Municipal Home Rule in California: II*

PROHIBITION OF SPECIAL LEGISLATION AND PROVISION FOR INCORPORATION UNDER GENERAL LAWS

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The framers of the constitution of 1879 adopted five provisions specifically limiting the power of the legislature to interfere with the affairs of municipal corporations and also vesting in such corporations extensive powers of local self-government.1 Such provisions have survived in substance to this day, namely, (1) prohibiting special legislation and providing for incorporation of cities under general law;2 (2) direct vesting in cities and towns by the constitution itself of power to make and enforce within their limits all such local, police, sanitary and other regulations as are not in conflict with general

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*This is the second of a series of articles on the subject of municipal home rule in California. The first article appeared in (1941) CALIF. L. REV. 1. For convenience of reference it will be hereinafter referred to as Part I. Subsequent to publication of Part I several errors and omissions were discovered in the Appendices attached thereto. The special charters of Napa (Cal. Stats. 1871-2, p. 542; Cal. Stats. 1873-4, p. 140) and San Rafael (Cal. Stats. 1873-4, p. 111), although indicated in Appendix A (Part I, pp. 41-42) were by inadvertence omitted from Appendix C (Part I, pp. 44-45). San Diego was probably a fourth class Municipal Corporation Bill city from 1887 to 1889 (see infra note 146), and this probability should be noted in Part I, p. 5, n. 15, and p. 42, II. 16-17. Other changes should be made in Part I as follows: (1) p. 8, ll. 2-3, change 133 to 136, and change 71 to 72; (2) p. 41, Palo Alto, change “1889” to “1894”; (3) p. 42, San Luis Obispo, change “1856 to 1884” to “1856 to 1858, 1863 to 1884”; (4) p. 42, Santa Clara, change “1852” to “1866”; (5) p. 43, Hermosa Beach, change “(1900)” to “(1907)”; (6) p. 43, La Verne, La Verne was known as “Lordsburg” from 1906 to 1917; (7) p. 43, Lawndale, the name of the City of “Lawndale” was changed to “Colma” at an election held in November, 1941; (8) p. 43, St. Helena, St. Helena was a special charter city from 1876 to 1887; (9) p. 43, San Juan, San Juan was a special charter city from 1870 to 1896; (10) p. 43, Sonoma, Sonoma was a special charter city from 1851-1862 but apparently had no municipal organization from 1862 to 1900; (11) p. 44, Woodlake, the incorporation of Woodlake was held invalid by judgment of the Tulare County Superior Court in May, 1941; (12) p. 44, ll. 15-16, Kennett, Shasta County, was disincorporated in 1930; (13) p. 44, paragraph commencing “The following cities”, The Municipal Corporation Bill cities referred to in this paragraph were all incorporated as cities of the sixth class thereunder. With the foregoing modifications the Part I Appendices are believed correct and complete as of January 9, 1942, having been rechecked with the records in the office of the Secretary of State on that date.

1 Part I, p. 38.
2 CAL. CONST. art. XI, §6, art. IV, §25.
laws; (3) taking from the legislature the power to impose taxes upon cities or towns or upon the inhabitants or property thereof, for city, town, or other municipal purposes; (4) prohibiting the legislature from delegating to any special commission, private corporation, company, association or individual "any 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 functions whatever"; and (5) giving to any city having a population of 100,000 or more (after 1890, 3500 or more) the power to frame a freeholders "charter for its own government". And subsequently in 1896 and 1914 constitutional amendments to section 6 of article XI granted to freeholder charter cities and special charter cities considerable immunity from legislative regulation of their "municipal affairs".

All six of these provisions will be discussed in this and subsequent articles. As the first four of them are applicable to all the cities of the state alike, whether they be special charter cities, Municipal Corporation Bill cities or freeholder charter cities, they will be considered first even though the provisions relating to freeholder charter cities are of greater importance today. Accordingly, the subject of this article will be the first of these four provisions.

(1) PROHIBITION OF SPECIAL LEGISLATION AND PROVISION FOR INCORPORATION OF CITIES UNDER GENERAL LAWS.

Several provisions were adopted for the purpose of ending objectionable special legislation. Section 25 of article IV prohibited "local or special laws" in thirty-two enumerated cases (thirteen of which

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3 Ibid. §11. Note should also be made in this connection of article XI, section 19, of the 1879 constitution which allowed individuals and companies to use the streets of cities to lay down pipes and conduits for supplying the inhabitants with water or light "upon the condition that the municipal government shall have the right to regulate the charges thereof". This was amended in 1911 to provide as it now does that persons or corporations may establish and operate works for supplying the inhabitants of any city with "light, water, power, heat, transportation, telephone service or other means of communication..." on condition that "the municipal government shall have the right to regulate the charges thereof." As will hereafter appear, section 19 of article XI seems not to have conferred any power of rate regulation beyond that given in section 11, article XI.

4 Cal. Const. art. XI, §12.

5 Ibid. §13.

6 Ibid. §8.
relate directly or indirectly to municipal corporations), and also "In all other cases where a general law can be made applicable". And section 6 of article XI prohibited the creation of "corporations for municipal purposes" by special law.

Provision for incorporation under general law was made by section 6 of article XI which directed the legislature to provide by general law "for the incorporation, organization, and classification, in proportion to population, of cities and towns, which laws may be altered, amended, or repealed . . . ." Section 6 of article XI also provided that "Cities and towns heretofore organized or incorporated may become organized under such general laws whenever a majority of the electors voting at a general election shall so determine, and shall organize in conformity therewith . . . ." And section 7 of article XI provided that consolidated city and county governments (only San Francisco at that time) "may be incorporated under general laws providing for the incorporation and organization of corporations for municipal purposes."10

7 Cal. Const. art. IV, §25 provides, "The Legislature shall not pass local or special laws in any of the following enumerated cases, that is to say:

"First—Regulating the jurisdiction and duties of Justices of the Peace, Police Judges, and Constables . . . ."

"Seventh—Authorizing the laying out, opening, altering, maintaining, or vacating roads, highways, streets, alleys, town plats, parks, cemeteries, graveyards, or public grounds not owned by the State . . . ."

"Tenth—For the assessment or collection of taxes.

"Eleventh—Providing for conducting elections, or designating the places of voting, except on the organization of new counties . . . ."

"Thirteenth—Extending the time for the collection of taxes . . . ."

"Sixteenth—Releasing or extinguishing, in whole or in part, the indebtedness, liability, or obligation of any corporation or person to this State, or to any municipal corporation therein . . . ."

"Eighteenth—Legalizing, except as against the State, the unauthorized or invalid act of any officer.

"Nineteenth—Granting to any corporation, association, or individual any special or exclusive right, privilege, or immunity.

"Twenty-first—Exempting property from taxation . . . ."

"Twenty-fourth—Authorizing the creation, extension, or impairing of liens . . . ."

"Twenty-sixth—Remitting fines, penalties, or forfeitures.

"Twenty-seventh—Providing for the management of common schools.

"Twenty-eighth—Creating offices, or prescribing the powers and duties of officers in counties, cities, cities and counties, townships, election or school districts."

8 Cal. Const. art. IV, §25 (33).

9 This provision is not applicable to counties. People v. McFadden (1889) 81 Cal. 489, 22 Pac. 851.

10 Cal. Const. (1879) art. XI, §7. This section also provided that the provisions of the constitution applicable to cities and also those applicable to counties shall be applicable to such consolidated governments so far as not inconsistent or not prohibited.
Complete freedom of any city or city charter from legislative control was apparently not envisaged, however, for section 6 of article XI provided that “cities and towns heretofore or hereafter organized, and all charters thereof framed or adopted by authority of this Constitution, shall be subject to and controlled by general laws.”

The 1879 constitution also gave any city having a population of 100,000 or more the power to frame a freeholders charter for its own government but San Francisco was the only city then having such a population and no other city had any prospect of having a population of 100,000 for a good many years. Accordingly the provision was clearly designed to be applicable only to San Francisco. And while neither the special charter cities nor the special charters of the days before 1879 were abolished by the new constitution, there was no method prescribed for amending such charters except by general law.

To summarize, the constitution recognized that the sixty-four existing special charters should be continued in force, but without power of amendment except by “general” laws to which all such charters were subject. The obvious impracticability of amending special charters by general laws (at least on the assumption that laws relating to cities cannot ordinarily be deemed “general” if applicable to only one city) indicates that it was hoped that special charter cities would be induced to organize under general law as soon as such a law was made available. San Francisco was to have three options: (1) to frame a freeholders charter, (2) to organize under general law or (3) to retain its pre-1879 charter. Other cities (at least until they attained a population of 100,000) were to have only the second and third of these options and new cities were to organize only under general laws.

While the foregoing provisions seemed on their face to foreshadow the end of special legislation relating to cities, and while there can be little doubt that the flood of special legislation of the days before 1879 was definitely checked, it would be a mistake to assume that it was eliminated entirely, or that these provisions were chiefly instrumental in checking such legislation.
A. Prohibition of Special Legislation.

Section 6 of article XI, in declaring that cities and towns "heretofore organized or incorporated" may become organized under and are subject to "general laws", recognized that the special charter cities already in existence in 1879 would have the power to keep their charters if they chose to do so. It was not entirely clear, however, that the prohibitions against special legislation did not operate retroactively to condemn all of the other special legislation passed prior to 1879 and applicable to the sixty-four cities operating under such charters at the time the new constitution was adopted. Section 1 of article XXII provided that "all laws in force at the adoption of this Constitution, not inconsistent therewith, shall remain in full force and effect until altered or repealed by the legislature". Were the existing special laws inconsistent with the new constitution? It was early held that they were not but continued in full force and effect until altered or repealed by the legislature.

The result was that all of the special charters and the special laws enacted prior to 1879 not technically a part of a charter continued in full force and effect after the adoption of the new constitution, until superseded or repealed by some statute, charter, or charter provision adopted after 1879. While no doubt most of them have in fact been superseded or repealed in this manner after 1879, it is possible with respect to many of the sixty-four cities existing in 1879 that charter provisions or other special laws enacted before 1879 can be found which are still applicable to such cities.

12 People v. Board of Election Com'rs, supra note 10; People v. Pond (1891) 89 Cal. 141, 26 Pac. 648, holding San Francisco still governed by Consolidation Act (Cal. Stats. 1856, p. 143) after 1879, notwithstanding section 7, article XI. The point was conceded without argument in nearly all supreme court cases decided after 1879. Thus in Desmond v. Dunn, supra note 10, at 246, the court said, "All such charters must remain in force until superseded or changed in the mode prescribed by the Constitution."

It was recognized in People v. Wilmington (1907) 151 Cal. 649, 91 Pac. 524, that as long as a pre-1879 charter city continued to operate under such charter the legislature was without constitutional power to repeal it as the right of any such city to continue thereunder was impliedly recognized and protected by section 6, article XI. To like effect is McConnell v. Board of Super's (1908) 7 Cal. App. 385, 94 Pac. 391 (upholding organization of Wilmington under Municipal Corporation Bill on ground prior charter validly repealed).

13 Ex parte Chin Yan (1882) 60 Cal. 78, 81, holding 1863 act giving San Francisco supervisors power to regulate houses of prostitution continued in force after 1879. The proposition was assumed without question in many other cases.

14 While laws not purporting to amend the charter itself were sometimes treated as being a part of the charter, Kelsey v. Trustees of Nevada (1861) 18 Cal. 629, contrary assumptions were frequently made.
While the special charters and the special laws of the pre-1879 days thus remained in force, the new prohibitions operated to prevent the creation of any new cities by special laws and to invalidate all other special laws passed after 1879 applicable to particular cities by name with one exception—a special law repealing a pre-1879 special charter of a particular city by name was valid notwithstanding the new prohibitions, where the city was not in fact operating under such charter.

Notwithstanding the lack of power in the legislature to enact special legislation dealing with cities by name, the constitution provided that all cities and city charters were subject to and controlled by "general" laws. Interference with municipal affairs by general laws seemed clearly to be invited or at least permitted by this provision. But notwithstanding the apparently plain language of section 6 of article XI on this matter, the California courts, evidently fearful that legislative interference with cities would continue unabated under the guise of "general" laws if the provision were taken at its face value, were reluctant to accept it as written. Thus in Desmond v. Dunn the

15 People v. Common Council (1890) 85 Cal. 369, 373, 24 Pac. 727, 728 (invalidating an 1889 act purporting to amend the pre-1879 special charter of San Diego by detaching the territory now comprising the City of Coronado as "in violation of the provisions of that instrument about municipal corporations"); Conlin v. Board of Super's (1893) 99 Cal. 17, 33 Pac. 753 (1891 act directing San Francisco supervisors to pay claim of street contractor held invalid); Conlin v. Board of Super's (1896) 114 Cal. 404, 46 Pac. 279 (same); Miner v. Justice's Court (1898) 121 Cal. 264, 53 Pac. 795 (act creating justice's court for Town of Berkeley held void); Ex parte Mauch (1901) 134 Cal. 500, 66 Pac. 734 (1889 act establishing a police court for Marysville held invalid).

16 People v. Wilmington, supra note 12, at 654, 91 Pac. at 525, upheld a special act passed in 1887 repealing the 1872 charter of Wilmington, where the city had never actually organized under the charter. "We know of no constitutional inhibition which prevents the legislature from clearing away the dead underbrush of such laws as this." But the court recognized very clearly that a law repealing the pre-1879 special charter under which a city was actually organized and functioning was void, since the right of cities to continue under their pre-1879 charters was impliedly recognized and protected by section 6, article XI.

In People v. Rinner (1921) 52 Cal. App. 747, 199 Pac. 1066, however, the court upheld an act repealing a special act of 1878 creating a school district as not contrary to section 6, article XI, since the act did not create a municipal corporation but dissolved one. Furthermore a school district was not a municipal corporation, the court said.

Several special charters granted to cities prior to 1879 but under which the city had ceased to operate were repealed subsequent to 1879 by special act. Thus those for Coloma, Downieville, Felton, Monterey, and Wilmington were so repealed. See Part I, Appendix C.

But a city remained an "incorporated" city even though municipal organization under pre-1879 special charters was not effected. People v. California Fish Co. (1913) 166 Cal. 576, 138 Pac. 79, holding Wilmington was "incorporated" from 1872-1887 within Political Code section 3488, providing for the withholding of tidelands from private sale if such lands were situated within two miles of an "incorporated" city or town.

17 Supra note 10, at 243.
court condemned as special a law setting up a new charter for “merged and consolidated cities and counties of more than one hundred thousand inhabitants”—obviously intended to be applicable only to San Francisco. This law, often referred to as “The McClure Charter”, prescribed a complete charter for San Francisco which was to supersede the Consolidation Act and apply to San Francisco automatically and irrespective of the wishes of the voters or government thereof. The court held that the law was special and not “general” in any event, since it was applicable only to consolidated cities and counties of 100,000 or more and not to cities of that population and furthermore since it dealt with only a single class of cities. But it also held as an alternative ground of decision that even assuming the law to be a “general” law, it was inapplicable to San Francisco for two reasons: (1) that the provision of article XI, section 6, making cities subject to general laws was not applicable to pre-existing charter cities, and (2) in any event no general law could take effect in “any city” until a majority of the electors thereof so determined.

The first reason was without even colorable support. The language of section 6, article XI, was that “cities and towns heretofore or hereafter organized, and all charters thereof framed or adopted by authority of this Constitution” shall be subject to and controlled by general laws. The second reason was equally without foundation. Section 6 of article XI provided only that cities theretofore organized “may” become organized under general laws passed by the legislature for the incorporation or organization of cities whenever a majority of their voters shall so determine. This would seem very far from saying that no general law—even a general law for the incorporation of cities—could be made applicable to any city unless a majority of the voters thereof agreed. Apparently cognizant of the fact that its construction was not clearly or obviously apparent from the face of section 6, the court resorted to the “spirit” and “general intention of the framers” of the constitution in reaching this result. It said that “To us the general intention to emancipate municipalities, as far as it consistently could be done, from the control of the Legislature, is apparent; and we cannot hold that general laws for the government of such municipalities can take effect in any of them, until a majority of the electors

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18 Cal. Stats. 1880, p. 137. At the time that the McClure charter was passed (April 24, 1880) San Francisco had chosen a board of freeholders to frame a freeholders charter under section 8, article XI, and it was charged that the McClure charter constituted a Republican plot to wrest control of the government of San Francisco from the Workingmen’s Party. San Francisco Bulletin, February 23, 1880.
so determine, without violating not only the spirit, but likewise the plain letter of the Constitution.\textsuperscript{19} The technique used here was quite similar to that employed by Justice McKinstry in \textit{People v. Lynch},\textsuperscript{20} and if followed in later decisions would have meant a judicial revision of these constitutional provisions to fit the justices' notions of their "spirit".

But \textit{Desmond v. Dunn} proved to be short lived on both of the points above discussed. General laws were soon held applicable to pre-1879 special charter and all other cities wholly irrespective of whether the inhabitants or the governments of such cities approved.\textsuperscript{21} Appar-

\textsuperscript{19} Desmond v. Dunn, \textit{supra} note 10, at 250. (Italics added.)

\textsuperscript{20} (1875) 51 Cal. 15. See Part I, pp. 30-32.

\textsuperscript{21} It was seven years later, however, before the point was finally and definitely decided although immediately after the Desmond decision the court began to decide cases on the assumption that general laws were applicable to special charter cities regardless of the consent of their electors. See cases from 1880 to 1887 reviewed in Huntington v. City of Nevada (C. C. N. D. Cal. 1896) 75 Fed. 60. The point was finally settled in Thomason v. Ashworth (1887) 73 Cal. 73, 14 Pac. 615, where a general law relating to street improvements in all cities of the state was held applicable to San Francisco, then a special charter city, regardless of whether its voters consented. To the argument that the effect of the ruling of the court would be that a city might have its charter wholly changed without its consent, the court said per Thornton, J., "This is a proper deduction from the ruling herein, but this cannot be done by special or local law applicable alone to a particular charter. The result can only be reached by a general law affecting all municipal corporations, or may be all of a class, and we can see no probability that a city can be injured by general legislation . . . . Whatever the danger may be from such legislation, the constitution is so written as to allow it, and thus we must interpret it." \textit{Ibid.} at 78, 79, 14 Pac. at 618. McKinstry, J., dissenting, stated that "Ever since, if not before, the decision in People v. Lynch . . . attention has been drawn to the evils of special legislation affecting the government or people of a particular municipality, and it would certainly seem that the framers of the constitution of 1879, and the people who ratified it, intended to prevent all special legislative interference with existing charters, except with the consent of the citizens." \textit{Ibid.} at 89, 14 Pac. at 623. The case was thereafter followed and various general laws held applicable to special charter cities: People v. Henshaw (1888) 76 Cal. 436, 18 Pac. 413 (McKinstry, J., again dissented on the ground that the "general laws" mentioned in section 6, article XI, do not include laws which change the charters of cities organized before the adoption of the constitution); Kennedy v. Board of Education (1890) 82 Cal. 483, 22 Pac. 1042; \textit{Ex parte Halsted} (1891) 89 Cal. 471, 26 Pac. 961; Santa Cruz v. Enright (1892) 95 Cal. 105, 30 Pac. 197.

Cities organized under the provisions of the Political Code (see Part I, p. 22) were also held to be subject to general laws in Marysville v. County of Yuba (1905) 1 Cal. App. 628, 82 Pac. 975, 977.

Freeholders charters were held subject to general laws subsequently passed in Davies v. Los Angeles (1890) 86 Cal. 37, 24 Pac. 771. And in \textit{Ex Parte Ah You} (1890) 82 Cal. 339, 22 Pac. 929, it was held that a freeholders charter which went into effect in 1890 was subject to a general law \textit{passed in 1885, i.e., the Whitney Act (Cal. Stats. 1885, p. 213)}, setting up a police court in cities having a population of at least 30,000 but not exceeding 100,000.
ently, however, Desmond v. Dunn is still recognized as having sufficient vitality to prohibit the legislature from creating municipal corporations by general laws without the approval of a majority of the electors thereof. 22

It thus became established very early that all cities of the state, no matter how or when created, were subject to and controlled by general laws. While in 1896 and again in 1914 freeholder charter cities and pre-1879 special charter cities were granted considerable immunity from general laws by constitutional amendments to section 6 of article XI, the principle thus established still operates to the extent that immunity is not given by those amendments. The extent of that immunity will be discussed in detail in a subsequent article.

It should be noted, of course, that the "general laws" to which all cities were subject did not include two very important general laws: (1) the provisions of the Political Code respecting the incorporation

Both special and freeholder charter cities are still subject to general laws except to the extent that immunity therefrom has been granted them by the 1896 and 1914 amendments of section 6, article XI, a matter to be discussed later.

Municipal Corporation Bill cities were held subject to general laws (and they still are). Sonora v. Curtin (1902) 137 Cal. 583, 70 Pac. 674; Santa Monica v. Guidinger (1902) 137 Cal. 658, 70 Pac. 732; Redondo Beach v. Barkley (1907) 151 Cal. 176, 90 Pac. 452; Millsap v. Balfour (1908) 154 Cal. 303, 97 Pac. 668.

The conclusion of the foregoing cases was unquestionably in accord with the intention of the framers of the constitution, notwithstanding the vigorous dissents of Justice McKinstry, noted above. Thus in 3 Debates and Proceedings of the Constitutional Convention of the State of California 1878-1879 (1881) 1483, Delegate Hager, who was chairman of the committee on city, county and township organization, said, "Then it has been stated that this was intended to take the charters beyond the control of the Legislature. Such never was the intention of this article. On the contrary, the charters are intended to be subordinate to general laws."

22 Huntington v. City of Nevada, supra note 21; Staude v. Election Com'rs (1882) 61 Cal. 313, 321; Thomason v. Ashworth, supra note 21.


No case has been found passing on the validity of the above cited acts. In People v. Van Nuys Lighting Dist. (1916) 173 Cal. 792, 800, 162 Pac. 97, 100, the court reserved the question whether an act purporting to validate all lighting districts was not "a mere evasion of the constitutional mandate against the creation of corporations for municipal purposes by special laws. (Art. XI, §6)."
of cities, referred to in Part I\(^2\) and which survived the adoption of the 1879 constitution, and remained in force until 1937.\(^2\) These provisions apparently were applicable only to the cities which were incorporated in the particular manner described in the act\(^2\) prior to 1879.

\(^2\) Part I, pp. 21-22.

\(^2\) While no new cities could be created under these provisions after 1879 because of the ban on creating municipal corporations by special act, five such cities were in existence in 1879 and continued in existence for many years thereafter, viz., San Luis Obispo until 1884, Eureka until 1895, Santa Barbara until 1899, Visalia until 1908, and Marysville until 1919. See Part I, p. 22, n. 62. The Political Code provisions were still of some importance for these cities, although their continued retention in the Code was hardly justified for this reason alone. After 1919 they could not possibly have been important for any purpose, yet they remained in the Code until 1937 (repealed by Cal. Stats. 1937, p. 516), and were the cause of much confusion. Both lawyers and courts erred repeatedly in assuming that these Political Code provisions were "general laws" applicable to all cities. Thus in People v. Henry (1881) 62 Cal. 557, the court assumed that the provisions of Political Code sections 4355 and 4370 regarding police judges were applicable to all cities of the state except special charter cities and freeholder charter cities. The most striking example of this confusion is found in the case of Los Angeles v. Teed (1896) 112 Cal. 319, 44 Pac. 580, where it was held that an 1880 amendment to these provisions authorizing cities organized thereunder to refund their outstanding indebtedness was applicable to Los Angeles—then a freeholder charter city. In reaching this obviously erroneous conclusion the court said that "We are bound to take judicial notice of the fact that no city was ever organized under the code" and presumed that the legislature was aware of that fact in 1880 and therefore must have intended the amendment to be applicable to cities generally. Ibid. at 326, 44 Pac. at 582. (Italics added.) But as shown above, there were five cities organized under the Political Code in 1880. Thus we have a case of the supreme court taking judicial notice of a fact which was untrue (!) and then basing its decision on the existence of such fact. And in In re Pfahler (1906) 150 Cal. 71, 88-89, 88 Pac. 270, 277, the court instead of overruling the Teed case appears to have announced the strange rule that while those provisions of Title III Part IV of the Political Code which were enacted before 1879 were not applicable to any city not incorporated under the Code, post-1879 amendments or additions to such provisions, were applicable to all cities under the Teed case. It should be noted, of course, that the argument made in the Teed case was correct for the period from 1919 to 1937, when no Political Code cities existed. In Levinson v. Boas (1907) 150 Cal. 185, 188, 88 Pac. 825, 826, Justice Henshaw assumed that section 4408 of the Political Code was applicable to San Francisco. And in Wood v. Lehne (1938) 30 Cal. App. (2d) 222, 225, 85 P. (2d) 910, 912, the court cited the Teed case approvingly on the above point.

Notwithstanding the repeal of the Political Code provisions respecting cities in 1937, statutes still refer to cities organized under the Political Code although no such cities now or ever can exist. See Cal. Pol. Code §961, regulating official bonds of officers of "any town or city organized under the provisions of this code....." In Wood v. Lehne, while citing Los Angeles v. Teed, supra, as authority for holding the provision applicable to a Municipal Corporation Bill city, the court finally placed its decision on an express provision of the Municipal Corporation Bill which was deemed to make section 961 applicable.

\(^2\) Ex parte Simpson (1873) 47 Cal. 127 (holding provisions of Political Code relating to police courts not applicable to San Francisco); San Francisco v. Kiernan...
(incorporation in this manner subsequent to 1879 was prohibited).

(2) The provisions of the Municipal Corporation Bill, to be hereinafter discussed, were and are applicable only to those cities incorporating under that Bill. With these two exceptions, all general laws were applicable.26

While the principle of the subjection of all cities of the state to general laws became established very early, the problem of what constituted a “general” law as distinguished from a special law was and still is extremely troublesome. Laws applicable to all cities of the state alike are, of course, general laws28 and it has never been contended that such laws are invalid because not made applicable to cities according to population. But where laws are made applicable to less than all cities, difficult problems arise. The difficulty is caused primarily by the provision of section 6, article XI, directing the legislature to provide “by general laws ... for the incorporation, organization, and classification, in proportion to population, of cities and towns, which laws may be altered, amended, or repealed” and that “Cities ... may become organized under such general laws whenever a majority of the electors ... so determine ...” The language is not clear as to whether classification of cities according to population and legislation with respect to any class of city resulting from such classification is limited to laws for the incorporation and organization...

(1893) 98 Cal. 614, 33 Pac. 720 (Political Code provisions on street improvement held not applicable to San Francisco); In re Pfahler, supra note 24 (Political Code election provisions held not applicable to Los Angeles). But see supra note 24.

26 Ex parte Armstrong (1890) 84 Cal. 655, 24 Pac. 598; People v. Bagley (1890) 85 Cal. 343, 24 Pac. 716; Postal Tel. Cable Co. v. Los Angeles (1911) 160 Cal. 129, 116 Pac. 566; see In re Pfahler, supra note 24, at 88-89, 88 Pac. at 277.

27 However, it was also held that the general County Government Act (Cal. Stats. 1883, p. 299, Cal. Pol. Code § 4000) was not applicable to the City and County of San Francisco, as this was not “a general law relating to municipal corporations....” People v. Babcock (1896) 114 Cal. 559, 564, 46 Pac. 818, 819.

28 Thomason v. Ashworth, supra note 21 (upholding Vrooman Act, Cal. Stats. 1885, p. 147, providing a street improvement procedure for all cities); Hellman v. Shoulters (1896) 114 Cal. 136, 45 Pac. 1057 (upholding Bond Act of 1893, Cal. Stats. 1893, p. 33, providing for the issue by any city of bonds to represent street improvement assessments levied under Vrooman Act—the fact that alternative modes of procedure are submitted to judgment of council does not destroy uniformity and violate article I, section 11 of the constitution); Davies v. Los Angeles, supra note 21 (upholding Street Improvement Act, Cal. Stats. 1889, p. 70, applicable on its face to all cities, as against claim act really passed for the purpose of improving a specific street in San Francisco); Clute v. Turner (1909) 157 Cal. 73, 106 Pac. 240 (same act upheld).

No case has been found in which the contention was made that the constitution required laws to be made applicable to different cities only according to population, i.e., that classification according to population was not merely permitted, but required.
tion of cities—which must be approved by a majority of the voters thereof before being applicable. The argument for such a limitation would derive considerable support from the wording of section 6, article XI. If adopted, it would have been clear that "general" laws, except only in the case of laws for incorporation and organization, would have been confined to laws applicable to all cities alike, irrespective of population. On the other hand if the contrary construction were adopted then the legislature could legislate with respect to any city according to its class as determined by its population, whether or not the law related to municipal "incorporation or organization" and regardless of the approval of the voters. As two cities almost never have exactly the same population, the result would be that if the legislature should define the classes in such manner that many cities were placed in separate classes, legislation dealing with such cities separately would still be permitted. On this latter construction it is obvious that the prohibitions against special legislation would be emasculated to the extent such legislation is permitted.

But notwithstanding that the latter construction thus appears to defeat the purpose of the framers of the constitutional provisions, the California legislature adopted it at a very early date. In 1883 it passed two laws designed to carry out the mandate of section 6, article XI. The first of these laws, known as the Classification Act, simply divided cities of the state into six classes according to population, without stating for what purpose the classification was made. The second was the Municipal Corporation Bill, enacted eleven days later and providing for the incorporation and organization of six classes of cities according to population upon approval of the majority of the

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29 Several sporadic attempts at classification were made between 1880 and 1883. Thus Code of Civil Procedure section 103, as amended in 1881, set up city justice's courts in various cities, the number of justices varying according to their population. This was upheld. Bishop v. Oakland (1881) 58 Cal. 572 (provision creating two justices in cities having more than 10,000 and not exceeding 100,000); County of Los Angeles v. Los Angeles (1884) 65 Cal. 476, 4 Pac. 453 (provision creating one justice of the peace in cities of more than 10,000 but not exceeding 20,000). Desmond v. Dunn, supra note 10, held invalid the McClure charter discussed above. Earle v. San Francisco Board of Education (1880) 55 Cal. 489, invalidated an act fixing salaries of school teachers in all cities or cities and counties containing more than 100,000 inhabitants. Both in the Desmond and Earle cases the court intimated that to constitute a valid law classifying cities in proportion to population the law must classify all cities of the state.

30 Cal. Stats. 1883, p. 24, 2 CAL. GEN. LAWS (Deering 1937) act 5151, hereinafter referred to and cited as Classification Act.

31 Cal. Stats. 1883, p. 93, 2 CAL. GEN. LAWS (Deering 1937) act 5233, hereinafter referred to and cited as Municipal Corporation Bill.
The six classes of cities defined in the Municipal Corporation Bill were identical with the six classes of cities set forth in the Classification Act.

While the Classification Act simply classified cities without stating for what purpose, it was clear from the very fact of the enactment of a separate classification act that the legislature assumed the classification made in such act was for purposes of legislation generally, whether relating to incorporation and organization or not, and that legislation dealing with any one of the classes of city therein defined would be deemed a "general law" and immune from attack. In any event laws referring to cities of the first, second and other classes of cities and laws dealing with cities of a specified population soon became very common.

The question of the validity of such laws was one of much difficulty although the courts had little trouble with the Classification Act itself; it was upheld as it read prior to 1910.32 It has not been attacked as it has read subsequent to 1910 although it may be vulnerable to such attack—as will appear later. But laws applicable to less than all cities and referring to cities of a certain "class" or population were very frequently attacked as special laws contrary to the constitution.

Such an attack was made in People v. Henshaw,33 where the court had before it the Whitney Act, establishing a police court in cities having a population of at least 30,000 and not more than 100,000. This corresponded approximately to cities of the second class as then defined in the Classification Act and Municipal Corporation Bill. In the Whitney Act the brackets were 30,000 to 100,000 while in the other two acts they were 30,001 to 100,000. However, in the Classification Act the basis of determining population was the last preceding federal census, while in the Whitney Act population in fact was the test. At this time (1885) Oakland was the only city having a population of between 30,000 and 100,000,34 and was operating under a special charter granted before 1879.35 The court upheld the act mainly on the ground that cities containing a large population "require different legislation from those composed of a few hundred inhabitants..."

32 Pritchett v. Stanislaus County (1887) 73 Cal. 310, 14 Pac. 795, purported to uphold the act but the language on the point was dicta. In Los Angeles v. Teed, supra note 24, at 328, 44 Pac. at 583, however, the court definitely upheld the act as it then read, citing the Pritchett case.
33 Supra note 21.
34 See Appendix D.
35 See Part I, Appendix A.
and that a law classifying cities on that basis is not "for that reason" special.\(^{36}\) There was no intimation that a law dealing with less than all cities of the state on the basis of population must relate to "municipal incorporation or organization" or must be approved by a majority of the voters of the city, or be an amendment to a law so approved. Nothing was said of the Classification Act or of the fact that the class referred to in the Whitney Act corresponded approximately to the second class referred to in the Classification Act.

In 1891 the question came before the court again in *Pasadena v. Stimson*,\(^ {37}\) involving section 870 of the Municipal Corporation Bill, which was part of the charter prescribed therein for cities of the sixth class (as noted above, this charter is applicable only where a majority of the voters of the city approves) requiring cities organized as cities of the sixth class under that Bill to make an effort to agree with the owners of land sought to be condemned by such cities. The same provision was made in the Bill with respect to fifth class cities but not as to any other class of city referred to therein. The court held that the section was unconstitutional, saying that while section 6 of article XI empowered the legislature to classify cities and towns in proportion to population "for the purpose of incorporation and organization" and that "it is undoubtedly true that a law limited to these purposes is not unconstitutional because it makes different regulations for the different classes", nevertheless "the mode of exercising the power of eminent domain, and the conditions upon which it may be invoked, are no part of municipal organization. They are the subject of general laws applicable to every person alike, and the legislature has no power to make arbitrary discriminations in this respect between different classes of persons."\(^ {38}\) Here we have the court deciding on the basis that section 6 permits classification only where legislation deals with municipal incorporation and organization. Recognition by the court of the authority of the *Henshaw* case\(^ {39}\) indicates that the court had no intention of limiting the power of classification to Municipal Corporation Bill cities.

The rule of *Pasadena v. Stimson* was followed for more than a

\(^{36}\) *People v. Henshaw*, *supra* note 21, at 446, 18 Pac. at 417. McKinstry, J., dis-\(^{37}\) (1891) 91 Cal. 238, 27 Pac. 604.
\(^{38}\)*Ibid.* at 451-452, 18 Pac. at 420.
\(^{39}\)*Ibid.* at 249, 27 Pac. at 606.
decade. In *Los Angeles v. Teed* the court upheld a law authorizing cities other than cities of the first class to refund their indebtedness; it justified the law on the ground that it related to "municipal organization". And in *Mintzer v. Schilling* a law providing for the disincorporation of "cities of the sixth class" was upheld solely on the ground that disincorporation is a matter affecting "incorporation and organization" and therefore the law was within the *Stimson* case.

But in *Rauer v. Williams* the court took a different view. The case involved a law passed in 1893 which regulated the manner of paying fees for official services in cities and counties having a population of more than 100,000 (a class corresponding with cities of the first class as defined in the Classification Act as it then read). The court said that "It is... entirely too narrow a view to say that the power to classify cities conferred upon the legislature in article XI, section 6, means the power to classify them only for the purpose of regulating their incorporation and organization..." and that the power to classify would be meaningless "unless the classifications made were to be employed by the legislature for the purpose of supplying the general laws required by the varying needs of the municipalities so classified." But the court finally condemned the law on the ground that in any event there was no reason for a law such as this applying to large and not to small cities.

That the court intended in *Rauer v. Williams* to overthrow the principle of the *Stimson* case that only in matters of "municipal incorporation or organization" will classification in proportion to population be permitted, was made manifest by the next case, *Tulare v. Heveren*. There, a section of the Municipal Corporation Bill providing that "'It shall not be necessary in any action, civil or criminal, to plead or prove the *** existence or validity of any ordinance...'" of any city of the fifth class—there being no similar provision applicable to cities of any other class—was held invalid. While the subject matter of the law obviously did not relate to municipal incorporation or organization and was therefore clearly within the ban of the principle declared in the *Stimson* case, the court did not base its decision on that principle but on the ground that "there is no conceivable reason why a corporation of the fifth class should not be subject to the same gen-

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40 Supra note 24.
41 (1897) 117 Cal. 361, 49 Pac. 209.
42 (1897) 118 Cal. 401, 50 Pac. 691.
43 Ibid. at 404-405, 50 Pac. at 692.
44 (1899) 126 Cal. 226, 229, 58 Pac. 530, 531.
eral rules in regard to pleading as all other persons and municipal corporations in the state.  

With the law resting in the above state, the case of Ex parte Jackson, involving the validity of section 862 of the Municipal Corporation Bill as amended in 1903, came before the court in 1904. The section authorized cities organized under the Municipal Corporation Bill as cities of the sixth class to levy and collect license taxes for purposes of revenue, it appearing that no other class of city organized thereunder had such power—that on the contrary such power was expressly prohibited to all other classes by section 3366 of the Political Code. The court upheld the section as amended in an opinion by Justice Angellotti which attempted to rationalize all past holdings and which declared principles which appear to be unimpaired by later authorities. After stating that the fact that an act of the legislature is applicable to only one of the six classes of municipal corporations provided for by the Municipal Corporation Bill "does not necessarily make it a special law", the court added that it was recognized by the framers of the constitution that cities containing different populations "would by reason thereof require different powers and different legislation as to their municipal affairs..." The court also added that section 6 of article XI "provided not only for general laws as to incorporation and organization, but also authorized a classification in proportion to population of such cities and towns, the plain object thereof being, that the legislature might thus be enabled to supply the general laws required by the varying needs of the municipalities so classified", citing Rauer v. Williams with approval on this point.

The court thus rejected the principle of the Stimson case that laws applicable to a class must relate to municipal incorporation and organization. But it announced a new test which was of a somewhat similar nature. In referring to the provisions of the Municipal Corporation Bill dealing with cities of the sixth class, Justice Angellotti said,

"... so long as the matters regulated thereby are within the proper scope of a municipal charter, it cannot be held that the legislature has exceeded the authority so given, notwithstanding the fact that such regulations differ materially from those provided for other classes of cities and towns.

"As to such matters,—i.e. matters coming within the proper

45 Ibid. at 231, 58 Pac. at 532.
46 (1904) 143 Cal. 564, 77 Pac. 457.
47 Ibid. at 568, 77 Pac. at 458. (Italics added.)
48 Ibid.
scope of a municipal charter, or, in other words, municipal affairs,—there is a distinction recognized by the constitution between the various classes of municipal corporations, which justifies the varying legislation.49

It then cited cases50 involving immunity of freeholders charters and special charters from regulation of their “municipal affairs” under the 1896 amendment to section 6 of article XI to establish that the collection of license taxes for purposes of municipal revenue was a municipal affair—thus showing it regarded the question of “municipal affairs” as being the same for this purpose as for the purpose of determining whether a freeholder charter city or a special charter city is subject to general laws. As will hereafter appear, the term “municipal affairs” is chiefly used in connection with and is generally thought applicable only in determining whether freeholder charter cities and special charter cities are subject to general laws. The Jackson case and cases following it show very clearly that the term is also important in determining whether laws relating to a class or several classes of cities—even Municipal Corporation Bill cities—are or are not special laws forbidden by the constitution. This fact is very frequently overlooked.

The cases of Pasadena v. Stimson and Tulare v. Hevren were not overruled in the Jackson case but their basis was changed. In neither of those cases, said the court, did the laws condemned relate to a “municipal affair” and so they were unauthorized under the new test established in the Jackson case. Thus the court simply substituted “municipal affair” for the test of “municipal incorporation and organization” used in those cases. The frequent reference to the Classification Act51 in the Jackson opinion and to cases involving cities not organized under the Municipal Corporation Bill52 shows very clearly that the rule of the Jackson case was not intended to be and is not applicable solely to cities organized under the Municipal Corporation Bill but is equally applicable to laws classifying other cities. The rule of the case appears to be, therefore, that a law purporting to be applicable only to a class or to several classes of cities less than all is invalid if the law

49 Ibid. at 569, 77 Pac. at 459. (Italics added.)
50 Ex parte Braun (1903) 141 Cal. 204, 74 Pac. 780 (involving Los Angeles—a freeholder charter city); Ex parte Helm (1904) 143 Cal. 553, 77 Pac. 453 (involving Santa Clara—a special charter city); Ex parte Lemon (1904) 143 Cal. 558, 77 Pac. 455 (involving Marysville—a special charter city).
51 Supra note 46, at 567, 569, 571, 77 Pac. at 458, 459.
52 Ibid. at 570-571, 77 Pac. at 459, 460, citing Rauer v. Williams, supra note 42, and Darcy v. San Jose (1894) 104 Cal. 642, 38 Pac. 500, both involving special charter cities.
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does not relate to a "municipal affair" but may be valid otherwise—although not necessarily so. Under Rauer v. Williams—which was also approved in the Jackson case—the law may be invalid even if it does relate to a municipal affair if it appears that there is no reasonable justification for the classification made by the act—that there is no valid reason for treating large cities differently from smaller ones with respect to the matter involved. The Jackson case thus places an important limitation on the power of the legislature to classify cities. This limitation has not been overthrown by later cases although the point has not been raised in recent years.

Several of the laws referred to in note 95, infra, appear to be vulnerable to attack under the rule of the Jackson case. Thus several provisions of the School Code there cited deal with a class or classes of city and yet the matter of schools is not ordinarily a municipal affair, as will hereafter appear. Provisions of the Code of Civil Procedure respecting city justices' courts (§§ 103, 103g et seq.) and the Municipal Court Act—also cited there, deal with classes of cities and yet the matter of inferior courts is also not usually considered a municipal affair. In fact it was held in the recent case of Wilson v. Walters (Dec. 2, 1941) 19 A. C. 152, 6 Cal. Dec. 638, 119 P. (2d) 340, that the constitution of municipal courts was not a municipal affair. But neither court nor counsel appeared to be cognizant of the fact that such holding brought the Municipal Court Act squarely within the rule of the Stimson case as modified in the Jackson case and thus invalidated it.

A very good statement of the applicable principle is found in Miller v. County of El Paso (1941) 136 Tex. 370, 374, 150 S. W. (2d) 1000, 1001, "... the classification must be broad enough to include a substantial class and must be based on characteristics legitimately distinguishing such class from others with respect to the public purpose sought to be accomplished by the proposed legislation. In other words, there must be a substantial reason for the classification. It must not be a mere arbitrary device resorted to for the purpose of giving what is, in fact, a local law the appearance of a general law." And in Leonard v. Luxora—Little River Road Maint. Dist. (1933) 187 Ark. 599, 61 S. W. (2d) 70, 71, it is said, ""The rule is that a classification cannot be adopted arbitrarily upon a ground which has no foundation in difference of situation or circumstances of the municipalities placed in the different classes. There must be some reasonable relation between the situation of municipalities classified and the purposes and objects to be attained. There must be something ... which in some reasonable degree accounts for the division into classes."

A similar limitation apparently prevails in Pennsylvania. Gutteau, CONSTITUTIONAL LIMITATIONS UPON SPECIAL LEGISLATION CONCERNING MUNICIPALITIES (1905) 58.

The Jackson case was followed in Ex parte Mogensen (1907) 5 Cal. App. 596, 90 Pac. 1063. It was also followed in Redding v. Dozier (1922) 56 Cal App. 590, 592, 206 Pac. 465, 466, where section 862 of the Municipal Corporation Bill was again upheld, the court specifically rejecting the contention that the Jackson case "is based on an erroneous interpretation of the law..." In Cary v. Blodgett (1909) 10 Cal. App. 463, 102 Pac. 668, section 862 of Municipal Corporation Bill (Cal. Stats. 1903, p. 93) empowering each city of the sixth class thereunder to acquire "works necessary or proper for supplying water for the use of such city or the inhabitants and gas and other works for light and heat" was upheld on the authority of the Jackson case—since this was a "municipal affair".

But in Martin v. Superior Court (1924) 194 Cal. 93, 227 Pac. 762, section 204 of
An even more important limitation is found in *Darcy v. San Jose*, decided in 1894, which involved a law passed in 1893 fixing the salaries of policemen "in cities containing a population of not less than 10,000 or more than 25,000". At this time for purposes of the Classification Act, cities of the third class included cities having a population of over 15,000 and not more than 30,000 and cities of the fourth class included those having a population of over 10,000 and not more than 15,000. The court held the law invalid as special legislation for the reason that the class of cities referred to therein was not the same as any of the classes set up in the Classification Act. The court said,

"On the third day of March, 1883, the legislature did, by a general law [the Classification Act], as the constitution requires, classify all the cities of the state. The class mentioned by the law in question is not one of those classes. It is a class created by the act itself. I am of the opinion that this cannot be done .... The special authority to thus classify cities and towns would also seem to imply that they cannot be otherwise classified for purposes of legislation. If they can be, and new classes created whenever it is desired by anyone to procure legislation which shall apply to only a few cities of the class, the limitations of the constitution, so carefully made and so often repeated, can be easily defeated."

"Furthermore," said the court, while considerable difference in population may justify diversity in organization, "the difference must be such as might rationally be deemed to call for, or at least to justify, diversity in organization". "Otherwise," said the court, "the restriction evidently intended by section 6, article XI, of the constitution would be defeated" and "the whole provision is a deliberate folly". The court concluded that "We are not at liberty to attribute such ab-

the Code of Civil Procedure as amended in 1923 providing for the manner of selecting jurors in counties and cities and counties having a population of 90,000 or over, was upheld although the class failed to conform to any class described either in the Classification Act, or Political Code section 4006 although it did include the first seven classes therein described as section 4006 then read. Cal. Stats. 1921, p. 3. Since the matter related neither to municipal affairs nor to the compensation of county officers (see *infra* note 67) the Act should have been held invalid on the authority of the Jackson case and the cases cited *supra*. The point was apparently not presented, however.

*Supra* note 52.

*Ibid.* at 647, 38 Pac. at 501. The court thus adopted the views expressed in the dissenting opinion of McKinstry, J., in People v. Henshaw, *supra* note 21, at 452, 18 Pac. at 420, where he asked, "But will any one contend that after general laws have been passed for the incorporation, organization, and classification of cities in proportion to population, the legislature may create, not merely a new classification of all cities and towns for a special municipal purpose, but a single class, differing from any included in the general classification, for a special municipal purpose?"
surdity to the people" but should give the provision such construction as will prevent the legislature "... from responding to applications from interested parties for laws designed solely to increase their salaries."

The court confused an otherwise clear opinion by using language indicating that it was referring to Municipal Corporation Bill classifications and not those of the Classification Act. This was undoubtedly an inadvertence caused by the fact that the classifications were substantially the same for both acts at this time. In the subsequent cases of *Denman v. Broderick* and *Ex parte Giambonini* the matter was cleared up and the rule of the *Darcy* case which was reaffirmed therein made referable solely to Classification Act classifications.

The rule of the *Darcy* case has never been qualified, although it has not been invoked since 1897. It was recognized in 1907 by a district court of appeal but has not been otherwise referred to since. Presumably it is still in force, however, and constitutes a very important limitation on the power of the legislature. It means that while the legislature is free to amend the Classification Act at will, it is required to adhere to the classes set up therein whenever it desires to pass a valid general law applicable to less than all the cities of the state. Thus the Classification Act now describes cities of the sixth class as those having a population of 8000 or less. A law applicable to cities having a population of 2500 or less is invalid under the rule of the *Darcy* case. The rule condemns many California statutes which have generally been thought to be of unquestionable validity.

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59 104 Cal. at 648, 38 Pac. at 502.

60 Ibid.

61 (1896) 111 Cal. 96, 43 Pac. 516, holding invalid a law providing for boards of election commissioners in cities having a population of 150,000 or more on the ground that it related to a class different from any of those set up in the Classification Act.

62 (1897) 117 Cal. 573, 574, 49 Pac. 732, holding invalid Cal Stats. 1891, p. 433, providing for a police court in cities having 15,000 and under 18,000 inhabitants on the ground "This law does not conform to the provisions of the act of 1883 classifying municipal corporations by population as the constitution commands (Stats. 1883, p. 24), nor yet is it an act amendatory of the earlier statute. It expresses just such another legislative effort as that considered in *Darcy v. Mayor*. . . . It is an attempt to force special and arbitrary legislation upon a city or cities, without regard to their general classification, for purposes of legislation set forth in the classification act of 1883."

63 *In re Johnson* (1907) 6 Cal. App. 734, 93 Pac. 199, upheld an act creating a city justice's court in cities of the third class on the ground that the classification referred to was that of the Classification Act.

64 The *Darcy* case and cases following it indicate that the following laws now in force are unconstitutional: Cal. Stats. 1895, p. 242, 2 Cal. Gen. Laws (Deering 1937) act 5171 (confering on cities over 100,000 in population power to condemn land for
The result of the foregoing authorities—which do not appear to have been overthrown or modified in any later cases—is that the legislature is bound to observe three principles in legislating with respect to cities or classes of cities less than all according to population: (1) the law must relate to a "municipal affair", (2) cities to which the law is applicable must constitute one or more of the classes set up in the Classification Act and (3) there must be a reasonable basis for the classification thus set up in the Classification Act with respect to the subject matter of the legislation; that is, there must be adequate reasons for treating the cities subject to the Act differently from larger or smaller cities which are not subject thereto—with respect to the subject matter of the legislation.65

It is hardly necessary to say that these principles do not constitute a suitable site and erect a building thereon for municipal purposes—since population in fact rather than according to the 1920 census is the criterion); Cal. Stats. 1889, p. 94, 2 CAL. GEN. LAWS (Deering 1937) act 5187 (confirming conveyance of property to trustees for charitable or educational purposes by any city of less than 50,000 population); Cal. Stats. 1911, p. 846 (authorizing any city other than a freeholder charter city to levy and collect a tax for parks, music and advertising purposes); CAL. CODE CIV. PROC. § 73 (insofar as said section provides for at least three sessions of the superior court in cities having a population of 125,000 or more); CAL. CODE CIV. PROC. § 73b (providing for at least one session of superior court in cities having a population of 20,000 or more if 30 miles or more from county courthouse and in cities of not less than 50,000 if 6 miles therefrom); CAL. CODE CIV. PROC. § 103 (establishing justice's courts in cities of the 2¾ class, save and except such as lie within a township in which two township justice's courts have been created and are in existence on September 15, 1931); CAL. HEALTH & SAFETY CODE § 7700 (authorizing governing body of any city or county having a population of 100,000 or more to order disinterment of human remains from cemeteries—since population in fact rather than according to the 1920 census is the criterion. Otherwise it would not be subject to the Darcy objection, since including three of the Classification Act classes, i.e., 1, 1½ and 2).

65 In Desmond v. Dunn, supra note 10, at 251, it was suggested that laws dealing with the incorporation of cities were invalid unless they classified all cities. This view was criticized in McBAIN, THE LAW AND THE PRACTICE OF MUNICIPAL HOME RULE (1916) 232. In Denman v. Broderick, supra note 61, it was held as an alternative ground of decision that a law dealing with fewer than all classes of cities was invalid.

But these cases were not followed. It seems to be well established that a law may refer to any one of the classes referred to in the Classification Act. People v. Henshaw, supra note 21; Mintzer v. Schilling, supra note 41; Union Ice Co. v. Rose (1909) 11 Cal. App. 357, 104 Pac. 1006 (upholding law creating police courts in cities of the 1½ class); or may refer to more than one such class but less than all: Los Angeles v. Teed, supra note 24 (law allowing all cities other than cities of the first class to refund their indebtedness); Waite v. Santa Cruz (C. C. N. D. Cal. 1898) 89 Fed. 619 (same); Ex parte Fedderwitz (1900) 6 Cal. Unrep. 562, 62 Pac. 935 (upholding CAL. CODE CIV. PROC. § 103 providing for city justices of the peace in cities of the third and fourth classes).

66 Rauer v. Williams, supra note 42, appears to be the only case where such an attack has been successfully made in California. See also supra note 54.
very formidable restrictions on the power of the legislature to pass acts applicable to the affairs of single cities or a few cities. Since many of the classes now set up in the Classification Act contain only one city, and as the legislature has almost full discretion to amend the Classification Act so that many more classes may be created which contain only a single city (in 1941, for instance, a new class was cre-

The fact that a classification of cities according to population results in any given class containing only a single city is not in and of itself a ground for holding the law special and invalid. Laws applicable to classes containing only one city have been upheld in California, although without adequate discussion. People v. Henshaw, supra note 21; Union Ice Co. v. Rose, supra note 65. In other states the rule appears to be that a law is *prima facie* not special even though the class may include only one city at the time the law is enacted provided it is not a closed class but may include other cities later if their population changes. Bingham v. Board of Super's of Milwaukee Co. (1906) 127 Wis. 344, 106 N. W. 1071; 1 McQuillen, MUNICIPAL CORPORATIONS (Rev. ed. 1940) 634. See infra note 112. Because of the ease with which constitutional provisions similar to that of California may be evaded by "classification" in this manner, several states have adopted more stringent constitutional provisions designed to prevent such evasion. Thus in four states the constitutions, while authorizing the classification of cities in proportion to population, provide that the number of classes shall not exceed four. Colo. Const. art. XIV, § 13; Mo. Const. art. IX, § 7; S. D. art. X, § 1; Wyo. Const. art. XII, § 1. And in Kentucky the constitution itself divides the cities into six classes according to population and specifically sets forth the population brackets. Ky. Const. § 156.

While the legislature has never gone so far as to place each city in a separate class —although many of the classes now contain only one city—the cases involving the construction of section 5, article XI of the constitution relative to counties indicates that the Classification Act could probably be amended to create 283 classes of cities according to population. Section 5, article XI provides that the legislature "shall regulate the compensation of all such officers, in proportion to duties, and may also establish fees to be charged and collected by such officer for services performed in their respective offices, in the manner and for the uses provided by law, and for this purpose may classify the counties by population. . . ." (Italics added.) For many years the legislature has construed this as giving it authority to place each of the 58 counties of the state in a separate class for the purpose of fixing compensation of officers (Cal. PoL. Code §§ 4231-4287a) and this action has been upheld by the courts. Cody v. Murphey (1891) 89 Cal. 522, 26 Pac. 1081; Summerland v. Bicknell (1896) 111 Cal. 567, 44 Pac. 232; Johnson v. Gunn (1906) 148 Cal. 745, 84 Pac. 665.

Prior to 1933 it was well established that counties could be classified in proportion to population only for the purpose of regulating compensation of county officers and not for any other purpose. Marsh v. Supervisors (1896) 111 Cal. 368, 370, 43 Pac. 975, 976 ("But the fact that these and the other counties of the state have been classified for a purpose which the constitution recognizes as a proper and necessary one does not relieve a law relating to other and distinct matters from the objection that it is local and special if, by its terms, it is limited in its application or operation to one or more classes of counties less than the whole.") Pratt v. Browne (1902) 135 Cal. 649, 651, 67 Pac. 1082, 1083. (Law fixing fees of official court reporter in counties of the 30th class held void since court reporter not a county officer within § 5, art. XI. "It is the same as if Ventura County had been mentioned by name. No change of words or phrases, or calling Ventura County by another name, can change the result.") Bloss
ated which contained only one city—Sacramento), it is quite clear that the provisions of the present constitution banning special legislation are only a slight obstacle to legislative interference with municipal affairs. Thus before 1879 the legislature could pass a law relating to the municipal affairs of San Francisco, Los Angeles or Oakland by name. After 1879 and at the present time it could and still can accomplish precisely the same result notwithstanding the ban on special legislation (although other constitutional provisions may forbid) by passing the same law and making it applicable to cities of the first, \( 1\frac{1}{2} \), and second classes, respectively (assuming that the Classification Act as it now reads is constitutional—a matter to be discussed later).

It seems quite apparent, therefore, that the approval thus given to legislation applicable to cities of a certain population or class has rendered relatively innocuous the constitutional prohibitions of special legislation.

Perhaps the most important problem now presented in connection with the Classification Act is the almost incredible confusion and uncertainty caused by the difference between the classifications referred to in the Classification Act and those of the Municipal Corporation Bill, a difference which well may lead to one or the other of the two acts being held unconstitutional as special legislation.

v. Lewis (1895) 109 Cal. 493, 41 Pac. 1081 (condemning law prescribing clerks' fees in counties of the thirty-third class); Chitwood v. Hicks (1933) 219 Cal. 175, 25 P. (2d) 406 (condemning law providing for appointment and compensation of secretary to superior judge in counties of 12th class); In re Brady (1924) 165 Cal. App. 345, 224 Pac. 252 (section 142 of the Code of Civil Procedure providing that "in counties of the first class at least one session of the superior court shall be held in each city of said county containing a population of not less than fifty thousand. . . ." held void).

In 1933, section 4, article XI, of the constitution (requiring the system of county government to be uniform) was repealed. In Consolidated Printing & Pub. Co. v. Allen (1941) 18 A. C. 35, 3 Cal. Dec. 778, 112 P. (2d) 884, the court seemingly indicates that the rule of cases decided before 1933, that counties could be classified according to population only for purposes of fixing compensation of officers, no longer obtains since 1933. Although it condemned as violative of section 11, article I, a law setting up a special procedure for the publication of delinquent tax lists in counties of the first class (Los Angeles only), the court intimated that the classification of counties made by section 4006 of the Political Code was for purposes of regulating compensation of county officers only, and could not be used by the legislature for any other purposes. It also said, however, that there was not sufficient difference between Los Angeles and other counties to justify the classification, thus intimating that a classification for purposes other than fixing the compensation of officers was not per se void. And recently it was held by a district court of appeal that after 1933 the legislature could classify counties for purposes other than the fixing of compensation of officers. Ogle v. Eckel (Feb. 9, 1942) 49 A. C. A. 775, upholding a law giving boards of supervisors in counties having a population of 100,000 or more the power to appoint a county counsel.
The Municipal Corporation Bill divided cities into six classes according to population. Cities of the first class were described as those having a population of more than 100,000. Cities of the second class were those having more than 30,000 but not exceeding 100,000; the third class 15,001 to 30,000; the fourth class 10,001 to 15,000; the fifth class 3001 to 10,000; and the sixth class not exceeding 3000. The Bill prescribed a different charter for each of the six classes of cities and provided for the incorporation of a city under the charter of the class to which the city belonged on vote of the majority of the inhabitants thereof. It should be noted that population in fact as of the date of incorporation determined the class of a city and the particular charter under which it would operate upon incorporation under the Bill.

Once a city had incorporated under the Bill, however, it retained the charter prescribed for it as of that date, notwithstanding any subsequent increase or decrease of population which would give it the power to organize under the Bill as a city of a higher or lower class if it were then incorporating. In short, the Bill did not provide that the

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63 Ex parte Fedderwitz, supra note 65, at 570, 82 Pac. at 939 (dictum of three judges only), but which expresses the presently understood law. "A city of the fourth class, organized under the charter of that class, retains its charter notwithstanding an increase of population which puts it in the third class. But it does not follow that because its charter remains unchanged its class remains unchanged. On the contrary, the privilege of changing its charter depends upon a change of class. The charter has nothing to do with fixing its class. That is dependent upon population alone, which is an element of all cities, however organized. In organizing under the general law a city must accept the charter of its proper class; but, unless it elects otherwise, it retains its original charter, no matter to what class it may rise or fall by change of population."

In re Mitchell (1898) 120 Cal. 384, 52 Pac. 799, held that the Whitney Act, setting up police courts in cities having a population of at least 30,000 but not exceeding 100,000 was applicable to Los Angeles even after it took its own census under an 1897 act which census showed a population of more than 100,000. The court being validly created at a time when Los Angeles had less than 100,000 inhabitants would not be affected by the census law in the absence of express provision to that effect. Henshaw, J., concurring said the same rule obtains under the Municipal Corporation Bill. Ibid. at 392, 52 Pac. at 803.

The most interesting example of the application of this rule is found in Williams v. Board of Trustees (1910) 157 Cal. 711, 718-719, 109 Pac. 482, 486, and Allen v. Board of Trustees (1910) 157 Cal. 720, 109 Pac. 486, where consolidation proceedings for Kern, a sixth class Municipal Corporation Bill city having a population of 3242 as determined by a census taken by its board of trustees, and Bakersfield, a fifth class Municipal Corporation Bill city having a population of 7338 as determined by a census taken by its Board of Trustees, were held to result in the creation of a new fifth class Municipal Corporation Bill city, even though the combined population exceeded 10,000, since the Consolidation Act provided for a merger of the smaller into the larger city but provided that the new city should be governed by the charter of the
class and charter of a city should automatically change upon a change of population. As a result, many cities which originally were incorporated as cities of the sixth class under the Municipal Corporation Bill because their population was 3000 or less as of the date of incorporation, now have a population substantially in excess of that figure and yet continue to operate under the charter prescribed in the Municipal Corporation Bill for cities of the sixth class and are known and usually referred as to "cities of the sixth class". While such a city has the privilege of invoking a proceeding provided for in section 3 of the Classification Act or another act passed in 1899 to reorganize under the Municipal Corporation Bill as a city of a higher class and thereafter to operate under the charter prescribed for that class of city, until it does so it continues to operate under the charter for and to be known as a sixth class city. Either because the reclassification procedures above referred to involve the holding of an election and obtaining the approval of a majority of the voters thereof, or because of the lack of any substantial benefits to be derived therefrom, only three cities have ever availed themselves of the privilege of changing their Municipal Corporation Bill class.

The classes provided for by the Municipal Corporation Bill have never been changed since the enactment of the Bill in 1883.

It is obvious, therefore, that to say that a city is one of a certain class for purposes of the Municipal Corporation Bill is ambiguous and

larger constituent city. The only way for a city to change its Municipal Corporation Bill class, said the court, was to hold an election for that purpose under section 3 of the Classification Act.

Sixth Class Municipal Corporation Bill cities having a population of more than 3000 according to the 1940 census are found in Part I, Appendix B, with their respective populations. The largest are Huntington Park, 28,648; South Gate, 26,945; Beverly Hills, 26,823; Whittier, 16,115, Burlingame, 15,940; South Pasadena, 14,356; Redlands, 14,324; Ontario, 14,197; Monrovia, 12,807; San Gabriel, 11,867; Brawley, 11,718; Bell, 11,264; Lodi, 11,079; Anaheim, 11,031; Lynwood, 10,982; Maywood, 10,731; Fullerton, 10,442; National City, 10,344; Merced, 10,135; El Centro, 10,017. Santa Ana, a fifth class Municipal Corporation Bill city, now has a population of 31,921.

See instances cited infra notes 96 and 99.

Cal. Stats. 1899, p. 75, 2 CAL. GEN. LAWS (Deering 1937) act 5226. This act did not require the city to take its own census in order to reorganize, as section 3 of the Classification Act provided before 1921, but allowed the city to proceed on the basis of the last preceding federal census (§ 4).

The following cities first incorporated as sixth class Municipal Corporation Bill cities, reorganized as fifth class Municipal Corporation Bill cities in the year indicated: Santa Ana, 1888 (under section 3 of Classification Act); Santa Monica, 1902 [under 1899 act, Cal. Stats. 1899, p. 75, 2 CAL. GEN. LAWS (Deering 1937) act 5226; see note 71, supra]. And San Diego, after being incorporated as a fifth class city in 1886, seems to have reincorporated as a fourth class city in 1887. See infra note 146.
can refer to either of two things: (1) the class to which the city would belong if it should now incorporate or reincorporate under the Bill or (2) the class to which it belonged when it did incorporate thereunder. Thus the city of Huntington Park, which had a 1940 population of 28,648, was incorporated under the Municipal Corporation Bill in 1906, when its population was less than 3000, as a city of the sixth class. It has never taken a proceeding to reclassify itself and so still remains to this day and is generally known as a city of the sixth class. But it is a city of the third class for purposes of reorganization under the Bill and if it should reorganize thereunder it would thenceforth be known as a city of the third class thereunder for all purposes. Thus we note the ambiguous character of any reference to the class of a city even for purposes of the Municipal Corporation Bill, and the necessity of explaining fully in each case the meaning of such reference. Much greater ambiguity, uncertainty and confusion is caused by the disparity between the Municipal Corporation Bill classifications and those of the Classification Act, however.

The Classification Act originally provided that cities of the state were divided into six classes according to population, the six classes corresponding to the six classes set up in the Municipal Corporation Bill for purposes of original organization or reorganization thereunder. It was also provided originally that for purposes of the Act the population of any city should be taken to be that shown by the last preceding federal census unless the city “shall elect to reorganize” as provided in section 3 of the Act. Section 3 provided that the council or legislative body “of any municipal corporation” could at any time cause an enumeration of the inhabitants thereof to be made and if upon such enumeration it should appear that such municipal corporation contains a sufficient number of inhabitants to entitle it to reorganize under a higher or lower class the council or other legislative body shall, upon receiving a petition therefor signed by not less than one-fifth of the qualified electors thereof, submit to the electors of the city the question whether such city or town shall reorganize “under the laws relating to municipal corporations of the class to which such city or town may belong,” the issue to be determined by a majority vote. While the matter is not entirely clear, the latter reference appears to have been to the Municipal Corporation Bill, although the Bill did not become law until eleven days later. The effect of this

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73 Classification Act § 1, Cal. Stats. 1883, p. 24.
74 Ibid. § 2.
provision appears to have been that a city could not at this time change its classification under the Classification Act unless it organized or reorganized under the Municipal Corporation Bill.

It is thus very clear that classification of cities for purposes of the Classification Act was in no sense equivalent to classification for purposes of the Municipal Corporation Bill, even in 1883, although there was approximate equivalence in fact between 1883 and 1890.

It should also be emphasized that classification of cities under the Classification Act was not and is not limited to Municipal Corporation Bill cities but includes special charter cities and freeholder charter cities as well. This should be constantly borne in mind in view of the very common assumption that only Municipal Corporation Bill cities have a "class" under California law.

The classifications made by the Classification Act as originally enacted corresponded with those for purposes of incorporation under the Municipal Corporation Bill. As of 1883 this meant that there was only one city of the first class (over 100,000)—San Francisco; one city of the second class (30,001-100,000)—Oakland; one city of the third class (15,001-30,000)—Sacramento; three cities of the fourth class (10,001-15,000)—San Jose, Los Angeles and Stockton; six cities of the fifth class (3001-10,000)—Vallejo, Alameda, Marysville, Santa Cruz, Santa Rosa and Santa Barbara; and fifty-two cities of the sixth class (not exceeding 3000)—all others.

After 1890 the disparity between Classification Act and Municipal Corporation Bill classifications became progressively wider. In that year the federal census automatically reclassified cities for purposes of the Classification Act, as provided therein, but cities already or-

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76 Ex parte Fedderwitz, supra note 65; Puterbaugh v. Wadham (1912) 162 Cal. 611, 123 Pac. 804; In re Johnson, supra note 63.

In In re Johnson the Classification Act was held applicable to Stockton, then a freeholder charter city. The court specifically rejected the contention that the Act referred only to Municipal Corporation Bill cities, saying: "There is nothing in the title or the language of the classification act which confines the application to cities and towns organized under the general municipal corporations act. As amended in 1901, it contains a class which does not appear among those provided by the municipal corporations act, to wit, those having more than 100,000 and not exceeding 200,000 population, which constitute the 'first and one-half class.' It is apparent, therefore, that the legislature did not intend to restrict the use of the classification act to those cities and towns organized under the general law." Ibid. at 739, 93 Pac. at 201.

78 For illustrations see infra note 96.
77 See Appendix D.
78 Ex parte Halsted, supra note 21 (indicated that under this provision the class of a city changed as soon as the census returns were filed in Washington); Ex parte Fedderwitz, supra note 65 (holding population established by recital in freeholders
organized under the Municipal Corporation Bill retained the class to which they belonged as determined by their population in fact at the date of incorporation, and continued to operate under the charter prescribed for that class even though they became cities of a different class for purposes of the Classification Act. Thus Alameda and Fresno, which had incorporated as cities of the fifth class under the Bill, thereafter became cities of the fourth class for purposes of the Act. And Pasadena and Riverside, while incorporated as sixth class cities under the Bill, became cities of the fifth class for purposes of the Act. Chico, on the other hand, which was organized as a fifth class Municipal Corporation Bill city and had been a city of the fifth class under the Classification Act before 1890, became a city of the sixth class for purposes of that Act owing to a decrease of population shown by the 1890 census. As to cities desiring to incorporate originally or to reincorporate under the Municipal Corporation Bill, however, the classification for purposes of the Bill still remained the same as that provided by the Act except that population in fact as of the date of incorporation or reincorporation, and not the last preceding federal census, was the basis for determining population.

Further disparity was introduced by the 1897 amendment to the Classification Act which, in anticipation of the prospect that Los Angeles would show a population exceeding 100,000 in the 1900 census, changed the Act to provide that cities over 200,000 should constitute cities of the first class and those from 30,001 to 200,000, cities of the second class. The classifications designated in the Municipal Corporation Bill were not changed, however, so that a city having a population of between 100,001 and 200,000 had the privilege of organizing as a city of the first class under the Municipal Corporation Bill but was a city of the second class for purposes of the Classification Act. Furthermore, prior to 1899 there was no provision for a city to change its class for purposes of the Classification Act as shown by the last federal census unless it incorporated or reincorporated under the Municipal Corporation Bill. In that year an amendment to section 3 of the Classification Act provided that if a city should charter and that on change of population, class of Berkeley automatically changed from fifth to fourth); Puterbaugh v. Wadham, supra note 75 (San Diego passed from third to second class automatically on release of 1910 federal census figures).

After the 1890 census, therefore, the classes were (see Appendix D): first, San Francisco; second, Los Angeles, Oakland; third, Sacramento, San Jose, San Diego; fourth, Stockton, Alameda, Fresno; fifth, cities numbered (10) to (25) in fifth paragraph of Appendix D; sixth, all others.

79 Cal. Stats. 1897, p. 421.
take a census of itself, declare the result thereof, and enter such result in the minutes of its legislative body, thereupon the number of inhabitants so ascertained should be deemed the number of inhabitants of such city for all the purposes of the Act. This provision remains in the Act today. Its wording makes it perfectly clear, however, that taking of such a census would not have the effect of changing the status or charter of a city incorporated under the Municipal Corporation Bill, that is, its status under the Bill. To change that status it was still necessary to hold a municipal election and obtain the consent of the majority of the votes cast on such question. And if a city failed to take its own census under section 3, the last preceding federal census still determined its population for purposes of the Act.

Automatic reclassification of cities by the federal census of 1900 further accentuated the differences in classification for purposes of the two acts. Another amendment was made to the Classification Act in 1901, designed to operate solely on Los Angeles—which had actually shown a population of 102,479 in the 1900 census. The amendment created a new class—3½—to include cities having a population of between 100,001 and 200,000 and changed the second class to include only cities having populations of between 30,001 and 100,000, as this class had originally been set up.

80 Cal. Stats. 1899, p. 141. That the mere taking by the city of its own census results in changing its class accordingly, see Ex parte Fedderwitz, supra note 65, at 571, 62 Pac. at 938.

81 See language of section 3. This was made even clearer by the 1911 amendment to section 1, discussed infra.

82 After the 1900 census the classes were as follows (see Appendix D): first, San Francisco; second, Los Angeles, Oakland; third, Sacramento, San Jose, San Diego, Stockton, Alameda; fourth, Berkeley, Fresno; fifth, Pasadena, Riverside, Eureka, Vallejo, Santa Rosa, Santa Barbara, San Bernardino, Santa Cruz, Pomona, Santa Ana, Bakersfield, Redlands, Grass Valley, Napa, San Rafael, Petaluma, Santa Clara, Watsonville, Marysville, Salinas, Nevada City, Visalia, Santa Monica and San Luis Obispo; sixth, all others.

Of the above, Alameda and Fresno were then operating as fifth class Municipal Corporation Bill cities; Pasadena, Riverside, Redlands, San Rafael, Watsonville, Santa Monica and San Luis Obispo were operating as sixth class Municipal Corporation Bill cities. Chico, incorporated as a fifth class Municipal Corporation Bill city in 1895, showed a population of only 2640 by the 1900 census and therefore was a sixth class city for purposes of the Classification Act. In all other cases of cities incorporated under the Municipal Corporation Bill such cities had the same class for purposes of both acts (i.e., with respect to the Municipal Corporation Bill—the class according to the charter under which the city was actually operating). Except for cities of the first and first and one-half classes, the classes were still the same as those for purposes of original incorporation under the Bill.

83 Cal. Stats. 1901, p. 94.
In 1910 the new federal census again brought about automatic reclassification for purposes of the Classification Act.\textsuperscript{84}

Another amendment in 1911 redefined the various classes, although it created no new ones.\textsuperscript{85} Cities of the first class were defined as including those over 400,000 (San Francisco only); cities of the 1$\frac{1}{2}$ class included those from 250,001 to 400,000 (Los Angeles only); cities of the second class included those from 100,001 to 250,000 (Oakland only); cities of the third class included those from 23,001 to 100,000 (Sacramento, Berkeley, San Diego, Pasadena, San Jose, Fresno, Alameda and Stockton); cities of the fourth class included those from 20,001 to 23,000 (none); cities of the fifth class included those from 6001 to 20,000 (Long Beach, Riverside, San Bernardino, Bakersfield, Eureka, Santa Barbara, Santa Cruz, Redlands, Pomona, Vallejo, Santa Ana, Santa Monica, Santa Rosa, Richmond and San Rafael); and cities of the sixth class included those having a population of not exceeding 6000 (all other cities of the state). It was also provided—and such provision remains in the Act today—"that nothing herein shall change the classification of existing cities organized under the municipal corporation act", from which the inference could possibly be drawn that the Municipal Corporation Bill classes for purposes of original organization thereunder were changed.\textsuperscript{87}

\begin{itemize}
\item \textsuperscript{84} After the 1910 census the classes were (see Appendix D): first, San Francisco and Los Angeles; 1$\frac{1}{2}$, Oakland; second, Sacramento, Berkeley, San Diego and Pasadena; third, San Jose, Fresno, Alameda, Stockton, Long Beach and Riverside; fourth, San Bernardino, Bakersfield, Eureka, Santa Barbara, Santa Cruz, Redlands, Pomona and Vallejo; fifth, cities numbered (22) to (54) in seventh paragraph of Appendix D; sixth class cities, all others.
\item Of the above, Bakersfield and Pomona listed as fourth class cities, were operating as fifth class Municipal Corporation Bill cities and Redlands, also listed as a fourth class city, was operating as a sixth class Municipal Corporation Bill city. The following cities listed above as fifth class cities were operating as sixth class Municipal Corporation Bill cities: San Rafael, San Luis Obispo, Alhambra, Monterey, Hanford, South Pasadena, Whittier, San Mateo, Ontario, Coalinga, Modesto, Colton, Monrovia, Redding, Corona, Red Bluff, San Leandro and Merced. In all other cases of cities incorporated under the Municipal Corporation Bill, such cities had the same class for purposes of both acts (i.e., with respect to the Municipal Corporation Bill, the class according to the charter under which the city was actually operating). For purposes of original incorporation under the Bill, the classes remained the same as those for the Act except in the case of Oakland, which was a city of the 1$\frac{1}{2}$ class under the Act and a city of the first class for purposes of incorporating under the Bill.
\item \textsuperscript{85} Cal. Stats. 1911, pp. 11, 476.
\item \textsuperscript{86} See Appendices D and E for population of leading California cities as of 1850, 1860, 1870, 1880, 1890, 1900, 1910, 1920, 1930 and 1940.
\item \textsuperscript{87} While the Act referred to one class, \textit{viz.}, first and one-half, which was not mentioned in the Bill, this would not necessarily preclude classes which were mentioned therein from being changed accordingly.
\end{itemize}
Another amendment to the Act in 1911 introduced an entirely new principle by providing that for purposes of the Act the federal census of 1910 should govern and cities would not be reclassified by operation of law under a new federal census—so that a city's status remained fixed as of 1910 unless it should take steps to reclassify itself as provided in section 3 of the Act. Previous to this time the class of any city varied automatically with appropriate changes of population. By the new amendment the class was irrevocably fixed and "closed" unless the city should take steps to reclassify itself. Accordingly, the changes of population revealed by the 1920 federal census did not result in changing the class of any city.

The Classification Act was again amended in 1921 to change the classifications for purposes of the Act as follows: cities of the first class included cities having a population of over 500,000 but not exceeding 550,000 (San Francisco); cities of the 1½ class included those having a population of more than 550,000 (Los Angeles); cities of the second class included those from 100,001 to 500,000 (Oakland); cities of the 2½ class included those from 70,001 to 100,000 (San Diego); cities of the 2½ class included those from 55,001 to 70,000 (Sacramento, Berkeley and Long Beach); cities of the 2¾ class included those from 35,001 to 55,000 (Pasadena, Fresno, Stockton and San Jose); cities of the third class included those from 23,001 to 35,000 (Alameda only); cities of the fourth class included those from 20,001 to 23,000 (none); cities of the fifth class included those from 6001 to 20,000 (Alhambra, Bakersfield, Calexico, Eureka, Glendale, Modesto, Ontario, Petaluma, Pomona, Redlands, Richmond, Riverside, San Bernardino, Santa Ana, Santa Barbara, Santa Cruz, Santa Monica, Santa Rosa, South Pasadena, Vallejo and Whittier); and cities of the sixth class included those having 6000 or less (all other cities).

After 1921, therefore, there were ten classes of cities in the Classification Act. And the 1921 amendment also retained the "fixed" or "closed" class principle of the 1910 amendment by providing that in determining population for purposes of the Act the federal census of 1920 shall govern unless the city council or other legislative body takes steps to reclassify itself by taking a census as provided in section 3.

Although the period from 1921 to 1941 brought about greater shifts in the population of the state and greater changes in the relative

88 Cal. Stats. 1911, p. 12.
89 Cal. Stats. 1921, p. 1654.
population of California cities than any other period in the history of the state. The classification of cities established by the 1921 amendment to the Classification Act has continued in force until this day except for amendments adopted by the 1941 legislature. These 1941 amendments were apparently designed primarily to place Sacramento in a separate class so that the legislature could pass laws operating solely on that city. The amendments set up a new class of cities, those of the 2 3/8 class, to include cities having 1920 populations of 60,001 to 70,000 (Sacramento only); redefined cities of the 2 3/8 class to include cities having 1920 populations of 55,001 to 60,000 (Long Beach and Berkeley); changed cities of the fifth class to include those from 8001 to 20,000 (Alhambra, Bakersfield, Eureka, Glendale, Modesto, Pomona, Redlands, Richmond, Riverside, San Bernardino, Santa Ana, Santa Barbara, Santa Cruz, Santa Monica, Santa Rosa and Vallejo) and changed cities of the sixth class to include all cities having a 1920 population of 8000 or less (thus changing the classification of Calexico, Ontario, Napa, Petaluma, South Pasadena and Whittier from fifth to sixth class cities for purposes of the Act). But as noted, the federal census of 1920 still governs in determining the population of any city for purposes of the Act, unless the city has taken its own census—which very few cities have done.

90 See Appendices D and E.  
91 Cal. Stats. 1941, p. 1823. The change was made so that Sacramento could be described as a city of the 2 3/8 class instead of being mentioned by name, in the Municipal Court Act of 1925, Cal Stats. 1925, p. 648, 2 CAL. GEN. LAWS (Deering 1937) act 5238, apparently so that provisions therein now applicable solely to Long Beach will not be applicable to Sacramento. The amendment was apparently put through at the instigation of proponents of the recent Sacramento municipal court proposal which carried last November. The similarity between present day and pre-1879 conditions is thus strikingly revealed.

92 Several cities have taken municipal censuses pursuant to authority conferred by Cal. Stats. 1897, p. 28, 1 CAL. GEN. LAWS (Deering 1937) act 1297, which authorizes a city to take a census of itself and report the results thereof to the Secretary of State. Burbank in 1925 and Pacific Grove in 1926 took such censuses and reported populations of 11,519 and 4399, respectively, according to the Secretary of State. While the freeholders charters of Albany, Compton and Inglewood recite that similar censuses were taken in these cities prior to 1927, 1925 and 1927, respectively, and also recite that the results thereof were filed with the Secretary of State (see Cal. Stats. 1927, p. 2312, p. 2313; 1925, p. 1212; 1927, p. 2205), this official stated in January 1942 that no such census figures were ever reported to him for these three cities. On the other hand the city clerk of Burbank reports that no city census was ever taken. The city clerk of Compton reports that a census was taken in 1924, and the population was determined to be 5,966. The city clerk of Inglewood reports that a census was taken in 1926 but has no figures on the results. The city clerks of both Compton and Inglewood report that the figures on the respective censuses were filed with the Secretary of State. No other instances of the taking of a city census have been discovered, but others probably exist.
And in the event such census has been taken it apparently controls even if taken before the 1920 census—an extremely anomalous and arbitrary result. Another strange consequence of the wording of the Act as it now reads is that the thirty-eight cities which have been incorporated subsequent to the taking of the 1920 census and are still functioning are necessarily unclassified for purposes of the Act until any such city shall take a census of itself as provided in section 3. The failure of the Act to classify all of the cities of the state may be a ground for constitutional attack.

It is clear from what has been said, therefore, that the “class” of a city can mean any one of four things: (1) its class for purposes of the Classification Act, which is determined by its population according to the federal census of 1920 unless the city has taken its own census; (2) its class for purposes of the Classification Act if it should now take a census of itself, which would mean that its present population in fact would determine its class; (3) its class for purposes of determining under which of the six charters set forth in the Municipal Corporation Bill it is operating (if it is incorporated thereunder)—which would be governed by its population at the time it incorporated under the Municipal Corporation Bill; (4) its class for purposes of determining which of the six charters set forth in the Municipal Corporation Bill it would take if it now should incorporate or reincorporate thereunder, which would be determined by its present population in fact.

Thus Santa Ana is a city of the fifth class for purpose (1), of the third class for purpose (2), of the fifth class for purpose (3) and of

93 Cities incorporated after the 1920 federal census which are still functioning and which therefore apparently have no class for purposes of the Classification Act are: Atherton, Atwater, Bell, Belmont, Chowchilla, Colma (formerly Lawndale), Dos Palos, Fairfax, Gardena, Hawthorne, Indio, Isleton, Laguna Beach, La Habra, Livingston, Lynwood, Maywood, Menlo Park, Montebello, North Sacramento, Ojai, Palm Springs, Palo Verdes Estates, Parlier, Placentia, Riverbank, San Carlos, San Clemente, San Joaquin, Shafter, Signal Hill, Soledad, South Gate, Torrance, Tulelake, Tustin, West Covina and Westmorland.

94 Darcy v. San Jose, supra note 52, at 647, 38 Pac. at 502. “I think a law made in conformity with this special permission in the constitution must be a law classifying all cities in the state, or a law amendatory of such a law. It must leave all the municipal corporations classified.” (Italics added.) This language is quoted with approval in Denman v. Broderick, supra note 61. See note 65, supra, however, where it was pointed out that the California courts now permit a law to deal with any one or more of the classes of cities set forth in the Classification Act. But the authorities there cited would appear to offer no support for the Classification Act’s failure to classify post-1920 cities—an essentially arbitrary result.
the second class for purpose (4). Santa Monica is a city of the fifth class for purpose (1), of the 2½ class for purpose (2) and of the second class for purpose (4). Many other similar examples are noted in Appendix E.

The foregoing discussion serves to illustrate that the reference to a city of the “sixth class” or any other “class” may be a very ambiguous one indeed unless adequate words of explanation are inserted thereafter. As a matter of fact, however, such words of explanation seldom appear. On the contrary, it is customary for the legislature to refer to cities of a certain “class” without further explanation. Very frequently there is real doubt as to which of the four meanings above referred to is intended by the legislature. And it is even more common

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85 Many laws refer to cities of the fifth class or the sixth class or both, without indicating whether classification according to the Municipal Corporation Bill or the Classification Act is intended. Cal. Stats. 1899, p. 75, 2 Cal. Gen. Laws (Deering 1937) act 5226 (providing for reorganization of cities of the sixth class); Cal. Stats. 1911, p. 839, Cal. Elect. Code § 9700 (regulating elections in cities of the sixth class); Cal. Stats. 1913, p. 398, 2 Cal. Gen. Laws (Deering 1937) act 5230 (authorizing cities of the fifth and sixth classes to declare weeds to be nuisances and to abate the same); Cal. Stats. 1897, p. 17, 2 Cal. Gen. Laws (Deering 1937) act 5231 (providing for disincorporation of cities of the sixth class); Cal. Stats. 1899, p. 17, 2 Cal. Gen. Laws (Deering 1937) act 5232 (winding up of affairs of cities of the sixth class disincorporated under last cited act); Cal. Elect. Code §§ 10,00-10,012 (enabling cities of the fifth and sixth classes to elect officers under certain circumstances); Cal. Elect. Code §§ 9700, 9704, 9705 (regulating “elections” in cities of the fifth and sixth classes); Cal. Health & Safety Code § 14401 (authorizing annexing of sixth class cities to fire protection district); Cal. Health & Safety Code § 14541 (allowing withdrawal from fire protection district of territory situated in city of sixth class); Cal. Rev. & Tax. Code § 4306 (authorizing cities of the fifth and sixth class to provide for their own system of assessment); Cal. School Code § 2.110 (providing that every city except cities of the sixth class shall constitute a separate school district. Since the basis of this exception is that sixth class Municipal Corporation Bill cities have no board of education or school department the section seems clearly to refer to sixth class Municipal Corporation Bill cities.); Cal. School Code § 2.111 (allowing board of supervisors to annex contiguous territory to school district in any city other than a sixth class city also seems to refer to Municipal Corporation Bill class).

While a law referring to cities of a certain “class” presumably refers to the classification made in the Classification Act (Ex parte Feddervitz, supra note 65, at 566, 62 Pac. at 937), it is not clear that the legislature did not intend to refer to the Municipal Corporation Bill classification. In fact, in two of the above cited statutes, Cal. School Code §§ 2.110, 2.111, it seems almost certain that such was the intention as the basis of the exception seems to have been that sixth class Municipal Corporation Bill cities do not have a school department while other Municipal Corporation Bill cities do.

And the reference in section 2.2052 of the School Code, giving unified school districts which contain “a chartered city or a city of the first to the fifth classes, inclusive” the same powers as are possessed by city boards of education seems clearly to be to Municipal Corporation Bill classes. (Italics added.)

The only other existing laws referring to cities by class which this writer has been
for courts to offend in this regard. It is commonplace for courts to say that a city is "a city of the sixth class" or some other class without further explanation both when they mean that it is a city of such class for purposes of the Municipal Corporation Bill (for determining the Municipal Corporation Bill charter under which it is operating)\textsuperscript{88}

able to find are the following: Cal. Stats. 1897, p. 75, 2 Cal. Gen. Laws (Deering 1937) act 5175 (allowing cities other than cities of the first class to refund indebtedness); Cal. Stats. 1899, p. 22 (authorizing cities of "less than the first class" to obtain lands for cemetery purposes); Cal. Stats. 1919, p. 712, 2 Cal. Gen. Laws (Deering 1937) act 5208 (authorizing cities of the third class to improve harbor); Cal. Stats. 1897, p. 9, 2 Cal. Gen. Laws (Deering 1937) act 5221 (authorizing cities of the first class to erect a municipal hospital); Cal. Stats. 1925, 1848, 2 Cal. Gen. Laws (Deering 1937) act 5238 (Municipal Court Act, providing for the establishment of municipal courts in cities of the first, 1\textfrac{1}{2}, 2, 2\textfrac{1}{4}, 2\textfrac{3}{4}, 2\textfrac{5}{4} and 2\textfrac{7}{4} classes); Cal. Stats. 1941, p. 99 (authorizing cities of the 1\textfrac{1}{2} class to create a city exhibition department); Cal. Code Civ. Proc. § 103 (establishing justice's courts in cities of the 2\textfrac{1}{4}, 2\textfrac{3}{4}, 2\textfrac{5}{4}, 2\textfrac{7}{4}, third and fourth classes—providing that justices of the peace in cities of the 2\textfrac{1}{4}, 2\textfrac{3}{4}, 2\textfrac{5}{4} and 2\textfrac{7}{4} classes must, to be eligible for office, have been admitted to practice law—prescribing different salaries for city justices in cities of the 2\textfrac{1}{4} ($3000), 2\textfrac{3}{4} ($4600), 2\textfrac{5}{4} ($5000), 2\textfrac{7}{4} ($2400), third ($3300) and fourth ($1500) classes); Cal. Code Civ. Proc. §§ 103g, 103h, 103i, 103j, 103k, 103m (providing for justice's courts in cities of second class); Cal. Code Civ. Proc. § 103\textfrac{3}{4} (providing for clerks of city justice's courts in cities of the 2\textfrac{1}{4}, 2\textfrac{3}{4}, 2\textfrac{5}{4} and third classes); Cal. Elect. Code §§ 11, 170-11, 196 (providing for recall of officers in cities of the 2\textfrac{1}{4} class); Cal. School Code §§ 2.972, 3.600, 3.602, 5.773 and 6.2a (all referring to cities of the first and/or the first and one-half classes). In all of the above provisions the reference seems to be to the classification made by the Classification Act, although it may be argued that since other sections of the School Code refer to Municipal Corporation Bill classifications those last cited do also.

\textsuperscript{88} Riverside & A. Ry. v. Riverside (C.C.S.D. Cal. 1902) 118 Fed. 736, 737 (Riverside is "a municipal corporation of the sixth class. . . "); Prince v. Fresno (1891) 88 Cal. 407, 408, 26 Pac. 606 ("Fresno is a city of the fifth class. . . "); Ex parte Sam Wah (1891) 91 Cal. 510, 27 Pac. 766 ("Martinez is a town of the sixth class. . . "); Electric L. Co. v. San Bernardino (1893) 100 Cal. 348, 350, 34 Pac. 819 ("the defendant is the city of San Bernardino, a municipal corporation of the fifth class. . . "); McConoughey v. Jackson (1894) 101 Cal. 265, 266, 35 Pac. 863, 864 ("Coronado is a city of the sixth class. . . "); Hayward v. Pimental (1895) 107 Cal. 386, 387, 40 Pac. 545 ("Hayward . . . is a municipal corporation of the fifth class. . . "); McBean v. Fresno (1896) 112 Cal. 159, 163, 44 Pac. 358, 359 ("Fresno, a city of the fifth class. . . "); Santa Ana v. Brunner (1901) 132 Cal. 234, 237, 64 Pac. 287, 288 (Santa Ana "is a municipal corporation of the fifth class. . . "); Denninger v. Recorder's Court (1904) 145 Cal. 629, 79 Pac. 360 ("Pomona is a city of the fifth class. . . "); People v. Wing (1905) 147 Cal. 379, 380, 81 Pac. 1103 (Loyalton is "a municipal corporation of the sixth class. . . "); Redlands v. Brook (1907) 151 Cal. 474, 475, 91 Pac. 150, 151 ("Redlands is a city of the sixth class. . . "); Escondido v. Wohlford (1908) 153 Cal. 40, 41, 94 Pac. 232, 233 ("This is an action by the city of Escondido, a municipal corporation of the sixth class. . . "); Matthews v. Livermore (1909) 156 Cal. 294, 104 Pac. 303, 304 ("Livermore is a city of the sixth class. . . "); San Pedro etc. R. Co. v. Long Beach (1916) 172 Cal. 631, 633, 158 Pac. 204, 205 ("Long Beach was at that time a city of the sixth class. . . "); Madera v. Black (1919) 181 Cal. 306, 307, 184 Pac. 397, 398 ("Madera is a city of the sixth class. . . ");
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and also when they mean that it is a city of such class for purposes of the Classification Act. Sometimes it cannot be determined which purpose is meant by the court. Very frequently we find language such as "Burlingame is a city of the sixth class organized under the Municipal Corporation Bill", the court meaning that the city is a city of the sixth class for purposes of determining the Municipal Corpora-

Wohlford v. Escondido (1905) 2 Cal. App. 429, 430, 84 Pac. 56 (Escondido "is a corporation of the sixth class . . . "); Cary v. Blodgett, supra note 56, at 464, 102 Pac. at 668 (Lodi is "a municipality of the sixth class . . . "); South Yuba Water Co. v. Auburn (1911) 16 Cal. App. 775, 777, 118 Pac. 101 ("Auburn is a city of the sixth class . . . "); Woodland v. Leech (1912) 20 Cal. App. 15, 16, 127 Pac. 1040, 1041 (Woodland is "a municipal corporation of the fifth class . . . "); Matter of Application of Smith (1914) 26 Cal. App. 116, 119, 146 Pac. 82, 83 ("Merced is a city of the sixth class with a population of about three thousand persons . . . "); Bridges v. Sierra Madre (1915) 27 Cal. App. 93, 94, 148 Pac. 965 (Sierra Madre "is a city of the sixth class . . . "); Scott v. County of San Mateo (1915) 27 Cal. App. 708, 710, 151 Pac. 33 (Hillsborough is "a city . . . of the sixth class . . . "); Biscay v. Burlingame (1932) 127 Cal. App. 213, 215, 15 P. (2d) 784 (Burlingame, "which is a municipal corporation of the sixth class . . . "); Stahell v. Redondo Beach (1933) 131 Cal. App. 71, 77, 21 P. (2d) 133, 136 ("Redondo Beach was found by the court to be a city of the sixth class . . . ").

In all of the above cases the court was in fact referring (as the opinions made clear elsewhere) to the class of cities actually incorporated under the Bill in order to determine which of the charters therein was applicable in each case. Such cases would appear to indicate that when the "class" of a city is referred to without more, this is its ordinary meaning. And indeed such is the usual meaning ascribed in legal circles.

97 Puterbaugh v. Wadham, supra note 75, at 613, 123 Pac. at 803 ("At the time of his appointment San Diego was a city of the third class. . . "); Taylor v. Board of Education (1939) 31 Cal. App. (2d) 734, 735, 89 P. (2d) 148, 149 (stating San Diego was "a city of the second and one-fourth class . . . ") in 1921); Norton v. Hoffman (1939) 34 Cal. App. (2d) 189, 196, 93 P. (2d) 250, 254 ("Los Angeles is a city of the first and one-half class . . . "); County of Fresno v. Shaw (1925) 72 Cal. App. 356, 362, 237 Pac. 560, 562 (stating "'city justice's courts' do not exist in cities of the fifth and sixth classes, the establishment of those courts being restricted to cities of the first to the fourth classes . . . ").

In each of the foregoing cases the court intended the "class" of the city involved to indicate its class for purposes of the Classification Act. While such is probably not now the sense in which the word is most frequently used and understood, it would seem that the history of the subject indicates that this is the meaning that should be ascribed where a city's "class" is mentioned without more.

98 Irwin v. Exton (1899) 125 Cal. 622, 623, 58 Pac. 257 ("Oceanside is a city of the sixth class . . . "); Hirons v. Clare (1918) 38 Cal. App. 608, 609, 177 Pac. 291 ("East San Diego, a municipal corporation of the sixth class . . . "); Daly City v. Holbrook (1918) 39 Cal. App. 326, 327, 178 Pac. 725, 726 ("The plaintiff is a municipal corporation, organized in 1911, as a city of the sixth class."); People v. Monterey Park (1919) 40 Cal. App. 715, 716, 181 Pac. 825 ("... the city of Monterey Park became a municipal corporation of the sixth class.").

In the above cases it is impossible to determine whether the court was referring to Classification Act classes or Municipal Corporation Bill classes.
tion Bill charter under which it is acting.\textsuperscript{96} The expression is obviously ambiguous, however, for a city of the sixth class for purposes of the Classification Act may be organized as a city of the fifth class under the Municipal Corporation Bill and vice versa. Thus Woodland is a city of the sixth class under the Act but is organized as a city of the fifth class under the Bill, while Redlands is a city of the fifth class under the Act but is organized as a city of the sixth class under the Bill. And many other cities now acting as sixth class Municipal Corporation Bill cities could at any time, by merely taking censuses, change their Classification Act classifications.

But apart from and in addition to mere ambiguity, the disparity and undue complexity of the provisions of these two acts classifying cities make it very easy to fall into error in determining the class of a city for purposes of applying laws to it. Even courts have been guilty of some very shocking errors in this respect.

Perhaps the most common error made by courts is the assumption that the class of a city for all purposes is determined by the classifications set up in the Municipal Corporation Bill for purposes of original incorporation under that Bill—moreover that the actual population of a city (either according to the latest federal census or otherwise)


Examples of language which appears to describe this situation accurately and without ambiguity are as follows: McGregor v. Board of Trustees (1911) 159 Cal. 441, 443, 114 Pac. 566 (“Burlingame is incorporated under the Municipal Corporation Act as a town of the sixth class.”); Redding v. Dozier, supra note 56, at 591, 206 Pac. at 465 (“Redding is a city of the sixth class, incorporated as such in 1887 under the Municipal Corporation Act of 1883.”); Newton v. Brodie (1930) 107 Cal. App. 512, 513, 290 Pac. 1058 (“Defendant City of Oceanside is a municipal corporation organized under the general Municipal Corporation Act of the state of California as a city of the sixth class . . . .”).
with reference to those classifications is determinative of its class for all purposes. Indeed if the Municipal Corporation Bill alone is read, there is nothing on its face to repel the inference that such is the correct construction. Courts have frequently been led into error on this assumption and consequently have often incorrectly applied the laws applicable to cities.

In \textit{People v. Knight} \textsuperscript{100} Justice Conrey, later on the supreme court, said, "The city of Porterville is a city of the fifth class", and decided the case on the basis that the city was incorporated and acting under a fifth class Municipal Corporation Bill charter, whereas it was actually operating under a sixth class Municipal Corporation Bill charter, although it was then a fifth class city for purposes of reorganization and reincorporation under the Bill as of 1923.\textsuperscript{101} And in \textit{Hirons v. Clare}, \textsuperscript{102} Justice pro tem Myers (later Chief Justice Myers) after stating, "East San Diego, a municipal corporation of the sixth class," proceeded to apply to it section 763 of the Municipal Corporation Bill—applicable only to fifth class Municipal Corporation Bill cities. The 1920 population of East San Diego was 4148 so that the error probably resulted from a belief that the actual population as of 1918 determined the class of a city actually incorporated under the Bill, assuming that there were estimates of the actual population of East San Diego available in 1918.

Again, in \textit{Board of Education v. Davidson} \textsuperscript{103} it was said that prior to 1912, San Rafael was a city of the fifth class and therefore had a city board of education as provided in the Municipal Corporation Bill, when actually San Rafael was a sixth class Municipal Corporation Bill city before 1912 and had no board of education. In fact in 1912, San Rafael was a sixth class city both according to its actual incorporation under the Municipal Corporation Bill \textit{and} under the Classification Act, but since the 1910 census gave it a population of 5934 it did have the power to reorganize under the Bill as a fifth class city in 1912 and the court apparently assumed that this determined its class and the Municipal Corporation Bill charter under which it was then operating.\textsuperscript{104}

\begin{footnotes}
\textsuperscript{100} (1923) 63 Cal. App. 63, 65, 218 Pac. 79.
\textsuperscript{101} See Appendix E.
\textsuperscript{102} \textit{Supra} note 98.
\textsuperscript{103} (1922) 190 Cal. 162, 163, 210 Pac. 961.
\textsuperscript{104} The same assumption was also made apparently in Grant, \textit{Penal Ordinances in California} (1936) 24 \textit{Calif. L. Rev.} 123, 132, where the writer says of the Municipal Corporation Bill, "This statute is still in force in substantially its original form and is the basic law for sixth class cities and towns (\textit{those having a population of 3,000 or less})
Another common error is the assumption that the class of a city under the Municipal Corporation Bill for purposes of determining the applicable charter is determined by the Classification Act.\footnote{105} In Osburn v. Stone\footnote{109} the court, through Justice Henshaw, held that Santa Cruz was a city of the fifth class (which it then was under the Classification Act) and that section 811 of the Municipal Corporation Bill (applicable only to fifth class Municipal Corporation Bill cities) was applicable, although Santa Cruz was not then and has never at any time been incorporated under the Bill, and accordingly none of its provisions was applicable. The Classification Act class seems clearly to have dictated this erroneous conclusion.

In other cases courts have been guilty of gross errors in determin-

and for the smaller fifth class cities.” (Italics added.) It should also be noted that there were then and are now only two “fifth class cities” in the sense mentioned by the writer, one large (Santa Ana) and one fairly small (Woodland). As to the latter he apparently accepted at face value the list of cities appearing at the end of Act 5233 of the General Laws [2 CAL. GEN. LAWS (Deering 1937) p. 2549], although he asserted that “The list contains several inaccuracies . . . .” 24 CALIF. L. REV. at 133, n. 66. The list there found is indeed inaccurate, incomplete and obsolete and a contributing cause of the existing confusion.

\footnote{105} In People v. Bagley, \textit{supra} note 26, at 347, 24 Pac. at 717, the court said “Under it [the Municipal Corporation Bill] six separate and distinct classes of such corporations, as defined in the act of March 2, 1883 (Stats. 1883, p. 24) [the Classification Act], may be organized.” In \textit{Ex parte} Jackson, \textit{supra} note 46, at 566, 77 Pac. at 457, it was said, “That act [Municipal Corporation Bill], after providing for the organization and incorporation of municipal corporations thereunder, provides a form of government and charter for each of the six classes of municipal corporations into which the municipal corporations of the state are classified, in proportion to population, by the act of the legislature entitled ‘An act to provide for the classification of municipal corporations,’ approved March 2, 1883, (Stats. 1883, p. 24,) \textit{and the amendments thereto} (Stats. 1901, p. 94).” (Italics added.) The court thus overlooked the fact that by the 1901 amendment a class of city was created, \textit{viz.}, the 1\frac{1}{2} class, which did not appear in the Bill at all. \textit{In re Baxter} (1906) 3 Cal. App. 716, 720, 86 Pac. 988, 999, assumed that the Municipal Corporation Bill class of any given city is determined by the Classification Act. In Pritchett v. Stanislaus County, \textit{supra} note 32, such was also the assumption of the court. This view was also taken by the three dissenting justices in \textit{Ex Parte} Fedderwitz, \textit{supra} note 65, at 578, 62 Pac. at 941, who argued that after the 1896 amendment to section 6, article XI respecting municipal affairs, general laws could no longer apply to freeholder charter cities or special charter cities and “There can be then no possible purpose for a classification under the constitution except as to cities and towns formed under the municipal incorporation act.” Only three other justices expressed their disagreement with the foregoing view. In Visalia Savings Bank v. Visalia (1908) 153 Cal. 206, 207, 94 Pac. 888, 889, it was assumed that the powers of Visalia were derived from the Classification Act, probably on the same theory.

18 CAL. JUR. § 101, p. 794, gives the impression or at least does nothing to dispel the inference which seems implicit in what is there said that the classes are the same for purposes of both acts.

\footnote{109} (1915) 170 Cal. 480, 490, 150 Pac. 367, 371.
ing the Municipal Corporation Bill charter of a particular city, resulting in deciding such cases under the wrong provisions.\textsuperscript{107}

Almost inexplicable errors of still a different character than those previously mentioned and which may be traceable directly or indirectly to the same confusing situation occurred in three cases where the courts assumed that cities were still operating under pre-1879 special charters and decided the cases on that basis when in fact in each case the city had incorporated under the Municipal Corporation Bill or was acting under a freeholders charter at the time in question.\textsuperscript{108}

Frequently error also results from overlooking the fact that the 1920 census and not a later federal census governs in determining the class of a city for purposes of the Classification Act.\textsuperscript{109} The point is

\textsuperscript{107}In the following cases gross errors were made by courts in determining the class of a city but the cause of the error is not discernible: Montgomery v. Railway Co. (1894) 104 Cal. 186, 192, 37 Pac. 786, 788, held Santa Ana was incorporated as a sixth class city under the Municipal Corporation Bill and applied to it section 862 of the Bill, applicable only to sixth class cities, when as a matter of fact it was a fifth class Municipal Corporation Bill city and the sections of the Bill applicable to fifth class cities should have been applied. The error may have been caused by the fact that Santa Ana was originally a sixth class Municipal Corporation Bill city from 1886 to 1888 and both counsel and the court overlooked the reorganization under the Bill as a fifth class city in 1888. In Hilliker v. Board of Trustees (1928) 91 Cal. App. 521, 523, 267 Pac. 367, 368, section 751 of the Bill, applicable only to cities incorporated as fifth class cities thereunder, was applied to Seal Beach, a city incorporated as a sixth class city under the Bill. In County of Fresno v. Shaw, supra note 97, at 362, 237 Pac. at 561, the court applied sections 806-807 of the Bill—applicable solely to cities incorporated as fifth class cities thereunder—to Coalinga, a city incorporated as a sixth class city. In Fort Bragg v. Brandon (1919) 41 Cal. App. 227, 229, 182 Pac. 454, 455, the court applied sections 750 and 764 (2), part of the Municipal Corporation Bill charter for cities incorporated thereunder as cities of the fifth class, to a city incorporated thereunder as a city of the sixth class.

\textsuperscript{108}In Stockton v. Insurance Co. (1887) 73 Cal. 621, 15 Pac. 314, the court decided the case on the assumption that Stockton was still operating under its pre-1879 special charter and had not incorporated under the Municipal Corporation Bill. In fact Stockton was then functioning as a fourth class Municipal Corporation Bill city. In Kelly v. Hayward (1923) 192 Cal. 242, 243, 219 Pac. 749, the parties stipulated and the court accepted the stipulation as true that "Hayward is a municipal corporation of the sixth class, incorporated under the act of March 11, 1876 (Stats. 1875-76, p. 215)." In fact, Hayward was then and had been since 1892 incorporated as a city of the sixth class under the Municipal Corporation Bill. In Klench v. Board of Pension Fd. Com'trs (1926) 79 Cal. App. 171, 179, 249 Pac. 46, 49, the court assumed and decided on the basis that Stockton was still operating under its pre-1879 special charter in 1904, when in fact it had been operating under a freeholders charter since 1889 and as a fourth class Municipal Corporation Bill city from 1884 to 1889.

\textsuperscript{109}An error somewhat similar to this was made by the court in Taylor v. Board of Education, supra note 97, at 735, 89 P. (2d) at 149, where it was said that San Diego was "a city of the second and one-half class in 1918, and ... second and one-fourth ... in 1921," thus applying the 1920 census to determine the status of a city as of 1918 and
easy to overlook because it is essentially irrational and arbitrary to classify on the basis of a census over twenty years old—particularly in view of the tremendous growth and change of relative position of California cities during the past two decades. It seems wholly irrational, for instance, that while the populations of Berkeley, Pasadena and Glendale are approximately the same (85,547, 81,864 and 82,582, respectively, by the 1940 census), yet for purposes of the Act, Berkeley is a city of the 2½ class, Pasadena is a city of the 2¼ class and Glendale is a city of the fifth class.

Finally, because of the provision of the Classification Act authorizing a city to change its classification by taking a census of itself, the class of any given city cannot be definitely determined until the records and minutes of each city are first searched to discover whether such a census has in fact been taken and properly entered in the minutes of the council or other legislative body. Furthermore, the very existence of this power in a city thus to change its classification leads to arbitrary results. San Francisco is a city of the first class, but if it should now take a census of itself, declare the results and enter them in the minutes of the board of supervisors, it would ipso facto become a city of the 1½ class, remove itself from the operation of legislation intended to be applicable only to San Francisco and become subject to legislation intended to be applicable solely to the city of Los Angeles.

All of the foregoing is the cause of much confusion and uncertainty and of many traps for the unwary in California municipal corporation law. Such a situation seems inexcusable and wholly unnecessary. It should be corrected by appropriate legislation.

In this way arriving at the conclusion that San Diego was a city of the 2½ class in 1918 which was three years before any such class was created by the Classification Act. In fact San Diego was a city of the third class in 1918.

While section 3 of the Classification Act provides that the results of any census changing the class of a city for purposes of the act shall be filed with the Secretary of State, such filing is not made a condition precedent to changing the class, but such change is effective on entry of the results of the census in the minutes of the council. In at least three cases freeholders charters have recited that the city took a census of itself at the time the charter was adopted, i.e., Albany, Compton and Inglewood, and yet no record of such censuses were in fact filed with the Secretary according to his office, even though in two of the cases (Albany and Inglewood) the charter expressly stated that such filing had actually occurred. And the city clerk of Albany reports that while Resolution No. 287 A.N.S. of November 29, 1926, appointed census takers and while a census was actually taken, the results thereof were not entered in the minutes of the council and there is no record of them. Therefore, notwithstanding the taking of such census, Albany is still governed by the 1920 census for Classification Act purposes.
But mere confusion and uncertainty are not the only products of the present situation. In addition, either the Classification Act as presently applied or the Municipal Corporation Bill is apparently vulnerable to serious constitutional objection.

The only constitutional authority for the Classification Act is section 6, article XI, providing that the legislature may pass laws for the classification of cities in proportion to population. This would seem very clearly to contemplate that classification shall be in proportion, or at least approximately in proportion, to present population and not to population at some remote period in the past. To allow legislation as to cities according to population even at the time legislation takes effect is a virtual emasculation of the constitutional prohibitions against special legislation. But to allow classification to be based on population as of a date over twenty years previous thereto would appear to nullify such prohibitions completely—to make them a mere farce. If population in 1920 is a proper test in 1942, why not population as of 1910, 1900, or even 1860? While it is true that a city can escape from legislation otherwise applicable to it on the basis of the 1920 census by taking a census of itself now, still, until it takes this apparently burdensome and expensive step\footnote{Section 3 of the Classification Act makes provision for a city taking a census of itself “in such manner and under such regulations” as the governing body thereof may adopt. While the section appears to contemplate an actual enumerating by city authorities themselves, it might be possible for a city to provide that the enumeration should be made by examining the figures shown by the last preceding federal census and adopting those figures. If such a procedure were permissible, the expense of taking the census would, of course, be negligible.} it is still subject to legislation applicable to it on the basis of its 1920 population and is not entitled to the benefit of legislation which is available only to cities having a larger or smaller 1920 population, even though they may have substantially the same 1940 or 1942 population. This arbitrary result would seem to render the Classification Act, or at least some of the provisions thereof, extremely vulnerable to constitutional attack as a special law.\footnote{It is well established that where constitutional authorization is given to legislate with respect to cities, counties or other subdivisions according to or in proportion to population, the classification made pursuant thereto must be prospective and must embrace subsequent changes in population. It cannot create a “closed” class. 1 McQuillen, op. cit. supra note 67, at 647 (“Accordingly, courts have held that classification even by population, ‘designed to operate in the present and on an existing state of facts,’ and not in the future, is unconstitutional, although several localities or cities fall within the class referred to by the act.”); (1937) 12 Wis. L. Rev. 546; Board of Com’rs. v. Spangler (1902) 159 Ind. 575, 65 N. E. 743 (condemning on this ground a law applicable only to counties having a population of between 15,000 and 15,050 by the census of 1920).} It may be that this objection, if valid, would oper-
ate to invalidate only section 2 of the Act, with the result that section 1 which sets up the population brackets and classes would still stand. In this event population as of today would determine the class of a city under the Act, with many very surprising, if not shocking results.

Another possible ground of attack on the Act may be found in decisions strongly suggesting, if not holding, that the classes set up in the Classification Act must be the same as those of the Municipal Corporation Bill (for purposes of original organization thereunder).\footnote{Darcy v. San Jose, supra note 52, at 647, 38 Pac. at 501, "...and I think it was intended that the classification there [in section 6, article XI] authorized was to be by a general law in the same sense and in the same way in which it was necessary to provide for the incorporation and organization of cities and towns."}

The serious results attendant on invalidation of the Classification Act or any part of it should not be underestimated. It would mean that many important provisions of the Municipal Court Act, the School Code, the Code of Civil Procedure and other laws referred to

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1890); Iowa v. Des Moines (1896) 96 Iowa 521, 65 N. W. 818 (condemning act applicable to all cities which had, by the state census of 1885, a population of 30,000 or more); Futrell v. George (1910) 135 Ga. 265, 268, 69 S. E. 182, 183 (law made inapplicable by its terms to counties having a population of between 7000 and 8000 "as shown by United States census of 1900" held void); Boyd v. Milwaukee (1896) 92 Wis. 456, 465, 66 N. W. 603, 605 (condemning law applicable to cities having population of 150,000 or over by federal census of 1890, saying "The class must not be so constituted as to preclude addition to the numbers included within it.").

A very pertinent recent case on this question is Sumter County v. Allen (Ga. Nov. 12, 1941) 17 S. E. (2d) 567, 570, where the court held valid a law applicable to counties having a population of from 26,750 to 27,750 according to the United States census of 1930 or any subsequent United States census. The court said that any conclusion to the effect that Sumter County was subject to the act merely because its population was within the prescribed limits of the census of 1930 would ignore the provision "any subsequent United States census" and that without the latter provision the act would be unconstitutional since "If classification should be thus fixed unchangeably by the particular census, the county or counties might as well have been specified by name.... Any such construction would render the act special." It also said "If, in order to be valid, a classification by population must open to let in counties subsequently falling within the class, so also it must open to let out a county which either by increase or decrease according to the last census ceases to have the required population." (Italics added.)

The recent case of Miller v. County of El Paso, supra note 54, is also interesting in that it condemned an act applicable to counties having a population of not less than 125,000 and not more than 175,000 containing a city of not less than 90,000 as shown by the last preceding federal census. This is a common form of special legislation. See Cal. Code Civ. Proc. § 103.

The provisions of the Political Code classifying counties according to the 1940 federal census (§ 4005c et seq.) and providing that subsequent changes in population shall not change the classification of any county without subsequent action by the legislature (§ 4007) would appear to be invalid under the above authorities. It does not appear that this specific objection has ever been made in California.
above would either have nothing on which to operate, or would operate on cities never intended by the legislature to be subjected to such laws.

If we assume, however, that these objections are untenable and that the Classification Act as it now reads is valid, then the Municipal Corporation Act becomes vulnerable to constitutional objection in that it violates the principle of *Darcy v. San Jose* that laws dealing with classes of cities less than all according to population must conform to the classes set up in the Classification Act—which the Municipal Corporation Bill obviously does not do at the present time.

The strange situation in which we now find ourselves is, therefore, that either (1) the Classification Act is invalid, or (2) if it is valid then the Municipal Corporation Bill is invalid. The need for legislation to correct this situation is apparent.

B. Incorporation under General Law—The Municipal Corporation Bill.

It was one of the main purposes of the framers of the new constitution not only to do away with special legislation but to encourage the formation of municipal corporations under general law. It was to this end that section 6 of article XI enjoined upon the legislature the duty of providing by general laws "for the incorporation, organization and classification, in proportion to population of cities and towns". Not until 1883 did the legislature obey this mandate by passing the Municipal Corporation Bill under which 226 of the 283 active incorporated cities of California are now functioning. This law provided, and still provides for the incorporation of (1) unincorporated territory containing a population of 500 or more and (2) cities incorporated prior to January 1, 1880.

Incorporation of unincorporated territory was and still is effected by the following procedure: a petition is presented to the county board of supervisors signed by at least 25 per cent of the holders of title to the lands situated within the limits of the proposed corporation, representing 25 per cent of the value of the land included in said limits. (Prior to 1933 the requirement was that the petition be signed by at least 50 of the qualified electors of the county who are residents within the limits of the proposed corporation.) The petition

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114 See supra note 95.
115 Supra note 52, and cases cited supra notes 61, 62 and 63.
116 Municipal Corporation Bill §§ 1, 2, 3.
117 Ibid. § 4.
sets forth and particularly describes the proposed boundaries of such corporation, states the number of inhabitants therein as nearly as may be, and prays that the territory be incorporated under the Bill. The board, upon finding that the foregoing requirements have been complied with, thereupon holds a hearing on the petition, and is required to make such changes in the boundaries as it shall find proper and must establish and define such boundaries and ascertain and determine how many inhabitants reside within them. The board is then required to give notice of an election to be held in such proposed corporation for the purpose of determining whether the same shall become incorporated. If a majority of the votes cast are for the incorporation, the board shall, by order entered on its minutes, declare the territory incorporated as a municipal corporation of the class to which it shall belong.

Incorporation of cities already incorporated prior to January 1, 1880 was and still is effected by one-fifth of the qualified voters of such city petitioning the council or other legislative body thereof to submit to the voters of the city the question whether the city shall become organized under the Bill. The council or other legislative body is then required to call an election and submit such proposition to the voters. If a majority of all the electors voting at such election shall vote for reorganization under the Bill, another election is immediately called for the election of officers according to the charter of the class to which the city shall belong under the Bill. As soon as the result of such election is declared and entered on the minutes of the council or other legislative body of the city, the city shall be deemed to be organized under the Bill with the powers conferred by such charter.

An act passed in 1897 gives freeholder charter cities the privilege of reorganizing under the Municipal Corporation Bill, although no city has ever availed itself of this act. Any city organized under the Bill is given authority to reorganize as a city of a higher or lower class

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118 Ibid. § 2.
119 Ibid. § 3. The section requires a majority of "the votes cast" at such election. This is held to mean a majority of those voting at the election and not those voting on the proposition for incorporation. Because of this rule the attempted incorporation of Woodlake, Tulare County, was invalidated. People ex rel. Smith v. Woodlake (1940) 41 Cal. App. (2d) 119, 106 P. (2d) 71. The same rule obtains under section 4 relating to reorganization of existing cities under the Bill and because of it the attempted reorganization of Berkeley under the Bill as a fifth class city in 1894 was invalidated. People v. Berkeley (1894) 102 Cal. 298, 36 Pac. 591.
120 Municipal Corporation Bill § 4.
according to changes in its population by taking proceedings for the purpose (involving the holding of an election) either under section 3 of the Classification Act or an act passed in 1899.\textsuperscript{122}

Section 5 of the Municipal Corporation Bill declares the effect of re-incorporation of any pre-existing city thereunder to be that such city shall for all purposes "be deemed and taken to be in law the identical corporation theretofore incorporated and existing", and existing ordinances are declared unaffected. Since no other provision of the act purports to repeal existing charters of, or special laws relating to cities incorporated before 1879, the inference from section 5 would appear to be that such charters and laws are repealed only to the extent they are inconsistent with the charter provisions of the Municipal Corporation Bill for cities of its class. While the point does not appear to have been definitely decided, it was assumed in \textit{Crossman v. Keniston}\textsuperscript{123} that laws passed prior to 1880 continued in force and were applicable to a city even after its incorporation under the Bill unless inconsistent with the provisions of the Bill. This would mean that those Municipal Corporation Bill cities which were formerly special charter cities may possibly still be governed in part by special legislation of the days before 1879, that is, to the extent that such legislation is not inconsistent with the Municipal Corporation Bill charter of such city.

The Municipal Corporation Bill originally set forth, and still sets forth today, six separate, distinct and quite elaborate charters which are applicable according to the class of the city incorporating thereunder. That class is determined by the population of the city in fact as of the date of incorporation and neither the class of the city for purposes of the Bill nor the charter applicable to it changes with subsequent increases or decreases of population. Thus the Bill set up and still sets up, separate charters for cities of the first, second, third, fourth, fifth and sixth class or as shown above, for cities having a population of (1) more than 100,000; (2) 30,001 to 100,000; (3) 15,001 to 30,000; (4) 10,001 to 15,000; (5) 3,001 to 10,000 and (6) 3000 or less, respectively, as of the date of incorporation.

The provisions applicable to the respective classes are described as "charters" with respect to cities of the second to sixth classes inclusive and failure to describe similarly the provisions applicable to

\textsuperscript{122} Cal. Stats. 1899, p. 75, 2 Cal. Gen. Laws (Deering 1937) act 5226. Under this act the last preceding federal census or a city census, if later, will determine the class of the city under the Municipal Corporation Bill.

\textsuperscript{123} (1893) 97 Cal. 379, 32 Pac. 448.
cities of the first class was probably an oversight. In any event, all cities thus far incorporated under the Bill have adopted what is described by the Bill itself as "a charter" and therefore all Municipal Corporation Bill cities now functioning are in the strictest sense of the term "chartered cities". As is stated in Ex parte Jackson in referring to the provisions of the Bill applicable to cities of the sixth class, such provisions are in fact "a charter for any municipality incorporated thereunder, in the same sense that a special act incorporating a city, adopted prior to our present constitution, or a freeholders' charter, adopted under section 8 of article XI of the constitution, is a charter. . . ." Many other cases are to like effect. Accordingly it is inaccurate to refer to cities operating under freeholders charters as "chartered cities"—at least in so far as such designation is used for the purpose of distinguishing freeholder charter cities from the other cities of the state. As the foregoing passage clearly indicates, all of the cities of the state, including Municipal Corporation Bill cities, are "chartered" cities. Notwithstanding such inaccuracy, however, the practice is very frequently followed.

124 Chapter II commencing at section 19 is headed "Municipal Corporations of the First Class §§ 19-288 (cities having a population of more than 100,000)." Chapter III commencing at § 300 is headed "Municipal Corporations of the Second Class §§ 300-426. (A charter for cities having a population of more than 30,000 and not exceeding 100,000)." Chapter IV, commencing at § 500 is headed "Municipal Corporations of the Third Class §§ 500-591. (A charter for cities having a population of more than 15,000 and not exceeding 30,000)." Chapter V, commencing at § 600 is headed "Municipal Corporations of the Fourth Class §§ 600-719. (Charter for cities having a population of more than 10,000 and not exceeding 15,000)." Chapter VI, commencing at § 750 is headed "Municipal Corporations of the Fifth Class, §§ 750-813 (A charter for cities having a population of more than three thousand and not exceeding ten thousand)." Chapter VII, commencing at § 850 is headed "Municipal Corporations of the Sixth Class, §§ 850-886 (A charter for cities and towns having a population of not exceeding three thousand)."

125 Supra note 46, at 569, 77 Pac. at 459.

126 Platt v. San Francisco (1910) 158 Cal. 74, 85, 110 Pac. 304, 309 ("The portion of such act applicable to any city organized thereunder is in fact the 'charter' of such city . . . ."). Other authorities have recognized that Municipal Corporation Bill cities are "chartered" cities. People v. Bagley, supra note 26; In re Pfahler, supra note 24; Huntley v. Board of Trustees (1913) 165 Cal. 298, 131 Pac. 859; Hanford v. Hanford Gas etc. Co. (1915) 169 Cal. 749, 147 Pac. 969; San Pedro etc. R. Co. v. Long Beach, supra note 96.

127 Ex parte Braun, supra note 50, at 208, 74 Pac. at 781, where Justice Angelotti assumed that Municipal Corporation Bill cities do not have "charters". In San Mateo v. Railroad Comm. (1937) 9 Cal. (2d) 1, 7, 68 P. (2d) 713, 716, Shenk, J., said "With respect to other matters charter cities are subject to and controlled by general laws . . . ." (meaning freeholder charter cities). To like effect: Department of Water & Power v. Inyo Chem. Co. (1940) 16 Cal. (2d) 744, 753, 108 P. (2d) 410, 416 ("Of
While six lengthy and elaborate charters are thus set up in the Municipal Corporation Bill for each class of city, it is important to remember that they are not applicable to any city unless and until such city actually organizes under the Bill, unless its charter expressly incorporates such provisions therein. As noted above, the Municipal Corporation Bill, while a "general law" is not such a general law as will control or be applicable under any circumstances to any city not actually organized thereunder. This has frequently been overlooked or misunderstood by courts, commentators and others. And as is also noted above no city or unincorporated area can organize under the Bill unless and until the approval of the majority of its voters is first obtained. As to cities previously incorporated such course, it is recognized that since the City of Los Angeles is a charter city, it is not subject to or controlled by any enactment of the state legislature as to its purely municipal affairs.""); Los Angeles Ry. Corp. v. Los Angeles (1940) 16 Cal. (2d) 779 at 783, 108 P. (2d) 430 at 433 ("The Constitution grants to chartered municipal corporations complete autonomy in respect to municipal affairs."); Bay Cities Transit Co. v. Los Angeles (1940) 16 Cal. (2d) 772, 776, 108 P. (2d) 435, 438 ("It is settled that the term 'vested' as used in section 23, article XII of the Constitution is limited to those powers possessed by a chartered city relating solely to the regulation and control of municipal affairs.").

This form of reference is also found in David, Municipal Liability in Tort in California (1933) 6 So. Cali. L. Rev. 269, 273, 298; and David, The Tort Liability of Public Officers (1939) 12 So. Cali. L. Rev. 127, 137.

129 Ex parte Armstrong; People v. Bagley; Postal Tel. Cable Co. v. Los Angeles, all supra note 26; Dudley v. Superior Court (1910) 13 Cal. App. 271, 278, 110 Pac. 146, 148 (also rejecting contention that because Santa Monica was a fifth class Municipal Corporation Bill city before it adopted its freeholders charter, section 762 of the Bill was applicable after it did so). Edwards v. Brockway (1911) 16 Cal. App. 626, 630, 117 Pac. 787, 788.

129 As will hereafter appear, freeholders charters very frequently contain provisions incorporating all general laws not inconsistent with charter provisions and this incorporation may include provisions of the Municipal Corporation Bill.

130 In People v. Toal (Cal. 1890) 23 Pac. 203, 205-206, Patterson and Fox, J.J., made contrary assumptions. In Levinson v. Boas, supra note 24, at 188, 88 Pac. at 826, Henshaw, J., assumed that section 64 of the Municipal Corporation Bill was applicable to San Francisco. And in Osburn v. Stone, supra note 106, at 490, 150 Pac. at 371, he assumed that section 811 of the Bill was directly applicable to Santa Cruz, a freeholder charter city. In Grieb v. Zemansky (1910) 157 Cal. 316, 319, 107 Pac. 605, 606, he seems to assume that the Municipal Corporation Bill charters for second and third class cities are applicable to existing cities. It also seems to be assumed in Taylor, California Low Rent Housing Legislation (1938) 11 So. Cali. L. Rev. 444, 445, that Municipal Corporation Bill charters for 1st, 4th, 5th and 6th classes are applicable to cities of the state generally for the writer says, "The Municipal Corporation Bill confers on cities of the various classes the power to regulate building construction." [citing Cal. Stats. 1883, c. 49, p. 93, §§ 64 (7), 622, 764 and 862].
approval is expressly required by section 6 of article XI of the constitution.\textsuperscript{131}

But while cities and unincorporated areas are thus given the privilege of determining for themselves whether they shall or shall not adopt the charter prescribed in the Municipal Corporation Bill for their class of city, the constitution expressly provides that general laws for the incorporation and organization of cities may be altered, amended or repealed.\textsuperscript{132} While this provision does not say in so many words that amendments to a general law for the incorporation and organization of cities can be made applicable to cities already incorporated thereunder without first obtaining the approval of the voters of the city for such amendments, it has always been recognized that they are so applicable.\textsuperscript{133} It is very clear, therefore, that notwithstanding the approval of the voters which is required for original incorporation under the Municipal Corporation Bill, the grant of local self-government to these cities is of a very limited character and subject to the overriding power of alteration, amendment or repeal by the legislature. By simply altering or amending the applicable charter subsequent to incorporation, a new or substantially new charter may be imposed on such a city without the consent of either it or its voters. A repeal of such charter can in effect destroy the city. Furthermore, general laws applicable to all or a class of cities less than all are (subject to the limitations set forth above) also applicable to cities already incorporated and functioning under the Municipal Corporation Bill even though such general laws do not purport

\textsuperscript{131} "Cities and towns heretofore organized or incorporated may become organized under the general laws... whenever a majority of the electors voting at a general election shall so determine, and shall organize in conformity therewith." \textsc{Cal. Const. art. XI, § 6}.

\textsuperscript{132} "... but the legislature shall, by general laws, provide for the incorporation, organization, and classification, in proportion to population, of cities and towns, which laws may be altered, amended, or repealed ..." \textsc{Cal. Const. art. XI, § 6}.

\textsuperscript{133} No case has been found in which the contrary was even contended, although if Desmond v. Dunn, \textit{supra} note 10, had been followed on the point that no general law could be made applicable to any city without the approval of its voters, obviously such amendments would not have been valid without such consent as to any existing city. But Desmond v. Dunn was not followed on the point. It has been assumed without discussion and without contention in many cases that amendments of Municipal Corporation Bill charters are applicable to existing cities even without the approval of the voters. A typical example is \textit{Ex parte} Jackson, \textit{supra} note 46. It is interesting to compare the California law on this point with that of Ohio. There the constitution expressly provides that additional legislation is applicable to cities organized under general laws only if a majority of the voters approves. \textsc{Ohio Const. art. XVIII, § 2}. 
to be amendments to the Bill. Consequently, while neither a city nor an unincorporated territory can be required or even permitted to incorporate under the Municipal Corporation Bill unless and until a majority of its voters approves, once such approval is given and such incorporation is effected, the subjection of the city to general laws is complete.

A problem which has been the cause of some confusion in the California cases is raised by the “municipal affairs” amendments of 1896 and 1914 to section 6 of article XI. As originally adopted, section 6 provided that “cities or towns heretofore or hereafter organized, and all charters thereof framed or adopted by authority of this Constitution, shall be subject to and controlled by general laws.” In 1896 this clause was amended to read: “cities and towns heretofore or hereafter organized, and all charters thereof framed or adopted by authority of this Constitution, except in municipal affairs, shall be subject to and controlled by general laws.” The question arose whether this language granted to Municipal Corporation Bill cities exemption from general laws in respect to “municipal affairs.” A close scrutiny of the language of the amendment would appear to favor the construction which would include such cities within the protection of the “municipal affairs” exception, for it can be argued with considerable plausibility that the “except” clause modified both “cities and towns heretofore and hereafter organized” and “all charters thereof”; furthermore, that a Municipal Corporation Bill charter is in fact a charter “framed or adopted by authority of this Constitution”.

Sonora v. Curtin, supra note 21 (Political Code, section 3366 added in 1901, purporting on its face to prohibit all cities from levying license taxes for purposes of revenue, held applicable to Sonora, incorporated under Municipal Corporation Bill in 1900); Santa Monica v. Guidinger, supra note 21 (same for Santa Monica, incorporated under the Bill in 1886). It should be noted that both Sonora and Santa Monica were incorporated as cities of the sixth class under the Bill and section 852 (10) of the Bill—applicable to sixth class cities only, expressly conferred on such cities the power denied by section 3366. Nevertheless such power was held abrogated by a later law applicable to all cities generally and not purporting to be an amendment of the Municipal Corporation Bill. In Millsap v. Balfour, supra note 21, the street improvement provisions of the Municipal Corporation Bill for fifth class cities were held to be superseded by the provisions of a general street improvement law (the Vrooman Act) purporting on its face to be applicable to all cities. In Redondo Beach v. Barkley, supra note 21, at 180-181, 90 Pac. at 454, one of the most important general laws of the state, the Municipal Bond Act of 1901 [Cal. Stats. 1901, p. 27, 2 Cal. Gen. Laws (Deering 1937) act 5178], was held applicable to sixth class Municipal Corporation Bill cities even though the law was applicable on its face only to a city having an “executive” and such cities have no mayor. The court held that the President of the Board of Trustees in such cities was the “executive” within the meaning of the 1901 act.
On the other hand, undesirable consequences would flow from such a construction, for Municipal Corporation Bill cities have no power to change the provisions of their charters themselves, and as such charters deal exclusively with "municipal affairs" the result would be that such charters would be frozen as of 1896 and that neither the city nor the legislature could amend them to meet changing conditions.

Shortly after passage of the 1896 amendment it was held by the California courts without adequate discussion or close examination of the wording of the amended section that neither Municipal Corporation Bill cities nor their charters were within its protection, so they were subject to general laws relating even to municipal affairs. The point was first raised in *Ex parte Braun* where the court was considering whether section 3366 of the Political Code, which prohibited all cities of the state from levying license taxes for revenue purposes, was applicable to Los Angeles—a freeholder charter city—in view of the 1896 amendment. It had been held in two earlier cases that the code section was applicable to Municipal Corporation Bill cities and counsel argued that these cases were controlling because such cities were just as much within the protection of the "municipal affairs" amendment of 1896 as were freeholder charter cities. But the court, speaking through Justice Angellotti, rejected the contention, saying,

"It is, however, manifest ... that the constitutional amendment of 1896 to such section in no wise affects cities and towns incorporated under the General Municipal Corporation Act. Such cities and towns were created under general laws, which general laws may at any time be altered, amended, or repealed by the legislature, and the amendment of 1896 has not in the slightest degree impaired the power of the legislature in this respect. The only limitation on the power of the legislature in regard to such cities and towns is, that it must not enact 'special laws' in regard thereto. They have always been and still are subject to and controlled by general laws in municipal affairs."

While the Justice gave no reasons why his conclusion was "manifest" and gave no consideration whatever to the wording of the section

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135 *Supra* note 50.
136 Sonora v. Curtin; Santa Monica v. Guidinger, both *supra* note 21.
137 *Ex parte Braun, supra* note 50, at 208, 74 Pac. at 781. The rule had earlier been stated categorically in Morton v. Broderick (1897) 118 Cal. 474, 487, 50 Pac. 644, 648; and Popper v. Broderick (1899) 123 Cal. 456, 460, 56 Pac. 53, although by way of dicta only.
as amended, this view was accepted without question for many years thereafter.\textsuperscript{138}

In 1919, however, a district court of appeal held in \textit{Red Bluff v. Southern Pacific Co.},\textsuperscript{139} without adequate consideration and without reference to prior cases, that Municipal Corporation Bill cities were exempt from general laws respecting "municipal affairs" just as freeholder charter cities were so exempt. Subsequently a petition for hearing was denied by the supreme court. While this case resulted in throwing the law into some confusion for a time,\textsuperscript{140} in 1934 another district court of appeal held to the contrary\textsuperscript{141} in accord with the earlier cases. This case was expressly approved on the point by the supreme court in \textit{San Mateo v. Railroad Commission}\textsuperscript{142} which has thus apparently settled the rule that Municipal Corporation Bill cities are given no protection from general laws by the "municipal affairs" amendments to section 6 of article XI made in 1896 and 1914.

It should be noted in passing that in point of fact the legislature has during the years since 1883 used considerable self-restraint in exercising its power to alter or amend the charters of Municipal Corporation Bill cities and has not amended the charters of fifth and sixth class cities thereunder so extensively as to change very drastically the charters as originally approved by the voters of such cities. On the contrary, the most drastic amendments yet made to the Bill,—those providing for the commission form of government in fifth and sixth class cities in 1911\textsuperscript{143} and that providing for the city manager form of government for fifth class cities in 1927\textsuperscript{144}—were expressly made applicable only if the voters of the city approved.\textsuperscript{145}

\textsuperscript{138}The principle was announced very clearly and unequivocally, although by way of dicta in \textit{Ex parte Helm}, \textit{supra} note 50, at 556, 77 Pac. at 453. It was expressly held, however, in Dawson v. Superior Court (1910) 13 Cal. App. 582, 110 Pac. 479. In Peterson v. Board of Super's (1924) 65 Cal. App. 670, 225 Pac. 28, 31, the rule was stated categorically although apparently by way of dicta only.

\textsuperscript{139} (1919) 44 Cal. App. 667, 187 Pac. 152, 155. Justice Richards apparently made the same assumption in Scott v. County of San Mateo, \textit{supra} note 96, at 710, 151 Pac. at 34.

\textsuperscript{140} Atlas Mixed Mortar Co. v. Burbank (1927) 202 Cal. 660, 663, 262 Pac. 334, 336.


\textsuperscript{142} \textit{Supra} note 127.

\textsuperscript{143} Cal. Stats. 1911, p. 842, adding §§ 752a, 752b, 852a, 852b.

\textsuperscript{144} Cal. Stats. 1927, p. 502, p. 505, adding § 752c.

\textsuperscript{145} Cities organized under the Bill either in the past or in the future continue to operate on the old council basis until an ordinance adopting the commission or city manager form of government is submitted to and approved by a majority of the voters.
One of the strangest anomalies of California municipal corporation law is that notwithstanding the existence in the Municipal Corporation Bill of the six elaborate charters for each of the six classes of cities therein referred to, no city has ever been incorporated thereunder as a city of the first, second or third class, and only two cities—Stockton, from 1884 to 1889 and probably San Diego from 1887 to 1889—were ever incorporated thereunder as cities of the fourth class. The charters provided for the first two classes of cities referred to therein have never been amended since their enactment, while those provided for third and fourth class cities have been amended only in very small particulars subsequent to 1883.

Accordingly, the first four charters may fairly be said to represent for the most part the notions current in 1883 as to what the charters of the larger cities of the state should contain. A comparison of these charters with those of the larger cities of the state today demonstrates the differences between such notions and those prevailing today. It may safely be said, therefore, that there is and for a good many years has been no reasonable or other prospect.

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140 According to the records in the office of the Secretary of State, San Diego incorporated as a fifth class Municipal Corporation Bill city on May 13, 1886 but there is no record of any other incorporation of San Diego under the Bill. But there is considerable evidence that San Diego was reincorporated as a fourth class Municipal Corporation Bill city in 1887. Thus it is stated categorically in Smythe, History of San Diego (1907) 465, and 1 McGrew, City of San Diego and San Diego County (1922) 228, that San Diego was reorganized as a city of the fourth class in 1887. The truth of the statements of these two writers is placed in some question by their further statement that San Diego was incorporated as a sixth class city in 1886—obviously incorrect. But their statement as to 1887 is supported in three California cases which find or assume that San Diego was a fourth class Municipal Corporation Bill city during the years 1887-1889. People v. Gunn (1890) 85 Cal. 238, 242, 24 Pac. 718; Capron v. Hitchcock (1893) 98 Cal. 427, 33 Pac. 431 (applying section 628 of Municipal Corporation Bill to San Diego on this theory); Dranga v. Rowe (1900) 127 Cal. 506, 507, 57 Pac. 944 (applying fourth class provisions of Bill to San Diego and in which the answer of the city alleged that on April 18, 1887, San Diego was reincorporated as a city of the fourth class). On the other hand, the California Blue Book for 1909, p. 372, indicates that San Diego was a city of the fifth class from 1886 to 1889, but the information therein contained was doubtful based on the records of the Secretary of State. The above evidence would seem to indicate that San Diego was in fact incorporated and acting as a fourth class Municipal Corporation Bill city from 1887 to 1889 but that the evidence establishing this fact either failed to reach the Secretary of State or was lost or destroyed.

147 Sections 625 and 626 of the Municipal Corporation Bill, relating to debt limitation, were amended in 1889—the year that Stockton and San Diego abandoned this charter and adopted freeholders charters. Section 641 relating to the duties of the city assessor was also amended in 1889. Sections 691 and 693 relating to the police court were amended in 1929. Section 711 relating to the School Department was amended in 1885. Sections 506, 608 and 609 relating to compensation of councilmen in third and fourth class cities were amended in 1937.
that any city will ever elect to use a charter designated for one of the first four classes of cities described in the Municipal Corporation Bill. Nevertheless such charters have remained on the statute books year after year and have been the source of much confusion, for there is nothing on the face of the Bill to indicate that cities having the population designated for any given class of city are not operating thereunder. In fact there is probably no greater single source of confusion in the field than the continued presence of these four obsolete charters in the statute books year after year.

This matter is also of considerable importance to freeholder charter cities in view of the very common presence in such charters of provisions incorporating general laws insofar as they are not inconsistent with other provisions of such charters.148 It was probably not the intention of the framers of these charters, particularly those of larger cities, to incorporate the provisions of the Municipal Corporation Bill—a law generally understood to be applicable only to cities incorporating under the Bill. Yet in two cases149 these general incorporating provisions were held to have that effect. Assuming the correct-

148 Nearly all of the freeholders charters contain some kind of provision incorporating general laws either generally or of particular kinds. Thus some charters provide that general laws shall be applicable in all matters not provided for by the charter. Albany Charter (1927) § 40; Alhambra Charter (1915) § 200 (municipal officers only); Bakersfield Charter (1915) art. XII, § 161; Berkeley Charter (1909) § 6 (conduct of elections); Eureka Charter (1895) § 191.

Some charters provide that the city may exercise all powers granted to cities by general laws. Bakersfield Charter (1915) § 12; Chico Charter (1923) art. II, §§ 1-22; Compton Charter (1925) art. III, § 1; Fresno Charter (1921) art. I, § 1; Glendale Charter (1921) art. III, § 1; Huntington Beach Charter (1937) art. III, § 2; Inglewood Charter (1927) art. III, § 3; Long Beach Charter (1921) art. IV, § 2; Los Angeles Charter (1925) art. I, § 2 (4); Oakland Charter (1911) § 49a; Sacramento Charter (1921) art. II, § 2; San Diego Charter (1931) art. I, § 2.

Some provide that where no procedure is provided by the charter for the exercise of any power belonging to the city the procedure provided by general laws shall control. Alhambra Charter (1915) § 61 (67); Compton Charter (1925) art. III, § 1; Fresno Charter (1921) § 123; San Francisco Charter (1931) § 3.

In only a very few cases are the provisions of the Municipal Corporation Bill expressly incorporated. Albany Charter (1927) § 3 (general laws applicable in cases not covered by charter "including all powers now or hereafter granted to cities of the sixth class."); San Bernardino Charter (1905) § 224 (incorporating general laws "applicable to the class of cities to which this city may belong"). In both of the foregoing cases the classification could refer to that of the Classification Act, however.

The foregoing examples are illustrative of the types of incorporating provisions found most frequently and are not exhaustive, although covering the largest cities. For citations of the charters above referred to, see Part I, Appendix A.

149 In re Baxter, supra note 105 (San Bernardino charter); Mitchell & Johnson v. Smith (1936) 16 Cal. App. (2d) 119, 60 P. (2d) 509 (Compton).
ness of these cases, difficult problems arise as to which Municipal Corporation Bill charter is incorporated. Is this determined by the population of the city at the time its charter is adopted or at a later date when the question arises? For instance the charter of Compton contains a provision incorporating general laws relating to procedure for enforcement of powers—not inconsistent with its provisions. When Compton adopted its charter in 1925 the last preceding federal census gave it a population of 1,478 while the 1940 census gave it a population of 16,198. If in 1941 that city seeks to exercise a power conferred by its charter for which no procedure is provided therein, but which is provided for by Municipal Corporation Bill charters, which of the latter charters will govern—that for sixth class cities because the population of the city at the date of adoption of its charter was under 3000, or that for third class cities because its population in 1941 was 16,198? There is no basis on which a satisfactory answer can be given to this question. In one of the two cases\(^ {150}\) it was stated that the question is to be determined by the class of the city \textit{under the Classification Act} at the time the question arises. And in the other case—which actually involved Compton—the question arising in 1936 (at which time the last preceding federal census gave Compton a population of 12,516), the court simply applied the charter for sixth class cities without discussion.\(^ {151}\) In fact, Compton was then a city of the sixth class under the Classification Act. Because of the lack of adequate discussion in these cases, the problem cannot be deemed to be settled at this time. It is very clear, however, that the continued existence of the first four Municipal Corporation Bill charters raises many difficult questions even for freeholder charter cities and introduces much confusion and uncertainty in the law applicable to them.

Apart from such confusion, such charters—under which in all probability no city will ever organize—occupy 137 pages in the last edition of the California General Laws and must be reprinted in every new edition thereof, thereby adding to the expense of publishing those laws and their cost to lawyers.

It would seem that there can be no possible excuse for the continued existence of the first four charters set forth in the Municipal Corporation Bill and that they should be repealed. Furthermore, the population brackets set forth for cities of the fifth and sixth classes under the Bill should be changed to correspond with those of the

\(^{150}\) \textit{In re Baxter}, supra note 105, at 720, 86 Pac. at 999.

\(^{151}\) Mitchell & Johnson v. Smith, supra note 149.
Classification Act, thus avoiding the objection of *Darcy v. San Jose.* In fact, in order to avoid coming into conflict with the rule of that case at any time in the future it would seem advisable to eliminate the population brackets found in the Bill and in lieu thereof to refer simply to the Classification Act classes.

CONCLUSION

It would appear from what has been said that the provisions of the 1879 constitution banning special legislation and providing for the organization of cities under general laws have not of themselves resulted in any substantial protection to California cities against legislative interference and have not of themselves resulted in a substantial grant to such cities of local self-government or home rule. More adequate protection and grants of home rule were made by other provisions of the constitution, however. They will be considered in subsequent articles.

APPENDIX D

POPULATION OF LEADING CALIFORNIA CITIES AT END OF EACH DECADE OF STATE'S HISTORY

(ACCORDING TO FEDERAL CENSUS EXCEPT FOR 1850)

In 1850 the largest cities and their approximate populations were (1) San Francisco, 35,000; (2) Sacramento, 29,000; (3) Marysville, 4800; and (4) Los Angeles, 1600.

In 1860 the largest cities and their populations according to the 1860 federal census were (1) San Francisco, 56,802; (2) Sacramento, 15,785; (3) Marysville, 4740; (4) San Jose, 4579; (5) Los Angeles, 4383; (6) Stockton, 3619; (7) Nevada City, 3679; (8) Santa Clara, 3539; (9) Placerville, 2466; (10) Napa, 2378; (11) Santa Barbara, 2351; (12) Monterey, 1833; (13) Oakland, 1842.

In 1870 the largest cities and their populations according to the 1870 federal census were (1) San Francisco, 149,473; (2) Sacramento, 10,283; (3) Oakland, 10,066; (5) San Jose, 9689; (6) Los Angeles, 8504; (7) Marysville, 4738; (8) Santa Cruz, 2501; (9) San Diego, 2300; (10) Napa, 1879; (11) Gilroy, 1625; (12) Placerville, 1525.

In 1880 the largest cities and their populations according to the 1880 federal census were (1) San Francisco, 235,959; (2) Oakland, 14,845; (3) Sacramento, 21,420; (4) San Jose, 12,567; (5) Los Angeles, 11,183; (6) Stockton, 10,252; (7) Vallejo, 9587; (8) Alameda, 7608; (9) Marysville, 4321; (10) Nevada City, 4022; (11) Santa Clara, 3989; (12) Napa, 3731; (13) Santa Rosa, 3616; (14) Santa Barbara, 3460; (15) Petaluma, 3326; (16) Chico, 3300; (17) Eureka, 2639; (18) San Diego, 2637; (19) Santa Clara, 2416; (20) San Rafael, 2376; (21) Woodland, 2357; (22) San Luis Obispo, 2243; (23) Red Bluff, 2106; (24) Placerville, 1931; (25) Salinas, 1854; (26) Colusa, 1779; (27) Modesto, 1693.

In 1890 the largest cities and their populations according to the 1890 federal census were (1) San Francisco, 298,997; (2) Los Angeles, 50,595; (3) Oakland, 48,662; (4) Sacramento, 26,366; (5) San Jose, 18,060; (6) San Diego, 16,159; (7) Stockton, 14,424; (8) Alameda, 11,165; (9) Fresno, 10,818; (10) Vallejo, 6343; (11) Santa Barbara, 5864; (12) Santa Cruz, 5590; (13) Santa Rosa, 5220; (14) Berkeley, 3101; (15) Pasadena, 4882; (16) Eureka, 4538; (17) Riverside, 4683; (18) Napa, 4395; (19) San Bernardino, 4012; (20) Marysville, 3991; (21) Petaluma, 3692; (22) Pomona, 3634; (23) Santa Ana, 3628; (24) San Rafael, 3290; (25) Woodland, 3069; (26) San Luis Obispo, 2993; (27) Chico, 2894; (28) Santa Clara, 2891; (29) Visalia, 2835; (30) Tulare, 2697; (31) Bakersfield, 2626; (32) Nevada City, 2524.

In 1900 the largest cities and their populations according to the 1900 federal census were (1) San Francisco, 342,782; (2) Los Angeles, 105,479; (3) Oakland, 66,960; (4) Sacramento, 29,282; (5) San Jose, 21,500; (6) San Diego, 17,200; (7) Stockton, 17,556; (8) Alameda, 16,646; (9) Berkeley, 13,214; (10) Fresno, 12,470; (11) Pasadena, 9117; (12) Riverside, 7973; (13) Vallejo, 7965; (14) Eureka, 7327; (15) Santa Rosa, 6673; (16) Santa Barbara, 6587; (17) San Bernardino, 6150.

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162 Supra note 52.
The largest cities and their populations according to the 1940 federal census were (1) San Francisco, 416,912; (2) Los Angeles, 319,199; (3) Oakland, 150,174; (4) Sacramento, 44,696; (5) Berkeley, 40,443; (6) San Diego, 39,578; (7) Pasadena, 30,219; (8) San Jose, 28,946; (9) Fresno, 24,889; (10) Alameda, 23,333; (11) Stockton, 23,253; (12) Long Beach, 17,809; (13) Riverside, 15,212; (14) Santa Barbara, 12,779; (15) Bakersfield, 12,727; (16) Eureka, 11,845; (17) Santa Barbara, 11,659; (18) Vallejo, 11,340; (19) Santa Cruz, 11,146; (20) Redlands, 10,449; (21) Pomona, 10,207; (22) Santa Ana, 8,429; (23) Santa Monica, 7,847; (24) Santa Rosa, 7,817; (25) Richmond, 6,862; (26) San Rafael, 7,174; (27) Santa Barbara, 5,164; (28) Napa, 5,791; (29) Marysville, 5,430; (30) San Luis Obispo, 5,157; (31) Alhambra, 5,021; (32) Monterey, 4,923; (33) Hanford, 4,829; (34) South Pasadena, 4,649; (35) Whittier, 4,530; (36) Visalia, 4,550; (37) Grasm Valley, 4,520; (38) census, 4,384; (39) San Max, 4,384; (40) Ontario, 4,274; (41) Coalinga, 4,199; (42) Modesto, 4,034; (43) Colton, 3,980; (44) Orovile, 3,859; (45) Chico, 3,750; (46) Salinas, 3,736; (47) Moreno, 3,576; (48) Redding, 3,572; (49) Coro- na, 3,540; (50) Red Bluff, 3,530; (51) San Leandro, 3,471; (52) Merced, 3,102; (53) San Buenavent-URA. (61) Daly City, 7,821; (62) Fillmore, 7,631; (63) Visalia, 7,573; (64) San Luis Obispo, 7,562; (65) Antioch, 7,562; (66) Lynnwood, 7,323; (67) National City, 7,301; (68) Torrance, 7,271; (69) Visalia, 7,262; (70) San Gabriel, 7,224; (71) Merced, 7066; (72) Santa Maria, 7057; (73) Hanford, 7028; (74) Corona, 7018; (75) Marywood, 7004; (76) Lodi, 6782; (77) Hawthorne, 6596; (78) Martinez, 6599; (79) Napa, 6437; (80) Roseville, 6425; (81) Monterey Park, 6406; (82) Santa Clara, 6306; (83) Calexico, 6299; (84) Oxnard, 6285; (85) Tulare, 6207; (86) South San Francisco, 6193; (87) Marysville, 5763; (88) Culver City, 5669; (89) Pacific Grove, 5585; (90) Woodland, 5542; (91) Hayward, 5530; (92) Montebello, 5498; (93) Coronado, 5427; (94) Porterville, 5303; (95) Arcadia, 5216; (96) Azusa, 4808; (97) Hermosa Beach, 4796; (98) Upland, 4721; (99) Madera, 4665; (100) San Anselmo, 4650; (101) Turlock, 4276; (102) Redding, 4188; (103) Willow Glen, 4164; (104) Visalia, 3978; (105) Eureka, 3976; (106) Cerrito, 3882; (107) Modesto, 3882; (108) Tracy, 3829; (109) Grass Valley, 3817; (110) Hollister, 3757; (111) San Mateo, 3730; (112) Orovile, 3698; (113) Huntington Beach, 3690; (114) Sausalito, 3667; (115) San Bruno, 3610; (116) Stockton, 3522; (117) Sierra Madrid, 3550; (118) Red Bluff, 3530; (119) Oakdale, 3524; (120) Oceanside, 3508; (121) El Segundo, 3503; (122) Gilroy, 3502; (123) El Monte, 3479; (124) Tulalip, 3442; (125) Escondido, 3421; (126) Mountain View, 3308; (127) Los Gatos, 3168; (128) Newman, 3144; (129) Chino, 3124; (130) Livermore, 3119; (131) Chino, 3118; (132) Sunnyvale, 3094; (133) San Jose, 3047; (134) Petaluma, 3022.

The largest cities in 1940 and their populations according to the 1940 federal census are set forth in Appendix E.
## APPENDIX E

### CLASSIFICATIONS OF CALIFORNIA CITIES FOR VARIOUS PURPOSES AS OF MARCH 1942

<table>
<thead>
<tr>
<th>City</th>
<th>Rank</th>
<th>1940 Population (by federal census of 1940)</th>
<th>1920 Population (by federal census of 1920)</th>
<th>Actual class for purposes of Classification Act</th>
<th>Actual class under Municipal Corporation Bill, based on population as of date of incorporation</th>
<th>Actual class under Classification Act as it now reads, based on the city's own census as of March 1942</th>
</tr>
</thead>
<tbody>
<tr>
<td>Los Angeles</td>
<td>1</td>
<td>1,504,277</td>
<td>576,673</td>
<td>1</td>
<td>1/2</td>
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</tr>
<tr>
<td>San Francisco</td>
<td>2</td>
<td>634,536</td>
<td>506,676</td>
<td>1</td>
<td>1/2</td>
<td>FC</td>
</tr>
<tr>
<td>Oakland</td>
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<td>302,163</td>
<td>216,261</td>
<td>2</td>
<td>FC</td>
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</tr>
<tr>
<td>San Diego</td>
<td>4</td>
<td>205,341</td>
<td>74,683</td>
<td>1/4</td>
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<td>1</td>
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<tr>
<td>Long Beach</td>
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<td>164,271</td>
<td>55,593</td>
<td>1/2</td>
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<td>1</td>
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<tr>
<td>Sacramento</td>
<td>6</td>
<td>105,958</td>
<td>65,908</td>
<td>1/2</td>
<td>FC</td>
<td>1</td>
</tr>
<tr>
<td>Berkeley</td>
<td>7</td>
<td>85,547</td>
<td>56,036</td>
<td>1/2</td>
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<td>1</td>
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<tr>
<td>Glendale</td>
<td>8</td>
<td>82,582</td>
<td>13,536</td>
<td>1/2</td>
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<td>1</td>
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<tr>
<td>Pasadena</td>
<td>9</td>
<td>81,864</td>
<td>45,354</td>
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<td>68,457</td>
<td>39,642</td>
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<td>1</td>
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<tr>
<td>Fresno</td>
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<td>60,685</td>
<td>45,086</td>
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<tr>
<td>Stockton</td>
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<td>54,714</td>
<td>40,296</td>
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<tr>
<td>San Bernardino</td>
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<td>53,500</td>
<td>18,721</td>
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<td>Altahbra</td>
<td>14</td>
<td>43,646</td>
<td>9,096</td>
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<td>Alameda</td>
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<td>38,935</td>
<td>9,096</td>
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<td>36,256</td>
<td>28,806</td>
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<td>Riverside</td>
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<td>19,441</td>
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<td>Burbank</td>
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<td>Santa Ana</td>
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<td>Inglewood</td>
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<td>31,921</td>
<td>15,485</td>
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<td>Bakersfield</td>
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<td>30,114</td>
<td>3,286</td>
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<td>25,252</td>
<td>18,658</td>
<td>1/2</td>
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<td>1</td>
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<tr>
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<td>26,945</td>
<td>N. I.</td>
<td>None</td>
<td>1/2</td>
<td>1/2</td>
</tr>
</tbody>
</table>

1 Under the Classification Act as it now reads, the classes are as follows, based on the 1920 census or the city's own census: (1) first (1) class, over 500,000 but not exceeding 550,000; (2) first and one-half (1 1/2) class, over 550,000 but not exceeding 550,000; (3) second (2) class, over 100,000 but not exceeding 500,000; (4) second and one-fourth (2 1/4) class, over 70,000 but not exceeding 100,000; (5) second and three-eighths (2 3/8) class, over 60,000 but not exceeding 70,000; (6) second and one-half (2 1/2) class, over 55,000 but not exceeding 60,000; (7) second and three-fourths (2 3/4) class, over 50,000 but not exceeding 55,000; (8) third (3) class, over 23,000 but not exceeding 30,000; (9) fourth (4) class, over 15,000 but not exceeding 23,000; (10) fifth (5) class, over 8000 but not exceeding 15,000; (11) sixth (6) class, not exceeding 8000. The figures appearing in this column were entered on the assumption that the city in question has never taken a census of itself and entered the results thereof in the minutes of its legislative body, except in the cases indicated. To be absolutely certain that a city census has not changed the class as shown in this column the records of each city must be searched.

2 Under the Municipal Corporation Bill, the classes based on population in fact as of the date of incorporation are: (1) first class, over 100,000; (2) second class, more than 30,000 but not exceeding 100,000; (3) third class, more than 15,000 but not exceeding 30,000; (4) fourth class, more than 10,000 but not exceeding 15,000; (5) fifth class, more than 3000 but not exceeding 10,000; (6) not exceeding 3000.

3 Assuming that the present population of the city is approximately as shown by the federal census of 1940.

4 C indicates city organized under freeholders charter.

5 Burbank apparently took a census of itself in 1925 and the result filed with the Secretary of State showed a population of 11,319. This automatically changed Burbank's classification for purposes of the Classification Act from sixth to fifth, if the results thereof were entered in the minutes of the council. The matter is not entirely clear for the reason that the clerk of Burbank has reported that no census was ever taken by the city.

6 N. I. indicates city not yet incorporated.
Compton took a census of itself in 1924, by which it was determined that the population was 9,966. This result was apparently entered in the minutes of the council but was not filed with the Secretary of State. This figure, therefore, is taken to be its population for purposes of the Classification Act but this census did not change its class.

<table>
<thead>
<tr>
<th>City</th>
<th>Rank</th>
<th>1920 Population (by federal Census of 1920)</th>
<th>Class under Classification Act if city should now take the census of itself or if classification is declart undetermined under section 2 of the Act</th>
<th>Class under Classification Act if city has complied with the population in fact as of the date of its incorporation</th>
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<td>23,642</td>
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<td>5</td>
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<td>16,896</td>
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<td>16,774</td>
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<td>70</td>
<td>8,937</td>
<td>5</td>
<td>FC 5</td>
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</table>

7 Compton took a census of itself in 1924, by which it was determined that the population was 9,966. This result was apparently entered in the minutes of the council but was not filed with the Secretary of State. This figure, therefore, is taken to be its population for purposes of the Classification Act but this census did not change its class.
<table>
<thead>
<tr>
<th>City</th>
<th>Rank</th>
<th>1920 Population (by federal census of 1940)</th>
<th>1930 Population (by federal census of 1920)</th>
<th>Actual class for purposes of Classification Act of 1911</th>
<th>Class under which the act of classification was approved</th>
<th>Class under which the act of incorporation was approved</th>
</tr>
</thead>
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<td>Visalia</td>
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* Pacific Grove took a census of itself in 1926 and the results filed with the Secretary of State showed a population of 4,399. This figure, therefore, is taken to be its population for purposes of the Classification Act but this census did not change its class.
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<th>Class under Classification Act if city should now take census of itself or if city is declared unincorporated under section 2 of the Act 6</th>
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*S. C. indicates city still operating under special legislative charter granted before 1879.