Municipal Home Rule in California: IV

SECTIONS 12 AND 13 OF ARTICLE XI OF THE CALIFORNIA CONSTITUTION

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Previous articles have discussed two of the constitutional provisions adopted by the framers of the present California constitution curtailing the power of the legislature to interfere with the affairs of municipal corporations and vesting in such corporations extensive powers of local self-government. The third and fourth such provisions, viz., sections 12 and 13 of article XI, will be discussed here.

I.

SECTION 12 OF ARTICLE XI

Section 12 of Article XI as originally enacted provided:

"The Legislature shall have no power to impose taxes upon counties, cities, towns, or other public or municipal corporations or upon the inhabitants or property thereof, for county, city, town or other municipal purposes, but may, by general laws, vest in the corporate authorities thereof the power to assess and collect taxes for such purposes."

Except for two additions not here important, made in 1933, the section has been unchanged to this day.

Unlike section 11 of article XI, considerable talk occurred in the Convention with respect to section 12. But most of the talk was not illuminating and failed to reveal that the delegates had any real grasp either of what they were doing or trying to do when they approved the provision. Delegate Hager, the chairman of the committee on

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1 This is the fourth of a series of articles on the subject of municipal home rule in California. The first three are found in (1941) 30 Calif. L. Rev. 1, (1942) 30 ibid. 272 (discussing Cal. Const. art. XI, §6 and art. IV, §25, prohibiting special legislation), and (1944) 32 ibid. 341 (discussing Cal. Const. art. XI, §11, vesting in cities and counties power to make local, police, sanitary and other regulations).

2 In 1933 there was inserted at the beginning of the section: "Except as otherwise provided in this Constitution" and added at the end the sentence: "All property subject to taxation shall be assessed for taxation at its full cash value."

city, county and township organization, did say, however, that "This provision comes from the Illinois Constitution, word for word. It has also been adopted in several other Constitutions." Examination of the Illinois constitution then in force indicates that section 12 did not come from the Illinois constitution word for word but that such constitution did have two provisions which seem approximately equivalent to it. Further examination reveals that the Missouri constitution then had a provision which was practically word for word the same as section 12; that Colorado had one substantially the same and West Virginia one the same in part. No other state constitution

\[4\] 2 Const. Deb. 1065.
\[5\] Ill. Const. (1870) art. IX, §§ 9, 10, still in force, provide:
"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.

"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."

\[6\] Mo. Const. (1875) art. X, § 10: "The General Assembly shall not impose taxes upon counties, cities, towns or other municipal corporations or upon the inhabitants or property thereof, for county, city, town or other municipal purposes, but may by general laws, vest in the corporate authorities thereof the power to assess and collect taxes for such purposes." This provision was changed by the 1945 constitution [Mo. Const. (1945) art. X, § 10] to read: "Except as provided in this Constitution, the general assembly shall not impose taxes upon counties or other political subdivisions or upon the inhabitants or property thereof for municipal, county or other corporate purposes.

"Nothing in this Constitution shall prevent the enactment of general laws directing the payment of funds collected for state purposes to counties or other political subdivisions as state aid for local purposes."

Mo. Const. art. X, § 15 defines "other political subdivision" as including "townships, cities, towns, villages, school, road, drainage, sewer and levee districts and any other public subdivision, public corporations or public quasi-corporation having the power to tax."

\[7\] Colo. Const. (1876) art. X, § 7: "The general assembly shall not impose taxes for the purposes of any county, city, town or other municipal corporation, but may by law, vest in the corporate authorities thereof, respectively, the power to assess and collect taxes for all purposes of such corporation."

\[8\] W. Va. Const. (1872) art. X, § 9: "The Legislature may, by law, authorize the corporate authorities of cities, towns and villages, for corporate purposes, to assess and collect taxes; but such taxes shall be uniform with respect to persons and property within the jurisdiction of the authority imposing the same."
appears then to have had such a provision although Idaho,\(^9\) Kentucky,\(^10\) Montana,\(^11\) Nebraska,\(^12\) Oklahoma,\(^13\) South Carolina,\(^14\) Utah\(^15\) and Washington\(^16\) appear to have adopted it in substance later, in whole or in part. It appears probable, therefore, that delegate Hager really meant that the provision was taken from Missouri rather than Illinois, although it is very clear that the framers must have had the Illinois provision in mind also.

The wording of section 12 is somewhat unusual in extending immunity from legislative action not only to cities and towns but also to "counties" and to "other public or municipal corporations" as well.\(^17\) While it may well be doubted whether legislative interference

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\(^9\) **Idaho Const.** (1890) art. VII, § 6: "The legislature shall not impose taxes for the purpose of any county, city, town or other municipal corporation, but may by law invest in the corporate authorities thereof, respectively, the power to assess and collect taxes for all purposes of such corporation."

\(^10\) **Ky. Const.** (1891) § 181, as amended 1903: "The General Assembly shall not impose taxes for the purposes of any county, city, town or other municipal corporation, but may, by general laws, confer on the proper authorities thereof, respectively, the power to assess and collect such taxes."

\(^11\) **Mont. Const.** (1889) art. XII, § 4: "The legislative assembly shall not levy taxes upon the inhabitants or property in any county, city, town, or municipal corporation for county, town, or municipal purposes, but it may by law invest in the corporate authorities thereof powers to assess and collect taxes for such purposes."

\(^12\) **Neb. Const.** (1875) art. VIII, § 7: "The legislature shall not impose taxes upon municipal corporations, or the inhabitants or property thereof, for corporate purposes." Art. VIII, § 6 provides that for all corporate purposes other than local improvements "... all municipal corporations may be vested with authority to assess and collect taxes ...."

\(^13\) **Okla. Const.** (1907) art. X, § 20: "The Legislature shall not impose taxes for the purpose of any county, city, town or other municipal corporation, but may, by general laws, confer on the proper authorities thereof, respectively, the power to assess and collect such taxes."

\(^14\) **S. C. Const.** (1895) art. X, § 5: "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 . . . ."

\(^15\) **Utah Const.** (1896) art. XIII, § 5: "The Legislature shall not impose taxes for the purpose of any county, city, town or other municipal corporation, but may, by law, vest in the corporate authorities thereof, respectively, the power to assess and collect taxes for all purposes of such corporation."

\(^16\) **Wash. Const.** (1889) art. XI, § 12: "The legislature shall have no power to impose taxes upon counties, cities, towns or other municipal corporations, or upon the inhabitants or property thereof, for county, city, town, or other municipal purposes, but may by general law vest in the corporate authorities thereof the power to assess and collect taxes for such purposes."

\(^17\) Most of the analogous constitutional provisions of other states extend the immunity to "counties, cities, towns or other municipal corporations". This is the case in Colorado, Idaho, Kentucky, Missouri (1875 constitution), Montana, Oklahoma, Utah and Washington. In West Virginia the provision is limited to "cities, towns and villages"
with the affairs of counties or of irrigation, drainage, reclamation, school or other such districts was a crying evil before 1879, or that the framers had any conscious desire to curb it, it is obvious that the section is just as applicable to counties as it is to cities and towns. And it seems clear that the words "public or other municipal corporation" must have been intended to be applicable to irrigation, drainage, reclamation, school and other such districts. At all events the courts have held or recognized that irrigation districts, drainage districts, water districts, sanitary districts, joint highway districts, bridge and highway districts and other types of taxing districts of this state are protected by section 12. While earlier cases in this state also held that school districts were within section 12, in *MacMillan Co. v. Clarke* doubt was cast on this conclusion and while in South Carolina the provision applies not only to these but to "counties, townships and school districts". One section of the Illinois provision [Ill. Const. (1870) art. IX, § 9] is also limited to "cities, towns and villages" but another (ibid. § 10) extends to all "municipal corporations". The Nebraska provision is limited to "municipal corporations". The Missouri constitution of 1945 expressly extends the protection of the provision to "townships, cities, towns, villages, school, road, drainage, sewer and levee districts and any other public subdivision, public corporation or public quasi-corporation having the power to tax."


19 *People v. Parks* (1881) 58 Cal. 624, 644.

20 *Henshaw v. Foster* (1917) 176 Cal. 507, 169 Pac. 82 (municipal water district); *Metropolitan Water Dist. v. Whitsett* (1932) 215 Cal. 400, 417, 10 P. (2d) 751, 758 (metropolitan water district); *In re Metropolitan Water Dist.* (1932) 215 Cal. 582, 11 P. (2d) 1095 (same).


22 *Joint Highway Dist. v. Hinman* (1934) 220 Cal. 578, 588, 32 P. (2d) 144, 148 (joint highway district).

23 *Golden Gate Bridge Dist. v. Felt* (1931) 214 Cal. 308, 320, 5 P. (2d) 585, 591.


26 (1920) 184 Cal. 491, 505, 194 Pac. 1030, 1036, 17 A. L. R. 288, 297. In Idaho the trend was just the other way. After holding school districts were not within *Idaho Const. art. VII, § 6* in *Fenton v. Bd. Comm’rs* (1911) 20 Idaho 392, 399, 119 Pac. 41, 43, a later case held otherwise. *C. M. & St. P. R. R. v. Shoshone County* (1941) 63 Idaho 46, 116 P. (2d) 225.
in *McDonald v. Richards* it was held in the alternative: (1) that section 12 is applicable only to city school districts; or (2) that section 6 of article IX of the constitution creates an exception to section 12 and authorizes the legislature to deal with school districts free from its limitations. And curiously enough, reclamation districts have been held not to be public or municipal corporations within section 12. It would seem that both school districts and reclamation districts, as well as any other taxing district having its own legislative body and a defined territory, were clearly intended to be included in section 12. Certainly it is difficult to justify the inclusion of irrigation, drainage, sanitary and water districts on the one hand and the exclusion of school and reclamation districts on the other. There is just no rational basis for any such distinction and the decisions which make it are ill-considered and should be repudiated.

While most of the decisions of courts in other states having constitutional provisions similar to section 12 are to the effect that the provisions are applicable only to taxes and not to special assessments for local improvements, the California courts have not yet so held. On the contrary, in holding that sanitary, drainage and irrigation districts—which levy only special assessments—are subject to section 12, they have impliedly held that section 12 is applicable to special assessments.

The language of section 12 is also somewhat puzzling in seeming

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28 Cal. Const. art. IX, § 6, as amended 1920. This provision would not seem clearly to create any implied exception to section 12 for it merely says in this connection that "The Legislature shall provide for the levying of school district taxes by the Board of Supervisors of each county, and city and county, for the support of public elementary schools, secondary schools, technical schools, and kindergarten schools, or for any other public school purpose authorized by the Legislature."


31 In Gadd v. McGuire, *supra* note 24, at 360, 231 Pac. at 760, it was conceded for purposes of argument that section 12 was applicable to special assessments. The same assumption is made in Pasadena v. Chamberlain (1934) 1 Cal. App. (2d) 125, 133, 36 P. (2d) 387, 390, *hearing den.* On the other hand, the 1933 amendment to section 12 (see *supra* note 2) might seem to support the view that the section is applicable only to taxes.
on its face to ban the imposition of taxes "upon" counties, cities, towns or other public or municipal corporations or "upon the inhabitants or property thereof". This particular form of language is peculiar to California, Illinois and Missouri. In terms it prohibits the legislature from taxing: (1) counties, cities, towns or other public or municipal corporations; (2) the property thereof; and (3) the inhabitants thereof; but it says nothing of taxing private property therein. It is not easy to determine why the framers thought it necessary to prohibit the legislature from taxing either counties, cities, towns or other public or municipal corporations or their property for local purposes. Nor do the convention debates indicate that the framers thought they were doing so. At all events, no case is known of the legislature's seeking to impose such a tax, and in *San Francisco v. Liverpool & London & Globe Ins. Co.* the court assumes categorically that "it was not the purpose of the section to prohibit such impositions." All cases so far decided where the section has been held or assumed applicable involve taxes on private property located in counties, cities, towns or other public or municipal corporations, on the inhabitants thereof, or on or in respect of the carrying on of business therein. We must assume, therefore, that the language used was inadvertent.

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32 2 Const. Deb. 1065 et seq.

33 (1887) 74 Cal. 113, 124, 15 Pac. 380, 384.

34 E.g., McCabe v. Carpenter, supra note 25.

35 No California case involving a poll tax has been found but courts of other states having similar constitutional provisions hold that such provisions are applicable to poll taxes. State v. Gowdy (1922) 62 Mont. 119, 203 Pac. 1115; State v. Ide (1904) 35 Wash. 576, 77 Pac. 961. *Contra:* State v. Nelson (1923) 36 Idaho 173, 213 Pac. 358.

36 E.g., People v. Martin (1882) 60 Cal. 153; *San Francisco v. Liverpool & London & Globe Ins. Co.,* supra note 33; County of El Dorado v. Meiss (1893) 100 Cal. 268, 34 Pac. 716, all involving license taxes on business. In *County of El Dorado v. Meiss,* supra, the court rejected the contention that the mention of the word "inhabitants" in section 12 prevented a license tax on nonresidents.

On the theory that their constitutional provisions are applicable only to property taxes, Idaho, Montana and Oklahoma have held them not applicable to license taxes. *State v. Union Central Life Ins. Co.* (1902) 8 Idaho 240, 67 Pac. 647; *Idaho Gold Dredg. Co. v. Balderston* (1938) 58 Idaho 692, 719, 78 P. (2d) 105, 117; *State v. Camp Sing* (1896) 18 Mont. 128, 44 Pac. 516; *State v. Silver Bow Refining Co.* (1926) 78 Mont. 1, 252 Pac. 301; *Trustees, Executors & Securities Ins. Corp. Ltd. v. Hooton* (1915) 53 Okla. 530, 548, 157 Pac. 293, 298. In *State v. Nelson,* supra note 35, the Idaho provision was held even to prevent the legislature from vesting cities with power to impose license taxes. In other jurisdictions the California view of People v. Martin, supra, that section 12 is applicable to license taxes prevails. *Walker v. Bedford* (1933) 93 Colo. 400, 26 P. (2d) 1051; *State v. Ashbrook* (1900) 154 Mo. 375, 55 S.W. 627; *The Best Foods, Inc. v. Christensen* (1930) 75 Utah 392, 285 Pac. 1001.
and that the section was intended primarily to cover the latter types of taxes. Very evidently the Missouri and Illinois prototypes were adopted blindly and without careful consideration of their language.

The language that the taxes could not be imposed on counties, cities, towns, or other public or municipal corporations for county, city, town "or other municipal purposes" must be deemed to have been intended to mean that no county tax could be imposed for a county purpose, no city tax for a city purpose, no town tax for a town purpose, and no public or other municipal corporation tax for a "municipal purpose", the words "municipal purpose" being a term used to indicate the purposes of all public or municipal corporations other than counties, cities or towns. It would have been much more accurate to say "or other local purposes" rather than "or other municipal purposes". And as a matter of fact the California supreme court seems in effect to have interpolated the word "local" into the section.  

Section 12 has been sometimes, although infrequently, invoked in effect to condemn taxation or the spending of money for a nonpublic purpose. It would seem clear that the section was not designed primarily to prohibit such taxation or spending, which are prohibited by other provisions of the constitution.

Apart from the foregoing the three most important problems in the interpretation of the section have been: (1) what constitutes the imposition of a tax by the legislature; (2) what is a county, city, town or other municipal purpose; and (3) who are the "corporate authorities" in whom the power of taxation may be vested.


38 Redwood City v. Myers (1936) 7 Cal. (2d) 283, 60 P. (2d) 291, which held violative of section 12, as attempting to authorize taxation for a nonmunicipal purpose, an act authorizing a city to purchase, from a fund to be raised by general obligation bonds of the city, defaulted special assessment bonds enforceable only by special assessments on benefited property. The court said the law not only required the levy of a tax to pay the general obligation bonds but also required the city to enforce the special assessment bonds thus purchased, thereby casting on the taxpayer a double burden.

In Rancho Santa Anita Inc. v. Arcadia (1942) 20 Cal. (2d) 319, 125 P. (2d) 475, section 12 was held not to prevent a city from acquiring by taxation a surplus over the amounts necessary to meet its budget, the objection being that section 12 forbids the taxation by the city for a nonmunicipal, i.e., a nonpublic purpose.

The provisions of other state constitutions have frequently been similarly construed. Newberry Library v. Bd. of Education (1945) 390 Ill. 48, 60 N. E. (2d) 552 and cases therein cited; State v. St. Louis (1903) 216 Mo. 47, 155 S. W. 534.

WHAT CONSTITUTES THE IMPOSITION OF A TAX BY THE LEGISLATURE?

Section 12 provides that the legislature shall have no power to "impose taxes" for the prohibited purposes. When does the legislature "impose" such a tax? Where the law requires persons to pay taxes to the local authorities, the money to be used for local purposes, there would seem to be a very plain violation of section 12, and the early case of People v. Martin so held. There a statute enacted before 1879 provided for a license tax on businesses and occupations and required the tax collector of each county to collect the tax and pay it into the general fund of the county. It was held that the tax could not be collected after the constitution of 1879 became effective, because it was contrary to section 12 of article XI. A like conclusion was reached in San Francisco v. Liverpool & London & Globe Ins. Co., holding invalid under section 12 a statute requiring agents of foreign insurance companies doing business in California to pay to the treasurer of the county a specified portion of the premiums received or contracted for by them on insurance effected within the county and providing that the money should constitute a firemen's relief fund for the county in which the property insured is situated. Similarly, Fatijo v. Pfister held violative of section 12 a statute which provided for the payment of a fee of five dollars at the time of filing a probate or guardianship proceeding in any county and for the further payment of one dollar for each $1,000 of appraised valuation in excess of $3,000 of the estate at the time of filing the inventory and appraisement, the fees to be paid into the general fund of the county to be used for county purposes.

But where the legislature does not itself directly impose a tax, the question of the violation of section 12 becomes much more difficult. Frequently, for example, the law will in terms provide for the "levy" of a tax by the corporate authorities but in an amount determined by others. Still more frequently the law will create or authorize the creation of a debt or burden against the city or other public corporation but will in terms say nothing of taxation. Often the law provides for a grant to the city or other public corporation of moneys raised

40 Supra note 36. To like effect see C. M. & St. P. R. R. v. Shoshone County, supra note 26; McDonald v. Louisville (1902) 113 Ky. 425, 68 S.W. 413; State v. Gowdy, supra note 35.


42 (1897) 117 Cal. 83, 48 Pac. 1012. To like effect see Hauser v. Miller (1908) 37 Mont. 22, 94 Pac. 197.
by general state taxation, the moneys to be used for local purposes. Do such laws impose a tax in violation of section 12? They will be considered in order.

Laws in terms providing for the levy of a tax by the corporate authorities but providing for the determination of the amount of the levy by others.

The question of whether laws of the above type violate section 12 was presented to the California supreme court very early in the leading case of *McCabe v. Carpenter*. There a statute provided that an annual tax "shall be levied by the authorities, whose duty it is to levy taxes in counties, cities, incorporated towns, the amount of said tax being estimated by the county superintendent of schools . . . . And it shall be the duty of such authorities to levy such rate as will produce the amount estimated to be necessary for such purpose." Here the statute does lip-service to section 12 for it provides in terms that the tax shall be levied by the authorities "whose duty it is to levy taxes", viz., the corporate authorities. But it is obvious that in a statute of this kind such authorities are deprived of any voice in the determination of the amount of the levy—the amount by which its taxpayers will be burdened. That amount was determined in *McCabe v. Carpenter* by a person other than the corporate authorities, viz., by the county superintendent of schools. The duty of the corporate authorities was obviously purely of a ministerial nature, viz., to levy exactly such amount as the superintendent should estimate. It is quite clear that if section 12 is not violated by a statute of this kind then the protection which it gives taxpayers from legislative imposition of tax burdens for local purposes would indeed be illusory. At all events the court held the statute invalid as violative of section 12, reasoning that since it left the amount of the tax wholly to the discretion of the superintendent, he and not the corporate authorities was really imposing the tax. The court said:

"If the legislature cannot impose a tax upon the property or inhabitants of a school district, it would seem to follow, that it cannot prescribe a procedure through which such tax would inevitably be levied without leaving some discretion in regard to it to the local authorities. The legislature imposes the tax when it requires an officer to make certain computations, the result of which must fix the amount to be levied. Such a process enjoined upon local authorities does not vest

43 Supra note 25.
44 Ibid. at 471, 36 Pac. at 837.
in such authorities the power to tax as required by section 12, article XI.”

The court thus took the view that section 12 is concerned with substance and not form; that it is not concerned with the ministerial duties attendant upon the levy of a tax, but with the legislative decision which finally determines whether any tax will be imposed at all, and the amount thereof.

The statute involved in McCabe v. Carpenter was amended following that decision to provide that upon receiving the estimate of the county superintendent it shall be the duty of the board to levy such tax not as will produce the amount estimated, as before, but such tax as will be “sufficient . . . in amount to maintain the high school.” Concluding that under the amended statute “the estimate of the superintendent of schools is but advisory, and the discretion is left with the supervisors to determine the amount and levy the tax”, the court upheld the statute as thus amended.45 And a further provision of the law, making it the duty of the county auditor to “levy” the high school tax in the event the taxing board failed or refused to do so, was held not to violate section 12 as the provision must be construed as referring only to “the ministerial acts necessary to be performed in assessing and collecting taxes and not to the legislative determination of the amount to be raised.”46 Here again is a recognition that the vital thing under section 12 is the determination of the amount to be raised, not the ministerial duty of “levying” the tax.

Further recognition of that fact was shown in the more recent

45 People v. Lodi High School Dist. (1899) 124 Cal. 694, 697, 57 Pac. 660, 661; Board of Education v. Board of Trustees (1900) 129 Cal. 599, 62 Pac. 173; MacMillan Co. v. Clarke (1920) 184 Cal. 491, 194 Pac. 1030, 17 A. L. R. 288. But another provision involved in the MacMillan case was in terms exactly the same as that involved in McCabe v. Carpenter. Nevertheless the court upheld it on the ground that the legislature did not intend that the estimate of the superintendent was to be binding on the board.

The applicable statute now provides that the “governing board” of the school district shall prepare a school budget (Cal. Educ. Code § 6301) which shall be submitted to the county superintendent for examination and after he indicates thereon such changes or corrections as he deems desirable or necessary he returns the budget to the board (ibid. § 6304). The board must then “make such changes in the budget as it deems desirable or necessary” and then return it to the superintendent (ibid. §6305). The superintendent must approve the budget as officially adopted and submitted by its governing board and then file it with the county board of supervisors whose duty it then is to levy the taxes required by the budget (ibid. §§ 6306, 6351, 6352). It will be noticed how carefully the present law is drawn so as to avoid the objection of McCabe v. Carpenter. Similar statutory provisions were held not to violate the Colorado constitution (art. X, § 7) in People v. County Comrs. (1888) 12 Colo. 3, 19 Pac. 892.

46 Board of Education v. Board of Trustees, supra note 45, at 602, 62 Pac. at 174.
case of Esberg v. Badaracco.\textsuperscript{47} In that case section 6 of article IX of the constitution had been amended in 1920 to read that “The Legislature shall provide for the levying of school district taxes by the Board of Supervisors of each county.” The applicable Political Code sections, however, provided for the preparation of the school district budget by the board of education—the legislative body thereof—after considering corrections or changes suggested by the superintendent of schools. The budget was then filed with the county board of supervisors and the latter was under a duty to fix such rate for school district taxes as would produce at least the amount of school district tax-money required by the budget. The board of supervisors of San Francisco refused to levy the school taxes required by the budget prepared by the board of education. It was contended, among other things, that since section 6 of article IX required the legislature to “provide for the levying of school district taxes by the Board of Supervisors of each county”, the power to levy the tax carries with it the exclusive discretion to determine the amount of the tax. But the court rejected the contention, holding that it was consistent with section 6 of article IX to provide for the determination of the amount of the tax by the school board and for the mechanical acts of levy and collection by the supervisors. The purpose of the section, the court said, was to take advantage of the county machinery for assessing and collecting property taxes rather than to choose the more expensive method of having each school board set up its own machinery. The court held that section 12 was not violated, nor was the rule of McCabe v. Carpenter, because under the constitutional and statutory changes in the state school system effected in 1920 and 1921 the boards of education had been vested with the full legislative power of the school district, including the power to determine the amount of money required for school purposes. Hence such school boards were now, the court implied, the real “corporate authorities” of the school district and could lawfully be vested under section 12, and McCabe v. Carpenter, with power to determine the amount of money required for school purposes.

This matter was considerably clarified by the amendment to section 6 of article IX, adopted November 5, 1946, which now provides: “The Legislature shall provide for the levying annually by the governing body of each county, and city and county, of such school district taxes, at rates not in excess of the maximum rates of school dis-

\textsuperscript{47} (1927) 202 Cal. 110, 259 Pac. 730.
tect tax fixed or authorized by the Legislature, as will produce in
each fiscal year such revenue for each school district as the governing
board thereof shall determine is required in such fiscal year for the
support of all schools and functions of said district authorized or
required by law.” (Italics added.)

Thus we find the sphere of operation of section 12 sharply defined
and limited to the determination of the amount to be raised by taxa-
tion. The formal levy of the tax is held to be an entirely different
thing and not within the scope of section 12.

It is very clear, then, that laws which provide for the levy of
taxes by the corporate authorities, but in amounts to be determined
by others, violate section 12 since such others are vested with the
power to determine the amounts to be raised by taxation and hence
“impose” the tax within the meaning of section 12.

Laws creating or authorizing the creation of a debt or burden against
the city or other public corporation but which say nothing of
taxation.

In view of what has been said under the preceding heading, we
would expect the courts to have little difficulty in determining the
validity under section 12 of laws creating or authorizing the creation
of a debt or burden against the city or public corporation even though
such law says nothing about taxation. For if such debt or burden is
valid then it follows that the city or public corporation must some day
levy a tax to pay it. If it should use nontax revenue to pay it then
such revenues would have to be replaced by more tax revenues. It
follows that those who have the discretion in determining whether the
debt or burden shall be created are the persons who in fact determine
the amounts to be raised by taxation, and it is they who impose the
tax within the meaning of section 12.

The courts of other states having similar constitutional provisions
have almost without exception taken this view and condemned such
laws,48 ruling that “the power to create a debt to be discharged by

48 Idaho County v. Fenn Highway Dist. (1926) 43 Idaho 233, 253 Pac. 377 (law
requiring highway district to repair highways); People v. Mayor of Chicago (1869)
51 Ill. 17, 31, 2 Am. Rep. 278, 285 (law requiring city to issue bonds for park purposes);
Lovingston v. Wider (1870) 53 Ill. 302 (law authorizing commission appointed by gov-
ernor to issue city bonds); People v. Canty (1870) 55 Ill. 33 (same); Wider v. East
St. Louis (1870) 55 Ill. 133 (same); East St. Louis v. Witts (1871) 59 Ill. 155 (same);
People v. Block (1916) 276 Ill. 286, 114 N.E. 527 (law requiring town to construct
bridges); People v. Franklin (1944) 388 Ill. 560, 58 N.E. (2d) 555 (law authorizing
supervisory board to incur debts to be paid by city); Lexington v. Thompson (1902)
taxation is no different from the power to impose a tax." But the problem which courts elsewhere have thus found easy of solution has been the occasion for fumbling and confusion in California.

The point seems first to have been considered in *MacMillan Co. v. Clarke* where a state law required high school districts to furnish free text books for high school students. This, of course, required such districts to purchase the books and to levy taxes to pay for the books purchased. The amount of taxes to be levied was thus determined by the legislature and not by the discretion of the corporate authorities of the district. Nevertheless, the court held that neither section 12 nor the rule of *McCabe v. Carpenter* had been violated because section 12 deals only with the power to assess and collect taxes—not with the power to impose burdens which must be met by taxation! The court said the situation was analogous to the county government sys-

113 Ky. 540, 68 S. W. 477, 101 Am. St. Rep. 361, 57 L. R. A. 775 (law fixing minimum compensation for members of city fire department); Campbell v. Bd. Trustees Fireman's Pen. Fund (1930) 235 Ky. 383, 31 S. W. (2d) 620 (law requiring pensions for city fire department); Helena Consolidated Water Co. v. Steele (1897) 20 Mont. 1, 49 Pac. 382, 37 L. R. A. 412 (law requiring city to purchase water plant); Metropolitan Utilities Dist. v. Omaha (1924) 112 Neb. 93, 198 N. W. 858 (law requiring city to pay expense of lowering water mains); State v. Standford (1901) 24 Utah 148, 66 Pac. 1061 (law requiring counties to pay salaries of deputy inspectors); Longview Co. v. Lynn (1940) 6 Wash. (2d) 507, 525, 108 P. (2d) 365, 373 (law requiring cities to guarantee special assessment bonds); State v. Bellingham (1941) 8 Wash. (2d) 234, 249, 111 P. (2d) 783, 789 (same).

The Illinois cases hold that the legislature imposes a tax within the meaning of these constitutional provisions when it validates an obligation illegally incurred by a city. Marshall v. Silliman (1871) 61 Ill. 218; Wiley v. Silliman (1871) 62 Ill. 170; People v. Ill. Cent. R. R. Co. (1923) 310 Ill. 212, 141 N. E. 822. But other courts take a different view, reasoning that since the corporate authorities approved the defective obligation, local self-government is not violated. Weber v. Helena (1931) 89 Mont. 109, 297 Pac. 455; Baker v. Seattle (1891) 2 Wash. 576, 27 Pac. 462; Owings v. Olympia (1915) 88 Wash. 289, 152 Pac. 1019.

People v. Franklin, *supra* note 48, at 567, 58 N. E. (2d) at 559.

*Supra* note 45. For similar aberrations, equally untenable, see DeWolf v. Bowley (1934) 355 Ill. 530, 189 N. E. 893 (holding that an act directing the payment of pensions did not amount to the levy of a tax but was analogous to acts of the legislature fixing salaries, which the court assumed valid); Duke v. Boyd County (1928) 225 Ky. 112, 7 S. W. (2d) 839 (requiring county to pay certain fees to peace officer making arrest, the court saying that the imposition of a burden or obligation on a county, although it may necessitate the levying of taxes, is not equivalent to the imposition of taxes); and State v. Holmes (1935) 100 Mont. 256, 47 P. (2d) 624, 100 A. L. R. 581 (upholding act requiring counties to insure their property against various perils, saying that to require a county or political division to expend money which, but for the enactment of the law, it would not expend does not violate the constitutional provision). All these cases are inconsistent with other cases from the same jurisdiction, two with cases later decided.
tem where the state, for example, "enumerates the officers who are to conduct the public business of the municipality and fixes their compensation, which the county is required to pay through the levy, collection, and disbursement of local taxes."51 The analogy is superficial and unsound. It is true that the legislature has always regulated the compensation of county officers and that counties are required to levy taxes to pay the salaries prescribed by law, so that the legislature and not the corporate authorities of the county determine the vital question of the amount to be raised by taxation to pay salaries of county officers. But this power stems from section 5 of article XI which, ever since 1879, has specifically authorized the legislature to regulate the compensation of county officers. Section 5 of article XI thus creates a constitutional exception to section 12—an exception which is applicable only to counties and is obviously not applicable to school districts.

The MacMillan case thus undid, or at least unsettled, all that was accomplished in McCabe v. Carpenter. No longer did section 12 deal with substance but with form only.

The mischievous doctrine that a law imposing a debt, burden or charge does not impose a tax within section 12 was repeated in Jensen v. McCullough52 where a law requiring counties to pay for the support of its insane wards in state institutions was upheld on this ground, among others. And that doctrine seems to have been the basis of the holding in Metropolitan Water Dist. v. Whitsett53 where a law requiring water districts to pay not less than the prevailing rate of wages in the locality for work performed on district works was held not to violate section 12, the court answering the contention by saying:

"The difficulty with the argument is that it assumes that the burden imposed by the statute is a tax. If it is not, the argument necessarily fails. In our opinion the burden imposed by the statute is not a tax as contemplated by the Constitution. It is essentially a minimum wage law."54

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51 184 Cal. at 505, 194 Pac. at 1036.
52 (1928) 94 Cal. App. 382, 393, 271 Pac. 568, 573, hearing den.
53 (1932) 215 Cal. 400, 10 P. (2d) 751.
54 215 Cal. at 417, 10 P. (2d) at 758. Closely analogous to the muddled thinking of the California supreme court in the foregoing passage is the opinion of the Oklahoma supreme court in Ardmore v. Excise Board (1932) 155 Okla. 126, 8 P. (2d) 2, where a law giving a county board power to revise a city's estimate of the amount it needed in taxes was held not to violate Okla. Const. art. X, § 20, because "The correction of an estimate cannot be said to be the assessment of a tax." However, the court went on to hold the law invalid on the ground that it violated the city's "inherent right of local self-government."
This statement indicates an incredibly muddled and confused line of thinking. Although the burden was obviously not a tax, the important thing was that it was a burden, that it was imposed by the legislature, and that it would have to be met by local taxation. This should have been enough to render section 12 applicable.

The question again arose in the case of *American Co. v. City of Lakeport.*\(^5^5\) There a city council had initiated proceedings for a public improvement under the Improvement Act of 1911. But instead of issuing special assessment bonds under that act, as it unquestionably could have done, it elected to issue a more marketable type of bond pursuant to the Improvement Bond Act of 1915, secured by special assessments on lands in the city. The 1915 act provided that if the assessments became delinquent, the city was obliged to purchase the lands covered thereby at the sale held by the city treasurer from any surplus in the general fund of the city, and if there were no surplus, the city was required to levy a tax to provide funds for such purpose. There were no such provisions in the 1911 act, which provided that bonds were secured solely by special assessments, and the city was not liable to levy any tax in respect of them or of a sale of land on their default or otherwise. The court held there was no violation of section 12 because the legislature had not levied a tax. "It has merely fixed the liability of the city to pay for the property purchased, and has required the city to levy and collect taxes in an amount suitable for this purpose",\(^5^6\) said the court, citing the *MacMillan* case. Thus the court saw fit to rest its decision on the untenable ground that the imposition of a charge, debt or liability is not the imposition of a tax within section 12, even though such charge, debt or liability must ultimately be met by taxation.

As a matter of fact the *Lakeport* case could and should have been rested upon an unimpeachable ground, *viz.,* that the 1915 act imposed no liability on the city unless the city council elected to initiate proceedings under that act. The city council could, if it had so desired, have proceeded solely under the 1911 act and thus avoided the liability of which it complained in the *Lakeport* case. The council was under no obligation, then, to initiate such proceedings but did so voluntarily. Obviously section 12 is concerned only with attempts by the legislature to impose taxes without the consent of the corporate authorities. Where such authorities must give their consent before any

\(^5^5\) (1934) 220 Cal. 548, 32 P. (2d) 622.

\(^5^6\) 220 Cal. at 555, 32 P. (2d) at 625.
burden can be imposed the section is not applicable. Consequently it is impossible to agree with the dissenting opinion of Justice Carter in Wulff-Hansen & Co. v. Silvers where the holding of the Lakeport case is attacked as a violation of section 12. However, Justice Carter is to be commended for his clear enunciation there of the rule which has been regarded as axiomatic in other states, viz., that laws imposing a debt, burden or liability violate section 12 just as much as do laws directly imposing taxes. In this connection the Justice said:

"It cannot be doubted that if a mandatory obligation is imposed by the Legislature upon the municipal corporation, such imposition is a violation of section 12 of article XI above quoted. That necessarily follows because the amount of revenue available to a municipality is dependent upon the exercise of the taxing power, and if the Legislature by statute commands a city to pay an obligation, it has also commanded the city to levy a tax which is no different from a direct levy of the tax by the Legislature, that which is forbidden by said section 12 of article XI."

It is to be hoped that the simple and obvious truth contained in the foregoing statement, which seems somehow to have eluded the supreme court, will now be recognized, and the indefensible holdings of the MacMillan, Whitsett and other cases mentioned above repudiated. The recent case of Shealor v. City of Lodi gives some hope that this may come about. There an act of the legislature provided for the pensioning of city policemen and the setting up of a pension

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However in two cases the foregoing rule was ignored and a law requiring a city, desiring to own its own waterworks, to purchase any existing private facilities if it did elect to have its own works, was held to violate provisions similar to section 12. Helena Consolidated Water Co. v. Steele, supra note 48; Kenton Water Co. v. Covington (1913) 156 Ky. 569, 573, 161 S. W. 983, 990. Both these cases, it is submitted, are erroneous.

58 (1942) 21 Cal. (2d) 253, 262, 131 P. (2d) 373, 378.

59 The Lakeport case was followed in the Wulff case. It was also followed without further discussion in Pasadena v. Chamberlain, supra note 31; Hammond v. Burbank (1936) 6 Cal. (2d) 646, 59 P. (2d) 495; Culver City v. Reese (1938) 11 Cal. (2d) 441, 80 P. (2d) 992.

60 21 Cal. (2d) at 268, 131 P. (2d) at 381.

61 (1944) 23 Cal. (2d) 647, 145 P. (2d) 574.
fund for that purpose. While the act seemed on its face to be mandatory, the court held that it would construe it as optional so as to avoid having to declare the act unconstitutional as violative of section 12.\(^\text{62}\)

Here we find a clear recognition by the court that a law placing a burden on a city without its consent, as this one would have done had it been construed as mandatory, is just as violative of section 12 as is one directly imposing a tax. That, it is submitted, is the correct interpretation of section 12. The supreme court would eliminate much confusion in this field by frankly so stating and by repudiating the contrary expressions in the MacMillan, Whitsett and other cases hereinabove referred to.

Laws providing for the grant to the city or other public corporation of moneys raised by general state taxation to be used for local purposes.

Where the state imposes a general state tax, taxing property, persons or transactions generally, and then turns over part of the proceeds thereof to cities, counties or other public corporations to be used for local purposes, the question of the violation of section 12 is a difficult one. In the first place, section 12 is applicable only to taxes imposed on property, inhabitants or transactions in cities, counties or public corporations as such. When the tax is not limited to the confines of a public corporation, but is state-wide, technically the section may be argued not to be applicable. Furthermore, it is indisputably true that section 12 and similar provisions elsewhere were designed to prevent meddlesome interference by the state in the financial affairs of cities, counties and other public corporations. But where the state is merely making a gift of state funds to such entities there is obviously no interference and it is inconceivable that any would object to such gift. At least, in the absence of such objection it can be argued with much force that section 12 is not applicable. The express provision added by the new Missouri constitution of 1945 to the provision corresponding to section 12 of our constitution, that “Nothing in this Constitution shall prevent the enactment of general laws directing the payment of funds collected for state purposes to counties or other political subdivisions as state aid for local purposes”, tends to support such an argument. Of course, even though section 12 is not

\(^\text{62}\) The contention is very clearly made that the imposition of a burden such as would be caused by a mandatory pension system constitutes the indirect imposition of a tax and is therefore contrary to section 12. \textit{Ibid.} at 653, 145 P. (2d) at 577.
applicable it is possible that other constitutional objections would exist to such a gift by the state. But section 12 does not quite seem to fit the case.

Nevertheless, both the California courts and those elsewhere have assumed that provisions such as section 12 are applicable to this situation and prevent such gifts by the state. The clearest exposition of the theory by which the constitutional provision is held applicable, is found in the Idaho case of *Gem Irrigation District v. Van Deusen* where an act appropriating money out of the general fund of the state for the uses of the Gem Irrigation District was held violative of the Idaho counterpart of section 12. The court said:

"The constitutional provision above quoted prohibits the Legislature from imposing taxes for the purpose of any municipal corporation. It necessarily follows that the Legislature is without authority to make appropriations for any such purpose."

The court then quoted a Kentucky case to the effect that:

" Appropriations of public funds and levying taxes to raise funds are the same and rest upon the same principle. If an object cannot have a tax levied for it . . . then no appropriation of public money can be made to it."

The California courts have always assumed, without discussion, that appropriations of funds raised from general state taxation to the purposes of a county, city or other public corporation violate section 12 although no case has yet invalidated an appropriation on this ground. Instead the purpose of the appropriation has always been held to be one of state-wide and not local concern, in some cases for the purpose of avoiding a holding of unconstitutionality.

Thus in *Bacon Service Corporation v. Huss*, where an act imposing a state license tax on contract motor carriers provided that half the proceeds of the tax should be appropriated to the state treasury and the other half to the counties to be devoted exclusively to the maintenance and repair of public highways within the counties, the court held that section 12 was not violated on the ground that the

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63 See supra note 39, and 1 Cooley on Taxation (4th ed. 1924) § 314.
64 (1918) 31 Idaho 779, 176 Pac. 887.
65 Idaho Const. (1890) art. VII, § 6, quoted supra note 9.
66 31 Idaho at 782, 176 Pac. at 888.
67 Agricultural & Mechanical College v. Hagar, Auditor (1905) 121 Ky. 1, 14, 87 S. W. 1125, 1129.
68 (1926) 199 Cal. 21, 248 Pac. 235, followed in *In re Schnulke* (1926) 199 Cal. 42, 248 Pac. 244. The question had previously been reserved in *In re Schuler* (1914) 167 Cal. 282, 139 Pac. 685.
purpose of the appropriation was state and not local. The court also relied on section 26 of article IV of the constitution which expressly gave the legislature power "to extend aid for the construction and maintenance in whole or in part of any county highway." The latter provision would seem to create another constitutional exception to section 12. At all events the court seems to assume that if the purpose of the appropriation to the counties had been local it would have been contrary to section 12.

This assumption was expressly recognized by the court in two companion cases decided in 1936 involving appropriations by the state from a state fund raised by the motor vehicle license tax. Section 9(b) of the act involved appropriated a portion of the fund to the cities of the state on a population basis and provided that the money so appropriated must be used by the cities for "law enforcement and the regulation and control and fire protection of highway traffic." Section 9(c) of the act appropriated another portion of the fund to counties on a population basis but placed no express restrictions upon the use of the money by the counties. In City of Los Angeles v. Riley the court upheld section 9(b). While expressly conceding that if the act allowed the funds to be used for municipal purposes it would violate section 12, the court found that "law enforcement and the regulation and control and fire protection of highway traffic" was not a municipal, but a state purpose, and so upheld the act.

Section 9(c) posed a much more difficult problem because of the absence of any express restrictions on the use of the funds by the county. Nevertheless the court upheld this also in County of Los Angeles v. Riley. The court conceded that if the act had permitted the funds to be used for county purposes it would not only have violated section 12 but also would have constituted a gift of state moneys in violation of sections 22 and 31 of article IV. It said:

"The constitutional provision here involved, article XI, section 12 . . . prohibits the legislature from taxing the cities or counties or the inhabitants thereof for local purposes. It necessarily follows that the state cannot levy and collect a tax, which it has the power to levy and collect for state purposes, and then appropriate a portion of the fund so collected to the cities or counties for purely local purposes. This would be to permit the state to do indirectly what it is prohibited

69 Supra note 37.
70 (1936) 6 Cal. (2d) 625, 59 P. (2d) 139, 106 A. L. R. 903.
71 Ibid. at 626, 59 P. (2d) at 140, 106 A. L. R. at 905.
from doing directly and, furthermore, would constitute a gift of state moneys in violation of article IV, sections 22 and 31 of the Constitution."

However, in order to avoid a holding that section 9 (c) was unconstitutional the court read into it by implication that the funds had to be used by the counties for state and not for local purposes. The case seems to establish that section 12 is violated by an appropriation of general state funds for local purposes. At all events the question is treated as no longer open in the recent case of City of Los Angeles v. Post War Public Works Review Board,72 upholding state appropriations for the post-war local construction projects of cities and counties, solely on the ground that the appropriation was for a state purpose.

Some of the current proposals to have the state turn over a portion of the proceeds of the state sales tax to the cities for their local purposes appear to overlook the rule thus now seemingly well established in this state.

It is clear from the foregoing, therefore, that taxes may be "imposed" contrary to section 12 even though the act does not in terms impose a tax, or indeed, even if it says nothing of taxation.

The next main question which has arisen under section 12 is that of when the purpose of a tax or expenditure is local as distinguished from state-wide.

**WHAT IS A COUNTY, CITY, TOWN OR OTHER MUNICIPAL PURPOSE?**

Section 12, as noted above, requires that the imposition of a tax, to be forbidden, must be for a "county, city, town or other municipal" purpose—in short, for a local as distinguished from a state purpose.

No general rule as to what constitutes a state as distinguished from a local purpose has been declared in the California cases. There has been tacit recognition, however, that the question turns on whether the particular matter is of concern only to the city, county or district, or also affects in a substantial way the welfare of the people of the state as a whole.

The California courts have not discussed the problem very frequently or at any great length in connection with section 12.73

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72 (1945) 26 Cal. (2d) 101, 156 P. (2d) 746. Cf. Walker v. Bedword, *supra* note 36 (invalidating under Colorado provision an act appropriating proceeds of motor vehicle license tax to counties for additional work relief projects to aid unemployed, holding purpose local and not state).

73 The many cases discussing the question of municipal as against state affairs in connection with freeholders charter cities will not be considered here.
The first case to discuss the question seems to have been San Francisco v. Liverpool & London & Globe Ins. Co.,\(^\text{74}\) reviewed above, where the management and control of the city fire department was held to be a city purpose so that a law imposing a tax for the use of the city fire department was void. More recently in Shealor v. City of Lodi,\(^\text{75}\) also reviewed above, three of the justices of the supreme court (Edmonds, Gibson and Traynor) conceded that the pensioning of city policemen was a city purpose within section 12; two (Shenk and Curtis) thought the pensioning of policemen, while a local purpose, was also a state purpose; two justices (Carter and Schauer) expressed no opinion. This question has assumed great importance in other states where there seems to be a growing tendency to hold city police\(^\text{76}\) and fire\(^\text{77}\) protection to be a state purpose within the meaning of provisions like section 12. It would seem that both fire and police protection have been so long handled by cities that they should continue to be regarded as city purposes under section 12. While both may in some circumstances take on a broader aspect and become matters of state concern, this should only justify compulsory burdens or taxes in relation to such broader aspects as, for example, requiring the incurring of debts for some type of overall state supervision. It should not be held to justify laws prescribing salaries, pensions or other bur-

\(^{74}\) Supra note 33.

\(^{75}\) Supra note 61.

\(^{76}\) Police Ass'n v. Warren (1937) 101 Colo. 586, 76 P. (2d) 94 (upholding act appropriating state funds for police pension fund of each city); People v. Abbott (1916) 274 Ill. 300, 113 N. E. 696 (upholding law requiring cities to create police pension system); Trustees v. Comm'rs of Lincoln Park (1918) 282 Ill. 348, 118 N. E. 746 (same); Littell v. Peoria (1940) 374 Ill. 344, 29 N. E. (2d) 533 (upholding state minimum wage law for city policemen); Morgan v. Rockford (1940) 375 Ill. 326, 31 N. E. (2d) 597 (same); Board Trustees Pension Fund v. Schupp (1928) 223 Ky. 269, 3 S. W. (2d) 606 (upholding law requiring cities to create police pension system); State v. Mason (1899) 133 Mo. 23, 54 S. W. 524 (upholding law allowing state appointed police commission to impose taxes for city police purposes); State v. Jost (1915) 265 Mo. 51, 175 S. W. 591 (same). See also, Notes (1927) 46 A. L. R. 609, 683, (1937) 106 A. L. R. 906, 914.

\(^{77}\) People v. Springfield (1939) 370 Ill. 541, 19 N. E. (2d) 598 (upholding law providing minimum wages for city firemen); People v. Peoria (1940) 374 Ill. 313, 29 N. E. (2d) 539 (same); Morgan v. Rockford, supra note 76 (same); State v. Love (1911) 89 Neb. 149, 131 N. W. 196 (upholding law requiring cities to create firemen's pension system). Contra: Lexington v. Thompson, supra note 48 (law fixing salaries for city firemen void). The recent New York cases of Osborn v. Cohen (1936) 272 N. Y. 55, 4 N. E. (2d) 289, and Holland v. Bankson (1943) 290 N. Y. 267, 49 N. E. (2d) 16, holding fire protection to be a city affair within the New York home rule provisions may strongly influence the future course of decision elsewhere. See also, Notes (1927) 46 A. L. R. 609, 689, (1937) 106 A. L. R. 906, 915.
dens relating to the ordinary running of city police or fire departments, which are primarily city matters.

In another group of cases it was held that the legislature did not impose a tax for a city purpose merely because it created a taxing district larger than but including the city, or coextensive with the city, and authorized the district to exercise powers or perform functions which the city also had power to exercise or perform, e.g., the operation of a waterworks. The court held in each case that the purposes of such a district were not city but were local to the larger or different district thereby created, so that there was no violation of section 12. The theory was that frequently a matter cannot be handled adequately by a city but must be dealt with by a larger or different district, sometimes consisting of one or more cities and unincorporated area. In *Henshaw v. Foster,* for example, a water district was formed consisting of three cities, an irrigation district, and also unincorporated area, for the purpose of obtaining an adequate water supply for the entire area. The district was held not to violate section 12, the court saying:

"The corporate authority of such a district is the board of directors, and to that board is delegated the taxing power not in relation to matters of a purely local character in the included city or cities, but having reference to the affairs of the larger municipality, embracing within it the others of lesser areas."

The foregoing group of cases were entirely misunderstood and misinterpreted in the later case of *Golden Gate Bridge Etc. Dist. v. Felt.* There a taxing district had been formed consisting of several

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78 Pixley v. Saunders, *supra* note 21 (upholding power of sanitary district consisting of rural area in Marin County and also that of the Town of Larkspur, formed to provide improved sewer facilities for the entire area, to impose district taxes on property in the Town of Larkspur even though the town had powers similar to those of the district within its own limits); Henshaw v. Foster, *supra* note 20 (upholding power of San Diego Municipal Water District, consisting of three cities, viz., San Diego, East San Diego and La Mesa, an irrigation district, an unincorporated area in San Diego County, formed to furnish water to entire area, to impose taxes within the three cities even though each city had power to acquire a water supply for its own inhabitants); Struckenbruck v. Bd. Superv., *supra* note 24 (upholding local health district coextensive with county even though county had similar health powers); Pasadena v. Chamberlain (1928) 204 Cal. 653, 269 Pac. 630 (upholding Metropolitan Water District of Southern California consisting of several cities uniting in the project of bringing water from Colorado River to such cities).

79 *Supra* note 20.

80 176 Cal. at 512, 169 Pac. at 84.

81 *Supra* note 23.
counties and parts of counties for the purpose of constructing a bridge across the Golden Gate to form part of a state highway. It was argued that the act creating the district violated section 12. While the court rejected the contention on other grounds, one ground for rejecting it was that the purposes of the district were state and not municipal since the bridge formed part of the state highway, citing *Henshaw v. Foster* and the other cases in the group above referred to. But as noted above, those cases did not hold that the purposes of the districts involved were state-wide. They merely held that their purposes were broader than those of any city or county located therein. There can be no question but that the court in each case still regarded the broader district as a “public or municipal corporation” itself within the meaning of section 12, and as having its own municipal or local purposes for which only its own corporate authorities could impose taxes. It would seem that in any case where the state creates a taxing district having its own legislative body and boundaries less extensive than the entire state it recognizes that the ordinary purposes of such a district are local—otherwise the tax burden would have been put on the state as a whole rather than on a part thereof. Any such district would seem to be a “public or municipal corporation” with its own “municipal” or local purposes within section 12.

The error of the *Felt* case was repeated in *Joint Highway District v. Hinman* where a district formed by two counties to construct a tunnel as part of a state highway was held not subject to section 12 because the state highway system was a state purpose, the court simply citing the *Felt* case without a fresh examination of the question. For similar reasons, the language of *MacMillan Co. v. Clarke* is erroneous, the court stating that since schools are a matter of state and not local concern “It may well be questioned if the imposition of financial burdens upon school districts by general laws for maintenance of public schools comes within the restriction of the constitution against taxation for local or municipal purposes.” If followed

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82 Supra note 78.
83 Supra note 22.
84 Supra note 26, at 505, 194 Pac. at 1036.
85 The question of state versus local purpose is entirely different in considering freeholders charter provisions or even when considering section 12 as preventing state imposition of taxes for school purposes on cities. While the school system is a state affair for the former purpose (Esberg v. Badaracco, supra note 47) and probably for the latter also, the question is entirely different when dealing with a public district created for school purposes and nothing else. Since the schools are not an ordinary affair of cities, and a city has many other traditional municipal affairs, there is no objection to calling
and fortunately it has not been followed so far—this language would mean that school districts would no longer be entitled to the protection of section 12, notwithstanding the many early decisions to the contrary, and notwithstanding the fact that the legislature, instead of laying the tax burden on the state at large, elected to fasten it on the residents of special taxing districts having their own legislative bodies.

The California courts have also held to be a state purpose: the matter of "law enforcement and the regulation and control of highway traffic"; the maintenance and repair of public highways within counties (although this holding was based in part on section 26 of article IV authorizing the legislature to extend aid for the construction of any county highway); the registration of vital statistics; and, more recently, the construction of city, county and district work projects as part of a state-wide plan to relieve post-war unemployment.

We turn now to the third and final main question under section 12.

WHO ARE THE "CORPORATE AUTHORITIES" IN WHOM THE POWER OF TAXATION MAY BE VESTED?

Section 12, and most of the similar provisions elsewhere, provide on the one hand that the legislature shall not impose taxes for local purposes, and on the other that it "may", by general laws, vest in the "corporate authorities" of cities, counties and other public corporations the power "to assess and collect taxes" for such purposes.

Notwithstanding some early expressions to the contrary, it is schools a state affair as to cities. But when the district has school purposes and none other, has a governing body, taxing power, and defined territories, it seems impossible to regard its purposes as anything but local to the school district.

80 Supra note 23.
87 City of Los Angeles v. Riley, supra note 37.
88 Bacon Service Corp. v. Huss, supra note 68.
90 Ex parte Wolters (1884) 65 Cal. 269, 270, 3 Pac. 894, 895; Ex parte Mount (1885) 66 Cal. 448, 450, 451, 6 Pac. 78, 80, 81.

81 Boss v. Lewis (1917) 33 Cal. App. 792, 166 Pac. 843, hearing den.
82 City of Los Angeles v. Post War Etc. Ed., supra note 72. For many cases in other states on what is a state purpose within constitutional provisions similar to section 12, see Notes (1927) 46 A.L.R. 609, 675; (1937) 106 A.L.R. 906, 913.
91 Ex parte Wolters (1884) 65 Cal. 269, 270, 3 Pac. 894, 895; Ex parte Mount (1885) 66 Cal. 448, 450, 451, 6 Pac. 78, 80, 81.
now well established that section 12 does not of itself vest in the local subdivisions any inherent power to tax, and accordingly it is necessary for the legislature "by general law" to vest the subdivision with such powers of taxation as it has. This requires that all powers of taxation shall be vested only by general laws in counties, cities (other than pre-1879 special charter or freeholders charter cities) and all other public corporations. This requirement appears to have been overlooked by the legislature when it created several local districts by special act which act also purported to confer the power of taxation. It is also well established that the legislature is under no duty to vest full powers of taxation in any local subdivision but may limit the power of taxation granted by it in any way it sees fit. Thus in *Ex parte Pfirrmann* the court upheld the power of the legislature to forbid the imposing of license taxes by counties for purposes of revenue, restricting them to license taxes for regulation only. And it seems also to have been generally assumed that the words "assess and collect" really are equivalent to "impose".

In California and most other states having these constitutional provisions, then, the power of taxation "may" be vested in the "corporate authorities". Long before the adoption of section 12 this language, which was originally found in the Illinois constitution, had

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64 E.g., Palo Verde Irrigation District (Cal. Stats. 1923, p. 1057, CAL. GEN. LAWS, Act 3880); Santa Clara County Irrigation District (Cal. Stats. 1923, p. 1215, CAL. GEN. LAWS, Act 3879); Orange County Water District (Cal. Stats. 1933, p. 2400, CAL. GEN. LAWS, Act 5683); Knights’ Landing Ridge Drainage District (Cal. Stats. 1913, p. 109, CAL. GEN. LAWS, Act 2191); American River Flood Control District (Cal. Stats. 1927, p. 1596, CAL. GEN. LAWS, Act 320); Los Angeles County Flood Control District (Cal. Stats. 1915, p. 1502, CAL. GEN. LAWS, Act 4463); Orange County Flood Control District (Cal. Stats. 1927, p. 1325, CAL. GEN. LAWS, Act 5682). There is no objection to creating such districts by special laws as they are not "corporations for municipal purposes" within section 6 of art. XI. People v. Levee District No. 6 (1901) 131 Cal. 30, 63 Pac. 676; People v. Sacramento Drainage Dist. (1909) 155 Cal. 373, 381, 103 Pac. 207, 212; Reclamation Dist. No. 70 v. Sherman (1909) 11 Cal. App. 399, 105 Pac. 277; Peterson v. Bd. Superv., *supra* note 29, at 677, 225 Pac. at 31. The objection that the acts involved in these cases violated section 12 because vesting the power of taxation by other than general laws was not made in any case.

65 (1901) 134 Cal. 143, 66 Pac. 205.

66 See also Tallon v. Vindicator Co. (1915) 59 Colo. 316, 149 Pac. 108, where a law limiting the amount of taxes which counties could levy, but permitting the limit to be exceeded with permission of the State Tax Commission, was upheld.

been construed by the Illinois courts as constituting a limitation on the power of the legislature to vest the power of taxation in anyone other than the "corporate authorities". Furthermore, the Illinois courts had construed the words "corporate authorities" as meaning persons "elected by the people to be taxed, or appointed in some mode to which the people have given their assent." In short, the Illinois courts regarded the provision as prohibiting local taxation except by representatives of the people of the locality taxed, or in some manner to which said people have given their assent. Applying the principle, they held invalid laws giving park commissioners appointed by the county judge, by the governor, or by the legislature itself, power to require the city council to issue bonds of the city for park purposes. Also held invalid was a law authorizing named incorporators, incorporated by the legislature, to impose drainage taxes on a defined area. And more recently a law authorizing a supervisory board, elected by delegates of Illinois cities meeting in convention, to require cities to pay funds certified by it in connection with firemen's pension funds was held to vest the taxing power in persons who were not the corporate authorities.

On the other hand, the Illinois courts repeatedly upheld the vesting of the taxing power in persons not elected by the people of the locality if such people gave their assent to such taxation. Thus an act creating a park district for three towns, and vesting the power of taxation in commissioners appointed by the governor, was upheld because of the provision of the act that it would not take effect in any of the three towns until a majority of the voters of each approved the act. A like holding resulted where a majority of the voters of a city approved a charter providing for taxation by an appointive officer. Many similar holdings exist.

99 People v. Mayor of Chicago, supra note 48.
100 Lovingston v. Wider; Wider v. East St. Louis, both supra note 48.
101 People v. Chicago (1869) 51 Ill. 58.
103 People v. Franklin, supra note 48.
104 People v. Salomon (1869) 51 Ill. 37.
105 People v. Morgan (1878) 90 Ill. 558.
106 West Chicago Park Comrs. v. Sweet (1897) 167 Ill. 326, 47 N. E. 728 (majority of voters approved act creating appointive park commissioners with power to levy special assessments); People v. Knopf (1897) 171 Ill. 191, 49 N. E. 424 (majority of voters of township approved act for township organization which provided for town taxation by county board); Bebb v. People (1898) 172 Ill. 376, 50 N. E. 185 (same). For other like cases, see Note (1927) 46 A. L. R. 609, 659.
There is much to be said for the Illinois view. When the constitution first provides that the legislature shall not impose local taxes and then provides that the legislature may vest the power to impose such taxes in the "corporate authorities" it must have meant that the "corporate authorities" should not be the mere agents of the legislature as otherwise the prohibition against the legislature's imposing local taxes would be meaningless. The only way the "corporate authorities" can be independent of the will of the legislature is for them to be chosen by the people or in a manner to which the people have assented. At all events the courts of Montana\textsuperscript{107} and Utah\textsuperscript{108} agreed with and followed the Illinois cases in construing their constitutional provisions.

On the other hand, the courts of West Virginia, South Carolina and Colorado refused to follow the Illinois view and saw no objection, so far as constitutional provisions such as section 12 are concerned, to the vesting of powers of local taxation in officers not elected by the people or chosen in a manner to which such people have assented. Thus in \textit{Booten v. Pinson}\textsuperscript{109} a law providing for the commission form of government for the City of Williamson, for the appointment of the commissioners for the first two years by the governor, and for their election thereafter, was held not to violate the West Virginia constitution. The court said that the constitution "does not provide who shall constitute the corporate authorities, nor how they shall be brought into being, whether by appointment or by election" and was "not a limitation upon the power of the legislature to prescribe the number and official character of the municipal authorities, and the manner in which they shall be chosen."\textsuperscript{110} In \textit{Lillard v. Melton}\textsuperscript{111} substantially the same law was held not to violate the similar South Carolina constitutional provision and on substantially the same reasoning.

\textsuperscript{107} State v. Edwards (1910) 42 Mont. 135, 111 Pac. 734, Ann. Cas. 1912A 1063, 32 L. R. A. (n. s.) 1078 (invalidating act creating park commission for cities of first class consisting of mayor and six persons appointed by governor with power to compel city to levy taxes).

\textsuperscript{108} State v. Standford, \textit{supra} note 48 (invalidating law authorizing state board to nominate three persons as county commissioners who must appoint one as fruit tree inspector with unlimited power to appoint deputies whose salaries must be paid by counties). In Lehi City v. Meiling (1935) 87 Utah 237, 48 P. (2d) 530, a law providing for the appointment of the taxing authority of a metropolitan water district by the legislative bodies of the cities uniting to form such district was upheld on the ground that before the district could be formed it must have the assent of a majority of the voters therein.

\textsuperscript{109} (1915) 77 W. Va. 412, 89 S. E. 985, L. R. A. 1917A 1244.

\textsuperscript{110} \textit{Ibid.} at 418, 89 S. E. at 988.

\textsuperscript{111} (1915) 103 S. C. 10, 87 S. E. 421.
And in *Milheim v. Moffat Tunnel Improvement District*\(^{112}\) an act of the Colorado legislature, providing for the formation of a tunnel improvement district to be governed and taxed by a board of five directors appointed by the governor for a specified period after which they were to be elected by the voters of the district, was held not to violate the Colorado constitution. But even though the *Booten, Lillard* and *Milheim* cases indicated disapproval of the Illinois view the cases are distinguishable. In the *Booten* and *Lillard* cases the West Virginia and South Carolina constitutions differed from that of Illinois. While each provided that the legislature may vest the local taxing power in "the corporate authorities", neither contained the complementary provision that the legislature shall not impose taxes for local purposes.\(^{113}\) And the *Milheim* case rested its decision entirely on another provision of the Colorado constitution to the effect that the legislature "shall provide for the election or appointment of such other county, township, precinct and municipal officers as public convenience may require."\(^{114}\) This, it was held, authorized the creation of appointive "corporate authorities".

In California there is much force to the argument that the Illinois rule should be adopted in view of the statements of the framers of our constitution, mentioned above, to the effect that they had the Illinois provisions in mind when they adopted section 12. This is especially true because of the rule often repeated and applied by the California courts that it will be presumed that in adopting a constitutional provision from another state the intent was to adopt the judicial interpretation placed upon the provision by the courts of such state.\(^{115}\)

However, the California courts have had infrequent occasion to consider the meaning of the words "corporate authorities" and have not yet definitely answered the question whether they do or do not follow the Illinois rule. It was early held and has been several times repeated that the words "corporate authorities" refer to the persons in whom is vested the legislative power of the city, county, or other public corporation,\(^{116}\) but none of these cases stated or implied that

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112 (1922) 72 Colo. 268, 211 Pac. 649.
113 See *supra* notes 8, 14.
114 Colo. Const. (1876) art. XIV, § 12.
the legislative body had to be elected by the people or indeed said anything at all about the manner of its selection. In point of fact, however, the legislative body was elected by the voters of the district in all these cases. In another case a board not elected by the people of a city was held to have power to impose a city tax because the freeholders charter of the city so provided and had been adopted by a majority vote of the people of the city. This, of course, was valid under the Illinois rule as pointed out above, but the Illinois rule was not mentioned. In *Nevada National Bank v. Board of Supervisors* the Irrigation District Act provided that in the event the board of directors of the district refused to levy sufficient assessments to pay the amounts due on bonds of the district the county board of supervisors could make such levy. The court held that both boards were "corporate authorities" but did not say why. An adequate reason, in line with the Illinois rule, would have been that a majority of the voters of the district had to give their consent before a district could be formed, and in giving such consent they assented to the taxing provisions of the act. Another adequate reason section 12 was not violated would have been that stated in *Board of Education v. Board of Trustees* referred to above, where a power in the county auditor to levy the required tax if the board did not was held to refer only to ministerial acts in making the levy and not to authorize the auditor to make the legislative determination of the amount to be raised by taxation, with which, as stated above, section 12 is alone concerned.

The question of whether the Illinois rule should be adopted in California was squarely presented in *Golden Gate Bridge and Highway District v. Felt*. There the Bridge and Highway District Act provided that such districts could be organized by the joint action of two or more counties. Proceedings to organize such a district were initiated by the board of supervisors of the respective counties either passing an ordinance consenting to organization, which ordinance was, of course, subject to referendum, or submitting the question of the giving of such consent to the voters of the county and obtaining the consent of the majority voting. Thereafter petitions for the formation of the district had to be circulated in each such county and, after a minimum number of signatures were obtained, the petitions

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117 Quigg v. Evans (1898) 121 Cal. 546, 53 Pac. 1093.
118 Supra note 18, at 648, 91 Pac. at 126.
119 Supra note 45.
120 Supra note 23.
were then presented to the Secretary of State, who was required to publish a notice stating the time and place when and where the superior court of each county would hear protests to the inclusion of specific property within the district. The superior court was empowered, after such hearing, to exclude any lands from the proposed district, and to enter judgment that the lands in the county not so excluded would be benefited by the formation of the district. After such judgments were entered the Secretary of State issued a certificate of incorporation and the boards of supervisors of the various counties were entitled to appoint members to the board of directors of the district to whom the power to tax property in the district was given. Bonds could not be issued by the district without the consent of two-thirds of the electors of the district.

The Golden Gate Bridge and Highway District was formed under the above provisions, the proceedings having been initiated by ordinances of the boards of supervisors of Del Norte, Mendocino, Napa, Sonoma, Marin and San Francisco counties. Parts of Mendocino and Napa counties were excluded by the superior courts of these counties but the whole of the other four counties was included. The district was incorporated in 1928, members of the board of directors chosen by the respective boards of supervisors, and in 1930 a proposition to issue bonds in the amount of $35,000,000 submitted to the voters of the district and approved by more than a two-thirds majority of those voting. In a proceeding to test the validity of the bonds of the district the objection was made that the act violated section 12 because the taxing power was vested in a board of directors not elected by the electors of the district or appointed in some manner to which they had given their assent and the Illinois and Montana cases referred to above were cited to the court. It was also brought to the attention of the court, in briefs of counsel, that the debates of the Constitutional Convention of 1879 showed that section 12 was taken from the Illinois constitution.

The court had four answers to the contention. First, it was said that the contention is grounded mainly upon the notion of an "inherent right" of local self-government which is contrary to the great weight of authority, "and cannot be said to have been adopted in this state." As pointed out in a previous article, however, this statement is erroneous, for the doctrine of an inherent right of local self-

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121 Ibid. at 320, 5 P. (2d) at 591.
122 (1941) 30 Calif. L. Rev. 1, 29-33, 38-41.
government was expressly adopted by the California supreme court in *People v. Lynch.*\(^{123}\) The court also cited in this connection, with apparent approval, *Booten v. Pinson,* the West Virginia case referred to above\(^{124}\) which rejected the Illinois view. This looked very much, therefore, like a rejection of the Illinois view of corporate authorities.

The second answer given by the court to the claim that section 12 was violated, however, was that the contention "takes no account of the manifest assent of the voters expressed in their passage of the ordinances and their favorable vote at the bond election."\(^{125}\) This, of course, assumes that the Illinois rule is applicable but that the rule was satisfied because the board of directors, though not elected by the voters of the district, had been chosen in a manner to which such voters had given their assent. The assent had been manifested: (1) by the passage of ordinances by their representatives resolving that the county become part of the district, which ordinances were subject to referendum; and (2) by the approval of more than two-thirds of the voters of the district at the bond election. It may well be questioned whether voters of the county when voting for supervisors in fact consent to have such supervisors bring them into a district having a nonelective taxing board. The approval at the bond election, on the other hand, seems more clearly a consent to be taxed by the board provided for in the act, within the meaning of the Illinois cases. Furthermore, it would seem to be a not unreasonable extension of the Illinois rule that corporate authorities can be selected by representatives of the people, *i.e.*, by the respective boards of supervisors as in the *Felt* case.

The third answer given in the *Felt* case was that section 5 of article XI of the constitution provides for the election or appointment of county, township and municipal officers,\(^{126}\) and section 4 of article XX declares generally that all officers whose election or appointment is not provided for elsewhere in the constitution, and all officers whose offices or duties were thereafter created by law "shall be elected by the people, or appointed, as the legislature may direct" and cited

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\(^{123}\) (1875) 51 Cal. 15.

\(^{124}\) Supra note 109.

\(^{125}\) 214 Cal. at 320, 5 P. (2d) at 591.

\(^{126}\) Art. XI, § 5 provides, so far as here material: "The Legislature, by general and uniform laws, shall provide for the election or appointment, in the several counties, of boards of supervisors, sheriffs, county clerks, district attorneys, and such other county, township, and municipal officers as public convenience may require, and shall prescribe their duties and fix their terms of office."
Milheim v. Moffat Tunnel Improvement District, reviewed above.\textsuperscript{127} It is hard to understand how this argument could have commended itself to the court. Insofar as the argument rests on section 5 of article XI it is clearly untenable. That provision is applicable only to "county, township and municipal" officers and seems clearly inapplicable to officers of districts such as the one involved in the Felt case. And the argument based on section 4 of article XX will not stand up under analysis. The argument, if valid, would make section 12 absolutely meaningless. If "corporate authorities" may be elected or appointed in any manner the legislature sees fit it follows that they may be appointed by the legislature itself. In that event we would have the ludicrous result that although section 12 provides that the legislature may not impose local taxes for local purposes, nevertheless agents or appointees of the legislature may be vested with the power to impose local taxes, for local purposes.

The fourth and final answer to the contention that section 12 was violated was that the district was organized for a state purpose. For the reasons set forth above this answer was also erroneous.

Consequently, the only one of the four answers which is invulnerable to attack is the second one based on the assumption that the Illinois rule is applicable in California but was satisfied in the Felt case because the voters of the district assented to the method of choosing the directors.

The Felt case was followed without fresh examination of the question in two cases where district taxing boards, not elected by the people of the respective districts, were held not to violate section 12. In the first, In re Metropolitan Water District,\textsuperscript{128} the governing board of the district was chosen by the legislative bodies of the cities uniting to form the district. And the voters of each city by majority vote had to approve the participation of such city in forming the district before it could be organized. Furthermore, the voters of the district approved the bonds by a majority in excess of four to one. Thus there was no violation of the Illinois rule. In the other case, however, Joint Highway District v. Hinman,\textsuperscript{129} the question was much closer. There the district was formed by the united action of two or more counties. Counties were brought into the district by a simple resolution of the board of supervisors of the county. The board of directors consisted of

\textsuperscript{127} Supra note 112.

\textsuperscript{128} Supra note 20, at 586, 11 P. (2d) at 1097.

\textsuperscript{129} Supra note 22, at 583, 32 P. (2d) at 148.
one member of the board of supervisors of each participating county chosen by the respective boards, and in the event an even number of counties participated in the district the directors thus appointed were to select an odd member from the boards of supervisors of any county in the district and if they could not agree, the Director of Public Works of California made the appointment. Thereafter bonds of the district could be issued by the district either with or without an election. In the Hinman case bonds were proposed to be issued without an election. It was held that section 12 was not violated by this taxing board but the court laid its greatest stress on the untenable ground that the district was formed for a state purpose. In this case it is hard to see how the Illinois rule would be satisfied, unless it be held that failure of the voters to file a referendum petition against the resolution bringing the county into the district is equivalent to assent on their part. No Illinois case has been found going that far although one case did seem to treat failure to protest, where opportunity to do so before a court was given, as amounting to assent by those not protesting. It would seem that the question of the violation of section 12 was far closer in the Hinman case than in the Felt case, and it is to be regretted that the argument that section 12 had been violated was not more forcefully presented.

CONCLUSION

Section 12 was put in our constitution in order to protect not only cities but also counties and districts from meddlesome interference by the legislature in their financial affairs. The protection intended to be given has not been fully realized, however, owing to the unsound decisions of the California supreme court reviewed above (1) to the effect that a law imposing a debt or burden which must be met by taxation does not impose a tax within the section; and (2) extending in a wholly unwarranted manner the doctrine of “state purpose” so as to remove from the protection of section 12 many activities which should have such protection.

II.

SECTION 13 OF ARTICLE XI

Section 13 of article XI originally provided:

"The Legislature shall not delegate to any special commission, private corporation, company, association or individual any power to

130 Owners of Lands v. People (1885) 113 Ill. 296.
make, control, appropriate, supervise or in any way interfere with any county, city, town or municipal improvement, money, property, or effects, whether held in trust or otherwise, or to levy taxes or assessments or perform any municipal function whatever."

The section still reads as it did in 1879 with the exception of the following language added at the end of the section in 1914:

"except that the Legislature shall have power to provide for the supervision, regulation and conduct, in such manner as it may determine, of the affairs of irrigation districts, reclamation districts or drainage districts, organized or existing under any law of this State."

The convention debates reveal that section 13 was taken from the constitution of Pennsylvania. The provision has also been adopted in Colorado, Montana, South Dakota, Utah, and Wyoming.

The practice of legislative interference with municipal affairs through special commissions appointed by the legislature or the governor was rather common before 1879 and the practice was specifically condemned on the floor of the 1878-1879 Constitutional Convention. When section 13 was actually presented to the convention, however, delegate Freeman moved to strike it out on the ground that every city has commissions for various purposes and they are desirable. In reply to this, delegate Hager, the chairman of the committee on city, county and township organization, stated in part:

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131 Delegate Hager, chairman of the committee on city, county and township organization stated: "This is taken from the Constitution of Pennsylvania, therefore I suppose it will meet with the same criticisms as the sections taken from other Constitutions . . . . To show that there is no difference, I will refer you to the Constitution of Pennsylvania, which you can compare for yourselves." 2 CONST. DEB. 1066. Article III, section 20 of the Pennsylvania constitution adopted in 1873, provided then and still provides: "The General Assembly shall not delegate to any special commission, private corporation or association, any power to make, supervise or interfere with any municipal improvement, money, property or effects, whether held in trust or otherwise, or to levy taxes or perform any municipal function whatever." It should be noted that the original California provision differed slightly from the Pennsylvania provision in that it inserted the words "county, city, town or" before the word "municipal".


133 MONT. CONST. art. V, § 36, identical with Pennsylvania.

134 S. D. CONST. art. III, § 26, adds to the Pennsylvania provision after the word "otherwise" the words "select a capital site".

135 UTAS CONST. art. VI, § 29, is identical with the South Dakota provision.

136 WYO. CONST. art. III, § 37, practically identical with Pennsylvania.

137 See (1941) 30 CALIF. L. REV. 13-14, ns. 35, 36, 37, 38.

138 Ibid. at 35-37, ns. 114, 117.
"This does not say that the county shall not have any Commissions. It says the Legislature shall not delegate to any special Commissions its power. It don't say that the city or the county shall not do it, but it provides that they shall appoint their own Commissioners. Why not? Why not the city appoint its own Commissioners? If they want a Funding Commission, why not appoint them? Why should the Legislature force upon you men from distant portions of the State to control your funds and pay off your debts?"\textsuperscript{130}

In terms section 13 says that certain powers shall not be delegated to certain persons but since 1914 an exception has been created. Three main problems arise, then: (1) who the persons are to whom the powers may not be delegated; (2) the scope and extent of the powers which may not be delegated; and (3) the scope and extent of the 1914 exception.

**THE PERSONS TO WHOM THE POWERS MAY NOT BE DELEGATED**

Section 13 has always provided that the legislature shall not make the forbidden delegation to "any special commission, private corporation, company, association or individual." It was held in *In re Pfahler*\textsuperscript{140} that the city electorate was not a "special commission" within section 13 and hence laws providing for the initiative and referendum did not violate it. This was rather a strange contention for it is difficult to conceive of section 13 as having been designed to protect a city from interference by its own electorate.

It has also been held that neither a county\textsuperscript{141} nor a city\textsuperscript{142} comes within any of the designations of "special commission", "private corporation", "company", "association" or "individual". These holdings were made upon a most inadequate analysis and seem unsound. If the purpose of section 13 is to prevent interference with local affairs by state agencies it is difficult to find any justification for permitting the state to interfere through the agency of a city or a county—to permit the state through the agency of a county or city to interfere with the local affairs of another county or city. Equally unsound, so it seems, and for similar reasons, are the holdings of the Pennsylvania supreme court that the Secretary of State,\textsuperscript{143} and that of the Montana supreme court that the Montana Public Service Commission,\textsuperscript{144} are

\textsuperscript{130} 2 Const. Deb. 1066.
\textsuperscript{140} (1905) 150 Cal. 71, 86, 88 Pac. 270, 277.
\textsuperscript{141} Oakland v. Garrison (1924) 194 Cal. 298, 228 Pac. 433.
\textsuperscript{142} American Co. v. Lakeport, supra note 55, at 556, 32 P. (2d) at 625; Gadd v. McGuire, supra note 24.
\textsuperscript{143} Clark v. Beamish (1933) 313 Pa. 56, 169 Atl. 130.
\textsuperscript{144} Public Service Com. v. Helena (1916) 52 Mont. 527, 159 Pac. 24.
not within the term "special commission", the courts apparently reasoning that the secretary and the commission, respectively, were regular and therefore not "special" commissions. The proper view in this respect would seem to be that of the Colorado and Utah courts that a special commission is any person or body of individuals separate and distinct from the city or other local government involved. In both these states the regular state public utilities commissions have been held to be "special commissions" within constitutional provisions like section 13.146

It has been held in Pennsylvania that a local board which was appointive and not elected by the people was a "special commission" within the Pennsylvania provision.146 This seems to say that a local governing board which is not elected by the people of the locality, but which is appointed, is a "special commission" which cannot be vested by the legislature with power over local affairs—a doctrine strikingly similar to the Illinois interpretation of "corporate authorities" discussed above in connection with section 12.

THE SCOPE AND EXTENT OF THE POWERS WHICH MAY NOT BE DELEGATED UNDER SECTION 13

The power which the legislature is forbidden to delegate under section 13 is power "to make, control, appropriate, supervise or in any way interfere with any county, city, town or municipal improvement, money, property or effects, whether held in trust or otherwise, or to levy taxes or assessments or perform any municipal function whatever." The use of the words "county, city, town" as well as "municipal" indicates that the word "municipal" was used in the broader sense so as to include public corporations other than counties, cities or towns.147 And indeed, such has always been the construction in California where section 13 has been held or assumed to prevent


147 These words are not found in the Pennsylvania, Colorado, Montana, South Dakota, Utah or Wyoming provisions as noted above. Nevertheless, it is held in Pennsylvania that the provision prevents legislative interference with the affairs of counties as well as cities, townships and boroughs. Commonwealth v. Woodring (1927) 289 Pa. 437, 137 Atl. 635; Tranter v. Allegheny Co. Authority (1934) 316 Pa. 65, 173 Atl. 289. In Montana, however, the protection of the provision is limited to cities, and is held not to extend to counties and school districts. State v. Holmes (1935) 100 Mont. 256, 47 P. (2d) 624.
interference with affairs of irrigation districts (before 1914)\textsuperscript{148} and school districts.\textsuperscript{149} The same assumption is made by the 1914 amendment in excepting irrigation, reclamation and drainage districts from the section.

\textit{Power to create debt or burden which must be met by local taxation.}

One of the most important questions to arise in this connection is the extent to which section 13 prohibits the vesting in a special commission, etc., the power to create a debt or impose a burden on the city or other public corporation which must be met by local taxation.

The primary purpose of the Pennsylvania constitutional provision on which section 13 is modeled was, as stated by the Pennsylvania supreme court in \textit{Tranter v. Allegheny County Authority},\textsuperscript{150} to prevent “the separation of the power to incur debts from the duty of providing for their payment by taxation.”\textsuperscript{151} This being true, it is obvious that the provision covers much the same ground as section 12 of article XI and similar provisions elsewhere. At least this is the case in most jurisdictions having provisions similar to section 12, which, as noted above, regard the imposition of a debt or burden which must be paid by local taxation as equivalent to the imposition of a local tax. And it may even be the case in California, as noted above. But if it is not the case here, section 13 would offer an additional means of attacking a law allowing a commission to create debts which must be paid by local taxes.\textsuperscript{152}

\textsuperscript{148} Merchants Bank v. Escondido Irr. Dist., \textit{supra} note 18, at 333, 77 Pac. at 937.
\textsuperscript{149} Esberg v. Badaracco, \textit{supra} note 47.
\textsuperscript{150} \textit{Supra} note 147. See also the excellent discussion of Sleane, J., in Porter v. Board of Plumbing Supervision (1942) 43 Pa. D. & C. 616, 621, and of Blume, J., in Stewart v. Cheyenne (1944) 60 Wyo. 497, 154 P. (2d) 355.
\textsuperscript{151} 316 Pa. at 78, 173 Atl. at 295.
\textsuperscript{152} Thus where the extent of street construction work to be done in a borough was fixed by borough officers, and the cost then assessed on property by the governing board of the borough, the Pennsylvania provision was held violated. Weatherly Borough v. Warner (1942) 148 Pa. Super. 557, 25 A. (2d) 831. It was also held violated by an act which gave a city school board discretion to fix the number of teachers to be employed, the duty to levy taxes to pay their salaries then being on the city council. Wilson v. Philadelphia School Dist., \textit{supra} note 146. But where an upper limit was fixed on the number of teachers who could be thus employed, the law was held valid. Moore v. Pittsburgh School Dist. (1940) 338 Pa. 466, 13 A. (2d) 29. The Wyoming provision was held violated by a law providing that upon demand of the public utilities board of a city the governing board thereof shall commence proceedings for the condemnation of property and shall call an election as to whether bonds shall be issued to pay the cost thereof. Stewart v. Cheyenne, \textit{supra} note 150.
While there have been few California cases on the question and none have discussed it at any great length or referred to the Pennsylvania authorities, the few cases we do have support the Pennsylvania view that it is a violation of section 13 to delegate to an officer or board, other than the legislative body of the city or other local subdivision, power to create debts or burdens which must be met by local taxation. Thus in \textit{San Francisco v. Broderick}\textsuperscript{153} a law authorizing county, township or district officers to appoint "as many deputies as may be necessary for the prompt and faithful discharge of the duties of his office" was held not to require the county to pay compensation to the deputies so appointed for so to construe the law would violate section 13. The court said:

"It will not seriously be contended that this permission which the legislature has accorded is to be construed into a power placed in the hands of these officers to appoint deputies at will, and make their salaries a charge against the counties. Such a construction would result in a grievous interference with the county funds, and would come clearly within the purview of section 13, article XI of the constitution."\textsuperscript{154}

On the other hand, where the act authorizes county officers to appoint a specific number of deputies and pay them a specified salary section 13 is not violated.\textsuperscript{155} As in Pennsylvania, the fixing of an upper limit beyond which burdens cannot be imposed obviates the objection based on section 13, the main purpose of which is to prevent the giving of unlimited discretion to create debts or burdens which the local authorities must pay.\textsuperscript{156}

In \textit{Sloane v. Hammond},\textsuperscript{157} however, there seems to be a clear case of violation of section 13, and yet the district court of appeal upheld the law. There the law provided that whenever the district attorney of any county became disqualified from conducting any criminal prosecution within the county, the attorney-general of the state might employ special counsel to conduct such prosecution and the agreed compensation was a charge on the county treasury. The attorney-general employed special counsel pursuant to this statute at an agreed compensation of $1,000. It was held that the special counsel could

\textsuperscript{153} (1899) 125 Cal. 188, 193, 57 Pac. 887, 889.

\textsuperscript{154} \textit{Ibid.} at 193, 57 Pac. at 889.

\textsuperscript{155} Tulare County v. May (1897) 118 Cal. 303, 308-309, 50 Pac. 427, 429-430.


\textsuperscript{157} (1927) 81 Cal. App. 590, 254 Pac. 648.
require the county to pay such compensation without violating section 13. The court conceded for the sake of argument that "petitioner is within the strict letter of this inhibition" but "we are satisfied that he is not within the spirit of it, as measured under the general principles of government which it is the purpose of all constitutions to foster and protect."158 The court then goes on for over ten pages159 in a wholly unconvincing attempt to show why the "spirit" of section 13 was not violated. But while citing many cases from other jurisdictions not having constitutional provisions like section 13, none was cited from a jurisdiction which did. If the court had looked at the Pennsylvania cases alone it would have found sufficient reason for condemning this law which gives a state officer unlimited discretion to employ special counsel at whatever compensation he sees fit and requires the county to pay the bill. The case seems contrary to San Francisco v. Broderick and should be overruled.

Power to interfere in local affairs in other ways.

While section 13 thus appears to have been intended primarily to prevent the creation of a debt or burden payable from local taxation by persons other than the legislative body of the local subdivision, it is by no means limited to this. Many other types of interference are held to come within it.

Thus in Pennsylvania special commissions appointed to improve a city street,160 or to exercise supervision and control over a municipal building161 or a municipal park,162 were held to violate the constitutional provision. The provision was also violated by an act creating a bureau of public morals in cities of the second class for the purpose of investigating and acting upon all questions affecting public morals. The bureau had power to investigate conditions, enforce laws and prosecute violations, and was entirely independent of the regular city government.163 And in Wyoming a statute making it mandatory for the governing board of the city to enact such ordinance as might be deemed necessary by the city board of public utilities, for the protection of the municipal water plant, was held to violate the provision.164

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158 Ibid. at 601, 254 Pac. at 653.
159 Ibid. at 601-612, 254 Pac. at 653-657.
160 Mellon v. Pittsburgh (1874) 31 Leg. Int. (Pa.) 212.
164 Stewart v. Cheyenne, supra note 150, at 535, 154 P. (2d) at 369.
In Colorado and Utah the constitutional provision is held violated by a statute conferring on the state public utilities commission the power to regulate the rates of city-owned public utilities. The question cannot arise in this state because our Public Utilities Act has been construed as not attempting to regulate municipally owned utilities. If the act should be amended so as to permit such regulation, the Colorado and Utah cases would be authority that section 13 is violated. A Montana case holds otherwise, however.

On the other hand, many types of interference through commissions, boards or officers are not deemed to be of sufficient magnitude or importance to come within the prohibition of section 13. Thus in Banaz v. Smith an act authorizing a contractor to collect a street assessment by foreclosure proceedings was upheld on the ground that "The contractor acts only as the agent or servant of the city. He has no discretion, and can create no liability, nor can he impose any duty or exercise any control or authority over anyone. He makes no assessment, levies no tax, and performs no municipal function."

The regulation by the Railroad Commission of the rates of private public utilities within cities was held not to be an "interference" within section 13. Neither was there an "interference" by a statute authorizing the county to appear and defend suits for tax refunds on behalf of a city or other taxing agency whose taxing functions have been transferred to and consolidated with those of the county, nor by a statute delegating to a state commission the power to declare the result of an election, or of computing the allocation of state funds to be made to cities for post-war reconstruction projects.

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166 Pasadena v. Railroad Commission (1920) 183 Cal. 526, 192 Pac. 25, 10 A. L. R. 1425. It was also held here that section 22 of article XII of the constitution providing that "no provision of this Constitution shall be construed as a limitation upon the authority of the Legislature to confer upon the Railroad Commission additional powers of the same kind or different from those conferred herein" did not authorize the legislature to confer powers to regulate municipal utilities.
167 Public Service Comm. v. Helena, supra note 144.
168 (1901) 133 Cal. 102, 65 Pac. 309.
169 Ibid. at 103, 65 Pac. at 310.
171 County of Los Angeles v. Superior Court (1941) 17 Cal. (2d) 707, 112 P. (2d) 10.
172 Wheeler v. Herbert (1907) 152 Cal. 224, 234, 92 Pac. 353, 357.
173 City of Los Angeles v. Post War Etc. Bd., supra note 72, at 118, 156 P. (2d) at 756.
In Pennsylvania the provision is held not to be violated by an act requiring a certification of certain facts by the city comptroller before debts could be incurred by the city or by one requiring the approval of the state board of education before part of a township may be annexed to a city. A law requiring the approval of the municipal art commission before structures could be built by a city on or over highways was similarly upheld. And laws appointing boards, commissions or officers to assist in matters of administrative detail and acting under and not independent of the city government have been upheld. Thus the establishment of advisory boards to visit, inspect and make recommendations to the county commissioners (the legislative body of the county) for changes, improvements and for the management of county tuberculosis hospitals, where the commissioners were not bound to follow their recommendations, was valid. Also held valid was a law vesting departments of public welfare with authority to administer the laws as to the care of dependents by the cities, a law creating a board of zoning appeals, and a law creating a board of plumbing supervision to examine and pass upon the qualifications of plumbers operating in the city.

Laws authorizing the creation of public authorities to manage self-liquidating public projects, the property to go to the city or county after the cost thereof has been paid from revenues of the project, were upheld on the ground that they did not involve the creation of a "debt" of the city or county and hence were not within the intent of the provision.

Whether section 13 is applicable in cases where law not operative without the consent of local legislative body or electors.

In many cases powers are delegated by law to a commission, board or officer to do certain acts relating to the affairs of cities, counties or other local subdivisions but the law is not operative within any city, county or other local subdivision unless the legislative body or people

175 Baldwin Township's Annexation (1931) 305 Pa. 490, 158 Atl. 272.
176 Walnut & Quince St. Corp. v. Mills (1931) 303 Pa. 25, 154 Atl. 29.
177 Commonwealth v. Woodring, supra note 147.
178 Poor District Case (No. 2) (1938) 329 Pa. 410, 196 Atl. 837.
180 Porter v. Board of Plumbing Supervision, supra note 150.
thereof consent. It would seem that such laws are not within the spirit of section 13 which was enacted to prevent legislative interference with the affairs of cities, counties, or other local subdivisions through special commissions, etc. Where either the legislative body or the people of the locality must consent before the law is applicable it is hard to see how there is any interference, or how section 13 is in any way applicable.

Most of the California cases agree with this position and hold that there is no violation of section 13 in such a case. Thus in Davies v. City of Los Angeles, an act provided for the making of street improvement assessments by persons not appointed by the city council but provided that no assessment would become effective until confirmed by the council. In holding section 13 not to be violated, the court said:

"The commissioners are simply made the agents of the municipalities to assist them in opening streets. They act under the direction of the city authorities and their acts are not binding or effective until the same are approved and confirmed by the city council. Therefore, the act done is the act of the city, at last, and not of the commissioners."

The clearest statement of the rule that a freeholders charter provision cannot violate section 13, since it is effective only with the consent of the city electorate, is found in In re Pjahler where the contention that the initiative provisions of the Los Angeles freeholders charter violated section 13 was rejected, the court saying:

"So far, at least, as the prohibition concerning the delegation by the legislature to any 'special commission' to perform any municipal function is concerned, it is clear that the whole object of the provision was to prevent the state legislature from interfering with local governments by the appointment of its own special commissions for the control of purely local matters .... Certainly there is nothing in the language used which could be held to prohibit provision in the organic act framed for the government of a city for such commissions, special or otherwise, to be appointed or elected by the city as might be deemed necessary for the conduct of municipal affairs."

Similarly in Mesmer v. Board of Public Service Commissioners the Los Angeles freeholders charter created a board of public service

182 (1890) 86 Cal. 37, 24 Pac. 771.
183 Ibid. at 49, 24 Pac. at 775.
184 Supra note 140.
185 Ibid. at 87, 88 Pac. at 277.
commissioners and gave it control of revenues derived from the sale of water by the city. It was held that there was no violation of section 13. The charter was the act of the city itself. Its electors, through freeholders, determined the charter provisions. And more recently in Butterworth v. Boyd\(^{187}\) the supreme court similarly held that a health board chosen by the employees of San Francisco to administer an employee health insurance system as provided by a provision of the San Francisco freeholders charter did not violate section 13. Speaking of section 13 the court said:

"But this section merely prohibits the legislature from interfering with the municipalities in respect of their municipal affairs, and has no application to the appointment of boards or officers pursuant to valid charter provisions."\(^{188}\)

The principle was again recognized in San Jose v. Railroad Commission\(^{189}\) where, after a city had transferred to the Railroad Commission its power over public utilities in accordance with section 23 of article XII of the constitution, the Commission ordered the city to pay a proportion of the cost of construction of a grade separation project at a street railway crossing. The city contended that this violated section 13. The court held otherwise on the ground that the city, by voluntarily agreeing to surrender to the commission its powers over public utilities, waived the protection that would otherwise have been afforded by section 13.

Finally, the principle has been applied recently in two more cases. In Housing Authority v. Dockweiler\(^{190}\) a law providing for the establishment of housing authorities in cities and counties to undertake local housing projects was held not to violate section 13 because the act provided that no authority could operate in any city or county until the governing body thereof should declare by resolution that there was need for an authority to function in such city or county. In view of the latter provision the court said that "it is the local governing body, and not the legislature, that confers upon the authority the right to exercise its functions."\(^{191}\) And in the recent case of Whittier v. Dixon\(^{192}\) an act authorized the formation of vehicle parking districts

\(^{187}\) (1938) 12 Cal. (2d) 140, 82 P. (2d) 434.

\(^{188}\) Ibid. at 149, 82 P. (2d) at 439.

\(^{189}\) (1917) 175 Cal. 284, 165 Pac. 967.

\(^{190}\) (1939) 14 Cal. (2d) 437, 94 P. (2d) 794.

\(^{191}\) Ibid. at 463, 94 P. (2d) at 808.

\(^{192}\) (1944) 24 Cal. (2d) 664, 151 P. (2d) 5.
in cities whenever the legislative body of the city elected to form such
districts and appointed parking place commissioners to levy assess-
ments. In holding that the act did not violate section 13, the court said:

"The parking place commissioners, however, are city officers ap-
pointed by the legislative body of the city when it elects to acquire
parking places under the act, and are removable at the pleasure of
that body. It is the local governing body and not the legislature that
confers upon the commission the right to exercise its functions."103

In view of all of the foregoing authorities, to the effect that sec-
tion 13 is not applicable where the consent of the legislative body or
electors of the city is necessary before the action complained of can
be taken, it is indeed a paradox that the only California cases which
have thus far held section 13 violated were cases where the local legis-
lative body or the electors consented to the action held illegal.

The first such case was Yarnell v. City of Los Angeles194 in which
a provision of the Los Angeles freeholders charter authorized the city
treasurer to deposit city funds with private banks. It was held that
there was an "interference" with municipal money contrary to sec-
tion 13. Taking cognizance of the fact that the authorization had
come from the freeholders charter, and not from a statute, the answer
of the court was:

"The only method proposed to avoid this provision is to say that while
the legislature may not do the thing prohibited, it may authorize its
creatures—municipal corporations—to do it. But the thing which
the legislature is forbidden to do, it cannot delegate to another to do,
unless such power of delegation is given by the constitution itself."105

Apart from ignoring the fact that a freeholders charter can in no true
sense be regarded as an act of the legislature, the foregoing statement
is palpably unsound and wholly ignores the purpose of section 13, viz.,
to prevent legislative interference with the affairs of cities and local
subdivisions.106 Where the people of the city or local subdivision must
give their consent before the alleged interference can occur the reason
for the provision obviously does not exist, as held in In re Pfahler,107

103 Ibid. at 667, 151 P. (2d) at 7.
104 (1891) 87 Cal. 603, 25 Pac. 767.
105 Ibid. at 607, 25 Pac. at 767.
106 A similar aberration is found in the Pennsylvania cases. Lighton v. Abington
107 Supra note 140.
Mesmer v. Board of Public Service Commissioners¹⁰⁸ and Butterworth v. Boyd.¹⁰⁹

The second California case to hold section 13 actually violated was City of Los Angeles v. Teed²⁰⁰ where an act authorized the governing body of municipal corporations to issue refunding bonds and to make them payable either at the office of the city treasurer or at a bank in San Francisco, New York, Boston or Chicago. The city issued bonds payable at a New York bank and the court held there was a violation of section 13, relying on the Yarnell case and saying it was "unable to distinguish that case from the present one." The court said that since the officers of the city had no authority to act outside the state "there is, therefore, no other alternative than to remit the money to the bank in New York, and make that bank the agent of the city to pay the bonds and coupons." "But this", said the court, "is precisely what is forbidden by the constitution, and is, as we regard it, a graver infraction of its provisions" than that considered in the Yarnell case.²⁰¹ The case is an excellent example of how one bad precedent will beget others. Wholly ignored in the Teed case, as in the Yarnell case, was the fundamental purpose of section 13; nor was there any explanation of how there can be interference with the affairs of a city when the governing body or electors thereof must first give their consent. The case is directly contrary to the recent cases of Housing Authority v. Dockweiler²⁰² and Whittier v. Dixon,²⁰³ discussed above.²⁰⁴

The third and final case to hold that section 13 was actually violated was Merchants Bank v. Escondido Irrigation District.²⁰⁵ There the Wright Act gave to boards of directors of irrigation districts power to mortgage the water system of the district as additional security for its bonds. The court held section 13 was violated since the mortgage

¹⁰⁸ Supra note 186.
¹⁰⁹ Supra note 187.
²⁰⁰ (1896) 112 Cal. 319, 44 Pac. 580.
²⁰¹ Ibid. at 330, 44 Pac. at 584.
²⁰² Supra note 190.
²⁰³ Supra note 192.
²⁰⁴ Strangely enough, in Mack v. Jastro (1899) 126 Cal. 130, 58 Pac. 372 it was held that the making of bonds of Kern County payable at a San Francisco bank did not violate section 13 although there was no showing here any more than in the Teed case that the city officials had authority to act outside the city limits. The court simply said: "The mere naming of a bank as a place of payment does not, however, constitute the bank the custodian of the funds or the agent of either party." 126 Cal. at 134, 58 Pac. at 374.
²⁰⁵ Supra note 18.
of the water system of the district necessarily involved transfer of the statutory powers of the board to the possession and management of the water system in the event of default and foreclosure "in contravention of section 13 of article XI of the constitution, which forbids the delegation of such powers." Here again there could be no delegation unless the board of directors elected to make it, so that section 13 was not violated under the many authorities considered above.

The Yarnell, Teed and Escondido cases can no longer be regarded as authoritative interpretations of section 13 for the reasons indicated. In any event all three cases also relied upon other grounds of invalidity and the rules of both the Yarnell and Teed cases have been abrogated by constitutional amendment. The rule of the Escondido case appears to have been abrogated as to irrigation districts by the 1914 exception to section 13.

State purpose.

As in the case of section 12 it has been held in a number of cases that section 13 was not applicable because the law complained of involved a state rather than a local purpose. Thus a law authorizing the superior court to direct the county to pay the expenses of maintaining delinquent children was upheld on the ground of state purpose. For the same reason the court upheld a law authorizing petitioning landowners to select the boundaries of territory to be annexed to a city, a law appointing a state board to administer a fund granted to cities and counties for aid in the support and care of persons afflicted with tuberculosis, and a law imposing on the county treasury the burden of the payment of local registrar's fees in connection with the collection of vital statistics.

In the group of cases discussed above under section 12, holding that the legislature did not impose a tax for a city purpose merely because it created a taxing district larger than but including the city or coextensive with the city and authorized the district to exercise powers or perform functions which the city had power to exercise or perform, it was also held that section 13 was not violated. As noted above

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206 Ibid. at 333, 77 Pac. at 938.
208 Aid Society v. Reis (1887) 71 Cal. 627, 632, 12 Pac. 796, 798.
209 People v. Ontario (1906) 148 Cal. 625, 631, 84 Pac. 205, 207.
210 County of Sacramento v. Chambers (1917) 33 Cal. App. 142, 164 Pac. 613.
211 Boss v. Lewis, supra note 89.
212 Supra note 78
the courts held in those cases that the purposes of such district were not city but were local to the larger or different district thereby created so that there was no violation of section 12. In each case it was also held for similar reasons that the larger or different district was not interfering with city functions contrary to section 13 since its functions were local to itself.213 The objections under sections 12 and 13 were usually considered together and a single answer given both. What was said above in connection with these cases is therefore equally applicable here and will not be repeated.

THE SCOPE AND EXTENT OF THE 1914 EXCEPTION

As pointed out above, section 13 was amended in 1914 to add at the end thereof the following:

"except that the Legislature shall have power to provide for the supervision, regulation and conduct, in such manner as it may determine, of the affairs of irrigation districts, reclamation districts or drainage districts, organized or existing under any law of this state."

In the argument to the voters for the adoption of this provision it was said:

"Assembly Constitutional Amendment No. 47 will make no change in section 13 of article XI of the Constitution of California except to add a clause, following the word ‘whatever,’ to remove doubt as to the right of the state to provide for ‘the supervision, regulation and conduct’ of irrigation, reclamation and drainage districts, in order to increase confidence in the bonds of such districts.

"In recent years considerable legislation has been enacted, especially with reference to irrigation districts, to safeguard the issuance of their bonds and to widen the market for them.

"Experience has shown, however, that some measure of state supervision of the affairs of the districts is desirable, at least during the period of the construction of their work, in order to assure investors in their bonds that the proceeds of the bonds will be so expended that the districts will be successful. In construing section 13 of article XI of the constitution as it now stands, our supreme court has held that it applies to irrigation districts.

213 Pixley v. Saunders, supra note 21, at 160, 141 Pac. at 818; Henshaw v. Foster, supra note 20, at 512, 169 Pac. at 84; Stuckenbruck v. Bd. Superv., supra note 24; Pasadena v. Chamberlain, supra note 78. To like effect on section 13 was Van de Water v. Pridham (1917) 33 Cal. App. 252, 164 Pac. 1136, hearing den. The court made the same unauthorized extension of the doctrine of the above cases in respect of section 13 as was made by Golden Gate Bridge Dist. v. Felt, supra note 23, in In re Metropolitan Water Dist., supra note 20, and Joint Highway Dist. v. Hinman, supra note 22, at 588, 32 P. (2d) at 148.
"Therefore the state could not provide for effective supervision of their affairs. It has never been held that this section applies to reclamation and drainage districts, but they have been included in the amendment to remove any doubt as to the right of the state to provide for their supervision. This amendment was suggested by representatives of the districts. It does not affect any other interest and does not commit the state to any policy. It simply makes possible the adoption of such measures for strengthening the securities of these districts as the legislature may find to be desirable.

"The amendment was unanimously approved by both houses of the legislature after a careful investigation of its merits, as a practical measure in furtherance of the development of California."

Since the Escondido case was the case definitely holding that irrigation districts were subject to section 13 it seems likely that the case was primarily responsible for the 1914 exception.

It would seem clear from the wording of the section, as well as from the argument to voters, that the only purpose of the exception was to remove irrigation, reclamation and drainage districts from the operation of section 13 although much more explicit language could have been employed to express such an intent. Certainly it was wholly unnecessary to give the legislature the substantive power to regulate such districts for it already had that under its general powers.

Nevertheless, no California case has yet said that the sole purpose and the sole effect of the exception was to free the legislature from the restrictions of section 13 in dealing with irrigation, reclamation and drainage districts. Indeed, one has assumed such districts are still subject to such restrictions.214 Instead, most of the cases indicate vaguely that the exception has operated to give the legislature an enlarged power to regulate; that the exception not only freed it from the restrictions of section 13 but also from other constitutional restrictions.

The first case to construe the exception was Mordecai v. Board of Supervisors.215 There the California Irrigation District Act of 1919 contained a provision that it should not apply to districts situated wholly or partly within a county which had adopted a county freeholders charter. The law was held to violate article I, section 11 of the constitution which provides that all laws of a general nature shall have a uniform operation. To the argument that the 1914 exception "empowers the legislature to pass what laws it sees fit in regard to

215 (1920) 183 Cal. 434, 192 Pac. 40.
irrigation districts untrammeled by the general requirement that laws of a general nature shall have a uniform operation", the court replied:

"We cannot agree with this. There is nothing to indicate that the power granted the legislature by this provision was not to be exercised by it subject to the general requirements of the constitution governing the manner in which the power of legislation when conferred or possessed shall be exercised. The legislature has the power, as conferred by the provision of the constitution just quoted, to legislate concerning the affairs of irrigation districts, but that power, like the power of the legislature to legislate on other subjects, must be exercised in the manner in which the constitution provides that the power of legislation when it exists must be exercised. Before any grant of power to legislate on a particular subject can be held to be free of a general requirement governing all legislation, the intent of the constitution to that effect must be plain. No such intent appears in the present instance."

The foregoing view seems absolutely sound for the reasons above indicated. Strangely enough, however, with the exception of a single case decided by a district court of appeal, subsequent California cases seem to have been a series of recusions from it.

Thus in *Wores v. Imperial Irrigation District* the law applicable only to irrigation districts embracing more than 500,000 acres of land was held to be a general law having a uniform operation and hence not violative of section 11 of article I. The court then said that the foregoing conclusion also disposed of the contention that the act is a special law violative of article IV section 25 (33). After thus disposing of the case the court proceeded to talk on. It pointed to the 1914 exception added to section 13 and the holding of the *Mordecai* case and said that notwithstanding that case:

"... still it must be conceded that when this requirement of the constitution is satisfied by finding a sufficient basis of classification in the attempted legislation, the legislature, in all matters touching the regulation and conduct of the affairs of these classes of governmental agencies, has been given an enlarged discretion by the terms of the aforesaid amendments to the constitution and hence that very clear reasons must appear for whatever objections are urged against..."

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216 Ibid. at 441, 192 Pac. at 43.
217 Hershey v. Cole (1933) 130 Cal. App. 683, 687, 20 P. (2d) 972, 974, *hearing den.,* where it was held that the 1914 exception did not free the legislature from the restrictions of the impairment of obligation of contracts clause of the constitution (art. I, § 16) in dealing with reclamation districts. But the court seemed to imply that this was the only constitutional restriction to which the legislature was subject in dealing with irrigation, reclamation or drainage districts.
218 (1924) 193 Cal. 609, 227 Pac. 181.
the particular provisions of a statute enacted subsequent to the adoption of said amendment to the constitution before the courts would be justified in declaring them void."

And in several other cases the California courts have answered contentions that constitutional provisions other than section 13 had been violated by pointing to the "broad" and "plenary" power vested in the legislature with respect to irrigation, reclamation and drainage districts by the 1914 exception to section 13.219

The theory that the 1914 exception somehow relieves the legislature of all state constitutional restrictions in dealing with irrigation districts is boldly declared in County of Los Angeles v. Rockhold.220

There a law providing for the refunding of bonds of street improvement districts and providing for the shortening of the redemption period from tax sales was held invalid as impairing the obligation of contracts. When counsel cited cases involving irrigation districts in an endeavor to uphold the law, however, the court held the cases inapplicable because the legislature has by the 1914 exception a broad power over irrigation districts which it does not have over street improvement districts. In other words, the court said that the 1914 exception authorized the legislature to legislate with respect to irrigation, reclamation and drainage districts and their bondholders wholly free of the constitutional restriction against impairing the obligation of contracts.

It would seem that the many intimations in these California cases that the 1914 exception frees the legislature from any constitutional restriction other than that which would otherwise be imposed by section 13 are palpably erroneous and unsound and that the California courts should stop their talk to the effect that the legislature by the 1914 exception otherwise has a broader or more plenary power over irrigation, reclamation or drainage districts than it has over any other subject of legislation.

The 1914 exception has been held to extend to a flood control district221 which presumably is a reclamation or drainage district within


220 (1933) 3 Cal. (2d) 192, 209, 44 P. (2d) 340, 347.

221 Los Angeles v. Los Angeles C. F. C. Dist., supra note 219, at 405, 80 P. (2d) at 483.
it. And one case seems to assume that a joint highway district somehow comes within the exception.\footnote{Joint Highway Dist. v. Hinman, \textit{supra} note 22, at 584, 32 P. (2d) at 147.}

CONCLUSION

A reading of the California cases dealing with section 13 fails to reveal any clear understanding by our courts of the fundamental purpose of section 13. In most cases the section has been invoked as a subsidiary argument in the case and has received only summary and ill-considered treatment by the court after the case has been decided on other grounds.

Furthermore, much, if not all, of the protection which section 13 was designed to give when originally adopted in Pennsylvania, is given to cities, counties and districts by section 12 of article XI, a provision which Pennsylvania does not have in its constitution. And it is given to freeholders charter cities in California by sections 6 and 8 of article XI of the California constitution, also not found in the Pennsylvania constitution. Accordingly the provision has assumed an importance in Pennsylvania that it cannot have here.

The conclusion is inescapable that section 13 has served no useful purpose in California and should be repealed.