill. 372 (1883). See People v Knopf, 171 Ill. 191 (1898).

[74] Wetherell v Devine, 116 Ill. 631 (1886). See City of Chicago v Wolf, 221 Ill. 130 (1906).

[75] Morgan v Schusselle, 228 Ill. 106 (1906); People v Block, 276 Ill. 286 (1916); but see Drainage Commissioners v Rector Drainage District, 266 Ill. 536 (1915).

[76] People v Block, 276 Ill. 286 (1916). See People v County of Williamson, 286 Ill. 44 (1918).

pal corporations, or the inhabitants or property thereof, for corporate purposes, but shall require that all the taxable property within the limits of municipal corporations shall be taxed for the payment of debts contracted under authority of law, such taxes to be uniform in respect to persons and property, within the jurisdiction of the body imposing the same." The evident purpose of this provision was to make doubly sure that taxes for corporate purposes should be levied only by the corporate authorities of the municipal corporation imposing them. The constitution of 1848 contained no similar provision, but it was held, nevertheless, that under that instrument the General Assembly could not levy taxes on municipalities for the corporate purposes of those municipalities.[77] In Marshall v Silliman[78] the facts were as follows: An election was held in a certain township to determine whether or not the township should issue bonds in aid of a certain railroad, and the result was favorable to the proposed issue of bonds. The election, however, was illegal because there was no statutory authorization for holding it. The General Assembly then passed an act purporting to validate the illegal election and the bonds issued thereunder. But the court held that the validating act, in so far as the bonds were concerned, was unconstitutional because it permitted the General Assembly indirectly to levy taxes on the property of the township for corporate purposes. The court took the view that the bonds, having been issued pursuant to an unauthorized election, were null and void; that the township was not bound to levy taxes to pay the bonds; that to permit the General Assembly to validate the bonds would be to sanction the creation by the General Assembly of a debt against the township which could be met only by money raised by taxation; and that, since the debt could be paid only by taxes levied for that purpose, the validating act in effect authorized the General Assembly to impose taxes upon the township for corporate purposes, contrary to that provision of the constitution of 1848 which required that taxes for corporate purposes should be imposed by the corporate authorities of the taxing district. In 1918, however, it was held by a divided court that an act of the General Assembly purporting to validate the proceedings of high school districts organized under an unconstitutional law, had the effect of validating all tax levies in such districts even though the levies were made prior to the enactment of the validating act.[79]

There is, however, a clear distinction between the imposition on a municipality, without its consent or that of its duly constituted corporate authorities, of an original debt which cannot be discharged except by funds acquired through taxation, and the levy of a tax to pay a debt of a municipality contracted under full authority of law. If a municipality with the consent of its people, or of its corporate authorities, incurs a binding obligation, the General Assembly has full power to levy taxes on the property in that municipality, for the purpose of discharging the debt, and need not provide that the taxes necessary to meet the obligation be imposed by the corporate authorities of the indebted municipal corporation. The reason for this holding is that section 10 of this article expressly provides that the General Assembly "shall require that all taxable property within the limits of municipal corporations shall be taxed for the payment of debts contracted under authority of law." So, in a case where bonds, issued in compliance with the vote of the people of a municipality, are registered with the Auditor of Public Accounts under a certain statute, the General Assembly may require the Auditor of Public Accounts to levy taxes on the property in that municipality in such an amount as will be sufficient to discharge the bonds as they become due, together with the interest thereon.[80]

[77] Marshall v Silliman, 61 Ill. 218 (1871); Gaddis v Richland County, 92 Ill. 119 (1879).
[78] 61 Ill. 218 (1871); see, also, C. B. & Q. R. R. Co. v Aurora, 99 Ill. 205 (1881).
[79] People v Mathews, 282 Ill. 85 (1918).
[80] Dunnovan v Green, 57 Ill. 63 (1870); Decker v Hughes, 68 Ill. 33 (1873).

It must also be remembered that the constitution merely prohibits the General Assembly from imposing taxes on municipal corporations for corporate purposes. It does not deprive the General Assembly of the power to impose taxes on municipal corporations for purposes not merely local in their character. "The General Assembly may compel a municipal corporation to perform any duty which relates to the general welfare and security of the state although the performance of the duty will result in taxation or create a debt to be paid by taxation. It may require a county to build a court house for the administration of justice and provide offices and agencies for the collection of the revenue of the state, to build and maintain a jail for the confinement of offenders against the laws of the state, to support paupers, or to establish such regulations as are necessary for the public health and safety and to provide a force to make the regulations effective, although the requirement in either case would result in the levy of a tax."[81] And so it has been held that "roads and bridges are not merely for local use but are for the use and accommodation of all citizens of the state, and it is within the power of the General Assembly to provide that counties shall build roads and bridges and that a county shall pay its proportionate share of the cost of a bridge across a stream on the boundary line between it and another county."[82] The General Assembly may direct a county to pay one-half the cost of constructing a bridge across a stream in a township in that county.[83] On the same theory counties may be required to pay election expenses,[84] a part of the expenses of city courts,[85] and a part of the cost of changing a railroad grade crossing to an elevated or subway crossing.[86] Counties may also be required to pay for the maintenance and care of dependent children.[87] Townships may be required to support paupers[88] and pay a part of the cost of separating a railroad grade crossing.[89] Park districts may be compelled to levy a tax for a park policemen's pension fund because park policemen are required not only for the local government of the park districts, but for the general welfare of the state as a whole.[90] And a city may be made liable for damages to property occasioned by mob violence because the maintenance of good order is a matter of state concern and, to emphasize the necessity for law enforcement by its local governmental agencies, the state may impose a penalty of this character for failure to suppress mobs and riots. The imposition of such a penalty, while it creates a debt against the city which can be discharged only by taxation, is a debt not for a purely local purpose but is for the general state or public purpose of affording more adequate security to life and property.[91]

It has been said in some of the judicial decisions that sections 9 and 10 of this article do not apply to counties and townships.[92] The implication to be derived from these decisions is that the General Assembly may authorize the imposition of taxes for the corporate purposes of counties and townships by persons other than the corporate authorities of those municipal corporations, and that the General Assembly, itself, is free to impose taxes for corporate purposes on such municipalities. The statements to that effect, however, were not necessary to the decisions in which

[81] People v County of Williamson, 286 Ill. 44 (1918).
[82] People v County of Williamson, 286 Ill. 44 (1918). See People v Block, 276 Ill. 286 (1916).
[83] Board of Supervisors v People, 110 Ill. 511 (1884).
[84] Wetherell v Devine, 116 Ill. 631 (1886).
[85] City of Chicago, v Knobel, 232 Ill. 112 (1908); but see People v Stookey, 98 Ill. 537 (1881); Veto Messages, 1917, p. 44.
[86] C. M. & St. P. Ry. Co. v Lake County, 287 Ill. 337 (1919).
[87] St. Hedwig's School v Cook County, 289 Ill. 432 (1919).
[88] Town of Fox v Kendall, 97 Ill. 72 (1880).
[89] C. M. & St. P. Ry. Co. v Lake County, 287 Ill. 337 (1918).
[90] Board of Trustees v Commissioners of Lincoln Park, 282 Ill. 348 (1918); but see Lovingston v Wider, 53 Ill. 302 (1870).
[91] City of Chicago v Manhattan Cement Co., 178 Ill. 372 (1899); Sturges v City of Chicago, 237 Ill. 46 (1908).
[92] Wetherell v Devine, 116 Ill. 631 (1886); Bolles v Prince, 250 Ill. 36 (1911); Raymond v Hartford Fire Insurance Co., 196 Ill. 329 (1902).

they were made, for the debts sought to be imposed in those cases were clearly sustainable as being for a purpose not distinctly local or corporate in character. It is probable that in those cases the court had in mind the distinction between counties and townships on the one hand and cities, incorporated towns and villages on the other. Counties and townships, of course, are political subdivisions of the state and exist primarily as state governmental agencies. Generally any function to be performed by a county or township is of such a character that it cannot be said to be a purely local corporate purpose. But other municipal corporations, such as cities and villages, while they may be charged with the duty of performing functions as state governmental agencies, are created largely for the purpose of local regulation or government as distinguished from the administration of the state government.

These sections of the constitution forbid the imposition of taxes on municipal corporations for local purposes by any persons except their corporate authorities. These sections, however, do not prevent the imposition of taxes on municipalities for other than purely local purposes by some agency other than the corporate authorities. Since the functions of counties and townships generally relate to the administration of the state government, it is obvious that in most cases the imposition of debts or taxes on such municipal corporations is not restricted by the sections of the constitution under consideration. But that is true because the debt or tax imposed is not for a purely corporate purpose and not because these sections fail to prevent the imposition of taxes for corporate purposes on these municipalities by persons other than their corporate authorities. It is believed that the statements made in the decisions previously referred to are based on the fact that counties and townships, because they are political subdivisions, seldom, if ever, perform functions that are distinctly local in character; and that, if the issue is distinctly presented whether or not a debt or tax for a purely local corporate purpose may be imposed on a county or a township without the consent of its people, or that of its duly constituted corporate authorities, the court would probably hold that the constitution forbids such action.

Uniformity. Both sections 9 and 10 of this article require that municipal taxes "shall be uniform in respect to persons and property within the jurisdiction of the body imposing the same." Section 1 of this article provides that, with reference to state taxes, each person and corporation shall pay a tax in proportion to the value of his, her or its property. The requirement of taxation in proportion to value applies to municipal taxes as well as to state taxes. "The 9th section of article nine of the constitution, in authorizing taxes to be laid and collected by municipal corporations, provides that such taxes shall be uniform in respect to persons and property within the jurisdiction imposing the same. To secure that uniformity, two things are essential: First, the assessments shall be just and equal, in proportion to the value of the property liable to assessment; and secondly, when thus assessed, the rate shall be uniform as to every person, and on every species of property, returned by the assessor for taxation."[88] The purpose of the requirement that the taxation of property shall be by valuation is to obtain uniformity and equality of taxation. In the main, therefore, the problem of uniformity with respect to municipal taxes is the same as that relating to state taxes, and since the question of uniformity with reference to state taxes is discussed elsewhere in this volume, there will be no need at this time to repeat that discussion. (See discussion article 9, section 1, center subheading, "Uniformity").

Municipal corporations, however, embrace but a portion of the territory of the state, and the requirement of sections 9 and 10 with respect to uniformity as to persons and property within the limits of the municipalities

[88] Sherlock v Village of Winnetka, 68 Ill. 530 (1873).

imposing taxes, therefore, presents some questions that do not arise in connection with taxes for state purposes which are imposed on all the property in the state. All property in a municipality levying a tax for corporate purposes must be subjected to the tax.[94] A municipal tax for general purposes which is levied against only one species of property in the municipality imposing the tax, or against the property in but one portion of the municipality, is void because it does not operate uniformly with respect to all property in the taxing district.[95] When it becomes necessary under the "Juul Law" to reduce the taxes in a certain part of a taxing district, the reduction must be made in the same manner in all parts of the district.[96] And for the same reason the General Assembly cannot authorize a township to levy a poll tax for road purposes but exempt from the tax all persons residing in a city or village included in whole or in part within the boundaries of the township.[97]

This does not mean, however, that a local tax is void simply because a certain tract of land in the municipality has been omitted from assessment as the result of an error. If the tax levy ordinance contemplated that all property in the municipality should be subject to the tax the inadvertent omission of certain property from assessment will not be a violation of the rule of uniformity.[98] But the failure to assess certain property cannot operate to increase the rate of taxation on the property listed for assessment in the municipality imposing the tax.[99]

Commutation of municipal taxes. Section 6 of this article is designed for the purpose of preventing the commutation of state taxes—that is, the duty or privilege of paying state taxes in a manner other than according to the method generally employed for the levy and collection of state taxes. (See discussion article 9, section 6, sub-heading, "Commutation of state taxes.") There is no express provision in the constitution forbidding the commutation of municipal taxes, and it has been expressly held that section 6 of this article does not extend to municipal taxes.[1]

Under the constitutions of 1818 and 1848 it was held that the General Assembly had the power to commute state and local taxes.[2] And while,

[94] People v C. & W. I. R. R. Co., 256 Ill. 388 (1912).

[95] Prinm v City of Belleville, 59 Ill. 142 (1871); C. B. & Q. R. R. Co. v Aurora, 99 Ill. 205 (1881); Village of Lemont v Jenks, 197 Ill. 363 (1902); see, also, St. Louis Bridge Co. v City of East St. Louis, 121 Ill. 238 (1887); People v Knopf, 171 Ill. 191 (1898).

[96] People v C. & A. R. R. Co., 247 Ill. 458 (1910).

[97] Town of Dixon v Ide, 267 Ill. 415 (1915). The constitution of 1848 (article 9, section 5) contained a similar provision with respect to the uniformity of municipal taxes. During the time that this constitution was in force the General Assembly granted many special charters to cities and villages, some of which contained provisions exempting the inhabitants thereof from the obligation of laboring a certain number of days each year on the roads outside the limits of such municipalities, or from paying taxes to procure such labor. Frequently the cities or villages thus specially incorporated were located within a road district, and the effect of these provisions of the special charters was to exempt the persons living in those cities and villages from the payment of the road taxes (or the duty to labor on the roads) levied by the road district in which they resided. As to whether or not these provisions of the special charters, under such circumstances, violated the constitutional rule of uniformity, there seems to be some confusion in the decisions of the court. In O'Kane v Treat, 25 Ill. 557 (1861) such a provision was held void as being in conflict with the rule of uniformity of taxation prescribed by the constitution of 1848. In Town of Pleasant v Kost, 29 Ill. 490 (1863) a similar provision was sustained on the ground that road taxes of that character were not taxes in a constitutional sense. And in Cooper v Ash, 76 Ill. 11 (1875) a similar provision was sustained on the ground that such a city or village, by reason of the exemption from such taxes, was created into a separate and distinct road taxing district, responsible only for the roads within its limits. See, also, Butz v Kerr, 123 Ill. 659 (1888); Hunsaker v Wright, 30 Ill. 146 (1863).

[98] Merritt v Farris, 22 Ill. 303 (1859).

[99] Vittum v People, 183 Ill. 154 (1899).

[1] Wetherell v Devine, 116 Ill. 631 (1886).

[2] State Bank of Illinois v People, 5 Ill. 303 (1843); I. C. R. R. Co. v McLean County, 17 Ill. 291 (1855).

under those constitutions, taxes could not be commuted without the imposition of something in the nature of an equivalent burden on the person or corporation whose taxes were commuted,[3] there was no necessity, in commuting both state and local taxes, to provide that the municipalities, which were deprived of their power to tax certain property in the ordinary way, should receive anything for the loss of revenue thus incurred.[4] A local tax prior to 1870 could be commuted merely by the payment of something in lieu thereof into the state treasury.

In Raymond v Hartford Fire Insurance Company[5] the court held that sections 9 and 10 of this article, even if they do not absolutely prevent the commutation of municipal taxes, have the effect of forbidding the commutation of such taxes without the payment of something in the nature of an equivalent to the municipalities that are deprived of the power to tax certain property. The decision was based on the ground that these sections of the constitution require that all property in a municipal corporation shall be taxed for the payment of its debts, and that all municipal taxes shall be uniform in respect to persons and property within the jurisdiction of the body imposing the same. In the opinion of the court the release of certain property within a municipal corporation from taxation by that body, without at least requiring the payment to the municipal corporation, of something in the nature of an equivalent in lieu thereof, would be in violation of these provisions of sections 9 and 10.

The court realized no doubt that the constitution of 1848 (article 9, section 5) contained provisions similar to those of sections 9 and 10 of this article, and distinguished the case of Illinois Central Railroad Company v McLean County,[6] which was decided in 1855, and which sustained the power of the General Assembly to commute local taxes merely for the payment of money into the state treasury, on the ground that the earlier case involved the commutation of county taxes. The court took the position that sections 9 and 10 of this article applied only to municipal corporations proper—that is, cities, incorporated towns and villages as distinguished from counties and townships.

It is difficult to ascertain just what is the effect of this decision. It holds clearly that there can be no commutation of local taxes with respect to cities, towns, villages and other similar municipal corporations, unless those municipalities receive something else of value for the taxes released. But it intimates that, with respect to cities, towns, villages and other like bodies, there can be no commutation of local taxes under any circumstances, and it also intimates that the local taxes of counties and other similar municipalities, such as townships, perhaps, may be commuted under any conditions that the General Assembly may see fit to impose.

Power of municipalities to impose occupation and franchise taxes. Sections 9 and 10 of this article refer only to taxes on property. While cities and other similar municipal corporations may be authorized by statute to impose occupation and franchise taxes such taxes are not governed by these sections. The General Assembly by virtue of the last clause of section 1 of this article, has the power to exact occupation and franchise taxes, and this power may, if the General Assembly sees fit, be delegated to municipalities.[7] (See discussion article 9, section 1, subheading, "Taxation of occupations, franchises and privileges.")

[3] Hunsaker v Wright, 30 Ill. 146 (1863). This case also held that in the commutation of taxes the General Assembly was the sole judge as to whether or not the value of the burden imposed in lieu of taxes was equivalent to the amount of taxes released. See, also, Board of Supervisors v Campbell, 42 Ill. 490 (1867).

[4] I. C. R. R. Co. v McLean County, 17 Ill. 291 (1855).

[5] 196 Ill. 329 (1902).

[6] 17 Ill. 291 (1855).

[7] Walker v City of Springfield, 94 Ill. 364 (1880); Banta v City of Chicago, 172 Ill. 204 (1898); but see Braun v City of Chicago, 110 Ill. 186 (1884).

Special assessments and special taxation for local improvements. Section 9 of this article provides that "the General Assembly may vest the corporate authorities of cities, towns and villages, with power to make local improvements by special assessment or by special taxation of contiguous property, or otherwise."

In general.

The constitution of 1848 contained no express provision authorizing the construction of local improvements by special assessments or special taxation. The power to make such improvements by special assessments, however, was sustained under the provisions of that instrument (article 9, section 5), which authorized the General Assembly to vest the corporate authorities of certain municipal corporations with power to levy taxes for corporate purposes. But the rule of equality and uniformity of taxation required by the second constitution (article 9, sections 2, 5) was applied to such proceedings.[8] Not only was it necessary that the special assessment against a particular lot or tract of land should not exceed the benefits, but it was imperative that all property in the municipality making the improvement should be assessed equally and in proportion to the benefits conferred.[9] "The assessment must be laid upon all property that is substantially and directly benefited. This necessarily excludes all personal property of a movable nature. Its value cannot be affected by laying this pavement. But every estate in land adjacent to the street, whether in fee, for life or for a term of years, may be increased in value. If adjacent property is held under a lease for fifty or a hundred years, the benefit to the property arising from replacing an old by a new pavement, would probably accrue wholly to the lessee."[10] And the judicial decisions under that constitution seem to hold that in any local improvement proceeding it was necessary to charge at least a part of the cost of the improvement to the general funds of the interested municipality. "We cannot understand how it is, that a law which places the burden upon the property adjacent to the improvement, is a more equitable apportionment than if imposed upon the entire property of the city, ward or district. Nor is it true that the grading, paving, etc., of a street in Chicago, or other large and growing city, is a mere local improvement, the expense of which adjacent proprietors should wholly bear. It is a matter of public benefit, extending throughout the chartered limits of the city. Are not the owners of property on Wabash avenue and Halsted street, or on the most remote street in Chicago, and those residing thereon, benefited by the grading, paving, etc., of Lake, Randolph, or Dearborn, or Clark streets? If so, should they not bear a fair proportion of the expense, to be assessed on the principle of valuation and uniformity, and of benefits? It does not follow . . . that the owner of an adjacent lot is benefited by an improvement, the cost of which amounts to the full value of his lot, and which may require an additional expenditure by him, to make his lot accessible. In these improvements, the whole public are interested, and that public should pay the cost, on the principle we have suggested; that is, assess to each lot the special benefits it will derive from the improvement, charging such benefits upon the lots, the residue of the cost to be paid by equal and uniform taxation. In this way, the demands of the constitution may be fulfilled, and injustice done to no one."[11]

[8] City of Chicago v Larned, 34 Ill. 203 (1864). The power to levy special assessments under the constitution of 1848 was sometimes referred to as an exercise of the power of eminent domain—that is, that the money of a person whose property was benefited by an improvement was taken and he was compensated therefor by the benefits. See the discussion of this question in the case cited in this note.

[9] City of Ottawa v Spencer, 40 Ill. 211 (1866); Scammon v City of Chicago, 42 Ill. 192 (1866); Bedard v Hall, 44 Ill. 91 (1867).

[10] City of Chicago v Baer, 41 Ill. 306 (1866).

[11] City of Chicago v Larned, 34 Ill. 203 (1864); see, also, St. John v City of East St. Louis, 50 Ill. 93 (1869).

The effect of this construction of the constitution of 1848 was to prevent any proceeding to charge the entire cost of a local improvement to the abutting or contiguous property without a proceeding to determine whether or not the assessments exceeded the benefits. And that portion of section 9 of article 9 which authorizes the construction of local improvements by special taxation of contiguous property, was inserted in the present constitution for the express purpose of overcoming this construction. (Debates, p. 1671-6).

There is now constitutional authority for the construction of local improvements by special assessments, or by special taxation of contiguous property, or otherwise. What is meant by the terms "special assessment" and "special taxation" as used in the present constitution? With respect to special assessments, the constitution of 1848 required two elements. (1) The assessment on any property should not exceed the benefits. (2) All property in the municipality imposing the assessment should be assessed equally in proportion to benefits. And that constitution probably required a third element. (3) In the construction of any local improvement at least a part of the cost thereof should be assessed to the interested municipality and met by general taxation. While the Supreme Court has said that special assessments under the present constitution are the same as under the earlier document,[12] it seems that only one of the previous elements is now necessary in so far as the constitution of 1870 is concerned. Special assessments may not exceed the benefits[13] but there is no necessity that, with reference to any local improvement, every parcel of property in the municipality making the improvement shall be assessed equally in proportion to the benefits conferred upon it. As a matter of fact, special assessments may be limited to the property contiguous to the proposed improvement.[14] Nor is there any constitutional requirement that a part of the cost of every local improvement shall be met by general taxation.[15]

But while special assessments must not exceed the benefits, this rule does not apply to special taxation of contiguous property. The constitutional provisions with reference to special taxation were inserted for the express purpose of permitting the cost of a local improvement to be assessed against the contiguous or abutting property without a proceeding to ascertain whether or not the tax exceeds the benefits. "Whether or not the special tax exceeds the actual benefit to the lot is not material. It may be supposed to be based on a presumed equivalent. The city council have determined the frontage to be the proper measure of probable benefits. That is generally considered as a very reasonable measure of benefits in the case of such an improvement, and if it does not in fact, in the present case, represent the actual benefits, it is enough that the city council have deemed it the proper rule to apply."[16] "Special taxation, as spoken of in our constitution, is based upon the supposed benefit to the contiguous property, and differs from special assessments only in the mode of ascertaining the benefits. In the case of special taxation, the imposition of the tax by the corporate authorities is of itself a determination that the benefits to the contiguous property will be as great as the burden of the expense of the improvement, and that such benefits will be so nearly limited, or confined in their effect, to contiguous property, that no serious injustice will be done by imposing the whole expense upon such property. In the case of special assessments, the property to be benefited must be ascertained by careful investigation, and the burden must be distributed according to the carefully ascertained proportion in which each part thereof will be bene-

[12] Guild v City of Chicago, 82 Ill. 472 (1876); White v People, 94 Ill. 604 (1880).

[13] City of Chicago v Galt, 225 Ill. 368 (1907).

[14] Lake v City of Decatur, 91 Ill. 596 (1879); West Chicago Park Commissioners v Farber, 171 Ill. 146 (1898); see also, Guild v City of Chicago, 82 Ill. 472 (1876) where it is held that under the constitution of 1870 special assessments are not limited to contiguous property.

[15] People v Sherman, 83 Ill. 165 (1876).

[16] White v People, 94 Ill. 604 (1880).

ficially affected."[17] But this does not mean that a municipality may build local improvements and charge the cost thereof to the contiguous property absolutely without regard to benefits. Special taxes for local improvements, after all, are based on the theory that the property specially taxed receives an equivalent benefit. The courts ordinarily will not, in a special tax proceeding, inquire into the question whether or not the tax exceeds the benefits, but if it is clear that a municipality is arbitrarily seeking to impose a burden on property without any regard whatever as to the benefits to the property, the collection of the special tax may be successfully resisted. While a municipality is allowed a large degree of discretion in determining that a special tax is equivalent to the benefits, the tax must be imposed as the result of a reasonable and honest exercise of judgment.[18]

As has already been pointed out, special assessments under the constitution of 1848 were governed completely by the general rules of equality and uniformity of taxation. Since 1870, however, these rules have no application to special assessments and special taxation. It is true that special assessments must not exceed the benefits and special taxes must not be arbitrarily imposed without any regard whatever to the question of benefits. But in the main, the rules of uniformity no longer restrict municipal corporations in providing the means of defraying the cost of local improvements. A city may provide that a local improvement in one part of the city shall be made by general taxation and that a similar improvement in another part of the city shall be made by special assessments.[19] And a city may charge against its general funds a greater proportion of the total cost of one local improvement than another.[20]

It must be remembered, however, that the power of municipalities to levy special assessments or special taxes depends upon legislative authorization. Cities, towns and villages cannot levy special assessments or special taxes unless authorized to do so by the General Assembly. And the General Assembly in conferring the power to make local improvements by special assessments or special taxation may impose conditions not required by the constitution. Thus, the General Assembly, while it need not have done so, has required that special taxes shall not exceed the actual benefits, and that the question whether or not the tax exceeds the benefits shall be reviewable by the courts.[1] (Hurd's Revised Statutes, 1917, chap. 24, sec. 541).

Owners of property subject to special assessments or special taxes cannot be made personally liable for the special assessments or special taxes levied against their property.[21] Owners of property, however, may be made personally responsible for general taxes levied against their property.[22]

What is a local improvement.

The Supreme Court has sought to define the term local improvement. In Loeffler v City of Chicago,[23] it was said: "That term [local improvement] was first mentioned in the constitution of 1870. The term 'local improvements,' as used in said section 9 of article 9 of the constitution, means

[17] Craw v Village of Tolono, 96 Ill. 255 (1880); see, also, Enos v City of Springfield, 113 Ill. 65 (1885); City of Galesburg v Searles, 114 Ill. 217 (1885); City of Sterling v Galt, 117 Ill. 11 (1886); C. & N. W. Ry. Co. v Village of Elmhurst, 165 Ill. 148 (1897).

[18] Craw v Village of Tolono, 96 Ill. 255 (1880); City of Bloomington v C. & A. R. R. Co., 134 Ill. 451 (1890); C. & N. W. Ry. Co. v Village of Elmhurst, 165 Ill. 148 (1897); see, also, Davis v City of Litchfield, 145 Ill. 313 (1893).

[19] Murphy v People, 120 Ill. 234 (1887).

[20] City of Ottawa v Colwell, 260 Ill. 548 (1913); see; also, County of Adams v City of Quincy, 130 Ill. 566 (1889); Davis v City of Litchfield, 145 Ill. 313 (1893).

[21] Hull v People, 170 Ill. 246 (1897).

[22] Craw v Village of Tolono, 96 Ill. 255 (1880).

[23] Douthett v Kettle, 104 Ill. 356 (1882).

[24] 246 Ill. 43 (1910).

such improvements as are paid for by special assessment or special taxation. In a certain sense all improvements within a municipality are local,—that is, they do not extend to all parts of the state. They have, however, locality,—that is, they are nearer to some persons and property than others. Under the constitution of 1848, as well as under the present constitution, it has been held that a special assessment means 'an assessment to pay for an improvement for public purposes upon real property which is, by reason of the locality of the improvement, specially benefited, beyond the benefits by the improvement to real property, generally, throughout the municipality, proportioned by such benefits.' A local improvement is a public improvement 'which, by reason of its being confined to a locality, enhances the value of adjacent property, as distinguished from benefits diffused by it throughout the municipality.' The test as to whether such an improvement is local is whether it specially benefits the property assessed. An improvement may be local, though of some general benefit to the public, when the substantial benefits to be derived from it are local in their nature and the portion of the city where the improvement is made will be specially and peculiarly benefited in the enhancement of the value of the property. When it is proposed by a municipal corporation to make an improvement, the question whether it is local in its character, so that it can be made by special assessment, is one of fact and not of law. The corporate authorities, however, cannot arbitrarily determine that the improvement shall be treated as local when it is, in fact, general in its character. Their decision on this question is subject to review by the courts."

Two municipalities cannot join in a special assessment proceeding for the purpose of defraying the cost of an improvement that will extend from one municipality into the other. Thus, the city of Chicago and the town of Cicero cannot, in a joint special assessment proceeding, provide for the construction of a continuous sewer, designed for use by both municipalities, and extending from one into the other.[25] In the opinion of the court a local improvement must be wholly under the control of one municipality.

An improvement which is designed primarily for the accomodation and convenience of the people in a certain part or locality of a municipality, and which is of such a nature that it confers a special benefit upon the property in that locality, is a local improvement, even though it may incidentally benefit the public at large; but an improvement which is designed primarily for the benefit of the general public is not a local improvement even though the property in its immediate vicinity may receive greater benefits therefrom than property generally in the municipality.[26] An improvement which contemplates the widening of the Chicago river for the purpose of improving navigation on the river, is not a local improvement, and the cost thereof cannot be defrayed by special assessments or special taxation.[27] A city has no power to provide for the construction, by special assessments, of a viaduct or bridge over a deep gulch or ravine, for the purpose of restoring the continuity of one of the main streets in the city.[28] But a city may provide for the construction of a viaduct over a series of railroad tracks which cross one of the city's principal thoroughfares and direct that the cost thereof shall be paid by special assessments. And, in such a case, it is not material that the viaduct when completed will extend across a creek and serve the purpose of a bridge over the stream, if the evidence shows that the viaduct could not be properly constructed without locating one of the approaches on the other side of the stream.[29]

[25] Loeffler v City of Chicago, 246 Ill. 13 (1910); see, also, Hundley v Lincoln Park Commissioners, 67 Ill. 559 (1873).
[26] City of Waukegan v DeWolf, 258 Ill. 374 (1913).
[27] City of Chicago v Law, 144 Ill. 569 (1893).
[28] City of Waukegan v DeWolf, 258 Ill. 374 (1913); see, also City of Bloomington, v C. & A. R. R. Co., 131 Ill. 451 (1890).
[29] L. & N. R. R. Co. v City of East St. Louis, 134 Ill. 656 (1890).

"The cost of constructing a reservoir, of sinking a well, the erection of a stand pipe and the pumping works and buildings for the same, are not local improvements, but of general utility to the inhabitants, and must be paid for by general taxation. The laying of pipes for the conveyance of water along a particular street or streets is local to the particular street and of special benefit, and is a local improvement, and may be paid for by special assessment or special taxation."[31] And it has been held that the poles, wires and lamps in an electric light system are local improvements, but that the power house and generator engines are not."[32]

An act of the General Assembly which authorizes parks to levy a special tax on contiguous property for the maintenance and repair of boulevards and pleasure driveways is unconstitutional. "Original paving of a street brings the property bounding upon it into the market as building lots. Before that, it is a road, and not a street. It is therefore a local improvement, with benefits almost exclusively peculiar to the abutting property. Such a case is clearly within the principle of assessing the lots lying upon it . . . but when the street is once opened and paved, thus assimilated with the rest of the city and made a part of it, all the particular benefits to the locality derived from the improvements have been received and enjoyed. Repairing streets is as much a part of the original duty of the municipality—for general good—as cleaning, watching and lighting. It would lead to monstrous injustice and inequality should such general expenses be provided for by local assessments."[33]

A municipality may not resort to special assessments or special taxation to defray the cost of sprinkling streets. "A local improvement . . is a public improvement which by reason of its being confined to a locality, enhances the value of adjacent property, as distinguished from benefits diffused by it throughout the municipality. The only basis upon which either special assessments or special taxation can be sustained is, that from the proposed local improvement, the property subjected to the tax or assessment will be enhanced in value to the extent of the burthen imposed . . . Used, as it is, in connection with special assessments, which are necessarily based upon the idea of equivalent benefits to the property owner, the idea of permanency in the improvement is necessarily involved,—that is, the benefit must flow from the actual or presumptive betterment of the street, and must be of such character as to enhance the market value of the property."[34] And, on the same theory, it has been held that the General Assembly cannot provide for the payment of the cost of exterminating noxious weeds by special assessments against the lands from which the weeds are removed.[34]

Municipalities that may be authorized to make local improvements by special assessments or special taxation.

Section 9 of this article provides that "the General Assembly may vest the corporate authorities of cities, towns and villages, with power to make local improvements by special assessment or by special taxation of contiguous property, or otherwise." The enumeration of cities, towns and villages has been held to be an exclusion of all other municipalities. The General Assembly may confer the power to make local improvements by special assessments and special taxation only on the corporate authorities of cities, towns, and villages. In Updike v Wright (1876),[35] it was held that drainage districts could not be given the power to levy special assessments. The first amendment to the present constitution (article 4, section 31), was

[30] Hughes v City of Momence, 163 Ill. 535 (1896); see, also, Village of Morgan Park v Wiswall, 155 Ill. 262 (1895); O'Neil v People, 166 Ill. 561 (1897); Hewes v Glos, 170 Ill. 136 (1897); Harts v People, 171 Ill. 458 (1898).

[31] Ewart v Village of Western Springs, 180 Ill. 318 (1899).

[32] Crane v West Chicago Park Commissioners, 153 Ill. 348 (1894).

[33] City of Chicago v Blair, 149 Ill. 310 (1894).

[34] People v Board of Commissioners, 221 Ill. 493 (1906).

[35] 81 Ill. 49 (1876).

adopted (1878) for the express purpose of enabling drainage districts to impose special assessments. (For a statement as to the power of drainage districts to levy special assessments, see discussion article 4, section 31.)

Counties and townships cannot be given the power to levy special assessments or special taxes for local improvements.[36] Park districts, however, on the theory that park commissioners are the corporate authorities of the cities, towns and villages in which the park districts are located, may make local improvements by special assessments or by special taxation.[37] And, while it is difficult to see how the park commissioners of a park district which embraces a part of a city and part of a township can be considered the corporate authorities of a city, town or village, the power of the General Assembly to authorize such a park district to levy special assessments has, nevertheless, been sustained.[38] Only the corporate authorities of cities, towns and villages may levy special assessments or special taxes for local improvements. A township cannot do so. There may be some justification for holding that the park commissioners of a park district located wholly within one city or town, or located wholly within two or more cities or towns, are the corporate authorities for park purposes of the municipality or municipalities in which the park district is located. But how can it be said that the park commissioners of a park district located partly in a city and partly in a township are such corporate authorities, as under the constitution, may be given the authority to levy special assessments or special taxes for local improvements? If the commissioners are deemed the corporate authorities of the city, they are then permitted to exercise jurisdiction beyond the limits of the city. If they are considered the corporate authorities of the township, then the power to levy special assessments and special taxes is being exercised by the township, a municipality which, under the constitution, has no power to levy such assessments and taxes. (See discussion following subheading.)

Corporate authorities.

Only the corporate authorities of cities, towns and villages may levy special assessments and special taxes. Who are corporate authorities? With respect to the power to levy general taxes the corporate authorities of a municipality are persons who are directly elected by the people to be taxed or selected or appointed in some mode to which the people have

[36] People v Board of Commissioners, 221 Ill. 493 (1906); Report Attorney General 1917-18, p. 1034.

[37] Dunham v People, 36 Ill. 331 (1880); West Chicago Park Commissioners v W. U. Telegraph Co., 103 Ill. 33 (1882); West Chicago Park Commissioners v Sweet, 167 Ill. 326 (1897); West Chicago Park Commissioners v Farber, 171 Ill. 146 (1898). The basis of these decisions is found in the reasoning of the court in People v Salomon, 51 Ill. 37 (1869), which was decided prior to the adoption of the constitution of 1870. The constitution of 1848 (article 9, section 5), provided that the corporate authorities of counties, townships, school districts, cities, towns and villages could be vested with the power to levy taxes for corporate purposes. The court held that the enumeration of certain municipalities prevented the General Assembly from giving the power of levying taxes for corporate purposes to the corporate authorities of any municipality not included in the enumeration. The General Assembly passed an act establishing a park district in three adjoining towns. The park was to be under the control of a board of park commissioners. In the Salomon case the point was raised that these commissioners could not be given the power to levy taxes for park purposes because they were not the corporate authorities of a county, township, school district, city, town or village. The court took the view, however, that, while it was true that only the corporate authorities of counties, townships, school districts, cities, towns and villages could be given the power to levy taxes for corporate purposes the General Assembly, in the act under consideration, was not attempting to confer a taxing power on the park commissioners as the corporate authorities of the park district, but was conferring upon these commissioners as the corporate authorities for park purposes of the towns in which the park district was located, the power to levy taxes for park purposes. And so, under the constitution of 1870, park commissioners may levy special assessments and special taxes for local improvements not as the corporate authorities of a park district but as the corporate authorities for park purposes of the city, town or village in which the park district is located.

[38] Van Nada v Goedde, 263 Ill. 105 (1914).

assented. (See discussion preceding subheading "Corporate authorities"). The same rule applies as to the corporate authorities that may be empowered to levy special assessments and special taxes. They must be elected by the people to be assessed or taxed, or selected in a mode which has been assented to by the people.[39]

(For a statement as to the corporate authorities of drainage districts, see discussion article 4, section 31, sub-heading "Corporate authorities").

Combination of methods to defray cost of local improvements.

A municipality, under a proper delegation of legislative authority, may provide that the cost of a particular local improvement shall be met in part by general taxation and in part by special assessments or special taxation. But it cannot provide that a part of the cost shall be paid by special assessments and the remainder by special taxation. Either special assessments or special taxation may be combined with general taxation in one local improvement, but special assessments and special taxation cannot be so combined.[40].

Exemptions from special assessments and special taxation.

(See discussion article 9, section 3, sub-heading "Special assessments and special taxation").

Section 10. The General Assembly shall not impose taxes upon municipal corporations, or the inhabitants or property thereof, for corporate purposes, but shall require that all the taxable property within the limits of municipal corporations shall be taxed for the payment of debts contracted under authority of law, such taxes to be uniform in respect to persons and property, within the jurisdiction of the body imposing the same. Private property shall not be liable to be taken or sold for the payment of the corporate debts of a municipal corporation.

(See discussion article 9, section 9, subheadings "Corporate authorities" and "Power of General Assembly to impose taxes on municipal corporations for corporate purposes.")

Section 11. No person who is in default, as collector or custodian of money or property belonging to a municipal corporation shall be eligible to any office in or under such corporation. The fees, salary or compensation of no municipal officer who is elected or appointed for a definite term of office, shall be increased or diminished during such term.

(See discussion article 4, section 4; see, also, discussion article 4, section 21, subheading, "Municipal officers").

[39] Givins v City of Chicago, 188 Ill. 348 (1900).
[40] Kuehner v City of Freeport, 143 Ill. 92 (1892); see also, Falch v People, 99 Ill. 137 (1881); City of Chicago v Brede, 218 Ill. 528 (1905).

Section 12. No county, city, township, school district, or other municipal corporation, shall be allowed to become indebted in any manner or for any purpose, to an amount, including existing indebtedness, in the aggregate exceeding five per centum on the value of the taxable property therein, to be ascertained by the last assessment for State and county taxes, previous to the incurring of such indebtedness. Any county, city, school district, or other municipal corporation, incurring any indebtedness as aforesaid, shall before, or at the time of doing so, provide for the collection of a direct annual tax sufficient to pay the interest on such debt, as it falls due, and also to pay and discharge the principal thereof within twenty years from the time of contracting the same.

This section shall not be construed to prevent any county, city, township, school district, or other municipal corporation, from issuing their bonds in compliance with any vote of the people which may have been had prior to the adoption of this Constitution in pursuance of any law providing therefor.

In general. The words "or other municipal corporation", as used in this section, have been held to include a village and a sanitary district.[41]

This section consists, primarily, of two restrictions upon the incurring of municipal indebtedness. It does not, except as suggested below, restrict the amount, rate or purpose of municipal taxation. "The fact that a municipal corporation is indebted up to the constitutional limit of five per cent does not prevent that municipality from levying taxes for any lawful purpose within the limits fixed by the laws governing such municipal corporations."[42] It should be borne in mind, however, that taxes levied to pay the interest or principal on a municipal debt which is void because in excess of the five per cent limitation, are themselves void because levied for an unlawful purpose. To this extent, the section under consideration does indirectly restrict the levy and collection of municipal taxes. (See discussion subsequent subheadings, "What is a debt", and "Effect of exceeding five per cent limitation").

(As to the requirements of the second sentence of this section with reference to the levy and collection of annual taxes to meet an indebtedness, see discussion subsequent subheading, "Necessity for provision for annual tax").

Indebtedness authorized before adoption of constitution. The provisions of the last sentence of this section have been held to validate municipal bonds issued after the adoption of the constitution of 1870, in compliance with a vote had prior to that date, pursuant to a law providing therefor, even though, when the bonds were issued, the municipality was indebted beyond the five per cent limitation, and no provision had been made for the payment of the principal and interest, by an annual tax.

In the case of Mason v City of Shawneetown,[43] it appeared that the city charter, a special act of 1861, authorized the city to borrow money for the construction and maintenance of a levee. The city submitted the question of borrowing money for that purpose to the people in May, 1870,

[41] Village of East Moline v Pope, 224 Ill 386 (1906); Evans v Holman, 244 Ill. 596 (1910); Wilson v Board of Trustees, 133 Ill. 443 (1890); People v Bowman, 253 Ill. 234 (1911).

[42] People v C. & T. Ry. Co. 223 Ill. 448 (1906); People v C. & A. Ry. Co. 253 Ill. 191 (1912).

[43] 77 Ill. 533 (1875).

and, upon a favorable vote, it issued, in 1872, $50,000 worth of bonds, for a levee. In 1872 the city was so indebted that the total indebtedness, including this bond issue, exceeded the five per cent limitation by some $10,000. It was alleged that this amount of these bonds was void and that the levy of taxes to pay the principal and interest thereon should be enjoined. The court held that under the last sentence of the section under consideration, these bonds were exempt from the provision in the first sentence of the section, that no municipality should become indebted to an amount in excess of five per cent of the value of the taxable property therein, for the reason that they had been issued in compliance with a vote had prior to the adoption of the constitution pursuant to a law providing therefor—that law being the city ordinance, enacted under the city's charter powers. (See discussion subsequent subheading, "Effect of exceeding five per cent limitation").

In the case of Board of Education v Bolton,[44] the facts were these: An act of 1865 authorized school districts to issue bonds, upon a favorable vote of the people. Such a vote was had in 1867. The bonds were issued in November, 1872. No provision was made at that time for the levy or collection of an annual tax to pay the principal and interest thereon in twenty years, pursuant to the requirements of this section. It was alleged, by the defendant in an action of debt upon the bonds, that for this reason the bonds were void. The court held that under the last sentence of this section the requirement of a provision for the levy of an annual tax had no application where the authority to create the debt was conferred by a vote had prior to the adoption of the constitution, pursuant to a statute providing therefor. (See discussion subsequent sub-heading "Necessity for provision for annual tax;" article 9, section 8; separate section 2.)

Constitutional amendments. The provisions of this section have been modified by two constitutional amendments embodied in section 34, article 4, and section 13, article 9 of the constitution. In the case of Stone v City of Chicago,[45] the court was endeavoring to ascertain whether the city's indebtedness had reached the five per cent limitation prescribed by this section. It was alleged that world's fair bonds in the amount of $4,517,000 should be included for that purpose. The court held: "These bonds were issued under section 13 of article 9 of the constitution of 1870, which section was adopted as an amendment to the constitution in the year 1890. The funds arising from the sale of said bonds were used in aid of the World's Columbian Exposition. At the time the amendment was adopted the city was in debt beyond the constitutional limit, and the object of the amendment was to confer upon the city power to issue said bonds notwithstanding the constitutional limit of five per cent. It is, therefore, clear that said bonds should not be taken into consideration in determining the amount of the city's indebtedness under the debt limit of five per cent fixed by the constitution." (See article 9, section 13.)

In the case of City of Chicago v Reeves,[46] the court was considering the question as to whether the sixth amendment to the constitution of 1870, (article 4, section 34), adopted in 1904, violated the provision of section 2 of article 14, that "the General Assembly shall have no power to propose amendments to more than one article of this constitution at the same session." (See discussion, article 14, section 2.) That is, the court was endeavoring to ascertain to what extent the amendment modified the provisions of other articles of the constitution. The court found that the amendment did, in effect, materially modify provisions in two articles of the constitution, but it held the amendment valid on the ground that thes modifications were necessarily incidental to the accomplishment of the purposes contemplated by the provisions of the amendment. (See article 4, section 34.) The court held that the section under consideration

[44] 104 Ill. 220 (1882).
[45] 207 Ill. 492 (1904); City of Chicago v McDonald, 176 Ill. 404 (1898).
[46] 220 Ill. 274 (1906).

had been modified by this amendment, "so that the City of Chicago [should a consolidation of the many local governments embraced within the city be effected], may become indebted to an amount aggregating five percentum of the *full* value of the taxable property within its limits as ascertained by the last assessment, either for *state or municipal purposes*, previous to the incurring of such indebtedness, instead of not to exceed five percentum of the value of the taxable property therein to be ascertained by the last assessment for state and county purposes previous to the incurring of such indebtedness." (See subsequent subheading, "Valuation of property used in computing five per cent limitation"). As a matter of fact, such a consolidation of the local governments in Chicago has not, as yet, been effected.

Annexations of municipalities. In the case of True v Davis,[47] it was held that the provisions of the section under consideration, prescribing the limitations upon municipal indebtedness, do not prohibit the annexation of two or more cities, incorporated towns or villages to each other, pursuant to statute, even though both of the constituent municipalities are at that time indebted beyond the five per cent limitation. This was true, the court said, because the annexation in no way increases the respective amounts of corporate indebtedness originally incurred by the several constituent municipalities.

Overlapping municipalities. "The constitutional limitation upon the extent of corporate indebtedness applies to each municipal corporation singly, and where one corporation embraces, in part, the same territory as others, each may contract corporate indebtedness up to the constitutional limitation without reference to the indebtedness of any other corporation embraced wholly or in part within its territory."[48] In the case of Wilson v Board of Trustees[49] the facts were as follows: A sanitary district, whose boundaries were not coterminous with those of any other municipal corporation, nevertheless embraced several other municipalities covering various parts of the same territory. One of these municipalities had the power, under its charter, to do what the sanitary district had been organized to do, namely, to construct and operate channels, drains, sewers, etc., for sanitary purposes. The aggregate indebtedness of the several municipalities embraced within the sanitary district, exceeded five per cent of the taxable property in the district. The court held that this was not a case where the powers of an existing municipality were redistributed to a new corporation, to evade restrictions upon the old corporation. The sanitary district was entirely distinct and separate from any other municipal corporation. The provisions of the section under consideration applied to it precisely as they might to any other municipality. The corporate indebtedness of other municipalities could not, therefore, be taken into consideration in determining the limit to which the sanitary district might become indebted.

In this connection, the case of Russell v High School Board[50] should be noticed. In that case the facts were these: An organized school district, having a board of education, had, pursuant to statute, established a high school and placed the administration thereof in a separate high school board of education. The original board of education retained control of the grade school. The high school board proposed to issue bonds for the high school in an amount which would raise the school district's total indebtedness to

[47] 133 Ill. 522 (1889).
[48] People v Honeywell, 258 Ill. 319 (1913).
[49] 133 Ill. 448 (1890).
[50] 213 Ill. 327 (1904).

seven per cent of the value of the taxable property in the district. The court held that the mere creation of a new administrative agency to manage the high school when the original board of education had ample power to do so, did not operate to create a new school district coextensive with and superimposed upon the other, which could incur an indebtedness without regard to that already incurred by the district. The plan amounted to a mere division of the existing powers of the school district between two boards of education in the same district. The amount of the debt which exceeded five per cent of the taxable property was void and, as to that the high school board was enjoined. (See discussion subsequent subheading, "Effect of exceeding five per cent limitation"). Moreover, the court said, that even if it did operate to create a new school district, the arrangement would merely have amounted to a division and redistribution of the powers of the old district, within the suggestion made in the Wilson case, to evade the constitutional restriction on municipal indebtedness, and would, for that reason be void.

Valuation of property used in computing five per cent limitation. In the case of People v Hamill,[51] decided in June, 1888, it was held that the basis for computing the five per cent limitation upon municipal indebtedness under the clause of this section "to be ascertained by the last assessment for state and county taxes", was the original assessment made by the local authorities and not the equalized assessed valuation as fixed by the state board of equalization. Justice Magruder dissented from that decision, holding that the assessed valuation as equalized by the state board of equalization was the basis contemplated by the constitution. Five months later, Justice Magruder, speaking for the full court in the case of Culbertson v City of Fulton,[52] decided in November 1888, held, without reference to the earlier case, that it was the equalized assessed value as determined by the state board of equalization, and not the original assessment as made by the local officers, that should govern in computing the five per cent limitation upon a municipality's indebtedness.

(By two acts of 1919, the state board of equalization was abolished and its powers conferred upon a state tax commission.[53])

However, this does not mean that it is the full value of the taxable property, as thus equalized, which is to be taken as the basis for the computation of the five per cent limitation. In 1898, the General Assembly passed an act fixing the assessed value of taxable property as one-fifth of the full value. In the case of City of Chicago v Fishburn,[54] the court held that the basis for the computation of the five per cent limitation was not the full value of taxable property, but the assessed value, as fixed by statute, namely, one-fifth of the full value. In 1909, the assessed value was changed from one-fifth to one-third of the full value. In 1919, it was raised from one-third to one-half.[55] Accordingly, the five per cent limitation upon a municipality's indebtedness is now to be computed upon the assessed value for state and county taxes, that is, one-half of the full value of the taxable property in the municipality, as equalized by the state tax commission.

Necessity for provision for annual tax—twenty year limitation. It will be noted that the section under consideration contains the following provision: "Any county, city, school district or other municipal corporation

[51] 134 Ill. 666 (1888).
[52] 127 Ill. 30 (1888); Wabash Ry. Co. v People, 202 Ill. 9 (1903).
[53] Laws, 1919, pp. 9, 718.
[54] 189 Ill. 367 (1901).
[55] Laws, 1919, pp. 727-728. The object of these changes since the act of 1898 has been that of increasing the borrowing powers of municipalities. (See discussion, Constitutional Convention Bulletin No. 4, pp. 289-290).

incurring any indebtedness as aforesaid, shall before or at the time of doing so, provide for the collection of a direct annual tax sufficient to pay the interest of such debt as it falls due, and also to pay and discharge the principal thereof within twenty years from the time of contracting the same." The words "incurring any indebtedness as aforesaid" do not mean "incurring any indebtedness in excess of the five per cent limitation." Rather, they mean "incurring any indebtedness in any manner or for any purpose to an amount which, when added to the original debt, is still within the five per cent limitation."[56]

It is not necessary, under this section, that a direct annual tax sufficient to liquidate the debt within twenty years be provided for in connection with every debt, of whatever kind. The words "any indebtedness" do not literally mean "any indebtedness." The constitution merely requires that such a tax be provided for in connection with debts of a fixed and absolute amount, which are in the nature of bonded debts, that is, those which bear interest and fall due at a fixed time or times in the future. Thus, it is not necessary, when a municipality purchases supplies on credit for the purpose of caring for the poor, or when it enters into a construction contract on which payments are to be made monthly at the rate of eighty-five per cent of the value of the work done, or when it contracts for the use of water hydrants at a maximum annual rental, that the levy and collection of an annual tax to pay the interest and principal thereon within twenty years, be provided for.[57] The indebtedness incurred in these cases was not fixed in amount. However, this rule does not go to the extent of defining the kind of indebtedness to which the five per cent limitation applies. In other words, while the requirement of a provision for an annual tax applies only to interest bearing debts of a fixed amount, the payment of which is deferred to a definite time in the future, the five per cent limitation in the first sentence of this section applies to all debts of whatever kind.[58] (As to the obligations of a municipality which have been held to be the debts within the meaning of the term "indebtedness," as used in the first sentence of this section, see discussion subsequent subheading, "What is a debt.")

Nor does the clause of this section, "shall provide for the collection of a direct annual tax," mean that the municipality, at the time of incurring the debt, shall actually levy the whole amount of the annual taxes necessary to liquidate the debt in twenty years. The constitution merely requires that the necessary steps be taken, at that time, for the levy and collection of that tax in subsequent years. As a matter of fact, under the system of taxation in force today, whereby the valuation of property is ascertained, annually, there cannot be a levy at one time of taxes to be collected each year for a period of years in advance. No valuation of property for the whole period, is then available.[59] (See discussion subsequent subheading, "What is a debt.").

The annual tax provided for must be clearly sufficient to pay the interest as due and also the principal within twenty years. For example, a statute was held to contravene this section which directed the municipality to provide for the levy and collection of an annual tax, the proceeds of which were first to be used for other purposes, the residue only, an indeterminate amount, being available to pay a particular bonded indebtedness.[60] Similarly, a special act prescribing the charter powers of a city was held void which limited to a clearly insufficient rate and amount, the taxes to be devoted to payment of the interest and principal on the corporate indebted-

[56] City of East St. Louis v People 124 Ill. 655 (1888); East St. Louis v Amy, 120 U. S. 600 (1886); Town of Kankakee v McGrew, 178 Ill. 74 (1899); Pettibone v West Chicago Park Commissioners, 215 Ill. 304 (1905); but see City of Carlyle v C. W. L. & P. Co., 140 Ill. 445 (1892).

[57] Town of Kankake v McGrew, 178 Ill. 74 (1899); County of Coles v Goehring, 209 Ill. 142 (1904); City of Danville v Danville Water Co., 180 Ill. 235 (1899).

[58] B. & O. S. W. Ry. Co. v People, 200 Ill. 541 (1903).

[59] Hodges v Crowley, 186 Ill. 305 (1900); Pettibone v West Chicago Park Commissioners, 215 Ill. 304 (1905).

[60] Pettibone v West Chicago Park Commissioners, 215 Ill. 304 (1905).

ness.[61] However, in both of these cases, the constitutional provision was held to be so self-executing as to supplant the provisions of these statutes. That is, this provision, without the aid of further legislation, constituted a direction to the municipality to provide for the necessary tax. Moreover, this constitutional provision is so self-executing as to be independent of the statutes regulating the passage by municipalities of appropriation and tax levy ordinances.[62] For example, where the municipal ordinance incurring the indebtedness and providing for the levy and collection of the necessary tax, was passed after the enactment of the appropriation and tax levy ordinances, it was held that the ordinance was passed pursuant to the constitutional mandate, and that, irrespective of the appropriation and tax levy ordinance, it constituted a binding direction to the proper officers to levy and collect the tax for that year, even though the statute requiring the tax to be embodied in the appropriation and tax levy ordinances had not been complied with.[63] Similarly, where the regular tax levy ordinance embodying this tax was held void, because invalidly enacted, the earlier ordinance providing for the levy and collection of the debt tax was held to constitute sufficient authority for the tax officers to levy and collect the tax in that year.[64]

The second sentence of this section merely restricts the term of a bonded indebtedness incurred by a municipality to a maximum period of twenty years. It does not require such bonds to be issued for a period of exactly twenty years, nor does it prohibit the incurring of a debt for any period less than twenty years, such as, for instance, a period of one year.[65] Moreover, this sentence does not require all bonded debts incurred by a municipality to be paid within twenty years, so as to preclude the possibility of refunding the debt at the end of that period. The debt continues to exist if not paid off within twenty years. If, at the end of that period, the provision first made for the payment of the debt with funds collected from annual taxes has proved to be insufficient to pay the whole debt, the constitution does not prohibit the issuance of new bonds to take up and refund the original debt. There must, however, be express statutory authority for refunding a debt in this manner. That is, the second sentence of this section establishes a policy which requires the liquidation of bonded debts within twenty years from the date thereof, to such an extent as to prohibit the refunding of such debts in the absence of express statutory authorization.[66]

What is a debt. The first sentence of the section under consideration provides that no municipality "shall be allowed to become indebted in any manner or for any purpose to an amount, including existing indebtedness, in the aggregate exceeding five per centum on the taxable property therein . . . " This note discusses the general question as to what constitutes an indebtedness within the meaning of this provision.

Accrued interest, which is due and payable, is a debt and must be computed in determining whether the city is indebted beyond the five per cent limitation prescribed by this section. However, interest not yet due is not a debt, for this purpose. For example, in the case of Goodwine v County of Vermilion,[67] the facts were these: Bonds were to be issued by the county, the principal of which did not cause the total indebtedness of the county to exceed the five per cent limitation. However, if the total interest that would fall due during the life of the debt were

[61] City of East St. Louis v People, 124 Ill. 655 (1888); East St. Louis v Amy, 120 U. S. 600 (1886).
[62] People v Wabash Ry. Co., 281 Ill. 382 (1917).
[63] People v Sandberg Co., 282 Ill. 245 (1918).
[64] People v Day, 277 Ill. 543 (1917).
[65] People v Bowman, 253 Ill. 234 (1911).
[66] Kane v City of Charleston, 161 Ill. 179 (1896); Hamilton County v Bank, 157 Fed. 19 (1907); Coquard v Village of Oquawka, 192 Ill. 355 (1901).
[67] 271 Ill. 126 (1915); Stone v City of Chicago, 207 Ill. 493 (1904).

added to the principal, the aggregate sum of principal and interest would exceed the constitutional limitation. It was urged in a proceeding to enjoin the issuance of the bonds, that for this reason the proposed indebtedness was void under the provisions of the section under consideration. The court held that the interest payable during the life of the loan did not, at the time of issuing the bonds, constitute a debt which should be computed in ascertaining whether the county's pre-existing indebtedness, in addition to that created by the bond issue, would exceed the five per cent limitation.

Judgments against a municipality, which have not been satisfied, are debts which must be computed in ascertaining whether the constitutional limitation upon municipal indebtedness has been exceeded.[68]

Neither special assessment warrants, payable out of funds collected by a municipality from special assesments for public improvements, nor the obligations of a municipality to pay, out of funds raised by general taxation for the current year, its share of special assessments for public benefits from public improvements, constitute debts which are to be computed in ascertaining the amount of municipal indebtedness.[69] (As to special assessments in general see discussion article 9, section 9, subheading "Special assessments and special taxation for local improvements".)

A right of action against a city does not create a debt so as to be rendered void by the fact that the city is indebted beyond the five per cent limitation. For example, in a suit against a city for damages on account of personal injuries caused by a defective sidewalk, the court held: "In the trial of a case like this, we are of opinion that the city cannot raise the question as to whether it is already indebted to an amount in excess of the constitutional limitation. It was not error to exclude proof on that subject."[70] In the case of City of Chicago v Cement Co.,[71] the court was considering the constitutionality of the mob law of 1887, under which the municipality was made liable for three-fourths of the damages caused to private property by mobs. It was urged that this act violated the section under consideration, but the court held: "By no possible construction can it be held to create a debt against municipal corporations of any particular amount, much less of an amount exceeding the constitutional limit. We certainly cannot be asked to assume that every county and city in the State would be compelled to become indebted, by its enforcement, to an amount, including existing indebtedness, exceeding five percentum on the value of its taxable property, in order to justify a holding against the validity of the act. Whether or not the city of Chicago was, at the bringing of this suit, indebted beyond that amount is wholly immaterial in determining the constitutionality of the law. That question could only arise, if at all, upon a proceeding to collect the judgment. But aside from the foregoing considerations, as already intimated, we do not think the act, in any proper sense, creates a debt against cities and counties. It does no more than provide that under certain circumstances they shall be liable to owners for property destroyed by mobs and riots. Owners seeking to recover for such loss must, as in any other case, make out their cause of action by alleging and proving all the facts prescribed by the several sections of the act. This right of action is no more a debt against a city or a county than is the right of recovery against such municipality for any other wrong or injury."

In the case of Chicago v P. C. C. & St. L. Ry. Co.[72] it appeared that a judgment had been recovered by the city against a railroad for certain

[68] City of Chicago v McDonald, 176 Ill. 404 (1898); Stone v City of Chicago, 207 Ill. 493 (1904).

[69] Jacksonville Ry. Co. v City of Jacksonville, 114 Ill. 562 (1885); Stone v City of Chicago, 207 Ill. 493 (1904); People v Honeywell, 258 Ill. 319 (1913); Lobdell v City of Chicago, 227 Ill. 218 (1907).

[70] City of Bloomington v Perdue, 99 Ill. 329 (1881).

[71] 178 Ill. 372 (1899).

[72] 244 Ill. 220 (1910).

damages. Thereafter, an ordinance was passed, providing for the elevation of the tracks of this railroad. In consideration of the elevation of the road and of the making of various public improvements, the city, by an ordinance, released the railroad company from its liability on the judgment. It was objected that this ordinance contravened the section of the constitution now under consideration. The court held: "The connection between section 12 of article 9, limiting indebtedness, and the ordinance in question, is not apparent. The plaintiff proved that the city of Chicago was indebted in excess of five per cent of its taxable property, and the argument seems to be, that if the defendant had not been released and had paid into the treasury the damages on account of the viaducts, the city would have had that much more money and the municipal expenses would have been reduced by that amount. We are unable to see that the provision has anything to do with this matter, or that a compromise by which some of the assets were given up in consideration of benefits received amounted to incurring an indebtedness."

Where a city already indebted beyond the five per cent limitation contracts for the furnishing of supplies or services to the city during a period of years, for which payments are to be made by the city upon the furnishing of the supplies or the rendering of the services, in fixed periodical installments, it has been held that the city thereby becomes indebted in violation of the provisions of this section, at the time of the making of the contract. This is so because whether it is the liability to pay the aggregate of the installments or the liability to pay each one as it falls due that constitutes an indebtedness, the city is powerless to incur any indebtedness whatsoever.[73] However, where a city is not indebted beyond the five per cent limitation, and it is not shown that the obligation to pay a particular installment will increase the city's indebtedness beyond the constitutional limitation, even though the obligation to pay the aggregate of the installments will have that effect, it has been held that the city does not, at the time of entering into the contract, thereby become indebted in violation of the provisions of the section under consideration. The actual liability to pay in such a case accrues upon the rendering of the service or the furnishing of the supplies, at the date the installment is due, and not before. Therefore, the amounts that might become due and payable at future installment dates do not, at the time of entering into the contract, constitute a debt of the city, within the meaning of the constitution.[74]

The question as to when the issuance of anticipation warrants, by a municipality indebted beyond the five per cent limitation, to meet current expenses, is prohibited by the section under consideration, seems to have arisen for the first time in the case of City of Springfield v Edwards.[75] It was urged by counsel in this case that "when liabilities are created [by municipalities] and appropriations are made, which are within the limits of the revenue accruing to meet them, they are not debts within the meaning of the prohibition of the constitution; and that temporary loans are not, when within the limits of the revenue expected to be realized." This contention was supported by cases from other states. The court held: "These cases maintain the doctrine that revenues may be appropriated in anticipation of their receipt, as effectually as when actually in the treasury; that the appropriation of moneys when received meets the services as they are rendered, thus discharging the liabilities as they arise, or rather anticipating and preventing their existence. We are only prepared to yield our assent to the rule recognized by the authorities referred to, with these qualifications: First, the tax appropriated must, at the time, be actually levied; second, by the legal effect of the contract between the corporation

[73] Prince v City of Quincy, 105 Ill. 138 (1883); 105 Ill. 215 (1883); 128 Ill. 443 (1889); City of Chicago v McDonald, 176 Ill. 404 (1898); City of Chicago v Galpin, 183 Ill. 399 (1899); Schnell v City of Rock Island, 232 Ill. 89 (1908).

[74] East St. Louis v East St. Louis L. G. L. & C. Co., 98 Ill. 415 (1881); City of Chicago v McDonald, 176 Ill. 404 (1898).

[75] 84 Ill. 626 (1877).

and the individual, made at the time of the appropriation, the appropriation and issuing and accepting of a warrant or order on the treasury for its payment, must operate to prevent any liability to accrue on the contract against the corporation. The principle, as we understand it is, that in such a case there is no debt, because one thing is simply given and accepted in exchange for another. When the appropriation is made and the warrant or order on the treasury for its payment is issued and accepted, the transaction is closed on the part of the corporation—leaving no future obligation, either absolute or contingent, upon it, whereby its debt may be increased. But until a tax is levied, there is nothing in existence which can be exchanged; and an obligation to levy a tax in the future, for the benefit of a particular individual, necessarily implies the existence of a present debt in favor of the individual against the corporation, which he is lawfully entitled to have paid by the levy. If the making of the appropriation and issuing and accepting a warrant for its payment does not have the effect of relieving the corporation of all liability, or, in other words, if it incurs any liability thereby, it must, manifestly incur, either absolutely or contingently, a debt. Where a warrant or order, payable from a specific appropriation of a tax levied but not yet collected, is accepted in exchange for services rendered or to be rendered, or for material furnished or to be furnished, so that there is, in fact, but the exchange of one thing for another, the duty remains for the proper officers to collect and pay over the tax in accordance with the appropriation—but, obviously, for any failure in that regard, the remedy must be against the officers and not against the corporation, for, otherwise, a contingent debt would, in this way, be incurred by the corporation." These principles have been adhered to in a number of subsequent decisions. The principal difficulty has been that of the application of these principles to particular fact situations. The rule, however, does not seem to have been departed from. In general, it may be said that the principal defect in the warrants that have been held not to come within the rule and to constitute municipal debts which were void because the city was previously indebted beyond the five per cent limitation, has been the fact that the warrants did not state clearly and unequivocally that they were payable out of and only out of a particular fund derived from a particular tax levied for the year in question.[76]

The case of Hodges v Crowley[77] is interesting in this general connection. In that case, the facts were these: An act of 1899 authorized the levy and collection, by counties, of an annual tax, of a certain amount, for road purposes, during a period of ten years. The taxes were to be levied in advance, for the whole ten year period, on the basis of the assessed value of the property in the counties, as determined for the year 1898, and were to be extended and collected annually. Anticipation warrants, bearing interest, were then to be drawn, in 1899, against the entire proceeds of the taxes for the ten year period. The court held that under the system of taxation in force, whereby assessments of property for purposes of taxation were made annually, there could not be an actual levy of taxes for ten years in advance for the reason that no assessed valuation for each year would be available. Therefore, anticipation warrants could not be issued against the revenue to be realized during the entire ten year period, for the reason that no valid levy of those taxes could be made, as required by the rule enunciated in the case of City of Springfield v Edwards, in advance of the issuance of the warrants. The act was held void, as an attempt to authorize counties, indebted beyond the constitutional five per cent limitation, to evade the provisions of the section under consideration, prohibiting the incurring of further indebtedness. (See discussion preceding subheading, "Necessity for provision for annual tax".)

[76] Law v People 87 Ill. 385 (1877); Fuller v City of Chicago, 89 Ill. 282 (1878); Fuller v Heath, 89 Ill. 296 (1878); Howell v City of Peoria, 90 Ill. 104 (1878); Commissioners of Highways v Jackson, 165 Ill. 17 (1897); Schnell v City of Rock Island, 232 Ill. 89 (1908); Booth v Opel, 244 Ill. 317 (1910).

[77] 186 Ill. 305 (1900); Pettibone v West Chicago Park Commissioners, 215 Ill. 304 (1905).

A question somewhat distinct from that relating to anticipation warrants is that as to when a city, which is indebted beyond the five per cent limitation, incurs a debt within the prohibition of this section, by the issuance of certificates, warrants or bonds for the payment of which property, funds or taxes belonging to or due to the city, are pledged.

In the case of City of Joliet v Alexander,[78] the facts were as follows: The city was indebted in excess of the five per cent limitation. It owned a system of waterworks, which yielded an annual income. Pursuant to an act of 1899, it was about to borrow $240,000 to enlarge the waterworks system, by the issuance of interest bearing certificates of indebtedness. These certificates were to be paid out of the proceeds or income from both the old and the enlarged waterworks, and from no other fund. The loan was to be secured by a mortgage of both the old and the new system. A taxpayer sought to enjoin the proposed transaction on the ground that the city's indebtedness would thereby be increased in violation of the provisions of the section under consideration. The court held that because the city owned both the existing waterworks and the established income derived therefrom, because that income was to be taken for the payment of the certificates, and because the old waterworks could be taken therefor in the event of the foreclosure of the mortgage, the transaction constituted a debt of the city, which, being in excess of the constitutional five per cent limitation, was void. The city was, accordingly, enjoined from proceeding with the transaction.

A slightly different situation was presented in the case of Village of East Moline v Pope.[79] The village was indebted beyond the five per cent limitation. It did not own a waterworks system. To procure the construction of such a system, the village was about to issue interest bearing bonds in the sum of $35,000, payable out of the income to be derived from the system when constructed, and also out of a special annual tax to be levied and collected for the purpose. It was held that inasmuch as the bonds were payable out of the special tax, should the income from the waterworks, when constructed, be insufficient, the transaction constituted a debt of the village. Since that debt would be in excess of the five per cent limitation, and therefore void, the village was enjoined from proceeding with the arrangement.

In both of these cases, however, it was suggested that "what is said relative to mortgaging property owned by the city or pledging its existing income is not intended to apply to a mortgage purely in the nature of a purchase money mortgage, payable wholly out of the income of property purchased or by resort to such property. This is not a case where there is no obligation of the city except the performance of a duty in the creation and management of a fund, and where the waterworks, upon paying for themselves, will become the property of the city. The reasoning in Winston v Spokane, 41 Pac. Rep. 888, cannot be applied to a case like this, and could only apply to property or a fund which the city never had, where the property is to be paid for by its own earnings without imposing any further liability on the city." In the Village of East Moline case, it was said that "in the case at bar it is manifest that if nothing but the income from the waterworks was pledged or could be reached to satisfy the principal and interest of the bonds the case would be within the meaning of the language last quoted, but here revenue of the village to be obtained by general taxation to the extent of one cent on the dollar of taxables must be applied to the payment of this indebtedness of the income from the waterworks proves insufficient to satisfy it."[80]

An important case in this connection is that of Lobdell v City of Chicago.[81] In that case it appeared that the city was indebted almost to the

[78] 194 Ill. 457 (1902); Schnell v City of Rock Island, 232 Ill. 89 (1908); Leonard v City of Metropolis, 278 Ill. 287 (1917).
[79] 224 Ill. 386 (1906); Holmgren v City of Moline, 269 Ill. 248 (1915).
[80] See Evans v Holman, 244 Ill. 596 (1910).
[81] 227 Ill. 218 (1907).

five per cent limitation. It proposed, pursuant to statute, to acquire the street railway system. To finance this project the city was about to issue $70,000,000 of street railway certificates, bearing interest, secured by a mortgage of the system to be acquired and of the franchise right to use the streets for street railway purposes, for twenty years. These franchises were then yielding some $400,000 a year in license fees. The certificates were to be payable out of the income to be derived from the street railway system, and from no other fund. A taxpayer sought to enjoin the city from proceeding with the transaction. The injunction was sustained. The court said: "If all that is proposed to be done in this case is to pledge the property, and its income, which is purchased with the proceeds of said street railway certificates when issued and sold to secure the payment of said certificates, then, under the doctrine of Winston v Spokane, 41 Pac. Rep. 883, which has been approved in the City of Joliet v Alexander and Village of East Moline v Pope, *supra*, there would be no indebtedness, within the constitutional inhibition, created by the issue and sale of said street railway certificates and the execution of said trust deed or mortgage, as against the city." The court held, however, that although the city was not directly liable on the certificates, its property, namely, the franchise rights in the streets and the license fees derived therefrom, as well as the railway system, could be taken to satisfy the claims due on the certificates, in the event of the foreclosure of the mortgage. For that reason, the transaction created a debt of the city. In view of the fact that the proposed indebtedness would exceed the five per cent limitation, the city was enjoined from proceeding in the premises.

Effect of exceeding five per cent limitation. Several cases have arisen involving the question as to whether a debt incurred by a municipality not theretofore indebted beyond the five per cent limitation, in such an amount as to extend the city's aggregate indebtedness beyond that limitation, was void as a whole or only as to the excess. These cases have been proceedings to prevent the collection of taxes, either by injunction or by objections to applications for tax judgments, for the payment of the interest and the principal on the debt which exceeded the five per cent limitation. It was held that it was only the amount of the indebtedness by which the limitation was exceeded that was void. As to that amount the collection of taxes was prevented. The portion of the indebtedness within the limitation and the taxes levied therefore, however, were held valid.[82] It should be noted, in this connection, that the incurring of an indebtedness which would have the effect of increasing a municipality's aggregate indebtedness beyond the five per cent limitation, has, in a number of cases, been enjoined. This has been because the proposed transaction, as a whole, represented an attempt to violate the provisions of the constitution, even though only the excess would actualiy be void.[83]

(See discussion preceding subheadings, "In general", and "What is a debt".)

(For a discussion of the question as to when a municipality may be estopped to deny the validity of bonds issued in excess of the five per cent limitation, see Dillon, Municipal Corporations, Fifth Edition, section 905, and following.)

Section 13. The corporate authorities of the city of Chicago are hereby authorized to issue interest-bearing bonds in said city to

[82] Culbertson v City of Fulton, 127 Ill. 30 (1888); City of Chicago v McDonald, 176 Ill. 404, at p. 414, (1898); B. & O. S. W. Ry. Co. v People, 200 Ill. 541 (1903); Wabash Ry. Co. v People, 202 Ill. 9 (1903).

[83] Russell v High School Board 212 Ill. 327 (1904); Lobdell v City of Chicago, 227 Ill. 218, (1907); Evans v Holman, 244 Ill. 596 (1910); Holmgren v City of Moline, 269 Ill. 248 (1915).

an amount not exceeding five million dollars, at a rate of interest not to exceed five per centum per annum, the principal payable within thirty years from the date of their issue, and the proceeds thereof shall be paid to the treasurer of the World's Columbian Exposition, and used and disbursed by him under the direction and control of the directors in aid of the World's Columbian Exposition, to be held in the city of Chicago in pursuance of an act of Congress of the United States: Provided, that if, at an election for the adoption of this amendment to the constitution, a majority of the votes cast within the limits of the city of Chicago shall be against its adoption, then no bonds shall be issued under this amendment. And said corporate authorities shall be repaid as large a proportionate amount of the aid given by them as is repaid to the stockholders on the sums subscribed and paid by them, and the money so received shall be used in the redemption of the bonds issued as aforesaid: Provided, that said authorities may take, in whole or in part of the sum coming to them, any permanent improvements placed on land held or controlled by them: And provided further, that no such indebtedness so created shall in any part thereof be paid by the State, or from any State revenue, tax or fund, but the same shall be paid by the said city of Chicago alone. [84]

(See discussion article 9, section 12, subheading, "Constitutional amendments".)

[84] This section was added by the fifth amendment to the constitution. The amendment was proposed by a resolution of the general assembly in 1890. It was ratified by the voters on November 4, 1890, and proclaimed adopted on November 29 of the same year.

ARTICLE X—COUNTIES

Section 1. No new county shall be formed or established by the General Assembly, which will reduce the county or counties, or either of them, from which it shall be taken, to less contents than four hundred square miles; nor shall any county be formed of less contents; nor shall any line thereof pass within less than ten miles of any county seat of the county or counties proposed to be divided.

"The object of this section is to prevent the reduction of large counties to small ones, and also to prevent the running of new county lines too near county seats already established."[1]

The question has arisen whether the ten mile limit, prescribed in the last clause of this section, is to be measured from the county buildings, or from the boundaries of the municipality which has been established as the county seat. The Attorney General has rendered an opinion, based upon decisions of courts in other states, that the ten miles is to be measured from the boundaries of the municipality. But the limits of the county seat will not expand as the particular municipality expands. The boundaries of the county seat are the limits of the municipality at the time the city is established as a county seat.[2]

Section 2. No county shall be divided, or have any part stricken therefrom, without submitting the question to a vote of the people of the county, nor unless a majority of all the legal voters of the county, voting on the question, shall vote for the same.

Section 3. There shall be no territory stricken from any county, unless a majority of the voters living in such territory, shall petition for such division; and no territory shall be added to any county without the consent of the majority of the voters of the county to which it is proposed to be added. But the portion so stricken off and added to another county, or formed in whole or in part into a new county, shall be holden for, and obliged to pay its proportion of the indebtedness of the county from which it has been taken.

Under the Constitution of 1848 it was held that an act of the General Assembly consolidating two counties was in violation of provisions similar

[1] People v Marshall, 12 Ill. 391 (1851).
[2] Report Attorney General, 1908, p. 706.

to those contained in this section, and in section 2 of this article, since no petition was filed and no election held to authorize such a consolidation.[3] For the same reason it has been held that an act of the General Assembly, ostensibly settling disputed county boundaries, but in reality striking land from one county and adding it to another, was invalid.[4]

The question has arisen whether, in forming a new county composed of parts of two established counties, the petition must be signed by a majority of the voters living in each of the parts proposed to be consolidated. The Attorney General has suggested that, in the absence of authorative construction, it would be advisable to have the petition signed by the majority of the voters living in each section.[5]

The term "majority of the voters of the county" is interpreted to mean a majority of those voting at the election at which the vote is taken. (See discussion article 10, section 4.)

Section 4. No county seat shall be removed until the point to which it is proposed to be removed shall be fixed in pursuance of law, and three-fifths of the voters of the county, to be ascertained in such manner as shall be provided by general law, shall have voted in favor of its removal to such point; and no person shall vote on such question who has not resided in the county six months, and in the election precinct ninety days next preceding such election. The question of the removal of a county seat shall not be oftener submitted than once in ten years, to a vote of the people. But when an attempt is made to remove a county seat to a point nearer to the center of the county, then a majority vote only shall be necessary.[6]

Under a similar provision of the constitution of 1848 it was held that an act of the General Assembly attempting to remove a county seat from one place to another, without a vote of the people of the county affected, was void.[7]

The Supreme Court has pointed out that this section of the constitution contemplates the passage of a law authorizing an election and prescribing the time, place, manner of conducting and determining the result thereof and, without such a statute, there can be no removal of a county seat under this section.[8] (See Hurd's Revised Statutes 1917, Chap. 34, Sec. 93.)[9] The Supreme Court has also said that the power given to the General Assembly to provide, by general law, for an election under this section, does not give the General Assembly the power to prescribe that women and aliens may vote upon all propositions for the removal of county seats.[10] Since this election is a constitutional election only the electors prescribed by article 7, section 1 may vote. (See discussion article 7, section 1, subheading, "Woman suffrage"; article 8, section 5.)

[3] People v Marshall, 12 Ill. 391 (1851).
[4] Rock Island County v Sage, 88 Ill. 582 (1878).
[5] Report Attorney General 1908, p. 706.
[6] In the section as it originally appeared the words "a majority" appeared instead of the word "three-fifths" and the last sentence was omitted. Under the terms of section 12 of the schedule the word "three-fifths" was substituted for the words "a majority" and the last sentence of the section was added.
[7] People v Marshall, 12 Ill. 391 (1851).
[8] Board of Supervisors v Keady, 34 Ill. 293 (1864).
[9] See Village of Ridgway v Gallatin County, 181 Ill. 521 (1899).
[10] People v English 139 Ill. 622 (1892).

In the constitution of 1848 the words, "voters of the county" were not modified by the words "to be ascertained in such manner as shall be provided by general law" and the question of how the number of voters in the county was to be determined gave rise to some difficulty. The Supreme Court held that, in order to give effect to the constitution it must be presumed that all of the voters of the county voted at the election,[11] and that the fact that the registry lists showed a larger number of voters in the county than voted at the election did not rebut this presumption.[12] But, if the election for the removal of a county seat was held at the same time as another election, the greatest number of votes cast would determine the number of voters in the county.[13] However, the act of 1872 prescribes "The number of legal votes cast at any county seat election held under this act shall be deemed and taken for the purposes of such an election *prima facie* evidence of the number of legal voters of that county at that time entitled to vote on the question; but in case it shall become necessary in consequence of a contest of an election held under this act to ascertain the number of voters of the county entitled to vote upon the question, the court in which the contest may be pending may ascertain the number of voters by taking or causing to be taken, legal evidence, tending to show the actual number of the legal voters of the county entitled to vote upon such question."[14]

Section 5. The General Assembly shall provide, by general law, for township organization, under which any county may organize whenever a majority of the legal voters of such county, voting at any general election, shall so determine, and whenever any county shall adopt township organization, so much of this constitution as provides for the management of the fiscal concerns of the said county by the board of county commissioners, may be dispensed with, and the affairs of said county may be transacted in such manner as the General Assembly may provide. And in any county that shall have adopted a township organization, the question of continuing the same may be submitted to a vote of the electors of such county, at a general election, in the manner that now is or may be provided by law; and if a majority of all the votes cast upon that question shall be against township organization, then such organization shall cease in said county; and all laws in force in relation to counties not having township organization, shall immediately take effect and be in force in such county. No two townships shall have the same name; and the day of holding the annual township meeting shall be uniform throughout the State.

In general. Eighty-five of the 102 counties in Illinois have adopted township organization. It is important in discussing township organization to keep in mind the fact that the terms town and township are used in a number of different senses. The congressional township is a geographical area used in the land surveys, and as such has no political significance,

[11] People v Warfield, 20 Ill. 159 (1858). See remarks of Mr. Cody, Debates p. 1239.
[12] People v Garner, 47 Ill. 246 (1868).
[13] People v Wiant, 48 Ill. 263 (1868).
[14] Hurd's Revised Statutes 1917, Chap. 34, sec. 103.

The school township is, in most cases, but not always, coterminous with the congressional township. The civil town, under the township organization law, is more often different in area from the school and congressional township. Incorporated towns are usually villages, incorporated before 1870, within the civil town; but the incorporated town of Cicero is coterminous with the civil town, and has the usual officers of the civil town as well as officers for village functions.

The courts frequently use the term "town" to designate both an incorporated town and a township under the township organization law. In the case of People v Martin[15] the Supreme court said: "A town organized under the township organization laws of the State is, as before said, a political or civil subdivision of a county. It is created as a subordinate agency to aid in the administration of the general State and local government. The distinction between such a town and other chartered municipal corporations proper, sometimes denominated towns, is, that a chartered town or village is given corporate existence at the request or by the consent of the inhabitants thereof for the interest, advantage or convenience of the locality and its people, and a town under township organization is created almost exclusively with a view to the policy of the State at large for purposes of political organization and as an agency of the State and county, to aid in the civil administration of affairs pertaining to the general administration of the State and county government, and is imposed upon the territory included within it without consulting the wishes of the inhabitants thereof."

Organization of townships by general law. The requirement that the General Assembly shall provide for township organization by general law does not mean that the law must apply in the same manner and with equal force to all counties which have adopted, or which propose to adopt, that form of organization. The Supreme Court has said that "An act general in its terms and uniform in its operation upon all persons and subject matter in like situation is a general law, and one that does not bring within its limits all persons and subject matter in substantially the same situation and circumstances is a special law."[16] The General Assembly has a reasonable discretion to classify communities with respect to township organization. Thus, it was held that an act was a general law which provided that county boards might organize the territory embraced within any city, having a population of 3,000 or over, into a separate township.[17] On the other hand, in an earlier case, it was held that an act of 1891 was not a general law providing for township organization, when it provided that where incorporated towns were coterminous with townships, portions of such towns having a population of not less than 1,000 might form new towns and townships upon petition and vote of the people thereof. In this case the Supreme Court said: "It is manifest the inhabitants of other like areas of territory in the state having the specified population are denied the privileges and advantages granted to these particular localities comprehended within the act of 1891 on the sole ground such territory has not been embraced within the limits of an incorporated town."[18]

The General Assembly is also prohibited, by article 4, section 22, from passing special laws regulating township affairs. (See discussion, article 4, section 22, subheading, "County and township affairs.")

Abandonment of township organization. The constitution of 1848 authorized township organization in any county where the majority of the

[15] 178 Ill. 611 (1899).
[16] People v Martin, 178 Ill. 611 (1899).
[17] People v Grover, 258 Ill. 124 (1913); People v Hazelwood, 116 Ill. 319 (1886). People v Brayton, 94 Ill. 341 (1880).
[18] People v Martin, 178 Ill. 611 (1899).

legal voters, voting at a general election, should decide in favor of that form of government, but there was no express provision for the abandonment of township organization by a county which had adopted it. The Supreme Court held, however, that the General Assembly could not authorize a township to abandon the system by a mere majority of those voting at a special election, and that the same formalities must be observed in abrogating the system as in its adoption, that is, it might only be abandoned by the vote of the majority of the voters of the county at a general election.[19] This construction was, in substance, adopted and carried forward into the constitution of 1870 by the insertion of the second sentence of this section, providing that the question of continuing township organization may be submitted to a vote at a general election "and if a majority of all the votes cast upon that question shall be against township organization, then such organization shall cease in said county."

However, it may be noted that the vote required for the abandonment of township organization is not necessarily the same as that required for the adoption of that form of organization. The vote required for the adoption of township government is a majority of the legal voters of the county voting at a general election;[20] the vote required for the abrogation of township organization is a majority of all the votes cast upon that question at a general election.

Under the constitution of 1870, it was held that a statute giving the county board power to alter the boundaries of townships could not be construed to permit the county board to consolidate townships, since this construction would allow the consolidation of all of the townships and result in the abandonment of the township system without the formalities prescribed in the constitution.[21] In another case it was contended that an act supplanting the township board of review by a county board of review was invalid because it destroyed township government without any compliance with the constitutional requirements for abandoning that form of organization. But the court held that this was untenable since "the whole *modus operandi* of township organization is committed to the legislature, the constitution prescribing no particular form or officers, and the legislature has the power to fix and limit the powers of township officers and to modify them at will."[22]

Date of annual town meeting. This section provides that the day of holding the township meeting shall be uniform throughout the state. In 1872 the General Assembly passed a general township organization act, and, in pursuance of this provision of the constitution, fixed the first Tuesday in April as the date of the annual township election. It is held that this act repealed that portion of the special charters of incorporated towns fixing a different election day.[23] In the case of People v Hazelwood[24] the court intimated that an act of the General Assembly, which fixed a different date for the election of township officers in townships whose limits were coextensive with cities, was a violation of this provision of the constitution.

Section 6. At the first election of County Judges under this Constitution, there shall be elected in each of the counties in this State, not under township organization, three officers, who shall be styled "The Board of County Commissioners," who shall hold sessions for the transaction of county business as shall be provided by law. One of said commissioners shall hold his office for one year,

[19] People v Couchman, 15 Ill. 142 (1853).
[20] See People v Garner, 47 Ill. 246 (1868).
[21] People v Brayton, 94 Ill. 341 (1880).
[22] People v Commissioners of Cook County, 176 Ill. 576 (1898).
[23] Kelly v Gahn, 112 Ill. 23 (1884).
[24] 116 Ill. 319 (1886).

one for two years, and one for three years, to be determined by lot; and every year thereafter one such officer shall be elected in each of said counties for the term of three years.

(See article 6, section 17, and schedule, section 4.)

Section 7. The county affairs of Cook county shall be managed by a Board of Commissioners of fifteen persons, ten of whom shall be elected from the city of Chicago, and five from towns outside of said city, in such manner as may be provided by law.

The constitution (article 4, section 22) prohibits special legislation with reference to the management of county or township affairs. It has been held, however, that this section constitutes an exception to that general provision, and that the General Assembly may pass special laws relating to the management of the affairs of Cook county. The basis for this construction is that the county commissioners are to manage the affairs of Cook county "in such manner as may be provided by law", thus implying a duty on the part of the General Assembly to pass laws relating to the management of the affairs of that county.[25]

But the power of the General Assembly to pass such laws does not deprive the commissioners of that county of certain implied powers. Thus the county commissioners may make appropriations for assistant state's attorneys, although there is no legislative authorization for doing so.[26]

Women may not vote for members of the board of commissioners of Cook County.[27] (See discussion, article 7, section 1, subheading, "Woman suffrage").

Section 17 of article 6 provides that "no person shall be eligible . . . to membership in the 'board of county commissioners' unless . . . he shall have resided in the state five years next preceding his election . . ." In the case of People v McCormick,[28] it was held that this requirement of five year's residence in the state, applied only to the board of county commissioners of counties not under township organization, (see article 10, section 6), and had no reference to the board of commissioners of Cook County provided for in this section. The court held that the qualifications for membership in the board of county commissioners of Cook County are fixed by section 6 of article 7 and, since that section makes one year's residence in the state a qualification for office, a statute requiring five year's residence as a qualification for membership in the board of commissioners of Cook county was invalid. (See discussion article 7, section 6).

Section 8. In each county there shall be elected the following County Officers at the general election to be held on the Tuesday after the first Monday in November, A. D. 1882, a County Judge,

[25] People v Day, 277 Ill. 543 (1917). And see People v Commissioners of Cook County, 176 Ill. 576 (1898); Morrison v People, 196 Ill. 454 (1902).
[26] Nye v Foreman, 215 Ill. 285 (1905); but see Dahnke v People, 168 Ill. 102 (1897).
[27] People v Czarnecki, 265 Ill. 489 (1914).
[28] 261 Ill. 413 (1914).

County Clerk, Sheriff and treasurer, and at the election to be held on the Tuesday after the first Monday in November, A. D., 1884, a Coroner and a Clerk of the Circuit Court (who may be ex-officio recorder of deeds, except in Counties having 60,000 and more inhabitants, in which Counties a Recorder of deeds shall be elected at the general election in 1884), each of said officers shall enter upon the duties of his office, respectively on the first Monday of December, after his election, and they shall hold their respective offices for the term of four years, and until their successors are elected and qualified:

Provided, That no person having once been elected to the office of Sheriff, or Treasurer shall be eligible to said office for four years after the expiration of the term for which he shall have been elected. [29]

It may be noted that this section provides that the sheriff and treasurer shall not be eligible to re-election "after the expiration of the term for which they have been elected." The Attorney General has held that a person appointed by the county board to act as county treasurer until a new treasurer may be elected, is eligible to be elected to succeed himself,[30] since, under this provision, only officers who have been elected are ineligible to succeed themselves. Thus, one who is elected to fill out the two year unexpired term of a deceased sheriff is in the opinion of the Attorney General, disqualified for re-election.[31]

Sheriff. In the case of Dahnke v People,[32] it was held that since this section provides for a sheriff without any limitation of his powers or enumeration of his duties, a sheriff such as was known at the common law is created. The General Assembly cannot, therefore, strip the sheriff of his common law prerogatives and functions, such as control of the county jail and court rooms. (See discussion article 5, section 1, subheading, "Attorney General;" Constitutional Convention Bulletin No. 1, p. 16.

Section 9. The clerks of all the courts of record, the Treasurer, Sheriff, Coroner and Recorder of Deeds of Cook county shall

[29] As modified by the second amendment to the constitution. The amendment was proposed by a resolution of the general assembly in 1879. It was ratified by the voters on November 2, 1880, and proclaimed adopted on November 22, 1880. Section 8 as originally adopted reads:

"Section 8. In each county there shall be elected the following county officers: County Judge, Sheriff, County Clerk, Clerk of the Circuit Court, (who may be ex officio Recorder of Deeds, except in counties having sixty thousand and more inhabitants, in which counties a Recorder of Deeds shall be elected at the general election in the year of our Lord one thousand eight hundred and seventy-two), Treasurer, Surveyor and Coroner, each of whom shall enter upon the duties of his office, respectively, on the first Monday of December after their election; and they shall hold their respective offices for the term of four years, except, the treasurer, sheriff and coroner, who shall hold their offices for two years, and until their successors shall be elected and qualified." See People v Board of Supervisors, 100 Ill. 495 (1881).

[30] Report Attorney General 1912, p. 696.

[31] Report Attorney General 1918, p. 778; 1918, p. 798; but see Report Attorney General 1910, p. 487.

[32] 168 Ill. 102 (1897).

receive as their only compensation for their services, salaries to be fixed by law, which shall in no case be as much as the lawful compensation of a judge of the Circuit Court of said county, and shall be paid, respectively, only out of the fees of the office actually collected. All fees, perquisites and emoluments (above the amount of said salaries) shall be paid into the county treasury. The number of the deputies and assistants of such officers shall be determined by rule of the Circuit court, to be entered of record, and their compensation shall be determined by the County Board.

In general. This section provides that the salaries of certain Cook County officers shall be fixed by the General Assembly. Under section 10 of this article, the compensation of all county officers not named in this section, must be fixed by the county board. The Supreme Court has held that the General Assembly has no power to fix the salary of those officers of Cook County who are not named in this section, and who are county officers within the meaning of section 10 of this article. Thus, it has been held that the board of commissioners of Cook County, who are not mentioned in this section, are county officers within the meaning of section 10 of this article, and that, therefore, the General Assembly has no power to fix the compensation of the members of this board.[33] (See discussion article 10, section 10, subheading, "County officers").

Deputies and assistants. Although the salaries of the officers named in this section may be paid only from the fees collected by their respective offices, it has been held that the compensation of their deputies and assistants is not limited exclusively to such fees as a source of payment.[34] The salaries of these deputies and assistants, however, must be fixed by the county board. Thus, it was held that the Cook county employees' pension fund was invalid, insofar as it applied to these deputies and assistants, because the compulsory payment of the premiums entailed a monthly reduction of their salaries thereby depriving the county board of its constitutional power to fix the salaries of these employees.[35]

It will be noted that the number of the deputies and assistants is to be fixed by the circuit court of Cook County. And in the case of People v Day[36] the Supreme Court held that an act requiring the county board to make an annual appropriation covering the salaries of these employees did not operate to deprive the circuit court of its power to determine the number of deputies and assistants to be employed, since the court may fix the number required prior to the adoption of the appropriation bill by the county board.

Fees. This section requires that all fees, perquisites and emoluments, remaining after the salaries of the respective officers are paid, be turned over to the county treasury. It has been held that an act authorizing the county treasurer of Cook County to retain for his own use two per cent of the amount of inheritance taxes collected by him, is in violation of this section,[37] and that the county clerk of Cook county may not retain naturallization fees collected by him.[38] It is clear, from the foregoing, that an act in-

[33] Wulff v Aldrich, 124 Ill. 591 (1888).
[34] County of Cook v Hartney, 169 Ill. 566 (1897).
[35] Hellwell v Sweitzer, 278 Ill. 248 (1917); but see People v Chetlain, 219 Ill. 248 (1906).
[36] 277 Ill. 543 (1917).
[37] Jones v O'Connell, 266 Ill. 443 (1915).
[38] People v Witzeman, 268 Ill. 508 (1915).

creasing the fees of these officers will not amount to an increase in their compensation during their term of office.[39] (See discussion article 5, section 23, subheading, "Disposition of fees collected by officers in their official capacities"; article 10, section 10, subheading, "Fees").

Section 10. The County Board, except as provided in section nine of this article, shall fix the compensation of all county officers, with the amount of their necessary clerk hire, stationery, fuel and other expenses, and in all cases where fees are provided for, said compensation shall be paid only out of, and shall in no instance exceed, the fees actually collected; they shall not allow either of them more per annum than fifteen hundred dollars, in counties not exceeding twenty thousand inhabitants; two thousand dollars in counties containing twenty thousand and not exceeding thirty thousand inhabitants; twenty-five hundred dollars in counties containing thirty thousand and not exceeding fifty thousand inhabitants; three thousand dollars in counties containing fifty thousand and not exceeding seventy thousand inhabitants; thirty-five hundred dollars in counties containing seventy thousand and not exceeding one hundred thousand inhabitants; and four thousand dollars in counties containing over one hundred thousand and not exceeding two hundred and fifty thousand inhabitants; and not more than one thousand dollars additional compensation for each additional one hundred thousand inhabitants: Provided, that the compensation of no officer shall be increased or diminished during his term of office. All fees or allowances by them received, in excess of their said compensation, shall be paid into the county treasury.

County board. The term "county board" is a general term used to include the board of supervisors, in counties under township organization, the board of commissioners in counties which have not adopted township organization, and the constitutional board of commissioners of Cook county. It was also held to include the county court, in townships not under township organization, in cases where, under section 4 of the schedule, that court survived, for a brief period, the adoption of the constitution of 1870.[40]

County offices. This section provides that the county board shall fix the compensation of all county officers, except as provided in section 9. This exception eliminates from the purview of this section the clerks of the courts of record, the treasurer, sheriff, coroner, and recorder of deeds of Cook county.

Who are county officers within the meaning of this section? It has been suggested that the term "county officers," as used in this section, must include those officers who are named as county officers in section 8 of this article, viz: the county judge, county clerk, sheriff, treasurer, coroner, clerk of the circuit court and recorder of deeds.[41] A possible

[39] People v Gaulter, 149 Ill. 39 (1894).
[40] Broadwell v People, 76 Ill. 554 (1875).
[41] Report Attorney General 1908, p. 321; 1910, p. 387; 1914, p. 371.

doubt as to the accuracy of this suggestion might arise in the case of the county judge. That officer is named as a judicial officer in article 6, and section 32 of article 6 provides that the salaries of all officers named in that article shall be fixed by the General Assembly, where the salary of such officers is not otherwise provided for in that article. Furthermore, section 18 of article 6 authorizes the General Assembly to create districts of two or more contiguous counties in each of which districts there may be elected a single county judge. On the other hand it must be noted that no such districts have ever been created and that the General Assembly has never attempted to assume the powers exercised by the county boards in fixing the salaries of county judges.

The enumeration of county officers in section 8 is not exclusive. County commissioners are not named in section 8, but, in the case of Wulff v Aldrich,[42] it was held that the county commissioners of Cook County were county officers, whose compensation must be determined by the county board and could not be fixed by the General Assembly.

On the other hand, it can not be said that every officer who exercises jurisdiction in and for a county is a county officer, whose salary must be fixed by the county board. For example, it has been held that the county superintendent of schools can not be included within the purview of this section, since article 8, section 5 vests in the General Assembly the power to fix the compensation of that officer.[43] Similarly, it has been held that the state's attorney can not be deemed a county officer within the language of this section, since his office is created by section 22 of article 6, and section 32 of article 6 provides that the salaries of officers named in article 6 shall be fixed by the General Assembly, except as otherwise provided in that article.[44] Apparently the probate judge cannot be deemed a county officer within the purview of this section since the creation of that office is authorized by section 20 of article 6 and section 32 of article 6 appears to require, as in the case of the state's attorney, that the salary of the probate judge shall be fixed by the General Assembly.

The question of whether statutory officers are county officers within the scope of this section has given rise to some discussion. However, in 1913, in the case of McAuliffe v O'Connell,[45] it was held that by the use of the words "all county officers" the framers of the constitution intended to include only officers who were elected under the provisions of the constitution, and this section, therefore, has no application to offices created by the General Assembly since 1870. It was held in that case that the General Assembly might fix the salaries of the Cook county civil service commissioners, since such officers "were not known to the law at the time the constitution of 1870 was adopted."

Fees. This section provides that the county officers receiving fees shall pay into the county treasury all fees and allowances in excess of their salaries and expenses. It may also be noted that section 13 of this article requires that all officers receiving fees shall make a semi-annual report of such fees and emoluments. With few exceptions, it has been held that all sums received for official services, are fees. The Supreme Court has held that the following items are fees within the meaning of this section: money received under federal statutes, by county clerks, as fees in naturalization causes;[46] interest upon public money, received by the county treasurer;[47] money received from the state, by the sheriff, for conveying prisoners, and amounts received by the sheriffs, from the counties, for attendance upon

[42] 124 Ill. 591 (1888).
[43] Jimison v Adams County, 130 Ill. 558 (1889).
[44] Hoyne v Danisch, 264 Ill. 467 (1914).
[45] 258 Ill. 186.
[46] People v Witzeman, 268 Ill. 508 (1915).
[47] County of Lake v Westerfield, 273 Ill. 124 (1916).

court.[48] The Attorney General has said that the following amounts are fees within the meaning of this section: amounts received by the county clerks for issuing hunters' licenses;[49] statutory allowance of county clerks for making election returns;[50] statutory allowance to the county treasurer for collecting inheritance taxes;[51] amounts received by the county clerk as a member of the board of review;[52] amounts received by sheriffs for executing process from foreign counties, without deduction for expenses in executing such process;[53] amounts received by county clerk and county treasurer as *ex officio* clerk and treasurer of drainage districts;[54] amounts received by the county treasurer, from the state auditor, as mileage, to the state capital and return, in making final settlement;[55] amounts received by the county clerk for preparing assessment rolls for local improvements;[56] statutory commission of sheriff on sales of real estate.[57] On the other hand the Attorney General has held that the allowances received by the sheriff from the county for dieting prisoners is not a fee,[58] and any amounts received by the county judge for holding court outside of his county need not be reported as a fee, since there is no statutory authority for the county judge to receive any fees in such a case.[59] Similarly, the Supreme Court has held that the *per diem* received by the court bailiffs need not be accounted for as fees.[60]

(For similar provisions requiring fees to be paid into the treasury, see discussion article 5, section 23, subheading, "Disposition of fees collected by state officers in their official capacities"; article 10, section 9, subheading, "Fees")

Salaries. It may be noted that this section also provides that the county officers receiving fees shall be paid their salary and expenses only out of the fees collected by them. In the case of Brissenden v County of Clay,[61] the Supreme Court said that any attempt on the part of a county board to appropriate funds other than fees for the salary or expenses of these officers would be *ultra vires* and void.

The amounts fixed in this section as limits upon the compensation of the officers in the various classes of counties relate only to personal compensation, and do not in any way limit the expenses of the officers.[62] It seems clear that this section fixes a maximum amount which the county board may not exceed, but places no minimum upon the amount which the county board is required to pay county officers. Thus, the Supreme Court has held that in a county containing between 30,000 and 50,000 inhabitants the county board may fix the salary of the county clerk at less than $2,000.[63]

Increasing or diminishing compensation during term of office. There are several provisions of the constitution forbidding changes in the salaries of officers during their terms of office. All of these provisions are considered together, elsewhere in this volume. It will, therefore be unnecessary to discuss here the cases relating to changes in the compensation of county officers during their terms of office. (See discussion article 4, section 21, subheading "County officers.")

[48] People v Foster, 133 Ill. 496 (1890).
[49] Report Attorney General 1912, p. 473.
[50] Report Attorney General 1900, p. 208; 1912, p. 462.
[51] Report Attorney General 1912, p. 226.
[52] Report Attorney General 1900, p. 216.
[53] Report Attorney General 1900, p. 216; 1912, p. 511.
[54] Report Attorney General 1900, p. 212; 1916, p. 358.
[55] Report Attorney General 1900, p. 212.
[56] Report Attorney General 1900, p. 212.
[57] Report Attorney General 1915, p. 317.
[58] Report Attorney General 1910, p. 418.
[59] Report Attorney General 1912, p. 478.
[60] County of LaSalle v Milligan, 143 Ill. 321 (1892).
[61] 161 Ill. 216 (1896).
[62] Report Attorney General 1910, p. 370.
[63] Hall v Beveridge, 81 Ill. 128 (1876).