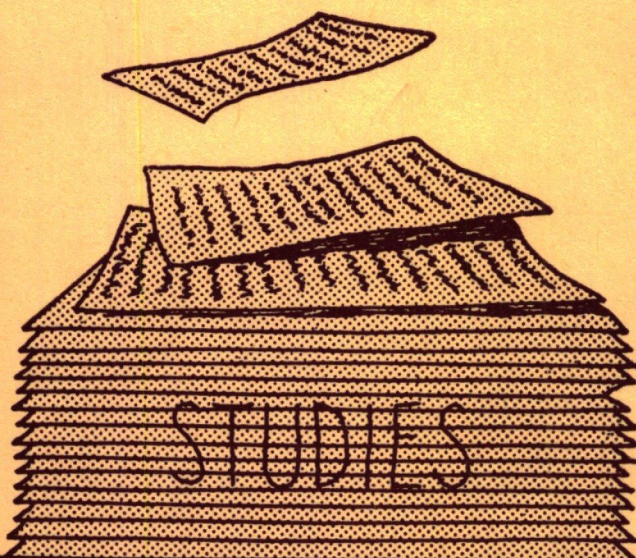
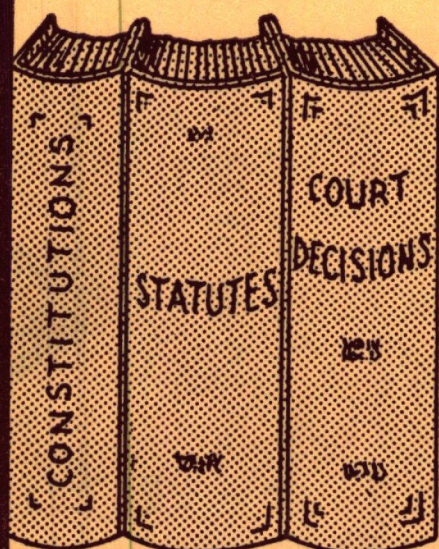
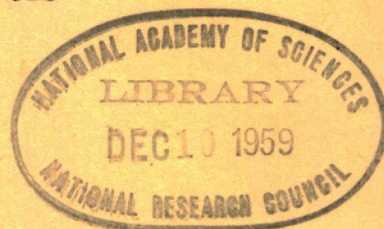


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**Special Report 50**

**STATE CONSTITUTIONAL  
PROVISIONS  
CONCERNING HIGHWAYS**

**A LEGAL ANALYSIS**



**National Academy of Sciences—**

**National Research Council**

publication 692



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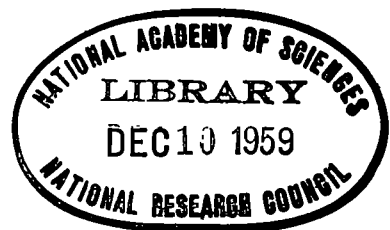
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A Report of the  
Highway Laws Project

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## **PREFACE**

Study of any law governing a public function must of necessity concern itself, at some point, with a review of constitutional provisions which set the broad boundaries within which that function may be performed

This special report, which is another in the series of law studies undertaken by the Highway Laws Committee research staff, reviews the constitutional boundaries as they relate directly or indirectly to highway operations. Other reports published in this series include "Relocation of Public Utilities Due to Highway Improvement, An Analysis of Legal Aspects" (Special Report 21), "Expressway Law, An Analysis" (Special Report 26), "Acquisition of Land for Future Highway Use, A Legal Analysis" (Special Report 27), "Condemnation of Property for Highway Purposes, A Legal Analysis" Parts I (Special Report 32) and II (Special Report 33), "Legislative Purpose in Highway Law, An Analysis" (Special Report 39), "Outdoor Advertising Along Highways, A Legal Analysis" (Special Report 41), "Highway System Classification, A Legal Analysis" Part I (Special Report 42), "Federal-Aid Provisions in State Highway Laws, An Analysis" (Special Report 48), and "Intergovernmental Relations in State Highway Legislation, An Analysis" (Special Report 49). Manuscripts entitled "Condemnation of Property for Highway Purposes, A Legal Analysis" Part III and "Highway System Classification, A Legal Analysis" Part II are in the process of review. The law relative to highway contracts is presently under analysis.

Dealing with constitutional rather than statutory law, this report differs from other legal analyses published or to be published by the Committee, both in this respect and in over-all content, since it covers the full range of pertinent subject matter found in the several constitutions. It gathers the State constitutional provisions which affect both the existing statutes and future legislation relating to highways. However, the pertinent provisions of the Hawaiian Constitution appear in Appendix C of this report inasmuch as Hawaii was not yet a State on the publication date and its constitution not yet effective.

With numerous States contemplating conventions for the purpose of revising their constitutions, this report provides a ready source of information on the current and comparative status of all State constitutions as they bear upon highway matters.

This report was researched and written by Alfred J. Tighe, assisted by Mary O. Eastwood and Edward J. Zekas, all of the Highway Laws staff. The photographs used are by courtesy of the U.S. Bureau of Public Roads.



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## **TABLE OF CONTENTS**

	<i>Page</i>
SUMMARY AND CONCLUSIONS. . . . .	1
INTRODUCTION . . . . .	6
The Role of a Constitution . . . . .	6
A Constitution and Highway Operations . . . . .	9
HIGHWAY ADMINISTRATION . . . . .	11
Powers Delegated to the State Legislature.. . . .	11
Powers Delegated to State and Local Administrative Bodies... .	12
Provision for Special Road Districts . . . . .	12
Provision for Constitutional State Highway Administrative Bodies..	13
Powers and Duties . . . . .	14
Composition of the Highway Bodies .. . . .	14
Operations of the Administrative Bodies . . . . .	15
Dismissal or Removal of Members . . . . .	15
Powers Delegated to the County Courts. . . . .	16
ACQUISITION OF PROPERTY . . . . .	17
Due Process Provisions . . . . .	17
Eminent Domain Provisions. . . . .	17
Property Which May Be Acquired . . . . .	19
Taking and Damaging . . . . .	19
Requirements When Property is Taken . . . . .	19
Time Compensation Is to Be Paid . . . . .	22
Fixing Compensation . . . . .	24
Benefits . . . . .	25
Public Use and Public Purpose . . . . .	25
Marginal Land . . . . .	27
Public Necessity . . . . .	27
FINANCE . . . . .	29
Taxation . . . . .	29
Limitations on the Amount of Taxes . . . . .	29
Special Highway Taxes . . . . .	32
Other Taxation Provisions . . . . .	33
Indebtedness . . . . .	38
Provisions Applying to the State Government . . . . .	38
Provisions Applying to County Governments . . . . .	42
Provisions Applying to Municipal Governments . . . . .	45
Provision for Highway Bond Issues . . . . .	47
Antidiversion of Funds . . . . .	47
Antidiversion of Highway User Funds . . . . .	47
Highway User Funds Dedicated . . . . .	51
Expenditure of Highway User Funds Permitted . . . . .	54
Antidiversion of Other Funds . . . . .	57

	<i>Page</i>
Prohibited Relationships Between Governmental and Non-Governmental Entities . . . . .	57
Credit and Faith . . . . .	57
Joint Ownership . . . . .	59
Transfer of Obligations . . . . .	59
INTERGOVERNMENTAL RELATIONS . . . . .	62
Federal-State Cooperative Activity . . . . .	62
State and Local Cooperative Activity . . . . .	62
INTERNAL IMPROVEMENTS . . . . .	63
LOCAL, SPECIAL OR PRIVATE LAWS . . . . .	65
SUITS AGAINST THE STATE . . . . .	67
MISCELLANEOUS PROVISIONS . . . . .	68
Hours of Work . . . . .	68
Contracts . . . . .	68
Particular Roads . . . . .	68
Roadside Advertising . . . . .	69
Convict Labor . . . . .	69
Workers' Rights . . . . .	69
APPENDIX A—TABLES OF STATE CONSTITUTIONAL PROVISIONS . . . . .	71
APPENDIX B—TABLE OF CASES CITED . . . . .	82
APPENDIX C—HAWAII PERTINENT CONSTITUTIONAL PROVISIONS AFFECTING HIGHWAY OPERATIONS . . . . .	84



## SUMMARY AND CONCLUSIONS

A constitution is a fundamental document containing the basic principles of government. It constitutes the supreme law for the jurisdiction. The Federal Constitution is regarded as a grant of power; State constitutions, a limitation of power. Under this concept, the powers of the people not specifically provided for in the Constitution reside in the State legislatures.

This report primarily presents State constitutional provisions pertaining to highways; however, Federal constitutional provisions are discussed where applicable. The provision for highway facilities is one of the basic responsibilities of government. The law applicable to highways (constitutional and legislative) should contain fixed principles as well as flexible standards to enable highway officials to provide adequate public facilities.

There are no well-settled criteria as to what a constitution should or should not contain other than that it should include only fundamental matter. Many existing constitutional provisions are basic to the American form of government, others pertain to situations peculiar to the jurisdiction.

There is considerable variation in the amount of details which States have included in their constitutions relating to highway matters. For example, is the establishment of a highway department fundamental, and, therefore, a proper subject for a constitutional provision? Or is such a matter more properly handled by legislation? In much of the analysis of highway law the elements come to the surface. In analyzing the constitutional provisions, however, this did not occur. There are no established yardsticks except the so-called "Model State Constitution." Although this model has been referred to in the report, it should be recognized that it has not been adopted by any State.

This report is organized according to functional areas of highway law—highway administration, acquisition of property; finance, intergovernmental relations, inter-

nal improvements; local, special or private laws, suits against the State, and miscellaneous provisions.

### *Highway Administration*

Twenty-two States fix authority and responsibility for highways in some manner other than providing for a State highway administrative body. For example, several jurisdictions grant authority to county courts, others to the State legislature which is authorized to enact legislation consistent with the constitutional mandate. Still others grant authority concerning highways to other governmental entities.

In fixing responsibilities for highway matters in State and local agencies and governments, what provision, if any, should be made in the constitution? Administrative agencies, such as State highway departments, are not generally the subject of constitutional authorization. Additionally, in order that there be more flexibility to meet changing needs, the details of administration are left for the State legislature to work out.

The Model State Constitution does not provide for a highway department, but rather, in keeping with its purpose of concentrating administrative power and responsibility in a single popularly-elected chief executive, provides for no more than twenty administrative departments to be headed by single executives, appointed by and subject to removal by the governor. The powers, duties and establishment of such departments are to be prescribed by law, but gubernatorial change by executive order in certain instances is provided for. Presumably a highway department would constitute one of these agencies.

*Powers Delegated to the State Legislature*—Eighteen jurisdictions make the State legislature responsible for specific highway functions. These provisions specify that the legislature may authorize the appropriation of funds for highway purposes, incur debts, engage in the construction, maintenance and repair of highways or

authorize a system of highways. For example, in Minnesota the constitution creates a trunk highway system to which the legislature may add in order to take advantage of Federal aid. The Oklahoma legislature is directed to establish a department of highways.

*Powers Delegated to State and Local Administrative Bodies*—Constitutional provisions delegate authority and responsibility for highways to some entity such as state highway commissions or departments, county supervisors or commissioners, town commissioners of highways or political subdivisions in eleven jurisdictions. In many instances such authority is limited to specific projects or facilities.

For example, four constitutions delegate responsibilities or grant jurisdiction to the counties for the construction and maintenance of county roads. Specific authority concerning highways and streets is granted to State highway departments in five States, to municipalities in two States.

*Provision for Special Road Districts*—Four States have constitutional provisions regarding special road administrative areas. Such provisions authorize the creation of road districts, sub-road districts and construction divisions within special areas.

Generally, the purposes of road administrative areas are for the construction, improvement and maintenance of roads and bridges in a particular area and usually special financing provisions are included.

*Provision for Constitutional State Highway Administrative Bodies*—Although every State has a State highway administrative body—highway department or highway commission—only four are provided for or created in the State constitution. These constitutional provisions include (or authorize the legislature to provide for) the powers and duties of such agencies, their makeup, certain operating procedures and matters concerning removal of members.

*Powers Delegated to the County Courts*—In addition to powers or responsibilities placed in the State legislature, and State and local administrative bodies, four States place or permit the administration of highway functions in local courts.

## *Acquisition of Property*

The power to acquire property and property rights is inherent in the sovereign, however, use of the power is subject to constitutional limitation. Such limitations are found in the "due process" and "just compensation" provisions in the State constitutions as well as the 14th amendment to the Federal Constitution. Due process provisions require, in effect, that no person be deprived of life, liberty or property without due process of law. Such provisions as found in all States except Kentucky, New Jersey and Rhode Island guarantee that a landowner will not be deprived of his property for highway purposes except by the process of law.

Just compensation provisions are found in all jurisdictions except New Hampshire and North Carolina although the provision in Kansas relates to corporations only. Typical provisions prohibit the taking or damaging of private property for public use without the payment of just compensation. The provisions include the following considerations:

Subject matter of eminent domain provisions

Private property (46 States).

Property and franchises of incorporated companies (21 States).

Actions involved:

Taking (46 States)

Damaging (25 States)

Appropriating (3 States)

Applying (8 States)

Destroying (5 States).

Requirements when property is taken:

Just, adequate or due compensation (46 States)

Compensation in money (2 States)

Time compensation is to be paid (31 States)

In advance (7 States).

Paid or secured to the owner (16 States)

Paid or paid into court for owner (10 States).

Manner or method of fixing compensation required (24 States)

Variances dependent upon the condemnor (13 States)

- To be fixed by law (7 States)
- To be determined by a jury (22 States).
  - In the first instance (18 States)
  - Upon appeal to trial court (6 States)
- To be determined by some other officially designated body (9 States)
- The theory of benefits and fixing compensation (13 States)
  - Instances where specifically prohibited in all cases (3 States)
  - Instances where specifically dependent upon the condemnor (10 States)
- Purposes for which property may be taken
  - Public use and purposes (44 States)
  - Private use (8 States)
- Acquisition of marginal land (11 States).
  - Who has authority to acquire
  - Under what circumstances
  - What may be done with it.
    - Sell unnecessary portions (10 States)
    - Lease unnecessary portions (5 States)
    - Power to impress restrictions upon sale (9 States)
- Questions as to public necessity
  - Within power of the legislature
  - Provisions to the contrary (4 States)
- Question of public use
  - Within judicial power
  - Specific provisions

Provisions relating to the acquisition of property are important to individual property owners, as well as the government, and such basic rights should be included in the constitution. However, it would seem that procedural matters should be handled by legislation.

### *Finance*

**Taxation**—State constitutional provisions concerning taxation may, for example, require: that all tax bills originate in the lower house of the legislature; that taxes be levied by general laws, that sufficient tax funds be raised to meet necessary expenses, and that taxes be uniform and equal. However, tax provisions included in this report have a more direct bearing upon

highways, such as, the authority to levy taxes, special assessments and special highway taxes, limitations on the amount of taxes, the requirement that the object be stated for which a tax shall apply, and the prohibition of applying such tax funds to any other object.

Tax limitation provisions in State constitutions setting an amount over and above which taxes may not be levied may be fixed by specifying a maximum amount on each dollar of assessed valuation, a maximum percent of the assessed valuation, or a maximum percentage increase over the tax for the preceding year. Twenty-four constitutions have such provisions applicable to taxes levied by the State, twenty-one are applicable to county taxes, and nineteen are applicable to municipal taxes. In some instances, taxes for certain purposes are excepted from such limitations. Examples of exceptions for highway taxes are found in Alabama, Arkansas and Kentucky.

In addition, the constitutions of twelve States authorize the legislatures to impose limitations or restrictions upon the municipal taxing power, and fourteen provisions simply grant the legislature authority to authorize municipal taxation, without specific reference to limitation. Several States authorize the legislatures to empower municipalities to make local improvements by assessments on property benefited.

Provisions in seventeen States authorize the State or local governments to levy taxes on motor vehicles and motor fuels as well as taxable real property solely for highway purposes. A motor vehicle license tax in Arizona is the only such tax levied directly by the constitution itself.

**Indebtedness**—Constitutional provisions in 44 States affect the contracting of indebtedness. Such provisions may establish the borrowing procedure, prescribe the amount of indebtedness that can be contracted; and require tax levies and redemption funds for the payment thereof. They apply in varying degrees to all units of government.

Provisions applicable to the means and methods whereby a State may incur indebtedness are found in 43 jurisdictions.

Basically, they allow for the contracting of indebtedness of unlimited amount by means of action either by the legislature or the voters. Five States have specific provisions for contracting indebtedness for highway purposes.

Constitutional indebtedness provisions in 33 jurisdictions enable counties to become indebted, set a limit on such indebtedness and establish procedures for the contracting and discharge thereof.

The constitutions in 40 jurisdictions contain indebtedness provisions which apply to cities, towns, townships, villages, municipalities, school districts, road districts, taxing districts and other political subdivisions.

Provisions in 15 States authorize bonds for highway purposes while in Kansas the constitution prohibits the issuance of bonds for the State highway system.

Indebtedness provisions are, of course, a matter of policy. Where the effective borrowing power of a jurisdiction is to reside, what measures must be complied with to make it operative, and under what circumstances exceptions are to be allowed can be determined only by valid policy decisions. Such complex matters are handled in the political arena.

The Model State Constitution (Art. VII, §702) provides that no debt be contracted by a State unless authorized by law for a single object and no such law shall take effect until it has received a favorable majority of all votes cast upon such question.

*Antidiversion of Funds*—Twenty-six States have constitutional provisions dedicating funds to highway purposes. These provisions follow the proposition that various funds are raised as an incidence of motor vehicle transportation and should therefore be used by the government for highway purposes. Typical provisions dedicate certain funds, such as motor fuel and motor vehicle taxes, for the construction, maintenance and operation of highway facilities and prohibit the use of such funds for any other purpose. In three States exceptions under certain circumstances are allowable.

In addition, provisions in 23 constitutions

prohibit the diversion of funds raised by the contracting of a debt for a specific purpose to another purpose. Seventeen of these further prohibit the proceeds of taxes levied for the purpose of discharging the debt being diverted to some other purpose at least until the debt has been discharged.

If an antidiversion clause is deemed necessary, dedication to "highway purposes," as defined by the legislature and courts would appear to be adequate.

*Prohibited Relationships Between Governmental Entities and Non-Governmental Entities*—Many constitutional provisions prohibit certain relationships between governmental units as well as governmental and non-governmental entities. Such provisions deal with "faith" and "credit," joint ownership and the assumption of obligations.

Provisions in 43 jurisdictions prohibit the utilization of the faith and credit of the government for a non-governmental purpose or the pledging of the faith and credit of one governmental unit to that of another. On the other hand, in South Dakota the State may loan or give its credit to any association or corporation organized for works of internal improvement.

Provisions in 26 jurisdictions prohibit the joint ownership or interest of governmental units with non-governmental entities. Such provisions apply to the State alone in 8 jurisdictions, to the State and other units of government in 13 jurisdictions, and to units of government other than the State in 5 jurisdictions.

Twenty-three constitutions have provisions prohibiting the transfer of the debts or liabilities of one governmental unit to that of another or the transfer of such an obligation of a private undertaking to that of a governmental unit.

### *Intergovernmental Relations*

*Federal-State Cooperative Activity*—Constitutional provisions in several States, while not limited to Federal-State highway activity, affect such cooperative projects. These provisions are usually general in nature and in most cases are not intended to serve as the basic authorization for Fed-



eral-State cooperative activity Provisions in three States authorize State acceptance of aid from the Federal Government and in two States local governments are authorized to cooperate with the Federal Government Thirteen States permit such action as is necessary to take advantage of Federal aid

*State and Local Cooperative Activity* — Only two States provide in their constitutions for agreements between State and local governments and between local governments

In some instances, it may be desirable for two or more governmental units to cooperate in providing public services or facilities, such as highway construction and maintenance A permissive statement in the constitution authorizing such cooperation between the various State, Federal and local governmental agencies would insure their general ability to cooperate in matters they are otherwise authorized by law to engage in The Model State Constitution includes such a provision.

#### *Internal Improvements*

Ten jurisdictions specifically prohibit government works of internal improvement However, either by specific exemption or judicial interpretation such prohibitions do not apply to highways

#### *Local, Special or Private Laws*

Thirty-nine States have constitutional provisions prohibiting the passage of all

local, special or private laws, stating a preference for the use of general laws in all possible situations, or, enumerating specific instances where such laws are prohibited, such as for laying out, altering or vacating streets, roads or highways Under certain circumstances however, in 11 jurisdictions such legislation for highway purposes is permissible

The value of constitutional prohibitions of local, special and private laws is obvious —to insure that all legislation shall be in the interest of the general public rather than of a privileged few.

#### *Suits Against the State*

A State may not be sued without its consent. A few constitutional provisions affirm this principle of jurisprudence On the other hand, provisions in 19 constitutions provide that the legislature shall or may direct in what courts and the procedure by which suits may be brought against the State In addition, the Idaho constitution itself provides a procedure for handling claims against the State

#### *Miscellaneous Provisions*

In addition to the foregoing, a few States have provisions which also apply to highway operations Such provisions pertain to hours of work, contracts, particular roads, roadside advertising, convict labor and workers' rights

## INTRODUCTION

Constitutional provisions concerning highway operations are the subject of this report. The constitutions of the 49 States have been studied and the appropriate provisions have been grouped into functional areas of highway application. Pertinent court decisions, attorneys general opinions, as well as other writings, were examined to gather important data on this subject. The Model State Constitution has been referred to in certain instances as a criterion (or means) of comparison with State constitutional provisions. It should be noted, however, that the model has not been adopted in its entirety in any State.

All types of constitutional provisions which may have a bearing on highway operations have been included in this study. Of course, all the judicial decisions in which a constitutional question has been raised have not been included because such a presentation would be unwieldy in view of the enormous amount of material and the various phases of the highway operation covered in the constitutions. Refinements of specific phases of highway law are handled in studies covering such specific topics as expressway laws, land acquisition for highway purposes, systems classification, treating one complete divisible segment of highway law. Constitutional provisions, however, comprise the broad principles with which all legislation and operations of the highway activities must conform. In brief, then, this report is intended to serve as a basis toward the complete analysis of highway legislation.

For presentation purposes, the provisions have been divided into the following: (a) highway administration, (b) acquisition of property, (c) finance, (d) intergovernmental relations, (e) internal improvements, (f) local, special or private laws, (g) suits against the State, and (h) miscellaneous provisions.

### THE ROLE OF A CONSTITUTION

In order to evaluate constitutional provisions relating to the highway operation,

an understanding of the nature, purpose and effect of a constitution is necessary. Basically, a constitution serves as the fundamental law of a jurisdiction.

Justice Patterson in an early United States Supreme Court decision<sup>1</sup> defined a constitution as "... the form of government, delineated by the mighty hand of the people, in which certain fixed principles of fundamental laws are established." Such a lofty definition illustrates the status of a written constitution in this society.

The authority of the people forms the basis of a constitution. Such a document is the highest form of law because it is the work of the people in their original, sovereign and unlimited capacity. It is distinguished from a legislative enactment in that the latter is the will of the legislature in its derivative and subordinate capacity. Thus, a constitution stands as the supreme law for a particular jurisdiction, and any legislative act which conflicts with the constitution is void. The preamble to the Constitution of the United States aptly depicts the constitutional basis and purpose in the following language:

We, the People of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

Many State constitutions have a similar preamble.

Generally, a constitution as conceived under the American form of government is said to

- 1 Establish the basis of the governmental system by prescribing the permanent framework under which the system operates and assigning to different departments their respective powers and duties,

- 2 Establish certain fixed principles upon which government is founded and is to operate, and

<sup>1</sup> Vanhorne's Lessee v. Dorrance, 2 U.S. (2 Dall.) 803 (1795)

3 Provide for the public welfare, which involves the safety, prosperity, health and happiness of the people<sup>2</sup>

Primarily, the Federal Constitution is regarded as a grant of powers, while a State constitution is a limitation of power<sup>3</sup> Under this concept, the powers of the people not specifically provided for in the constitution reside in the State legislatures. Thus, the State legislature can act with regard to any appropriate subject that has not been delegated to the national government, or expressly or impliedly denied to the States under the terms of the Federal Constitution, or restricted under terms of the State constitution.

In interpreting the Constitution of the United States before it was adopted, it was stated in *The Federalist* that the document would have the following status:

A constitution is, in fact, and must be regarded by the judges, as a fundamental law. It therefore belongs to them to ascertain its meaning, as well as the meaning of any particular act proceeding from the legislative body. If there should happen to be an irreconcilable variance between the two, that which has the superior obligation and validity ought, of course, to be preferred, or, in other words, the constitution ought to be preferred to the statute, the intention of the people to the intention of their agents<sup>4</sup>

The essential difference between a constitution and a statute or ordinance is that a constitution generally states principles and establishes a foundation of law and government; while a statute or ordinance provides detail for the subject which it treats. Further, a constitution is intended not merely to meet existing conditions but to govern future contingencies. It directs those who have the authority of government to do certain things and prohibits them from doing other things.

Constitutions are drafted to withstand temporary pressures but some provision must be made to permit necessary changes. Continuing analysis with constructive criticism is a process not merely to be allowed

but to be encouraged.<sup>5</sup> Provisions are found within many constitutions calling for such a procedure.

The process by which a constitution can be amended should not be overlooked in analyzing its content. If amendment is a relatively simple process, the constitution may: (a) lack qualities of permanency, (b) lack continuity, (c) be subject to passing pressures of the times, and (d) contain more than fundamental matter. On the other hand, if the amending process is too difficult, the document may be functionally outmoded and deficient in meeting the needs of the time. Ideally, a process of amending the constitution which is neither too cumbersome nor too simple is desirable.

The Federal and every State constitution provide means for amending the document but the procedures vary in many instances. The majority of the constitutions provide that specific amendments may be made by a proposal passed by two legislatures and approved by a vote of the people. Several others provide that conventions or commissions may be called for a general revision. Only the constitution of New Hampshire fails to provide for specific amendments but it does provide for a convention to be called for revising the constitution.<sup>6</sup> Others provide that amendments may be proposed by initiative petitions signed by a designated number of voters and submitted to the people without reference to the legislature. Amending a constitution, however, is usually a difficult, time-consuming process.

Table 1 shows the date of existing State constitutions, the number of times the constitutions have been amended and the date of the last change. It is interesting to note

<sup>5</sup> See Commission on Intergovernmental Relations, "A Report to the President for transmittal to the Congress" (Washington, June 1955) p. 37 which states that the Commission was confronted with the fact that many State constitutions restrict the scope, effectiveness and adaptability of State and local action. These self-imposed constitutional limitations make it difficult for many States to perform all of the services their citizens require, and consequently have frequently been the underlying cause of State and municipal pleas for Federal assistance.

It is significant, the report continues, that constitutions prepared by the founding fathers with broad grants of authority and avoidance of legislative detail have withstood the test of time far better than the constitutions later adopted by the States. A due regard for the need for stability in government requires adherence to basic constitutional principles until strong and persistent public policy requires a change. However, a dynamic society requires a constant review of legislative detail to meet changing conditions and circumstances.

The Commission finds a very real and pressing need for the States to improve their constitutions.

<sup>6</sup> N. H. CONST. PT. 2, art. 99.

<sup>2</sup> 11 AM. JUR. Constitutional Law, §6.

<sup>3</sup> See 16 C.J.S. Constitutional Law, §67. In Connecticut, however, the constitution has been construed to be a grant and not a limitation of power. *State v. Coleman*, 96 Conn. 190, 113 Atl. 385 (1921).

<sup>4</sup> THE FEDERALIST, No. LXXVIII (1788).

Table 1 Date of State Constitutions, Number of Amendments and Date Last Amended

State	Date <sup>1</sup>	Number of Amendments as of July 1955 <sup>2</sup>	Date Last Amended
Ala	1901	110	1957
Alaska	1959	—	—
Ariz	1911	36	1958
Ark	1874	42	1956
Calif	1879	372	1956
Colo	1876	56	1956
Conn	1955	—	—
Del	1897	21	1955
Fla	1885	102	1956
Ga	1945	18 <sup>3</sup>	1956
Idaho	1890	53	1956
Ill	1870	8	1954
Ind	1851	18	1952
Iowa	1857	19	1952
Kan	1859	42	1954
Ky	1891	16	1955
La	1921	326	1956
Me	1819	77	1955
Md	1867	79	1956
Mass	1780	81	1950
Mich	1908	59	1956
Minn	1857	80	1956
Miss	1890	32	1958
Mo	1945	4	1956
Mont.	1889	23	1956
Neb	1875	69	1956
Nev	1864	56	1956
N H	1783	94	1956
N J	1947	2	1957
N M	1911	36	1955
N. Y	1894	127	1955
N C	1868	28	1956
N D.	1889	64	1956
Ohio	1851	72	1956
Okla	1907	37	1956
Ore.	1857	94	1958
Pa.	1874	54	1956
R I	1843	33	1955
S C	1895	220	1957
S D	1889	60	1954
Tenn.	1870	8	1953
Tex	1876	121	1956
Utah	1896	29	1951
Vt	1793	40	1954
Va	1902	87	1956
Wash	1880	28	1956
W Va	1872	27	1956
Wis	1848	59	1956
Wyo.	1890	13	1956
Hawaii	1950 <sup>4</sup>	—	—

<sup>1</sup> The dates are not universally agreed upon. Such a situation exists, among other reasons, due to different effects attributed to constitutional conventions, time lapses between adoption and effective dates, etc.

<sup>2</sup> The number of amendments is approximate because, among other reasons, a single amendment affecting more than one section may or may not have been counted as more than a single amendment. Figures, except those for Connecticut, New Jersey and Tennessee, from THE BOOK OF THE STATES, 1956 1957, pp. 70-74.

<sup>3</sup> Local amendments excluded.

<sup>4</sup> At the time of preparation of this report, Hawaii had not yet become a State.

that amendments in 32 States were adopted since 1956, and that every State constitution has been amended since 1950, except Alaska and Connecticut which have adopted their constitutions since that time. Three of the existing constitutions were adopted in the 18th century,<sup>7</sup> 34 were adopted in the 19th century<sup>8</sup> and 12 were adopted in the 20th century<sup>9</sup>.

Although the constitutions have been amended numerous times and in many instances been subjected to rearrangements, principles basic in the American form of government have remained fixed. It is difficult to draw general conclusions predicated upon the age of a constitution alone. At first glance the sheer weight of age might indicate a measure of the continuity of fundamental principles. Closer consideration indicates, however, that in many instances early constitutional provisions are not able to cope with the changes in society and government. On the other hand, provisions in some of the more recent constitutions may also be obsolete.

Since the function of a constitution is to state the fundamental principles, the question arises—what is fundamental, and what is not fundamental and a more proper subject for legislation? For example, is the establishment of a highway department fundamental, and, therefore, a proper subject for a constitutional provision? Or is such a matter more properly handled by legislation? A survey of the constitutions indicates a wide variance in their length, content and detail. The date of adoption appears to have little bearing. Contrary to what one might expect, some of the older constitutions adopted in the 18th century, are among the shortest, while some adopted recently are lengthy and have been subjected to extensive amendment.<sup>10</sup>

Two principles in this matter appear evident: (a) that agreement as to what is and

<sup>7</sup> Massachusetts 1780, New Hampshire 1783, and Vermont 1793.

<sup>8</sup> Maine 1819, Rhode Island 1843, Wisconsin 1848, Indiana 1851, Ohio 1851, Iowa 1857, Minnesota 1857, Oregon 1857, Kansas 1859, Nevada 1864, Maryland 1867, North Carolina 1868, Illinois 1870, Tennessee 1870, West Virginia 1872, Arkansas 1874, Pennsylvania 1874, Nebraska 1875, Colorado 1876, Texas 1876, California 1879, Florida 1885, Montana 1889, North Dakota 1889, South Dakota 1889, Washington 1889, Idaho 1890, Mississippi 1890, Wyoming 1890, Kentucky 1891, New York 1894, South Carolina 1895, Utah 1895, and Delaware 1897.

<sup>9</sup> Alaska 1959, Alabama 1901, Virginia 1902, Oklahoma 1907, Michigan 1908, Arizona 1911, New Mexico 1911, Louisiana 1921, Georgia 1945, Missouri 1945, New Jersey 1947, and Connecticut 1955.

<sup>10</sup> See ALFRED DE GRAZIA *State Constitutions—Are They Growing Longer?* (State Government, April 1954, pp. 82-83) for a graphic presentation of the relationship between the length and date of adoption of the State constitutions.



is not fundamental is difficult, if not impossible; and (b) that everything generally agreed to be fundamental about the organization, conduct and control of government cannot be written into a constitution. Is not one of the basic characteristics of a state constitution, *ie*, that it is a limitation of power rather than a grant of power, predicated upon a principle such as this? It seems, therefore, that constitutions should be evaluated to some degree in terms of the practicality of specific provisions. If this premise is accepted, much discussion as to what is and is not fundamental could be avoided. With this approach, decisions as to what should be included or deleted in a constitution could be drawn from consideration of the following:

1 What should be prescribed about the structure and procedure of government to make sure that the desired end of government organization exists and the expected kind of behavior by those who exercise governmental authority is carried out?

2 What should be prescribed to make sure that the effective control of the government is in the voters and that governmental officials who determine the policies and conduct of government will be properly apprised of the voters' desires?

3 What instructions should be given to public officials and what limitations should be imposed upon them to make sure that any group which happens to be running the government will not be able, before they can be removed from office, to operate contrary to the wishes of the people?

4. Are there some policies so desirable that they should be put into effect until such time as they are modified or reversed by further constitutional change?<sup>11</sup>

#### A CONSTITUTION AND HIGHWAY OPERATIONS

An efficient highway system must serve two functions. First, it must provide an adequate network for through traffic. Second, it must provide the landowners or occupiers of a particular area with a means of local access and travel.

The demands upon the highway system today are staggering. The Congress has en-

acted legislation calling for the cooperation of the Federal and State governments for a tremendous road-building program. At present, however, the Federal-aid highway system which totals 755,278 miles represents only 22 per cent of the 3,400,000 miles of roads and streets in the United States.<sup>12</sup> Based upon the governmental activity, expense and time involved in highway construction, maintenance and operations, it is apparent that such an undertaking ranks high on the list of necessary government functions. By its nature today, highway activity is dynamic because of the changing needs and requirements of the public it serves. The many areas of law involved in the highway field must be kept current to meet these expanding needs and requirements.

From a constitutional standpoint, how should the highway function be provided for by the various States? Existing constitutions reveal a wide variance in treatment. Many provisions found in the Model State Constitution<sup>13</sup> present a marked contrast to those contained in existing constitutions. For example, article V, section 506 of the model which, though not specifically establishing a highway department, provides for the establishment by law of administrative departments which presumably would include a highway department. Some existing constitutions provide for the establishment of a highway department in detail. Other State constitutional provisions, such as those relating to indebtedness, taxation, powers of local government, intergovernmental relations, also differ. Perhaps consideration should be given to such provisions to determine whether they are properly included or are in need of revision.

There is no easy answer, nor indeed will answers tailored to meet problems of one State necessarily apply to problems of another. However, the importance of the government's highway activity and the need for legal provision for its flexible requirements appear to demand that such consideration be given.

Although this report primarily presents State constitutional provisions pertaining to

<sup>11</sup> See CHARLES S. HAYESMAN, *The Illinois Constitution and Democratic Government*, 46 Ill. L. Rev. 511 (Sept.-Oct. 1951).

<sup>12</sup> Figures from the Administration of Federal Aid Highways, B.P.R., January 1957.

<sup>13</sup> NATIONAL MUNICIPAL LEAGUE, 5th Ed., 1948.

highways, the Federal constitutional provisions are discussed where applicable. The Federal Constitution contains few provisions which pertain solely to highway matters. The Federal Government does not construct or maintain roads except on Federal lands although it plays an active and vital role in the highway field. Such a role is primarily conducted pursuant to statutory enactments which authorize and govern the Federal-State cooperative highway activity. There are certain Federal constitutional provisions, however, which do affect highway operations undertaken either by the State governments alone or as joint Federal-State projects. It must be remembered that the Federal Government can exercise only those powers which have been delegated to it. In this sense, it is a government of limited powers. However, in its sphere of delegated powers, the Federal Government is supreme. The powers not delegated are reserved to the States or to the people.<sup>14</sup>

What part do the Federal constitutional provisions play in highway projects? The Constitution contains both enabling and restrictive provisions relative to highway operations. With respect to enabling provisions, the United States Congress is given express authority to establish post roads, provide for the general welfare and common defense, regulate commerce among the several States and make all laws necessary and proper for carrying such powers into execution.<sup>15</sup> On the other hand, the restrictive provisions restrain the Federal Government from depriving any person of property without due process or taking property for a public use without just compensation.<sup>16</sup> These provisions prevent the Federal Government from merely seizing private property for highway purposes or other public purposes. These provisions are restrictions on the Federal Government, not upon the individual States. However, article I, section 10 of the United States Constitution provides that no State shall pass a law impairing the obligation of contracts. In addition, the fourteenth amendment to the Constitu-

tion specifically provides that no State shall deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. It should be noted that this provision requires that no State deprive any person of property *without due process of law*. Similar provisions are found in most of the State constitutions, some using the same phraseology, others employing phrases such as "the judgment of his peers or the law of the land," and "due course of law," all having been interpreted as bearing a similar meaning. However, the mandate contained in the fourteenth amendment must be adhered to by all jurisdictions, whether they have similar provisions or not. Nichols states that "the principle of due process (is) . . . one of the basic and fundamental rights of all persons living under the system of the common law. . . . (it) is a right which is inalienable and which governments are powerless to destroy."<sup>17</sup>

The concept of due process neither forbids nor requires a jury trial. Accordingly, Nichols states, ". . . that the assessment of damages in eminent domain proceedings by a judicial tribunal other than a jury constitutes due process of law, and consequently is not a violation of the Fifth Amendment when the taking is by the United States, or of the Fourteenth Amendment when the taking is by authority of a State."<sup>18</sup> However, the provisions of the seventh amendment of the Constitution must be considered in determining the instances in which the right to trial by jury are protected or preserved. While the seventh amendment protects the right of trial by jury in United States courts, it merely preserves the right of trial by jury in suits at common law. Nichols further states "Condemnation proceedings are not suits at common law, moreover, if a right to trial by jury had been given by this amendment, it would have been *created*, not preserved, for in this class of cases it did not previously exist."<sup>19</sup>

<sup>14</sup> U.S. CONST. amend. X

<sup>15</sup> U.S. CONST. art. I, §8

<sup>16</sup> *Id.*, amend. V

<sup>17</sup> NICHOLS, EMINENT DOMAIN, 3rd Ed., 1950, §4.2

<sup>18</sup> *Id.*, §4.105(1), and accompanying citations

<sup>19</sup> *Ibid.*

## HIGHWAY ADMINISTRATION

Provisions in the constitutions of 22 States fix authority or declare a responsibility for highways in some manner other than providing for a State highway administrative body. There is little uniformity in the provisions, however. Several jurisdictions fix responsibility in a particular court; others in the State legislature which in turn is either directed or empowered to enact legislation in light of the constitutional mandate. Still other provisions fix the responsibility for carrying out highway functions with some other governmental entity. These provisions are categorized into five groups for presentation purposes according to the authority vested with responsibilities

### POWERS DELEGATED TO THE STATE

#### LEGISLATURE

Eighteen jurisdictions have constitutional mandates specifying highway functions for which the State legislature is responsible.<sup>20</sup> Generally these provisions specify that the legislature may authorize the appropriation of funds for highway purposes, incur debts, engage in the construction, maintenance and repair of highways or authorize a State system of highways. Some provisions are direct prohibitions, as the Kansas mandate which prohibits the legislature from levying a property tax or issuing bonds for the construction and maintenance of the State system of highways.

Other provisions, however, vest the legislature with broad discretionary powers either to carry out certain functions or directing it to assume specific duties. They provide that the legislature: (a) in Oklahoma is directed to establish a department of highways; (b) in Alabama, Louisiana, Minnesota, West Virginia and Wisconsin is

authorized to appropriate funds, (c) in Oregon, Pennsylvania, West Virginia and Wyoming is authorized to incur debt, (d) in Alabama, California, Kansas, Louisiana, Michigan, Minnesota, Mississippi, Oklahoma, Oregon, South Dakota, Texas, Wisconsin and Wyoming is authorized to engage in the construction, maintenance, and repair of highways, (e) in Minnesota shall prescribe the board, officer or tribunal which will fix the location of the trunk highway system, (f) in Alabama, California, Kansas, Louisiana, Michigan, Mississippi and West Virginia is authorized to provide for systems; (g) in Minnesota may authorize agreements between the State, counties and other units of government, (h) in Georgia is required to make a fixed appropriation for highway purposes any amount not less than the total motor fuel and motor vehicle license taxes less certain costs.

Under the Minnesota constitution<sup>21</sup> a State Trunk Highway System is created, and routes numbered 1 through 70 are established with specific starting points and terminals and the various villages and cities through which such routes will pass are listed. A 12,200-mile ceiling is placed on the system, but the legislature may add thereto to meet, use, or otherwise take advantage of any Federal aid made available. Routes added by the legislature may be changed as provided by law, but the terminals and starting points as well as the villages and cities which are to be traversed cannot be changed. In addition, the legislature is authorized to provide for the establishment of a county State-aid highway system and a system of municipal State-aid streets. Mileage limitations are stipulated for both systems but they may be changed by law. Certain funds, such as the highway user tax distribution fund, the trunk highway fund, the county State-aid highway fund and the municipal State-aid street fund, are established and dedicated to highway use. The issuance of bonds is authorized and certain taxes are provided for.

<sup>20</sup> ALA CONST amend XI (art XX), amend XXI (art XXa), amend LVIII, §93, CAL CONST art IV, §36, COLO CONST art XI, §3, GA CONST art VII, §9 (§2-6404(b)), art VII, §2 (2-5501), ILL CONST art IV, §30, KAN CONST art XI, §9, LA CONST art VI, §19, MICH CONST art VIII, §26, 27, MINN CONST art XVI, §§1-7, MISS CONST art IV, §85, art VI, §170, OKLA CONST art XVI, §1, ORE CONST art XI, §7, PA CONST art IX, §§4, 16, 21, S D CONST, art XIII, §9, TEX CONST art XVI, §24, W VA CONST, GOOD ROADS AMENDMENT OF 1920, GOOD ROADS AMENDMENT OF 1928 and, FIFTY MILLION DOLLAR BOND ISSUE FOR ROADS AMENDMENT, WIS CONST art VIII, §10, WYO CONST art XVI, §9.

<sup>21</sup> MINN CONST art XVI, §§2-11.

The legislature is empowered to authorize political subdivisions to aid in the work of the trunk highway system or other public streets within their territory

In West Virginia,<sup>22</sup> on the other hand, the legislature is directed to make provisions for a system of State roads and highways connecting at least the various county seats to be under the control of State officers and agencies. For this purpose, the issuance of bonds and the levying of taxes are authorized. The Minnesota provision is the more detailed and a 1957 revision permits a certain amount of legislative discretion. It is the only constitutional provision of its type.

#### POWERS DELEGATED TO STATE AND LOCAL ADMINISTRATIVE BODIES

Constitutional provisions delegate authority and responsibility for highways to some entities such as State highway commissions, State highway departments, boards of county supervisors or commissioners, or town commissioners of highways in 11 jurisdictions.<sup>23</sup> Other provisions delegate responsibilities to (a) villages, towns and cities, counties or other similar political subdivisions, or (b) boards, officers or tribunals. In many instances, the authority delegated to these entities is limited to specific projects or facilities.

Such constitutional provisions are distinguished from those which set forth specific requirements for the erection, establishment or administration of a State highway body which is responsible for carrying out the over-all highway policies and functions of the State. In other words, the above-mentioned entities which have been delegated specific duties or functions supplement, in most cases, rather than serve as the basic highway agency of a particular State.

For example, the constitutions of Minnesota, Mississippi, North Carolina, and Ore-

gon<sup>24</sup> delegate responsibilities or grant jurisdiction to the counties for the construction and maintenance of county roads. Other provisions are broad in directing State departments or county boards or commissioners to assume specific duties relative to highways such as the Alabama constitution which directs the State highway commission to "... locate, construct, and maintain highways and State trunk roads so as to connect each county seat with the county seat of the adjoining county."<sup>25</sup>

Under other existing constitutional provisions, State highway departments have specific authority over highways in Colorado, Georgia, Maine, Missouri, and Minnesota. Parishes, municipalities and other political subdivisions in Louisiana have the right to build or acquire bridges over navigable streams, lakes or rivers.<sup>26</sup> In Michigan and Minnesota,<sup>27</sup> municipalities are granted authority over local streets. The Michigan constitution also provides for the election of a commissioner of highways in each organized township.<sup>28</sup> A Missouri provision<sup>29</sup> authorizes contracts between the State highway commission and cities, counties or other political subdivisions for the maintenance and regulation of traffic on State highways within their territory.

#### PROVISION FOR SPECIAL ROAD DISTRICTS

In addition to the entities or officials given responsibilities for carrying out highway functions, Alabama, California, Louisiana and Texas<sup>30</sup> have constitutional provisions regarding special road administrative areas. Such provisions authorize the creation of road districts, sub-road districts and construction divisions within special areas. Under the constitution, the Alabama legislature may provide for districts with most provisions applicable only to specified counties.

<sup>24</sup> MINN. CONST. art. XVI, §3, MISS. CONST. art. VI, §170, N. C. CONST. art. VII, §2, ORE. CONST. art. XI, §10.

<sup>25</sup> ALA. CONST. amend. XI (art. XV).

<sup>26</sup> LA. CONST. art. VI, §19.

<sup>27</sup> MICH. CONST. art. VIII, §§27, 28, MINN. CONST. art. XVI, §4.

<sup>28</sup> MICH. CONST. art. VIII, §18.

<sup>29</sup> MO. CONST. art. IV, §31.

<sup>30</sup> ALA. CONST. amend. XV, CAL. CONST. art. XI, §7½, LA. CONST. art. XIV, §14(c), TEX. CONST. art. III, §52d. See also ALASKA CONST. art. X, §5, which provides for the establishment of "service areas."

<sup>22</sup> W. VA. CONST. THE GOOD ROADS AMENDMENT OF 1920, THE GOOD ROADS AMENDMENT OF 1928, and FIFTY MILLION DOLLAR BOND ISSUE FOR ROADS AMENDMENT.

<sup>23</sup> ALA. CONST. amend. XI (art. XX), COLO. CONST. art. XI, §3, GA. CONST. art. VII, §9 (sec. 2 6204(b)), LA. CONST. art. VI, §19, ME. CONST. art. IX, §19, MICH. CONST. art. VIII, §§18, 27, 28, MINN. CONST. art. XVI, §§24, MISS. CONST. art. VI, §170, MO. CONST. art. IV, §§12, 29, 31, 32, 33, N. C. CONST. art. VII, §§2, 13, ORE. CONST. art. XI, §10.



In Louisiana, the legislature is empowered to authorize by general law the police juries to create road districts and sub-road districts composed of territory either wholly within a parish or within two or more parishes. California, which recognizes its counties as legal subdivisions of the State, permits any county to form a charter for its own government which may include provisions for the formation of road districts and highway construction divisions. These areas may include an entire (or a part of any) incorporated city or town providing both the assent of the majority of the electors in the affected area is obtained and a local ordinance has been enacted. The Texas constitution assumes the existence of road districts within Harris County and makes applicable to both Harris County and the road or county districts therein the provisions for elections by qualified voters in these areas for assessment of a special tax for road construction.

Generally, the purposes of road administrative areas are to construct, maintain, improve and repair public roads and bridges in a particular area. With regard to financial consideration, property assessments are provided for in Alabama, graduated con-

tribution or benefit tax<sup>31</sup> and general taxation in Louisiana, while California and Texas provide for general taxation by such districts. In California, Louisiana and Texas, an election is required prior to the use of the fund raising provisions. In addition, bonds may be sold and indebtedness incurred by the Alabama, California and Louisiana administrative areas, with both California and Louisiana requiring elections for such purposes but Alabama making an election optional. On the other hand, Texas only authorizes the collection of an annual tax under specified conditions for a period not exceeding five years.

#### PROVISION FOR CONSTITUTIONAL STATE HIGHWAY ADMINISTRATIVE BODIES

Although every State has some sort of administrative body, commission or board responsible for the highways and public road functions in the State, few such bodies are provided for or created in the State constitution itself. Four States, Arkansas, Louisiana, Missouri and New Mexico,<sup>32</sup>

<sup>31</sup> LA. CONST. art. VI, §20.

<sup>32</sup> ARK. CONST. amend. 42; LA. CONST. art. VI, §§19.1, 19.2; MO. CONST. art. IV, §§12, 29, 31, 32, 33; N. MEX. CONST. art. V, §14.

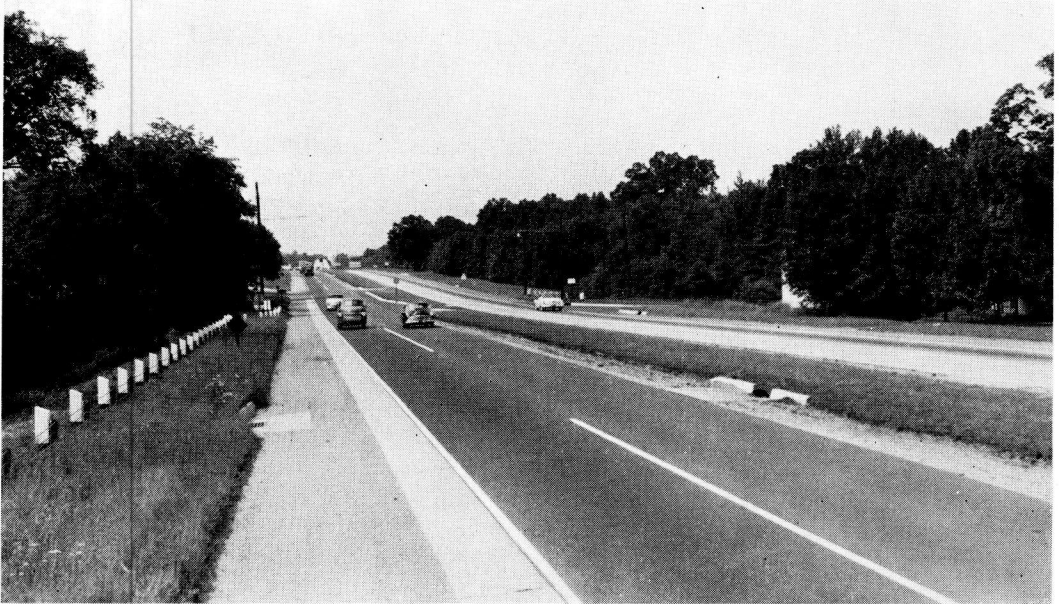


PLATE A

Experimental section on US 130, Milltown, New Jersey. Note bituminous section on left with "singing" shoulder and gravel shoulder and concrete section on right.

have constitutional provisions creating highway administrative bodies

### *Powers and Duties*

**Arkansas**—The constitution creates a State highway commission authorized with the powers and duties imposed by law for the administration of the State highway department.<sup>33</sup> The highway commissioners, appointed by the governor, have the authority to appoint a director of highways<sup>34</sup> whose duties shall be prescribed by the commission or by statute

**Louisiana**—The board of highways has authority to establish, construct, extend, improve, maintain and regulate the use of the State highways and bridges. The board has general supervisory control over the department of highways, appoints the director, formulates policies and determines the efficacy of the policies, plans and procedures of the department, and supervises all functions of the director of highways, chief and maintenance engineers, other than those specifically provided for

**Missouri**—The constitution provides that "The department of highways shall be in charge of a highway commission" The department has the authority to locate, relocate, design and maintain all State highways, construct and reconstruct and limit access to, from, and across State highways subject to the limitations and conditions imposed by law<sup>35</sup> The commission may enter into agreements with local authorities for the location of supplementary State highways in areas over which such authorities have jurisdiction If necessary, the commission may construct highways of a higher type than ordinary supplementary State highways

**New Mexico**—The constitutionally created State highway commission is respon-

sible for determining all matters of policy relating to design, construction, location and maintenance of State highways and public roads in addition to having general supervision of all highways and bridges constructed or maintained with State aid The commission also has charge, subject to such regulation as provided by law, of all matters pertaining to the expenditure of highway funds<sup>36</sup>

### *Composition of the Highway Bodies*

**Arkansas**—The governor appoints members to the 5-man State highway commission selected from qualified electors at large for a term of ten years The senate confirms the appointees. Provisions are also set forth for filling vacancies and in the event the senate rejects a governor's appointee

**Louisiana**—The board of highways is composed of one person from each of the eight congressional districts and the governor who serves in an ex-officio capacity The members are selected from the State board panel, compiled and kept by the secretary of State from a certified list of ten names submitted annually by the governing authorities of each parish and of New Orleans In the event of a vacancy, the board nominates seven persons listed on the panel from the same congressional district as the missing member The governor appoints a person from this list or he may exercise discretion and appoint anyone The board members serve either 4- or 6-year terms, staggered so that one new member is elected each year. Members are ineligible for re-appointment after serving four years or more

**Missouri**—The number, qualifications, compensation and terms of members of the highway commission are set by the legislature The constitution requires that not

<sup>33</sup> In *Arkansas State Highway Comm v Clayton*, 226 Ark 712, 292 S W 2d 77 (1956) it was held that the State highway department is not a juristic entity, the highway department employees are employees of the State and the highway department is not a political subdivision of the State

<sup>34</sup> See *Bean v Humphrey*, 223 Ark 118, 264 S W 2d 607 (1954)

<sup>35</sup> In *Public Water Supply Dist #2 v State Highway Comm*, 244 S W 2d 4 (Mo 1951), the State supreme court held it to be plain beyond question by the terms of the constitution that the State highway commission has the dominant, primary and superior dominion over highways Also see *Expressway Law, An Analysis*, H R B, Spec Rep 26, for the effects of the access limitation provision

<sup>36</sup> In the opinion of the New Mexico Attorney General (*Opinions of New Mexico Attorney General* 1951-52 (No 239) No 5588) under the provision, as it existed prior to a 1955 amendment which subjected the expenditure of funds to regulation by law, neither the State board of finance nor the governor could exercise any control over the expenditure of highway funds, since they were within the complete charge of the commission for the purposes for which appropriated Under the provision, the policy making power formerly held by the legislature was now deemed to be in the commission (*New Mexico Attorney General Opinion* 1951-52 (No 241) No 5591) Appropriations were for State highways and public roads and the policy and expenditure of the funds was up to the highway commission

more than one-half the members be of the same political party.

*New Mexico.*—The State highway commission is composed of five members, each appointed by the governor for a 6-year term from the five highway commission districts established in the constitution. The appointments must be confirmed by the senate. Each member must reside within the district from which he is appointed and a move outside the district automatically terminates his appointment. The constitution also provides that not more than three members shall belong to the same political party and in the event the governor refuses or fails to submit his appointments to the senate, the senate shall fill the vacancy.

#### *Operations of the Administrative Bodies*

Arkansas, Missouri and New Mexico have no specific constitutional provisions relating to the operating procedures such bodies will follow. Missouri does, however, set forth requirements for the highway commission in allocating funds for the construction or acquisition of supplementary State highways and bridges in each of the counties. On the other hand, the Louisiana constitution requires that the highway board hold

at least one open meeting each month and other meetings at its discretion or upon the call of the chairman. It also specifies that in case of a tie vote on the board, the governor shall cast the deciding ballot.

#### *Dismissal or Removal of Members*

The Arkansas constitution provides that State highway commissioners may be removed by the governor for the same causes as apply to other constitutional officers, or by the senate. Louisiana and Missouri have no provisions relating to the removal of board members or commissioners but the Louisiana constitution does provide for the removal of the director of highways by the highway board, and the Missouri legislature fixes the qualifications of members of the highway commission. In addition, the Missouri constitution provides that the selection and removal of commission employees shall be without regard to political affiliation. In New Mexico, the constitution provides that highway commissioners shall not be removed except for incompetence, neglect of duty or malfeasance in office. The State supreme court is given original jurisdiction over proceedings to remove commissioners. However, a change of residence

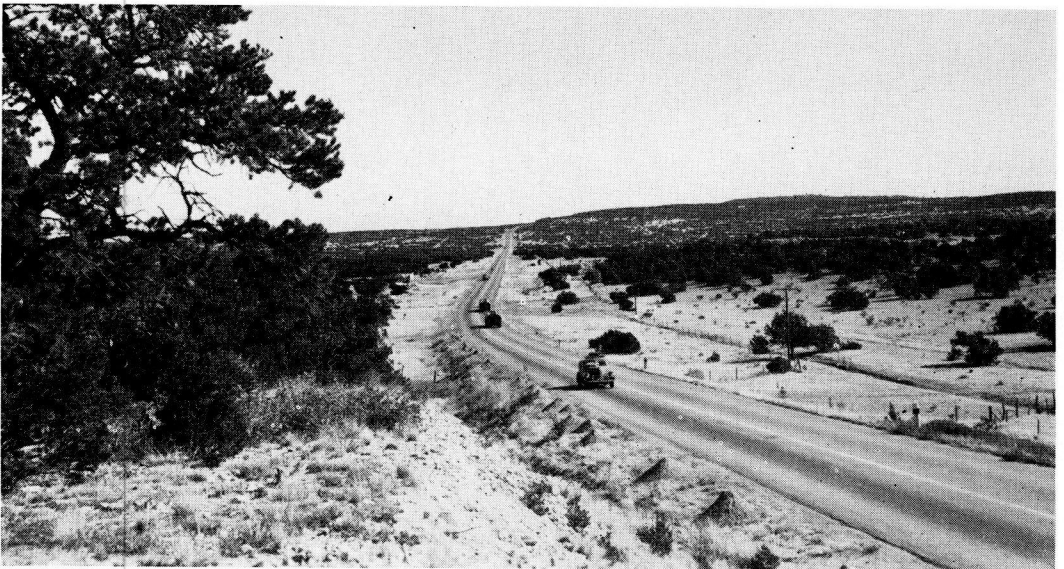


PLATE B

US 66 about 10 miles west of Clives Corner, New Mexico. New Mexico is one of four States that establish their State Highway Departments by constitution.

outside the district from which the commissioner is appointed, automatically terminates the commissioner's term. In addition, the constitution provides that the chief highway engineer, who serves as the chief administrator of the highway commission, has charge of the hiring and firing of employees of the commission subject to the control and supervision of the highway commission.<sup>37</sup>

#### POWERS DELEGATED TO THE COUNTY COURTS

Arkansas, Georgia, Missouri, and West Virginia<sup>38</sup> place or permit the administration of highway functions in local courts

<sup>37</sup> The New Mexico Attorney General prior to the 1955 amendment of this provision was of the opinion (New Mexico Attorney General Opinion 1951-52 (No 239) No 5589) that the people of New Mexico by adoption of the constitutional amendment felt that the highway commission should have charge over its own employees. This, in part, was predicated upon the fact that the paramount purpose behind the adoption of the amendment was to remove the State highway commission from all political influence and that the provisions should be interpreted to promote this purpose. However, the 1955 amendment eliminated the sentence "It shall have charge of all matters pertaining to highway employees." Whether the highway commission has complete charge of the employees or whether the legislature has retained some control has not been ruled on.

<sup>38</sup> ARK CONST art VII §28, GA CONST art VI, §6 (§2-4102), MO CONST art VI, §14, W VA CONST art VIII, §24

Georgia and West Virginia provide that the respective courts shall have such powers as may be conferred upon them by law, while Arkansas reserves to county courts original jurisdiction in enumerated cases. Missouri provides for the courts to administer powers and allocate costs among contiguous counties performing any common function or service which has received voter approval. The Arkansas provision, although being almost self-operative, requires legislative implementation for procedural matters.<sup>39</sup> The court's power has been judicially declared to relate to county, rather than State, taxes, roads, bridges and ferries.<sup>40</sup>

The West Virginia provision appears to be ineffective as far as highways are concerned, inasmuch as the legislature has provided that the State highway department take over the functions of county-district roads.<sup>41</sup> A somewhat similar situation appears to exist in Georgia<sup>42</sup> due to constitutional as well as legislative enactments.

<sup>39</sup> See *Prewitt v Warfield*, 203 Ark 137, 156 S W 2d 238 (1941), *City of El Dorado v Union County*, 122 Ark 184, 182 S W 899 (1916).

<sup>40</sup> *Connor v Blackwood*, 176 Ark 139, 2 S W 2d 44 (1928).

<sup>41</sup> W VA CODE OF 1955, §1458.

<sup>42</sup> See *Bowen v Lewis*, 201 Ga 482, 40 S E 2d 80 (1946).



## ACQUISITION OF PROPERTY

The acquisition of land and property rights for highway purposes is a major factor in the highway operation. As substantial sums of money are being channeled into the highway program, an increasing percentage thereof is being used for acquiring property rights.

Eminent domain is the power of the sovereign to take property for public use. It is conceded to be an essential attribute inherent in the sovereignty of government.<sup>43</sup> It does not require recognition by constitutional provision, but exists in absolute and unlimited form. Its existence, however, as may be seen in Arkansas,<sup>44</sup> has been expressly and fully confirmed by means of constitutional provision.

The power of eminent domain, however, remains dormant until the legislature points out occasions for its exercise. Such authorizations exist in all States.<sup>45</sup> The process involves at least three things: (a) the determination of a necessity to use the power; (b) the designation of an authority to exercise the power, and (c) a public use or purpose.

In the highway field the process involves, for example, the designation of the State highway department as having authority to acquire land needed for highway purposes. The constitutions of the several States, as well as that of the United States, assert limitations upon this inherent attribute of State sovereignty. Such limitations, general in scope, are found in the form of due process and eminent domain provisions.

### DUE PROCESS PROVISIONS

Provisions in 47 State constitutions<sup>46</sup> guarantee due process safeguards which ap-

ply to the exercise of the power of eminent domain for highway purposes. Typical provisions read: No person shall be deprived of life, liberty or property without due process of law. Superimposed upon all of these provisions, of course, is the fourteenth amendment to the Constitution which provides, in part, that no State shall deprive any person of life, liberty or property without due process of law.

There is some variance among the terms used in the provisions. Table 2 shows the terminology in the several States. All mention property (lands) specifically but there is some variance in the enumeration of other matters within their scope. Such variations, however, are not of particular significance to the highway operation.

In effect, the due process provisions, among other things, guarantee that a landowner will not be deprived of his property for highway purposes, except by the process of law. When subjected to judicial interpretation, the terms used appear, in effect, to be synonymous.<sup>47</sup>

### EMINENT DOMAIN PROVISIONS

Other provisions relevant to the taking of property are grouped under the general heading of eminent domain provisions. Table 3 shows their essential elements. The provisions, for the most part, are of a general nature. In some cases, however, other provisions are effective under certain circumstances. Examples are the provisions pertaining to corporations only, which normally are more stringent.<sup>48</sup> All the States except Kansas, New Hampshire and North Carolina have general provisions.<sup>49</sup> However, these States have due process provi-

<sup>43</sup> *Kohl v. United States*, 91 U.S. 367 (1875); *North Eastern Gas Transmission Co. v. Collins*, 138 Conn. 582, 87 A.2d 139 (1952); *Erwin v. Mississippi State Highway Comm.*, 213 Miss. 885, 58 So.2d 52 (1952); *State v. Yelle*, 46 Wash.2d 166, 279 P.2d 645 (1955).

<sup>44</sup> ARK. CONST. art. II, §23.

<sup>45</sup> See *Acquisition of Land For Future Highway Use*, H.R.B. Spec. Rep. No. 27, *Condemnation of Property For Highway Purposes*, Part I, H.R.B. Spec. Rep. No. 32, and *Condemnation of Property For Highway Purposes*, Part II, H.R.B. Spec. Rep. No. 33.

<sup>46</sup> See Table 2. Kentucky and Rhode Island provisions relate to criminal prosecutions only, whereas New Jersey has no such provision. See *State Airport Commission v. May*, 51 R.I. 110, 152 Atl. 225 (1930); *Kane v. Lapre*, 69 R.I. 330, 33 A.2d 218 (1943).

<sup>47</sup> *Parrish v. Claxon Truck Lines*, 286 S.W.2d 508 (Ky. 1956); *Sale v. State Highway and Pub. Works Comm.*, 242 N.C. 612, 89 S.E.2d 290 (1955); *State v. Demeritt*, 103 A.2d 106 (Me. 1953); *Eason v. Spence*, 232 N.C. 579, 61 S.E.2d 717 (1950); *Slansky v. State*, 192 Md. 94, 63 A.2d 599 (1949); *State v. Ballance*, 229 N.C. 764, 51 S.E.2d 731 (1949); *Gray v. Hall*, 203 Cal. 306, 265 Pac. 246 (1928); *McCov v. Kenosha County*, 195 Wis. 273, 218 N.W. 348 (1928).

<sup>48</sup> But see the KY. CONST. §§13, 242 and S.C. CONST. art. I, §17, art. IX, §20, in regard to the time of payment of compensation.

<sup>49</sup> Kansas, however, does have a provision relating to the acquisition of right of way by a corporation. KAN. CONST. art. XII, §4.

Table 2. Due Process Provisions in State Constitutions

State	Due Process	Due Course of Law	Judgment of Peers or Law of the Land	Conformably to the Laws
Ala.	Art I, sec 13			
Alaska	Art I, sec 7			
Ariz.	Art II, sec 4			
Ark	Art II, sec 8		Art II, sec 21	Art II, sec. 13
Calif.	Art I, sec 13			
Colo.	Art II, sec 25			
Conn		Art I, secs. 9, 12		
Del		Art I, sec 9	Art. I, sec. 7	
Fla.	Decl of Rts , sec 12			
Ga	Art I, §1, (§2-103)			
Idaho	Art I, sec 13			
Ill	Art II, sec 2			
Ind		Art I, sec 12		
Iowa	Art I, sec 9			
Kan		Bill of Rts sec 18		
Ky			Bill of Rts , §11 <sup>1</sup>	
La.	Art I, sec 2			
Me		Art I, sec 19		
Md			Decl. of Rts., sec 23 [§13] art XII	
Mass				
Mich	Art II, sec 16			
Minn	Art I, sec 7		Art. I, sec 2	
Miss	Art. III, sec 14			
Mo.	Art I, sec 10			
Mont	Art III, sec 27			
Neb	Art I, sec. 3			
Nev	Art. I, sec 8			
N H			Pt I, art. 15	Pt I, art. 14
N J	No provision			
N M	Art II, sec 18			
N Y	Art I, sec 6			
N C		Art I, sec. 35	Art I, <sup>2</sup> sec 17	
N D.	Art I, sec 13			
Ohio		Art. I, sec 16		
Okla	Art II, sec 7			
Ore		Art I, sec. 10		
Pa			Art. I, sec 9	
R I			Art I, sec 10 <sup>1</sup>	
S C	Art I, sec 5			
S D	Art. VI, sec 2			
Tenn		Art I, sec 17	Art. I, sec 8	
Tex		Art I, secs 13, 19		
Utah	Art I, sec 7			
Vt.				Ch 1, Art 4
Va	Art. I, sec 11			
Wash.	Art I, sec 3			
W Va.	Art III, <sup>3</sup> sec 10			
Wis				Art I, sec 9
Wyo.	Art I, sec 6			

<sup>1</sup> Provision relates to criminal prosecution only<sup>2</sup> Provision specifies "law of the land" only<sup>3</sup> Provision also includes "judgment of peers "

sions and just compensation, made or secured, is an essential element of due process with respect to the taking of private property for a public use.<sup>50</sup>

### *Property Which May Be Acquired*

Thirty-eight provisions utilize the term "private property" specifically, while six use the term "property of no person" and four make use of the term "any man's property." In addition, 21 constitutions<sup>51</sup> contain provisions which in effect provide that the property and franchises of incorporated companies are subject to the exercise of the right of eminent domain. These provisions, except the one in Texas, are worded to the effect that the exercise of the power and right of eminent domain shall never be abridged or construed to prevent the legislature (general assembly or State) from taking the property and franchises of incorporated companies (corporations) and subjecting them to the public use (necessity) the same as property of individuals.<sup>52</sup> Such provisions might be premised upon the fact that the legislature created these corporate franchises and the franchise constitutes property in the constitutional sense. Then, when the legislature considers that the public necessities require, it can only be taken by the exercise of eminent domain and the payment of just compensation.<sup>53</sup>

### *Taking and Damaging*

The provisions specify what may not be done without the payment of compensation.

<sup>50</sup> *Sale v. State Highway & Public Works Commission*, 242 N.C. 612, 89 S.E.2d 290 (1955), *Petition of State Highway Commissioner*, 279 Mich. 285, 271 N.W. 760 (1937), *Goodrich Falls Electric Co. v. Howard*, 86 N.H. 512, 171 Atl. 761 (1934).

<sup>51</sup> ALA. CONST. art. I, §28, ARIZ. CONST. art. XIV, §9, CAL. CONST. art. XII, §8, COLO. CONST. art. XV, §8, GA. CONST. art. IV, §2 (22501), IDAHO CONST. art. XI, §8, ILL. CONST. art. XI, §11, MISS. CONST. art. VII, §190, MO. CONST. art. XI, §4, MONT. CONST. art. XV, §9, NEB. CONST. art. X, §6, N. MEX. CONST. art. XI, §18, N.D. CONST. art. VII, §134, PA. CONST. art. XVI, §3, S.D. CONST. art. XVII, §4, TEX. CONST. art. I, §17, UTAH CONST. art. XII, §11, VA. CONST. art. XII, §159, WASH. CONST. art. XII, §10, W.VA. CONST. art. XI, §12, WYO. CONST. art. X, §9, 14.

<sup>52</sup> The Texas provision, in effect, states that all privileges and franchises granted by the legislature or created under its authority shall be subject to its control. TEX. CONST. art. I, §17.

<sup>53</sup> NICHOLS, EMINENT DOMAIN, 3rd Ed. (1950), §1141(5). This is in keeping with fundamental concepts relative to sovereign powers. In general, it may be said that one legislature can create private property rights which must be recognized by its successors, as by the grant of a franchise, but that it cannot impair the sovereign power of the legislature. Each legislature assumes the legislative power as fully and completely as its predecessors. The legislature cannot clothe the property of a corporation or an individual with exemption from subsequently authorized condemnation. It can, however, create private property rights, e.g., a franchise, which must be recognized when the power of eminent domain is exercised and thus, to a certain extent, hamper the exercise of the power of eminent domain

They include the taking, damaging, appropriating, applying or destroying of private property. Forty-eight constitutions prohibit the taking of property, with 26 of these adding a prohibition against the damaging of property. In addition, eight constitutions provide that private property shall not be applied; five, that it shall not be destroyed, and two, that it shall not be appropriated.

### *Requirements When Property Is Taken*

When the action (taking, damaging, etc.) is otherwise valid, in 47 States, a just, adequate, due or full compensation is expressly required as a general proposition, and in the other three States<sup>54</sup> the courts have held such compensation to be necessary.<sup>55</sup> In North Carolina the requirement of just compensation is regarded as being an integral part of the "law of the land."<sup>56</sup>

Of course, the fourteenth amendment, although devoid of just compensation language, has been interpreted by the Supreme Court to impose the limitation on the power of all States.<sup>57</sup>

In addition, in certain instances when corporations other than municipal are the condemning party, "full compensation" is specifically required. Such provisions are found in Arizona, Arkansas, California, Florida, Kansas, Nevada, North Dakota, Ohio, South Carolina and Washington. The Ohio provision requires compensation in money, while Vermont specifies that an equivalent in money must be received by the condemnee (Table 3).

by a subsequent legislature. These provisions specifically recognize this concept.

<sup>54</sup> Kansas, New Hampshire and North Carolina.  
<sup>55</sup> *Thompson v. The Androscoggin River Improv. Co.*, 58 N.H. 108 (1877), *F. W. Woolworth Co. v. Berlin*, 82 N.H. 154, 130 Atl. 741 (1925), *Piscataqua Bridge v. New Hampshire Bridge*, 7 N.H. 35 (1834), *Petition of Mt. Washington Road Co.*, 35 N.H. 134 (1857), *Ash v. Cummings*, 50 N.H. 591 (1872), *Eller v. Board of Educ.*, 242 N.C. 584, 89 S.E.2d 144 (1955), *Sale v. State Highway & Pub. Works Comm'n.*, 242 N.C. 612, 89 S.E.2d 290 (1955), *McKinney v. Deneen*, 231 N.C. 540, 58 S.E.2d 107 (1950), *Yancey v. N. Carolina State Highway & Pub. Works Comm'n.*, 222 N.C. 106, 22 S.E.2d 256 (1942). In *Sale v. State Highway & Pub. Works Comm'n.*, it was declared that where private property has been appropriated by the State for public purposes, the right of the owner to recover adequate compensation will be entertained by the courts as an exception to the principle that the sovereign cannot be sued without its consent. The court went on to say that, if no statute affords an adequate remedy for depriving an owner of private property without just compensation, the common law which provides a remedy for every wrong will furnish the appropriate action for the adequate redress of such grievance.

<sup>56</sup> *Eller v. Board of Educ. of Buncombe County*, 242 N.C. 584, 89 S.E.2d 144 (1955), *Sale v. State Highway & Pub. Works Comm'n.*, 242 N.C. 612, 89 S.E.2d 290 (1955).

<sup>57</sup> *Chicago, Burlington and Quincy R.R. Co. v. Chicago*, 166 U.S. 226 (1897), *Appleby v. Buffalo*, 221 U.S. 524 (1911), *Olson v. United States*, 292 U.S. 246 (1934).

Table 3 Just Compensation Provisions in State Constitutions<sup>1</sup>

State	Citation	Private Property	Property of No Person	Any Man's Property	Shall Not Be					For		Without				Without Consent of Representatives	Determined by a Jury	Ascertained by Board of Commissioners	Ascertained in Manner Provided by Law	Having First Been Made	Or Secured to the Owner	Or Paid Into Court for Owner
					Taken	Damaged (Injured)	Applied	Appropriated	Destroyed	Public Uses or Purposes	Private Uses	Just Compensation	Adequate Compensation	Due Compensation	Full Compensation in Case of Corporations							
Ala	Art I, §23, art XII, §235	X			X		X		X <sup>2</sup>	X	X	X					X <sup>2</sup>		X <sup>2</sup>	X		
Alaska	Art I, §18, art VIII, §16	X			X	X <sup>2</sup>				X	X	X					X <sup>2</sup>		X <sup>2</sup>	X		X
Ariz	Art II, §17	X			X	X				X	X	X					X <sup>2</sup>		X <sup>2</sup>	X		
Ark	Art II, §22, art XII, §9	X			X	X		X		X	X	X					X <sup>2</sup>		X <sup>2</sup>	X	X <sup>4</sup>	
Calif	Art I, §14	X			X	X				X	X	X			X		X <sup>2</sup>		X <sup>2</sup>	X		
Colo	Art II, §15	X			X	X				X	X	X					X	X	X	X		
Conn	Art I, §11		X		X	X				X	X	X						X		X		
Del	Art I, §8			X	X	X	X			X	X	X					X			X		
Fla	Decl of Rts, §12, art XVI, §29	X			X	X		X <sup>2</sup>		X	X	X			X		X <sup>2</sup>			X <sup>2</sup>	X	
Ga.	Art I, §3 (§2-301)	X			X	X				X	X	X	X	X					X	X		
Idaho	Art I, §14	X			X	X				X	X	X							X	X		
Ill	Art II, §13	X			X	X				X	X	X					X <sup>6</sup>			X <sup>6</sup>		
Ind	Art I, §21		X		X	X				X	X	X					X			X	X	
Iowa	Art I, §18	X			X	X				X	X	X					X			X	X	
Kan	Art XII, §47		No general provision					X				X			X		X <sup>8</sup>			X	X <sup>2</sup>	
Ky	§§13, 242			X	X	X <sup>2</sup>	X		X <sup>2</sup>	X	X	X	X	X			X <sup>8</sup>			X	X <sup>2</sup>	X <sup>9</sup>
La	Art I, §2, art VI, §19 1	X			X	X				X	X	X	X	X						X		
Me	Art I, §21	X			X	X				X	X	X	X	X			X			X	X <sup>10</sup>	X <sup>10</sup>
Md	Art III, §§40, 40A, 40B	X			X	X				X	X	X	X <sup>11</sup>							X	X <sup>10</sup>	X <sup>10</sup>
Mass	[§11] art X		X		X	X	X			X	X	X	X				X <sup>12</sup>			X		
Mich	Art XIII, §§1, 2	X			X	X				X	X	X	X				X <sup>12</sup>		X	X	X	
Minn	Art I, §13, art X, §4	X			X	X				X	X	X		X					X	X	X	
Miss	Art III, §17	X			X	X				X	X	X							X	X	X	
Mo	Art I, §§26, 28	X			X	X				X	X	X					X <sup>13</sup>	X		X	X	
Mont	Art III, §§14, 15	X			X	X				X	X	X					X <sup>13</sup>			X	X	
Neb	Art I, §21		X		X	X				X	X	X			X					X	X	
Nev	Art I §8, art VIII, §7	X			X	X				X	X	X							0 <sup>14</sup>	X	X	
N H	Pt I art 12			X	X	X	X			X	X	X	0 <sup>14</sup>				X			X <sup>15</sup>		
N J	Art I, §20	X			X	X				X	X	X								X		
N M	Art II §20	X			X	X				X	X	X					X <sup>16</sup>			X		
N Y	Art I, §7	X			X	X				X	X	X								X		
N C	No general provision				X	X				X	X	X					X <sup>8</sup>			X		
N D	Art I, §14	X			X	X				X	X	X <sup>17</sup>			X		X <sup>17</sup>			X <sup>17</sup>	X <sup>17</sup>	X <sup>17</sup>
Ohio	Art I, §19, Art XIII, §5	X			X	X				X	X	X					X			X		
Okl	Art II, §24	X			X	X				X	X	X					X			X		

Ore	Art. I, §18, art. XI, §4	X			X				X		X							X <sup>8</sup>	X <sup>4</sup>	
Pa	Art. I, §10, art. XVI, §8	X			X	X <sup>2</sup>	X		X <sup>2</sup>	X	X							X	X	
R. I	Art. I, §16	X			X				X	X	X							X <sup>8</sup>		
S. C.	Art. I, §17, art. IX, §20	X			X					X	X				X			X <sup>4</sup>	X <sup>1</sup>	
S. D.	Art. VI, §13, art. XVII, §14	X			X	X				X	X							X	X <sup>2</sup>	
Tenn	Art. I, §21			X	X		X			X	X					X		X		
Tex	Art. I, §17		X		X	X	X		X	X			X							
Utah	Art. I, §22				X	X				X	X							X <sup>18</sup>	X <sup>18</sup>	
Vt	Ch. I, arts. 2, 9	X			X	X				X	X									
Va.	Art. IV, §58, art. I, §6	X			X	X				X	X							X		
Wash	Art. I, §16	X			X	X				X	X				X			X <sup>9</sup>		X
W. Va.	Art. III, §9	X			X	X				X	X							X	X <sup>10</sup>	
Wis.	Art. I, §13, art. XI, §2		X		X					X	X							X	X <sup>10</sup>	
Wyo	Art. I, §§32, 33	X			X	X				X	X		X <sup>20</sup>							
Total		37	6	4	47	26	8	3	5	45	8	45	3	2	10	7	22	3	8	31
																			16	10

<sup>1</sup> Read entire line for full force of constitutional requirements

<sup>2</sup> Applicable when taking is by municipal and other corporations and individuals

<sup>3</sup> Applicable when taking is by corporation other than municipal

<sup>4</sup> Applicable when taking is by a corporation

<sup>5</sup> Applicable when compensation is not by the State

<sup>6</sup> Except for taking by State where compensation must be first assessed and tendered

<sup>7</sup> Applicable only when right-of-way is being appropriated to the use of a corporation

<sup>8</sup> On appeal from preliminary assessments

<sup>9</sup> Applicable when taking is for highway purposes

<sup>10</sup> Applicable when the property is in Baltimore or needed for highway purposes

<sup>11</sup> "A reasonable compensation" is required

<sup>12</sup> Not applicable when action is by commissioner of highways or road commissioners or when compensation is to be made by the State

<sup>13</sup> Applicable only for opening private roads

<sup>14</sup> No specific provision but required by judicial decree

<sup>15</sup> Applicable when taking is by individuals or private corporations

<sup>16</sup> When taking is not by the State

<sup>17</sup> When private property is taken in time of war or other public exigency, or for the purpose of making or repairing roads, which shall be open to the public without charge, the only requirement is that compensation in money shall be made to the owner

<sup>18</sup> Provision requires "an equivalent in money"

<sup>19</sup> Applicable when taking is by a company incorporated for the purpose of internal improvement

<sup>20</sup> Applicable where private property may be taken for private purposes

*Time Compensation Is to Be Paid* — Eighteen jurisdictions have no specific constitutional provision in regard to the time of the payment of compensation. Due process, it might be noted, does not require that the determination of the question of compensation be in advance of the acquisition, provided that adequate provision is made for certain payment without unreasonable delay. It is satisfied, under such circumstances, whenever adequate provision is made for the ascertainment of compensation pursuant to regular processes of law and for its payment, when ascertained, in due course of procedure.<sup>58</sup>

<sup>58</sup> *Joslin Mfg Co v Providence*, 262 U S 668 (1923), *Bragg v Weaver*, 251 U S 57, (1890), *Corzier v Krupp*, 224 U S 290 (1912)

On the other hand, 35 jurisdictions have provisions specifying the time within which compensation must be paid (Table 4). Such provisions, in general, are of three types. It is required by 30 provisions that the compensation be first paid, by 15, payment must be secured to the owner, and by 10, payment must be made into court. In instances where more than one provision is found in a State the procedure to be followed depends upon the circumstances and the condemnor.

In Arkansas, Florida, Kansas, New Jersey and West Virginia the provisions apply when property or right-of-way is appropriated by a corporation or individual. In Arkansas and Kansas full compensation in

Table 4 Time Compensation for Taking Property is to be Paid

No Provision	First Made	Secured to Owner	Paid into Court
Alaska	Ala	Ark <sup>1</sup>	Ariz
Conn	Ariz	Fla <sup>2</sup>	Calif
Del	Ark <sup>1</sup>	Iowa	Colo
Ill	Calif	Kan <sup>1</sup>	La <sup>3</sup>
Me	Colo	Ky <sup>2</sup>	Md <sup>7</sup>
Mass	Fla <sup>2</sup>	Md <sup>7</sup>	Mo
Neb	Ga	Mich	Mont
N H	Idaho	Minn	N D
N M	Iowa	Nev	Okla
N Y	Kan <sup>1</sup>	Ohio <sup>5</sup>	Wash
N C	Ky	Ore <sup>1</sup>	
R I	La	Pa	
Tenn	Md <sup>4 5</sup>	S C <sup>1</sup>	
Utah	Mich	Tex <sup>4</sup>	
Vt	Minn	W Va <sup>6</sup>	
Va	Miss		
Wis	Mo		
Wyo	Mont		
	Nev		
	N J <sup>2</sup>		
	N D		
	Ohio <sup>5</sup>		
	Okla.		
	Ore <sup>4</sup>		
	Pa		
	S C		
	S D.		
	Tex <sup>4</sup>		
	Wash		
	W Va <sup>6</sup>		
18	30	15	10

<sup>1</sup> Corporations

<sup>2</sup> Corporations and individuals

<sup>3</sup> Highway purposes

<sup>4</sup> Except for State

<sup>5</sup> Except for highway

<sup>6</sup> Internal improvement company

<sup>7</sup> For highways



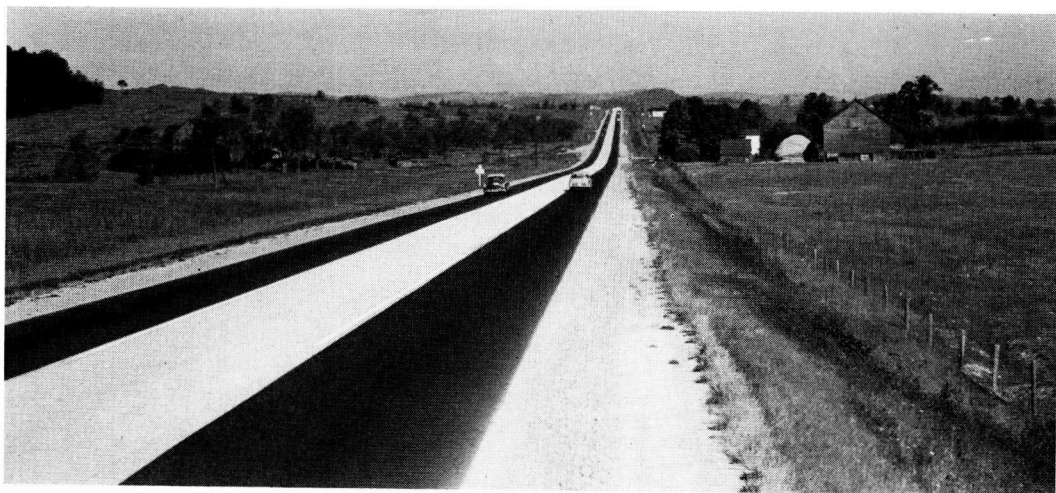


PLATE C

US 11 1 mile north of Steels Tavern, Virginia. In Virginia, as in 25 other States, the constitution prohibits the taking or damaging of private property without the payment of compensation.

money must first be made or secured by deposit. A similar Florida provision also applies when the appropriation is for an individual. In New Jersey when the appropriation is for individuals or private corporations compensation must be first made, while in West Virginia when the appropriation is by any company incorporated by internal improvements just compensation shall first be paid or secured to be paid to the owner. The provisions in Alabama, Georgia, Idaho, Mississippi and South Dakota<sup>59</sup> imply that compensation shall be first made. In 13 other jurisdictions alternatives are provided. In Arizona, California, Colorado, Missouri, Montana, North Dakota, Oklahoma and Washington<sup>60</sup> compensation must have first been paid to the owner or into court for him and in Iowa, Michigan, Minnesota, Nevada and Pennsylvania<sup>61</sup> such compensation must be first made or secured.

In eight States exceptions to the aforementioned are stipulated. In Kentucky, Oregon and South Carolina exceptions for

corporations are stipulated.<sup>62</sup> In Indiana, Oregon and Texas when the State is the condemnor exceptions are allowed. Normally in Indiana and Oregon compensation must be first assessed and tendered<sup>63</sup> and in Texas it must be first made or secured by a deposit of money.<sup>64</sup> However, the provisions do not apply to the State acting as a condemnor. In Louisiana, Maryland and Ohio, on the other hand, exceptions are made when the condemnation is for highway purposes. Normally in Louisiana<sup>65</sup> and Maryland<sup>66</sup> the compensation must be first made (or tendered in Maryland) while in Ohio it must be first paid or secured.<sup>67</sup> However, when the condemnation is for highway purposes: (a) in Louisiana the property may be appropriated prior to judgment provided provision is made for deposit with the court the amount of the appraisals of the property together with damages to which the owner may be entitled;<sup>68</sup> (b) in Maryland the general assembly may when property in the judgment of the roads commission is necessary for

<sup>59</sup> ALA. CONST. art. I, §23, art. XII, §235; GA. CONST. art. I, §3 (§2-301); IDAHO CONST. art. I, §14; MISS. CONST. art. III, §17; and S.D. CONST. art. VI, §13.

<sup>60</sup> ARIZ. CONST. art. II, §17; CAL. CONST. art. I, §14; COLO. CONST. art. II, §15; MO. CONST. art. I, §26; MONT. CONST. art. III, §14; N.D. CONST. art. I, §14; OKLA. CONST. art. II, §24; WASH. CONST. art. I, §16.

<sup>61</sup> IOWA CONST. art. I, §18; MICH. CONST. art. XIII, §1; MINN. CONST. art. I, §13; NEV. CONST. art. I, §8; PA. CONST. art. I, §10.

<sup>62</sup> KY. CONST., §§13, 242; ORE. CONST. art. I, §18, art. XI, §4; S.C. CONST. art. I, §17, art. IX, §20.

<sup>63</sup> IND. CONST. art. I, §21; ORE. CONST. art. I, §18.

<sup>64</sup> TEX. CONST. art. I, §17.

<sup>65</sup> LA. CONST. art. I, §2.

<sup>66</sup> MD. CONST. art. III, §40.

<sup>67</sup> OHIO CONST. art. I, §19.

<sup>68</sup> LA. CONST. art. VI, §19.1.

highway purposes, provide for the payment to the owners or into court such amount as the commission shall estimate to be its fair value provided such legislation also requires the payment of any further sum that may be subsequently awarded by a jury,<sup>69</sup> and (c) in Ohio when property is taken for the purpose of making or repairing toll-free roads the mandate requires only that a compensation in money be made to the owner<sup>70</sup>

*Fixing Compensation*—The amount of compensation to which a property owner is entitled when his property is taken or damaged is a judicial question.<sup>71</sup> However, the nature and character of the tribunal determining such compensation is within the discretion of the legislature. Nichols states it to be well settled that the assessment of damages in eminent domain proceedings by a judicial tribunal other than a jury constitutes due process of law and is not a violation of the fourteenth amendment.<sup>72</sup>

Constitutional provisions in some States stipulate that compensation is to be determined in a manner provided by law.<sup>73</sup> Provisions in 22 States<sup>74</sup> (Table 3), however, call for the compensation to be determined by a jury in all or in certain classes of cases.<sup>75</sup> Some apply regardless of the petitioner,<sup>76</sup> others apply when the petitioner is a corporation or individual,<sup>77</sup> or when corporations other than municipal are the moving party,<sup>78</sup> and still others apply when the petitioner is not the State, a highway or

some other specified official.<sup>79</sup> In Montana, a jury is required only in condemnation proceedings brought to acquire property for a private road.<sup>80</sup> Six of the provisions require the determination by a jury of 12 men.<sup>81</sup>

It should not be implied, however, that a jury determination is always necessary or a requisite prior to the taking of possession. Normally a trial by jury in civil cases may be waived and a failure to request a jury trial may constitute a waiver.<sup>82</sup> Some of the provisions stipulate who may request the jury. For example, the Colorado provision specifies that compensation will be determined by a jury when required by the owner of the property,<sup>83</sup> and in West Virginia, it is to be so determined when required by either of the parties.<sup>84</sup> In other instances no choice is included,<sup>85</sup> though some provide that the jury may be waived.<sup>86</sup> In Illinois and Missouri, whenever any incorporated company is interested either for or against the exercise of the power of eminent domain, the right of trial by jury shall be held inviolate.<sup>87</sup>

A number of the provisions contain specific alternatives to the jury requirement. In some instances these take the form of either-or propositions,<sup>88</sup> in others they represent a step in the condemnation procedure which takes place prior to the time the procedural question of a jury determination presents itself.<sup>89</sup> In other words, there is a clear choice of two alternatives at the outset in the former, while in the latter the landowner is ultimately guaranteed a jury determination.

<sup>69</sup> MD CONST art III, §40B

<sup>70</sup> OHIO CONST art I, §19

<sup>71</sup> NICHOLS, EMINENT DOMAIN, 3rd Ed (1950), §4 104

<sup>72</sup> *Id.*, §4 105(1)

<sup>73</sup> For example, ALA CONST art XII, §235, ARIZ CONST art II, §17, IDAHO CONST art I, §14, MICH CONST art XIII, §1, MISS CONST art III, §17, OKLA CONST art II, §24, W VA CONST art III, §9

<sup>74</sup> Ala., Ariz., Ark., Cal., Colo., Fla., Ill., Iowa, Ky., Md., Mich., Mo., Mont., N.Y., N.D., Ohio, Okla., Pa., S.C., S.D., Wash., W.Va.

<sup>75</sup> Twenty-six States provide that the right to a jury trial shall remain inviolate or continue as heretofore. See *Condemnation of Property for Highway Purposes* Part II H.R.B. Spec Rep 33, p. 21. However, it should be noted that although a jury was employed to lay out highways at common law, it was not the common law jury of twelve men presided over by a judge. The size was indeterminate and a sheriff or coroner presided. It has been held that those jurisdictions which require a jury trial have created a new right unknown at common law.

<sup>76</sup> COLO CONST art II, §15, IOWA CONST art I, §18, MD CONST art III, §§40, 40A, 40B, MO CONST art I, §26, OKLA CONST art II, §24, S.D. CONST art VI, §13, W VA CONST art III, §9

<sup>77</sup> ALA CONST art XII, §235, ARK CONST art VII, §9, CAL CONST art I, §14, FLA CONST art XVI, §29, KY CONST §242

<sup>78</sup> ARIZ CONST art II, §17, N.D. CONST art I, §14, S.C. CONST art IX, §§1, 20, WASH CONST art I, §16

<sup>79</sup> ILL CONST art II, §13, MICH CONST art XIII, §2, N.Y. CONST art I, §7, OHIO CONST art I, §19, art XIII, §5

<sup>80</sup> MONT CONST art III, §15

<sup>81</sup> ARK CONST art XII, §9, FLA CONST art XVI, §29, MICH CONST art XIII, §2, OHIO CONST art XIII, §5, S.C. CONST art IX, §20, W VA CONST art III, §9

<sup>82</sup> *Kearney v. Case*, 79 U.S. (12 Wall.) 275 (1871); *Perego v. Dodge*, 163 U.S. 160 (1896), *Duignan v. United States*, 274 U.S. 195 (1927)

<sup>83</sup> COLO CONST art II, §15

<sup>84</sup> W VA CONST art III, §9

<sup>85</sup> For example, ARK CONST art XII, §9, FLA CONST art XVI, §29, ILL CONST art II, §13, IOWA CONST art I, §18, MO CONST art I, §26, MONT CONST art III, §15, OHIO CONST art I, §19, art XIII, §5, N.Y. CONST art I, §7, S.D. CONST art VI, §13

<sup>86</sup> For example, ARIZ CONST art II, §17, CAL CONST art I, §14, N.D. CONST art I, §14, WASH CONST art I, §16

<sup>87</sup> ILL CONST art XI, §14, MO CONST art XI, §4

<sup>88</sup> COLO CONST art II, §15, MICH CONST art XIII, §2, MO CONST art I, §26, N.Y. CONST art I, §7, S.C. CONST art IX, §20

<sup>89</sup> ALA CONST art XII, §235, KY CONST §242, MD CONST art III, §§40, 40A, 40B, OKLA CONST art II, §24, PA CONST art XVI, §8, S.D. CONST art XVII, §18

Under such circumstances compensation may be determined by commissioners, viewers, appraisers, an official referee, a court or the State road commission. Qualifications, in certain instances, are stipulated. For example, Colorado and Missouri provide for a board of commissioners of not less than three freeholders; Michigan requires not less than three commissioners appointed by a court of record.<sup>90</sup> In Maryland, on the other hand, when the property needed is in Baltimore City and is desired by the State or by the mayor and city council of Baltimore, the general assembly may provide for the appointment of an appraiser by the court of record to value the property.<sup>91</sup> However, when in the judgment of the State roads commission property is needed for highway purposes, an estimate of the fair market value by the commission is provided for.<sup>92</sup>

**Benefits**—In determining the compensation to be paid for the acquisition of private property, many considerations are involved. One such factor concerns the question of benefits.

An example of the application of the benefit theory is where the public takes or damages property for highway purposes and the project as constructed benefits the remaining property. In determining compensation in such a situation, the value of the special benefit to the landowner might be used to reduce the amount of compensation to be paid if in keeping with the law of that jurisdiction.

Interpretations of just compensation, taking and damaging of property provisions, as well as distinctions between general and special benefits, play an important role in determining whether or not the benefit theory may be utilized.

A 1946 Illinois case provides an example.<sup>93</sup> The Illinois constitution provides that "private property shall not be taken or damaged for public use without just compensation."<sup>94</sup> It has no specific provision relative to benefits. However, the

State supreme court declared the rule to be long settled:

that if property is actually "taken" for a public use, the provision of the constitution requires that it shall be paid for in money regardless of benefits or advantages accruing to other property of the same owner of which he is not deprived; but that where property is not actually taken by the public for its use, the constitution requires that the owner is to be compensated in money for his damages thereto only to the extent that the benefits or advantages accruing to the property from the improvement are exceeded by the damages occasioned thereby.<sup>95</sup>

Specific provisions relative to benefits are found in 13 jurisdictions (Table 5). No distinction between general and special benefits is drawn. In Iowa, Ohio and Oklahoma general prohibitions forbid the use of the benefit theory.<sup>96</sup> In Alabama, Arizona, California, North Dakota, South Dakota and Washington deduction for benefits is prohibited in cases where the taking is in behalf of private corporations.<sup>97</sup> Municipal corporations are expressly exempted. In Arkansas, Florida, Kansas and South Carolina, however, deductions for benefits are not allowable to any corporation.<sup>98</sup> The Alabama and Florida provisions also apply where the appropriation is by an individual.

**Public Use and Public Purpose**—Just compensation provisions generally state that property may not be taken for a public use or purpose without payment. In only eight States is the exercise of the power of eminent domain for private use expressly prohibited.<sup>99</sup> However, it is a well established principle that private property cannot be taken by eminent domain except for a public purpose or use.<sup>100</sup>

It is within the power of the legislature to determine who shall exercise the power of eminent domain as well as when and where the power may be used. The legisla-

<sup>90</sup> Kane v City of Chicago, 64 N.E.2d 506 at 508.

<sup>91</sup> IOWA CONST art I, §18, OHIO CONST art I, §19, OKLA CONST art II, §24.

<sup>92</sup> ALA CONST art I, §23, ARIZ CONST art II, §17; CAL CONST art I, §14, N.D. CONST art I, §14, S.D. CONST art VI, §13, WASH CONST art I, §16.

<sup>93</sup> ARK CONST art XII, §9, FLA CONST art XVI, §29, KANS CONST art XII, §4, S.C. CONST art IX, §20.

<sup>94</sup> ALA CONST art I, §23, ARIZ CONST art II, §17, COLO CONST art II, §14, MO CONST art I, §28, OKLA CONST art II, §23, S.C. CONST art I, §17, WASH CONST art I, §16, WYO CONST art I, §32.

<sup>95</sup> Jones v North Georgia Elec. Co., 125 Ga. 618, 54 S.E. 85 (1906), Ottawa Hunting Ass'n v State, 178 Kan. 460, 280 P.2d 754 (1955).

<sup>96</sup> ILL. CONST art II, §13.

<sup>90</sup> COLO CONST art II, §15, MO CONST art I, §26, MICH CONST art XIII, §2.

<sup>91</sup> MD CONST art III, §40A.

<sup>92</sup> Id., §40B.

<sup>93</sup> Kane v City of Chicago, 392 Ill. 172, 64 N.E.2d 506 (1946).

Table 5. State Constitutional Provisions Prohibiting Setting Off Benefits in Acquisition of Property for Public Use

State	Citation	General Prohibition	Corporations	Individuals	Municipal Corporations Excepted
Ala	Art I, §23		× <sup>1</sup>	×	×
Ariz	Art II, §17		×		×
Ark	Art XII, §9		×		
Calif	Art I, §14		×		×
Fla	Art XVI, §29		×	×	
Iowa	Art I, §18	×			
Kan	Art XII, §4		×		
N D	Art I, §14		×		×
Ohio	Art I, §19	×			
Okla	Art II, §24	×			
S C	Art IX, §20		×		
S D	Art VI, §13		×		×
Wash	Art I, §16		×		×

<sup>1</sup> Alabama—"forced subscription" has been construed to mean benefits

<sup>2</sup> Iowa—"advantages" has been construed to mean benefits

<sup>3</sup> South Dakota—provision specifies that "private corporations" cannot set off benefits

ture therefore, in the first instance has the power to determine the question of public use. Nevertheless, the question whether a use is really public rather than private, is ultimately a judicial one.<sup>101</sup> However, it must be remembered that the question of public use as presented to the courts is not whether the use for which the property is taken is public, but whether the legislature might reasonably consider it to be public. In other words, if any legislative basis can be found, the action will not be considered unconstitutional.

Constitutional provisions in Arizona, Colorado, Mississippi, Missouri, Oklahoma and Washington<sup>102</sup> expressly provide that whenever an attempt is made to take private property for a use alleged to be public, the question whether the contemplated use is really public shall be a judicial question, and determined as such, without regard to any legislative assertion that the use is public. Thus, though normally the consideration due to a coordinate department of the State government would require that if the legislature has declared a use to be public, such a presumption would arise, in these States, it would appear, that the question would come before the court without any presumption either in favor of or

against the legislative assertion and would be tried as any other question submitted to the court's discretion.

On the other hand, some of the constitutions, at least by implication, designate certain uses as being public. Such provisions relevant to highway matters are exemplified by provisions in the Louisiana constitution<sup>103</sup> to the effect that the legislature shall have the power to authorize the taking of property for highway purposes by orders rendered ex parte in expropriation suits; and in the Maryland constitution,<sup>104</sup> authorizing the acquisition of land and property by the mayor and city council of Baltimore for off-street parking facilities which is declared to be a public use.

In Alaska, Georgia, Michigan, Mississippi, Montana and New York provision is made for private ways of necessity.<sup>105</sup> In the eight States where the exercise of the power of eminent domain for private use is expressly prohibited exceptions for private ways are also granted.<sup>106</sup>

Such provisions apparently go toward the weight of the presumption arising as to public use. A 1907 Idaho case handed down

<sup>103</sup> LA CONST art VI, §19.1

<sup>104</sup> MD CONST art VI, §1. See also RI CONST art XXXII, §1

<sup>105</sup> ALASKA CONST art VIII, §18, GA CONST art I, §3 (2-301), MICH CONST art XIII, §3, MISS CONST art IV, §10, MONT CONST art III, §15, NY CONST art I, §7(C).

<sup>106</sup> ALA CONST art I, §23, ARIZ CONST art II, §17, COLO CONST art II, §15, MO CONST art I, §28, OKLA CONST art II, §23, S C CONST art I, §17, WASH CONST art I, §16, WYO CONST art I, §32

<sup>101</sup> NICHOLS, EMINENT DOMAIN, 3rd Ed (1950), §7.4

<sup>102</sup> ARIZ CONST art II, §17, COLO CONST art II, §15, MISS CONST art III, §17, MO CONST art I, §28, OKLA CONST art II, §24, WASH CONST art I, §16

Table 6 Constitutional Provisions Authorizing the Acquisition of Marginal Land

State	Citations	Who has Authority						Power of		
		State	Political Sub-divisions	Counties	Municipalities	Cities	Towns	Sale	Lease	With Reservations
Calif.	Art. I, §14½	×		×		×		×		×
Mass	(§11) art. X	×		×		×	×	×		×
Mich	Art. XIII, §5				×			×	×	×
Mo	Art. I, §27	×		×		×		×		×
N. J.	Art. IV, §6, ¶3	×	×							
N. Y.	Art. I, §7			×		×		×	×	
Ohio	Art. XVIII, §10				×			×		×
Pa	Art. XV, §5					×		×	×	×
R. I.	Art. XVII, §1	×				×	×	×	×	×
Utah	Art. XI, §5					×		×	×	×
Wis	Art. XI, §3a	×				×		×		×
	Total	6	1	4	2	8	2	10	5	9

by the State supreme court<sup>107</sup> construing a constitutional provision which declares certain uses to be public uses<sup>108</sup> is in this regard worthy of note. The court stated that by the provision the authority to exercise the right of eminent domain had been extended and made broader than that right in many of the States and was not made to depend upon the narrow and restricted meaning of public use as defined by the courts of last resort in other States. Therefore, the construction placed upon the provisions in each State is important in considering the question of public use or purpose.

*Marginal Land.*—Eleven jurisdictions have constitutional provisions authorizing the acquisition of marginal land in certain instances. Such provisions declare who may acquire the excess land, whether they have the power to sell or lease portions of it that are not necessary for the intended purpose, and whether reservations can be imprinted on this land when it is sold or leased (Table 6). The jurisdictions authorized to acquire the marginal land vary and a number of significant details are included.

The provisions generally permit the acquisition of marginal land when beneficial

to the public interest. However, in California, Massachusetts, Missouri, New Jersey, New York, Pennsylvania and Rhode Island, legislation is needed to make the power effective. In Massachusetts a special act is required. Limitations such as the extent of the marginal land that may be acquired, distance from the improvement or as may be provided by law are included in eight of the provisions. All, except New Jersey, authorize the sale of portions of such land not needed. In five States the land may be leased. Under such circumstances, in Rhode Island the first opportunity to buy or lease must be given the former owner.

*Public Necessity.*—As it is within the power of the legislature to determine who shall exercise the power of eminent domain, so it is in its power to determine when and where the designated recipient of the power may use it. Therefore, when the legislature has authorized the exercise of the power of eminent domain without a constitutional limitation, a property owner, in the first instance at least, has no constitutional right to be heard by a court on the question whether the public improvement is required for the public necessity and convenience, or whether it is necessary that his land be

<sup>107</sup> Connolly v. Woods, 13 Idaho 591, 92 Pac. 573 (1907)

<sup>108</sup> IDAHO CONST. art. I, §14

taken for such improvement.<sup>109</sup> The weight of authority makes clear that the question of necessity lies within the discretion of the legislature and is not a proper subject of judicial review.<sup>110</sup> It must be noted, however, that the constitutions in Michigan, Montana, New York and Wisconsin have specific provisions bearing upon the question, although the provisions apply only in limited situations.

By the terms of these provisions, the necessity for private roads must be determined by a jury in Michigan, Montana and New York.<sup>111</sup> In New York a jury of freeholders is required, while in Michigan a

jury of six freeholders or not less than three commissioners must make the determination. In Wisconsin a municipal corporation may not take private property for public use until the necessity has been established by a jury.<sup>112</sup> Another Michigan provision requires that, when private property is taken, for the use or benefit of the public, the necessity for using such property shall be ascertained by a jury of 12 freeholders residing in the vicinity of such property or by not less than three commissioners appointed by a court of record, but the provision does not apply to the action of commissioners of highways or road commissioners in the official discharge of their duties.<sup>113</sup>

<sup>109</sup> NICHOLS, EMINENT DOMAIN, 3rd Ed (1950), §133

<sup>110</sup> *Id.*, §411. See also *Acquisition of Land for Future Highway Use*, H R B, Spec Rep No 27, p 4

<sup>111</sup> MICH CONST art XIII, §3, MONT CONST art III, §15, N Y CONST art I, §7(C)

<sup>112</sup> WIS CONST art XI, §2

<sup>113</sup> MICH CONST art XIII, §2



## FINANCE

### TAXATION

The power to tax is inherent in sovereignty. As the Tennessee court stated in an early case: "The taxing power is an essential incident of sovereignty. The only limitations upon it must be sought in the organic law. It is not *conferred* by constitutions—but we look to them only for the *limitation* upon it. If they do not exist in the constitution they do not exist at all, and the State is left to measure the exercise of this tremendous power by its necessities alone."<sup>114</sup>

Some provisions found in the State constitutions pertaining to taxation include a requirement that all tax bills originate in the lower house of the legislature, that taxes be levied by general laws, that sufficient tax funds be raised to meet necessary expenses, and that taxes be uniform and equal. Others concern valuation for tax assessment purposes, prohibit the contracting away of the taxing power and state the purposes for which the taxing power may be exercised. The foregoing provisions are included in this report when made specifically applicable to taxation for highway purposes.

State constitutional provisions which more directly relate to taxation for highway purposes include limitations on the amount of taxes, the requirement that the object be stated for which a tax shall apply and the prohibition of applying such tax funds to any other object. Other pertinent provisions relate to the authority to levy taxes, special assessments and special highway taxes.

#### *Limitations on the Amount of Taxes*

Tax limitation provisions in State constitutions generally set an amount over and above which taxes may not be levied. Such limitations may be fixed by specifying a maximum amount on each dollar of assessed valuation. Some of these provisions

are made applicable to all taxes levied within the jurisdiction, while others are made applicable only to State, county or municipal taxes.

Indebtedness limitations to be discussed in the following section are closely related to tax limitations. An indebtedness limitation restricts the governmental power of contracting indebtedness. In some jurisdictions, in order to contract indebtedness, a constitutional amendment is necessary. In some States, a legislative act approved by the voters is required, while in others a legislative act alone is sufficient. Some State constitutions stipulate the maximum amount of indebtedness which may be incurred. There has been a split in judicial opinion concerning the effect of one upon the other. For example, in the absence of a specific tax limitation, a provision limiting the power to incur debt does not necessarily operate as a limitation on the taxing power or as has been written by one eminent writer<sup>115</sup> ". . . the fact that the 'debt' limit has been reached does not affect the power to levy further taxes not in excess of the 'tax limit'." An Ohio tax limitation provision was held<sup>116</sup> to impose by implication, a debt limit on the theory that the greater includes the lesser and that the power to spend is circumscribed by the power to collect. However, in Illinois<sup>117</sup> it was held that the limitation of the taxing power of a county does not necessarily limit the county's power to incur a debt.<sup>118</sup>

Constitutional provisions in Florida, Michigan, Nevada, Ohio, Oklahoma, Washington and West Virginia<sup>119</sup> establish overall tax limitations, with some exceptions. For example, the Michigan provision limits the total amount of taxes assessed against property in any one year to 1½ percent of the assessed valuation of such property,

<sup>115</sup> COOLEY ON TAXATION, §163.

<sup>116</sup> *State ex rel Portsmouth v Kountz*, 129 Ohio St 272, 194 N.E. 869 (1935).

<sup>117</sup> *Coles County v Goehring*, 209 Ill 142, 70 N.E. 610 (1904).

<sup>118</sup> See also, *Annot.*, 97 A.L.R. 1103.

<sup>119</sup> FLA. CONST. art. IX, §1, MICH. CONST. art. X, §21, NEV. CONST. art. X, §2, OHIO CONST. art. XII, §2, OKLA. CONST. art. X, §9, WASH. CONST. art. VII, §2, W. VA. CONST. art. X, §1.

<sup>114</sup> *Freedman Bros v J H Mathes*, 55 Tenn 488, 492 (1872) (Emphasis added).

but declares that this limitation may be increased, for a period up to 20 years, to no more than 5 percent of the assessed valuation by a majority vote of the electors of any assessing district, or when provided for by the charter of a municipal corporation

The Michigan and Ohio provisions specify limitations on property taxes, the West Virginia provision specifies real and personal property. The Nevada limitation is an over-all ceiling to the total tax levy for all public purposes. In Oklahoma, the provision applies to all taxes on an ad valorem basis while the Florida provision applies only to intangible property.

Twenty-four States have constitutional tax limitations applicable to taxes levied by the State government. Nineteen of these contain exceptions for taxes such as those levied for educational purposes, to repel invasions, suppress insurrection, defend the State, to pay off debt or whatever other use is declared necessary by the legislature or the people.

The allowable tax rate varies, as does the tax base to which the rate applies. Some States use as the base the valuation of the property which is to be taxed, others use the taxable property in the whole State or the tax of the preceding year.

Twenty-one State constitutions have tax limitation provisions applicable to county taxes. The California provision authorizes the legislature to limit the amount of taxes which may be imposed upon real and personal property for county or city and county purposes, while in North Carolina the limitation applies to State and county taxes on property. Missouri has the only provision which permits a variance in the tax rate depending on the assessed valuation of the property in the county. In addition, it is expressly provided that nothing shall prevent the enactment of any general law permitting any county or other political subdivision to levy taxes other than ad valorem taxes for its essential purposes. All other provisions have fixed rates based upon the taxable or assessed valuation of the property. The Nebraska provision requires the valuation to be actual, New York uses the average full valuation as the basis,

while in Washington the assessed valuation (which is to be 50 percent of the true and fair value of the real or personal property) constitutes the base.

Fifteen of these provisions contain exceptions. The Alabama exception specifically applies to bridges and roads, and exceptions in Arkansas and Kentucky apply to county road purposes. Exceptions found in Arkansas, Kentucky and Nebraska to pay indebtedness existing at the time the constitutions were adopted are apparently now executed.

Nineteen jurisdictions have constitutional limitations upon municipal taxation.<sup>120</sup> For example, in Montana no specific rate is provided, but it is stated that the valuation for municipal tax purposes shall not exceed the valuation of the property for State and county purposes.

Table 7 indicates the constitutional provisions limiting the amount of taxes, with exceptions, applicable to the various units of government within the several States.

In addition to tax ceilings, a few State constitutions contain appropriation ceilings. In California,<sup>121</sup> such a ceiling is dependent upon the appropriations for the preceding fiscal year. The Arkansas constitution prohibits the appropriating or expending of more than \$25 million for all purposes for any biennial period except monies raised or collected for educational purposes, highway purposes, and the just debts of the State.<sup>122</sup> In Illinois all appropriations from the State treasury must end with each fiscal quarter.<sup>123</sup>

Idaho and Montana,<sup>124</sup> have provisions prohibiting any appropriation or authorizing any expenditure of the State during any fiscal year in excess of the total tax then provided by law and applicable to such appropriation or expenditure unless a sufficient tax, not exceeding the rates authorized, is levied to pay such appropriation or expenditure within the fiscal year.

<sup>120</sup> For the purposes of this study, the term municipalities includes cities, towns, townships, villages, municipalities, school districts, road districts, taxing districts and other political subdivisions.

<sup>121</sup> CAL CONST art IV, §34a

<sup>122</sup> ARK CONST art V, §39. The limit may be exceeded, however, by the votes of three fourths of the members elected to each house of the general assembly. See also art V, §31 which stipulates purposes for which taxes are allowed and the procedure necessary in the general assembly for enactment.

<sup>123</sup> ILL CONST art IV, §18

<sup>124</sup> IDAHO CONST art VII, §11, MONT CONST art XII, §12

Table 7 Constitutional Limitations on the Amount of Taxes

State	Applies to State Tax Levies	Exceptions	Applies to County Tax Levies	Exceptions	Applies to Municipal Tax Levies	Exceptions
Ala	Art XI, §214		Art XI, §215	×	Art XI, §215	×
Ark	Art XVI, §§5, 8		Art XVI, §9 amend 3	×	Art XII, §4	×
Calif.	Art IV, §34a	×	Art XI, §20			
Colo	Art X, §11	×			Art XI, §8	
Fla	Art IX, §1		Art IX, §1		Art IX, §1	
Ga	Art VII, §1 (2-5402(3))	×				
Idaho	Art VII, §9	×	Art VII, §15			
Ill.			Art IX, §8	×		
Ky.			§§157, 157a	×	§157	
La.	Art X, §3	×	Art XIV, §§8, 11	×	Art XIV, §12	×
Mich	Art X, §21	×	Art X, §10		Art X, §10	
Mo.	Art X, §8	×	Art VIII, §26		Art X, §21	×
Mont			Art X, §21			
Neb	Art XII, §9	×	Art X, §§11a, 11b, 11c, 11d	×	Art X, §11a, 11b	×
Nev	Art X, §2		Art VIII, §5	×	Art XII, §5	
N M	Art VIII, §2	×	Art X, §2		Art X, §2	
N Y.			Art VIII, §10	×	Art IX, §12	
N C	Art V, §6	×	Art V, §6	×	Art VIII, §10	×
N D	Art XI, §174	×				
Ohio	Art XII, §2	×	Art XII, §2	×	Art XII, §2	×
Okla	Art X, §9	×	Art X, §9	×	Art X, §9	×
Ore	Art XI, §11	×	Art XI, §11	×	Art XI, §11	×
S D	Art XI, §1	×				
Tex	Art VIII, §9	×	Art VIII, §9		Art VIII, §9	
Utah	Art XIII, §7	×			Art XI, §§4, 5	
Va.	Art XIII, §188					
Wash	Art VII, §2 (amend 17)	×	Art VII, §2 (amend 17)	×	Art VII, §2 (amend 17)	×
W Va	Art X, §1	×	Art X, §§1, 7	×	Art X, §1	×
Wyo	Art XV, §4	×	Art XV, §5	×	Art XV, §6	×
Total	25	20	21	15	19	12

In addition to the constitutional limitations, the constitutions of twelve States authorize the legislatures to impose limitations or restrictions upon the municipal taxing power,<sup>125</sup> and 14 State constitutional provisions simply grant the legislature power to authorize municipal taxation, without specific reference to limitation<sup>126</sup>

However, inherent in the authority to grant the power to tax is the authority to limit that power.

Twelve States have provisions relative to the construction of local improvements by means of special assessments. Arkansas<sup>127</sup> and Louisiana<sup>128</sup> have provisions to the effect that nothing in the constitution shall be construed as prohibiting the legislature from authorizing assessments on real prop-

<sup>125</sup> CAL CONST art XI, §20, KAN CONST art XII, §5, MICH CONST art VIII, §20, MISS CONST art IV, §80, NEV CONST art VIII, §8, N D CONST art VI, §130, OHIO CONST art XIII, §6, art XVIII, §13, ORE CONST art XI, §5, S C CONST art VIII, §3, S D CONST art V, §§1, 2, W VA CONST art VI, §39a, WYO CONST art XIII, §3.  
<sup>126</sup> ALASKA CONST art X, §2, ARIZ CONST art IX, §6, art VII, §13, ARK CONST art XIX, §27, ILL CONST art IX, §9, LA CONST art VI, §20, X, §13, MINN CONST art IX, §1, art XI, §5, MONT CONST art XII, §4, NEB CONST

art. VIII, §6, OKLA CONST art X, §7, S C CONST art. X, §6, S D CONST art XI, §10, TENN CONST art II, §29, UTAH CONST art XI, §5, art XIII, §5, VA CONST art XIII, §170, WASH CONST art VII, §9.  
<sup>127</sup> ARK CONST art XIX, §27.  
<sup>128</sup> LA CONST art X, §13.

erty for local improvements under certain circumstances. In addition, the Louisiana provision specifically includes constructing, paving, surfacing or otherwise improving roads and streets. In Arizona, Illinois, Minnesota, Nebraska, Oklahoma, South Dakota, Utah, Virginia and Washington<sup>129</sup> the legislatures are authorized to empower municipalities to make local improvements by special assessments or by special taxation on the property benefited. The Virginia provision is restrictive in that a municipal corporation is prohibited from imposing any local assessments for paving streets.<sup>130</sup> However, benefits may be assessed against abutting landowners for making and improving walkways upon existing streets, improving and paving existing alleys, and for the construction or use of sewers. Both Alabama and Ohio<sup>131</sup> have self-operative provisions. In Alabama, no city, town or other municipality is permitted to make any assessment for the cost of sidewalks or street paving in excess of the increased value of such property by reason of the special benefits derived from the improvements; and, in Ohio, the provision allows any municipality appropriating private property for a public improvement to provide up to 50 percent of the cost of such appropriation in the district benefited by assessments upon benefited property but not in excess of the special benefits conferred by the improvements.

In other jurisdictions, provisions are found authorizing or commanding the legislature or general assembly to limit the rate of taxation in order to prevent abuse of the power. Such provisions are found in California, Kansas, Michigan, Mississippi, Nevada, North Dakota, Ohio, Oregon, South Carolina, South Dakota, West Virginia and Wyoming.<sup>132</sup> Other provisions require that when a debt is contracted a suitable tax

must be levied to pay its interest and principal<sup>133</sup> when due. These provisions are discussed more fully in the section dealing with indebtedness.

### *Special Highway Taxes*

Provisions in 17 States deal with taxes dedicated solely to highway purposes. These provisions authorize designated governmental units to levy a particular tax or type of tax or furnish the procedure for exercising the power (Table 8).

A provision in the Arizona constitution<sup>134</sup> is the only one directly levying a tax for highway purposes. A license tax upon all vehicles registered for operation upon the highways of the State is imposed. In addition, a Louisiana provision<sup>135</sup> requires that a percentage of the proceeds from mineral leases granted by the State be placed in the "Royalty Road Fund" for highway purposes.

In Alabama, Colorado, Florida, Kansas, Louisiana, Michigan and Minnesota, the State legislature is authorized to levy special highway taxes.<sup>136</sup> Counties in Alabama, Arkansas, Kentucky, Michigan, Missouri, South Carolina and Texas are authorized to levy such taxes and in Arkansas, Missouri and South Carolina municipalities are so authorized. In some States (for example, South Carolina and Texas) the legislature is empowered to authorize the counties to levy such taxes.

Referendums are required for the levy of special assessments upon property abutting or adjacent to improvements in Alabama, Arkansas, Missouri and Texas. In South Carolina, assessments by incorporated cities and towns may be authorized by the general assembly provided the improvements are so ordered by the written consent of one-half of the owners of the affected property and that the corporate authorities pay at least one-half of the cost of such improvements.

The majority of the special highway tax provisions include purposes for which the

<sup>129</sup> ARIZ. CONST. art. IX, §6, ILL. CONST. art. IV, §9, MINN. CONST. art. IX, §1, NEB. CONST. art. VIII, §6, OKLA. CONST. art. X, §7, S.D. CONST. art. XI, §10, UTAH CONST. art. XI, §5 (Provision is self-operative if authorized by city charter), VA. CONST. art. XIII, §170, WASH. CONST. art. VII, §9.

<sup>130</sup> Hicks v. Bristol, 102 Va. 861, 47 S.E. 1001 (1904).

<sup>131</sup> ALA. CONST. art. XII, §223, OHIO CONST. art. XVIII, §11.  
<sup>132</sup> CAL. CONST. art. XI, §20, KAN. CONST. art. XII, §5, MICH. CONST. art. VIII, §25, MISS. CONST. art. IV, §80, NEV. CONST. art. VIII, §8, N.D. CONST. art. VI, §130, OHIO CONST. art. XIII, §6, art. XVIII, §13, ORE. CONST. art. XI, §5, S.C. CONST. art. VIII, §3, S.D. CONST. art. X, §1, W.VA. CONST. art. VI, §39a, WYO. CONST. art. XIII, §3.

<sup>133</sup> In some instances sinking funds are specifically required.

<sup>134</sup> ARIZ. CONST. art. IX, §11.

<sup>135</sup> LA. CONST. art. IV, §2.

<sup>136</sup> See Table 8.

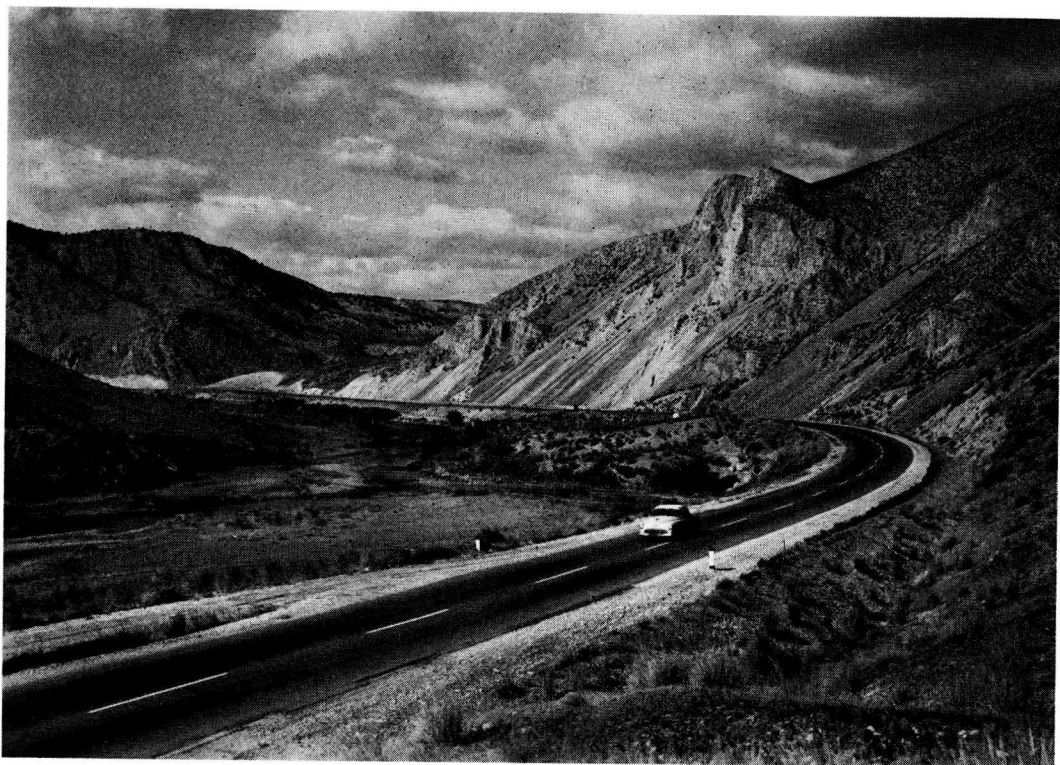


PLATE D

US 40, about 25 miles west of Elko, Nevada, along the Humboldt River. The Nevada constitution sets an over-all tax limitation for all public purposes.

tax funds may be used, such as (a) for the erection, construction or maintenance of public roads, bridges and ferries, and (b) to provide revenue for particular funds dedicated to highway uses, such as the Highway User Tax Distribution Fund in Minnesota. In other instances, the taxes are "in lieu of" other taxes. On the other hand, a Kansas provision merely reserves to the State the power to levy special taxes upon motor vehicles and motor fuels, and a Michigan provision, authorizing the licensing, registering and transferring of motor vehicles and certificates of title together with the licensing and regulating of motor vehicle dealers and operators is silent as to its purpose.

Upon whom or what the tax is to be imposed is specified in all instances with the exception of a West Virginia provision which leaves it to a legislative determination. The tax rate, however, for the most part is left to the discretion of the legislature or other body authorized to levy the

tax. Arizona, Kentucky, South Carolina and Texas stipulate a maximum tax rate, with the actual rate left to legislative discretion and determination. Louisiana and Michigan are the only States where a specific rate is provided. The Nevada provision requiring the legislature to provide by law for the annual payment of a poll tax for the maintenance and betterment of the public roads is the only one of its type. See also the Missouri provision<sup>137</sup> which recognizes outstanding bonds issued under and recognized by a prior constitution<sup>138</sup> and provides for the levy of a sufficient tax annually to pay these according to their tenor. These bonds, however, have been paid in full.

#### *Other Taxation Provisions*

In addition to limitations on the amount of taxes and special highway tax provisions,

<sup>137</sup> MO. CONST. art. IV, §34.

<sup>138</sup> MO. CONST. of 1875, art. IV, §44a.

Table 8 State Constitutional Provisions Authorizing Special Highway Taxes

State	Citation	Tax	Levy Authorized By	Purpose	Upon Whom Or What	Rate
Ala	Art XI, §215	Special tax on property	County	To pay debt incurred for the erection, construction or maintenance of bridges and roads	Property	One-fourth of one percent on the value of taxable property
	Amend XI, (art XX)	Special annual license or privilege tax	State legislature	To create a sinking fund for \$25 million bond issue	Motor vehicles	Legislature determines
	Amend XVIII			To pay indebtedness for the construction or improvement of concrete or better than concrete surfaced public roads and bridges and to connect Baldwin and Mobile Counties.	Property	One-half of one percent of the assessed value of property
	Amend XIX	Special road tax	Walker County	For the erection, construction, maintenance of public roads, bridges or ferries.	Taxable property	Fifty cents on each \$100 worth of taxable property
	Amend XXI (art XXa) amend LXXXVII	Excise tax	State legislature	To create a sinking fund for payment of \$25 million bond issue, to match Federal funds and to retire bonds of Alabama Bridge Commission	Gas or any substitute	Two cents per gallon
	Amend LXVI	County privilege license tax	Marshal County	For construction and maintenance of hard surface farm-to-market roads.	Sale or storage of gasoline or other motor fuel	Three cents per gallon
Ariz	Art IX, §11	License tax	Tax is directly imposed by constitution	In lieu of all ad valorem property taxes	Motor vehicles	(a) Rate equal to average ad valorem rate for all purposes in the taxing districts for the preceding year but never to exceed \$4 on each \$100 in value, and (b) during the first calendar year of the life of the vehicle upon a value equal to 60% of the mfg's list price and during each succeeding year upon a value 25% less than the value for the preceding year
Ark	Art XVI, §1	Special tax	Municipalities	To pay existing indebtedness, to purchase right of way, for the construction of streets and bridges, and to purchase street cleaning apparatus.	Real and personal property	Five mills on the dollar in addition to the legal rate permitted on real and personal taxable property
	Amend 3	County road tax	County courts	To make and repair public roads and bridges	Taxable property	Three mills on the dollar on all taxable property



Colo	Art X, §6	Graduated annual specific ownership tax	General assembly	In lieu of all ad valorem taxes over motor vehicles, trailers and semi-trailers.	Motor vehicles, trailers and semi-trailers	General assembly determines.
	Art XI, §3	Motor vehicle registration license fees	General assembly	To pay bonds issued to create a fund for the construction and improvement of public highways	Motor vehicles	General assembly determines
Fla	Art IX, §13	License tax	Legislature	In lieu of all ad valorem taxes assessable against motor vehicles as personal property Legislature determines purpose	Motor vehicles	Legislature determines
	Art IX, §16	Motor fuel tax	State	For the State roads distribution fund	Motor fuel	Two cents per gallon
Kan	Art XI, §10	Special taxes	State	Provision reserves the power to levy such taxes to the State	Motor vehicles and motor fuel	Legislature determines
Ky	§157a	Additional property tax	County	Paying interest on indebtedness for road purposes.	Taxable property	Twenty cents on \$100 of assessed valuation of such county
La	Art VI, §22	License tax on vehicles and fuel taxes	Legislature	To make up the general highway fund	Motor vehicles and fuel	Determined by legislature (private automobiles \$3 00, fuel five cents per gallon)
	Art VI, §23(5)	Tax and additional tax	Legislature	To make up the general highway fund	Gasoline, benzene and other motor fuels	Five cents per gallon
	Art VI, §23(5)	Use or license tax	Legislature	To make up Royalty Road Fund for building and constructing black top, concrete or other hard-surfaced roads, highways, bridges and tunnels and to purchase, operate and maintain automobile ferries.	Motor fuel	Determined by legislature
	Art IV, §§2, 2(c)	Proceeds from mineral leases			From all mineral leases	10% of royalties.
	Art X, §10	Property tax	Political subdivisions	To acquire sites for the construction or improvement of roads, bridges or other works of permanent public improvement	Property	Five mills on dollar for single purpose and not to exceed 25 mills on the dollar on any property in any year
Mich	Art. VIII, §§10, 26		County board of supervisors	For the construction or repair of public buildings or bridges	Property	One-tenth of one mill on the assessed valuation of said county per year If assessed valuation is less than \$10 million, the board may only levy a tax of \$1,000 without approval of the electors.

Table 8 State Constitutional Provisions Authorizing Special Highway Taxes (Continued)

State	Citation	Tax	Levy Authorized By	Purpose	Upon Whom Or What	Rate
Mich	Art X, §22	Licensing, registering and transferring motor vehicles and certificates of title, and licensing and regulating motor vehicle dealers and operators	Legislature	For highway purposes	Motor vehicles, dealers and operators	Legislature determines.
Minn	Art XVI, §10, art. IX, §5 Art XVI, §9	Excise tax	State	For purpose of the highway user tax distribution fund	Motor fuel or the business dealing in motor fuel	Legislature determines
		Taxation of motor vehicles	Legislature	In lieu of all taxes, except wheelage taxes imposed by political subdivision solely for highway purposes	Motor vehicles	Legislature determines
Mo	Art XVI, §12	Property tax	Legislature	In case the trunk highway fund is inadequate to pay principal and interest of authorized bonds	Taxable property of the State	Legislature determines
	Art X, §12a	Road and bridge tax	County courts, township board of directors, or other county administrative body	For road and bridge purposes	Property	\$0 35 on each \$100 assessed valuation
	Art X, §12a	Additional road and bridge tax	County court for road district	Credit of the road district	Taxable real and tangible personal property	\$0 35 on the \$100 assessed valuation
Neb	Art VIII, §1	Motor vehicle tax	State	Legislature determines	Motor vehicles	Legislature determines.
Nev	Art II, §7	Poll tax	Legislature	For the maintenance and betterment of public roads.	Male residents between 21 and 60 years	Not less than \$2 00 nor exceeding \$4 00
Ohio	Art VIII, §2c	Fees, excises or license taxes, tax on vehicle fuels	State	To discharge debts contracted for acquisition of rights-of-way, construction, reconstruction of State highways.	Motor vehicles and fuels	Legislature determines
S C	Art X, §13-A	Assessment upon abutting and adjacent property	General assembly may authorize Beaufort County to levy	To pay for permanent improvement of bridges, public roads and highways	Abutting property and adjacent property within ten miles	In proportion to the benefits derived, but the assessment of abutting property owners shall not exceed one-half the cost of the improvements
		Assessment upon abutting property	General assembly may authorize cities and towns to levy	To pay for permanent improvements on streets and sidewalks	Immediately abutting property	Corporate authorities must pay at least one-half the cost of such improvements

Texas	As the legislature may authorize	Any county or political subdivision, any number of adjoining counties, or any political subdivision of the State or any defined district	To pay indebtedness incurred for the construction, maintenance and operation of macadamized, graveled or paved roads and turnpikes or in aid thereof	Legislature determines	As legislature authorizes
Art. III, §52	Annual special tax	Harris County and road districts therein	To create a fund for constructing lasting and permanent roads and bridges.	Rendered taxable property	Determined by commissioner's court
Art. II, §52d	Ad valorem tax	Counties	For the construction and maintenance of farm-to-market roads or for flood control	Property	\$0.30 on each \$100 valuation
Art. VIII, §1-a	Ad valorem tax	Legislature may authorize county	For maintenance of public roads	Property	Fifteen cents on the \$100 valuation of the property
Art. VIII, §9					

<sup>1</sup> There are at least 15 other sections dealing with assessments of abutting property in specified cities and towns. See also *Rose v. Baskins*, 178 S.C. 69, 182 S.E. 153 (1935) which declared that the provisions of art. X, §16 do not exempt a town from the limitations upon bonded indebtedness imposed by art. VIII, §7.

several State constitutions have other tax provisions which may have a bearing on highway financing. For example, 17 States provide that the object of the tax levied must be specified.<sup>139</sup> Other provisions require that taxes be levied to provide for the expenses of government and for the payment of the principal and interest on State debt.<sup>140</sup>

In some instances, as found in Arkansas, Georgia and Louisiana,<sup>141</sup> purposes for which taxes may be assessed are specified. On the other hand, provisions in Alabama, Florida, Oklahoma, Louisiana, Texas and Virginia<sup>142</sup> list certain taxes which are prohibited from being levied for either general or State purposes. In Alabama, a tax upon any debt for rent or hire of real or personal property cannot be assessed. Parishes and municipalities in Louisiana are prohibited from levying a license tax upon any vehicle on which such tax shall be imposed for State highways. In Oklahoma the constitution provides that no ad valorem tax shall be levied for State purposes, while Florida prohibits any ad valorem taxes upon real or personal property for State purposes. Texas prohibits ad valorem taxes upon any property for general revenue purposes and Virginia does not permit a State property tax on real estate or tangible property for State purposes.

Florida, Georgia, Idaho, Minnesota, Montana, South Carolina, Tennessee, Texas and Utah<sup>143</sup> provisions deal with the authority to levy taxes. For example, the Minnesota provision stipulates that the tax powers of the counties shall be prescribed by law, while in Idaho, the legislature must provide by law such a system as will cause the

<sup>139</sup> ARIZ. CONST art. IX, §§3, 9, ARK. CONST art. XVI, §11, FLA. CONST art. IX, §9, IOWA CONST art. VII, §7, KAN. CONST art. XI, §5, KY. CONST §180, MICH. CONST art. X, §6, N.Y. CONST art. III, §22, N.C. CONST art. V, §3, ND. CONST art. XI, §175, OHIO CONST art. XII, §5, OKLA. CONST art. X, §19, ORE. CONST art. IX, §3, S.C. CONST art. X, §3, S.D. CONST art. XI, §9, WASH. CONST art. VII, §5, WYO. CONST art. XV, §13. The Kentucky and Oklahoma provisions specify that every act, ordinance and resolution levying a tax shall state the purpose for which the tax is levied.

<sup>140</sup> See for example, FLA. CONST art. IX, §2, GA. CONST art. VII, §3 (§2-5609), S.D. CONST art. XI, §1.

<sup>141</sup> ARK. CONST art. V, §39, GA. CONST art. VII, §§2 (§2-5501), 4 (§2-5701), LA. CONST art. X, §10.

<sup>142</sup> ALA. CONST art. XI, §211, FLA. CONST art. IX, §§2, 7, LA. CONST art. X, §17, OKLA. CONST art. X, §9, TEX. CONST art. VIII, §1a, VA. CONST art. XIII, §171.

<sup>143</sup> FLA. CONST art. IX, §5, GA. CONST art. VII, §§2 (§2-5501), 4 (§2-5701), IDAHO CONST art. VII, §15, MINN. CONST art. XI, §5, MONT. CONST art. XII, §4, S.C. CONST art. X, §5, TENN. CONST art. II, §29, TEX. CONST art. XI, §6, UTAH CONST art. XIII, §5.

business of the counties to be conducted on a cash basis. When warrants are outstanding and unpaid, a special tax not in excess of 10 mills on the dollar of taxable property is authorized. In Georgia and South Carolina specific purposes are listed for which levies are authorized, both including road purposes.

Tax procedural matters are stipulated in Florida, Idaho, Tennessee and Texas. In Florida and Tennessee, the principles established for State taxation must be followed for county and municipal taxation. On the other hand, in Texas the levy, assessment and collection of taxes necessary to satisfy indebtedness must be accomplished separately from taxes for current expenses of municipal government and shall, when levied, specify in the act of levying, the purpose. Such taxes may be paid in the coupons, bonds or other indebtedness for the payment of which such tax may have been levied. In Louisiana, the legislature may authorize the taxing officers of the State to impose and collect taxes required for the payment of the principal or interest on any bonded debt of any parish, and may authorize the taxing officer of the parish to impose and collect taxes required for the payment of the principal and interest of any bonded debt of any school district in such parish in the event of any default in the imposition and collection thereof.<sup>144</sup> In Missouri, Montana and Utah<sup>145</sup> on the other hand, the legislature may not levy taxes for county, town or municipal purposes but may authorize such powers in the corporate entities. In addition, it is expressly provided in Missouri that nothing shall prevent the enactment of general laws directing the payment of funds collected for State purposes to counties or other political subdivisions as State aid for local purposes.<sup>146</sup>

#### INDEBTEDNESS

A debt is an amount the State or other governmental unit is bound to pay in excess of its current revenues, as an obligation secured by its full faith and credit. The

burden of discharging public debts is upon the taxpayers. Obligations running currently with revenues are not normally considered debts. Some courts have stated that a debt within the meaning of a constitution must be one that is to be paid by a general property tax.<sup>147</sup>

Historically, as governmental activity increased, borrowing entered its program and its use increased. Soon after public borrowing began, however, abuses arose. As early as 1840 some States had acquired large debts and were forced to default. Public confidence, to say the least, was shaken and in response various limitations were advanced. The prohibition of works of internal improvement and of the loaning of the government faith and credit are among these.

The residual powers of the State legislature allow them to authorize borrowing and indebtedness. Other units of government may also become indebted in keeping with their enabling authorization.

There are however, constitutional provisions in every State except Connecticut, New Hampshire, Tennessee and Vermont which affect the contracting of indebtedness. Such provisions may establish the borrowing procedure, prescribe the amount of indebtedness that can be contracted, and require tax levies and redemption funds for the payment thereof. They apply in varying degrees to all units of government.

#### *Provisions Applying to the State Government*

Constitutional provisions providing the means and methods whereby a State may incur indebtedness are found in 44 jurisdictions. Basically they allow for the contracting of indebtedness of unlimited amount<sup>148</sup> by means of action, either by the legislature or the voters—the site of the effective borrowing power. They may require a constitutional amendment or a majority or some other vote of the people or the legislature (Table 9).

<sup>147</sup> State ex rel. Capitol Addition Bldg. Comm. v. Conneally, 39 N.M. 312, 46 P.2d 1097 (1935); State ex rel. Patzer v. Armory Bd., 174 Kan. 369, 256 P.2d 143 (1953); State v. Board of Regents, 167 Kan. 587, 207 P.2d 373 (1949).

<sup>148</sup> It should be noted, however, that due to varying circumstances to be discussed subsequently, indebtedness may never be contracted in this manner.

<sup>144</sup> LA CONST art. XIV, §14(j).

<sup>145</sup> MO CONST art. X, §10(a); MONT CONST art. XII, §4; UTAH CONST art. XIII, §5.

<sup>146</sup> MO CONST art. X, §10(b).

Table 9 Site of the Effective State Borrowing Power

In the Voters		In the Legislature	
Operative by means of			
Referendum	Constitutional Amendment	By Constitutional Provision	Absent Constitutional Provision Contrary
Alaska	Mo <sup>1</sup>	Del	Conn
Ark	Mont.	Md	Miss
Calif	N J.	Mass	N H
Idaho	N Y.	N D	Tenn
Ill	N. C.		Vt
Iowa	Okla		
Kan.	R I		
Ky	S. C		
Me	Wash		
	Ala		
	Ariz		
	Colo		
	Fla		
	Ga		
	Ind		
	La		
	Mich		
	Minn		
	Mo <sup>1</sup>		
	Neb		
	Nev		
	N M.		
	Ohio		
	Ore		
	Pa		
	S D		
	Tex		
	Utah		
	Va		
	W Va		
	Wis		
	Wyo		

<sup>1</sup> In Missouri, the provision stipulates that authorization may be either by the general assembly as on constitutional amendments or by the people by the initiative

Under these provisions, in Delaware, Maryland, Massachusetts and North Dakota the power to contract indebtedness resides specifically in the legislature,<sup>149</sup> while in Connecticut, Mississippi, New Hampshire, Tennessee and Vermont, in the absence of a provision to the contrary, it likewise resides in the legislature

In 40 States, on the other hand, the power resides in the voters. In 17 of these the power becomes operative by means of a referendum,<sup>150</sup> and in 22 a constitutional amendment is necessary. In Missouri indebtedness may be contracted either under a constitutional amendment submitted by the general assembly or on initiative by the people.<sup>151</sup>

In Arkansas and Maine voter approval of an indebtedness referendum may be given at either a general or a special election, whereas in Idaho, Iowa, Kansas, Kentucky, Montana, New Jersey, New York, Oklahoma, South Carolina and Washington such approval must be given at a gen-

eral election.<sup>152</sup> In South Carolina two-thirds of the qualified electors voting on the question must approve, while in Kansas, Maine and New Jersey a majority of those voting at the election must approve. In Illinois the law must receive a majority of the votes cast for members of the general assembly at such election.<sup>153</sup> In addition, in Kansas the debt must be authorized by a law approved by a majority of all members of each house in the legislature, while in Maine two-thirds of both houses must concur

In addition to the foregoing "normal" indebtedness, in 44 States indebtedness may be incurred by other means. For casual deficits, extraordinary expenses, other general purposes, or for refunding, defense, or other particular purposes, these "special" indebtedness provisions establish a procedure different from the normal one (Table 10)

<sup>149</sup> The Alaska, California, Illinois, Missouri, North Carolina and Rhode Island provisions are silent on this matter

<sup>150</sup> This provision (ILL CONST art IV, §18) must be interpreted to mean that such a law is adopted if it receives a number of votes equal to a majority of the number of voters voting for members of the general assembly. If the provision is given literal construction, no law creating a debt in excess of \$250,000 could be adopted because each voter has 3 votes for members of the house of representatives and this would require for ratification a greater vote than all the electors were entitled to cast. *Hagler v Small*, 307 Ill 460, 188 NE 849 (1923), *Mitchell v Lowden*, 288 Ill 327, 123 NE 500 (1919)

<sup>149</sup> DEL CONST art VIII, §3, MD CONST art III, §34, MASS CONST (§194) art I, XII, N D CONST art XII, §182, ALASKA CONST art IX, §8, ARK CONST, amend 20, CAL CONST art XVI, §1, IDAHO CONST art VIII, §1, ILL CONST art IV, §18, IOWA CONST art VII, §5, KAN CONST art XI, §7, KY CONST §50, ME CONST art IX, §14, MONT CONST art XIII, §2, N J CONST art VIII, §2, §3, N C CONST art V, §4, OKLA CONST art X, §25, R I CONST art XXXI, §1; S C CONST art X, §11, WASH CONST art VIII, §3

<sup>151</sup> MO CONST art. III, §37

Table 10 Constitutional Authority for State to Contract Indebtedness for Special Purposes

State	Citations	Casual Deficits or Extra- ordinary Expenses	Other General Purposes	Refunding Purposes	Defense Purposes <sup>1</sup>	Other Particular Purposes	Highway Purposes
Ala	Amend. XXVI	×		×	×		
Alaska	Art. IX, §8				×		
Ariz	Art IX, §5	×			×		
Ark	Amend 20	×		×			×
Calif	Art XVI, §1		×		×		
Colo	Art XI, §3	×	×		×		
Del	Art VIII, §3	×			×		
Fla	Art IX, §6				×		
Ga	Art VII, §3 (§§2-5601 to 5603)	×	×	×	×		
Idaho	Art VIII, §1		×		×		
Ill.	Art IV, §18	×			×	×	
Ind	Art X, §5	×	×		×		
Iowa	Art VII, §§2, 4, 6	×			×	×	
Kan	Art XI, §§6, 7, 8		×		×		
Ky.	§§49, 50	×		×	×	×	
Me	Art IX, §14		×		×		
Md	Art III, §34	×			×		
Mass.	[§§193, 194, 195] Art. LXII	×	×		×		
Mich.	Art X, §10	×			×		×
Minn	Art IX, §§5, 7, 8	×			×		
Mo.	Art VI, §29; art III, §37	×		×			
Mont.	Art. XIII, §2		×		×		
Neb	Art XIII, §1	×			×		
Nev.	Art IX, §3		×		×		
N J	Art VIII, §2		×		×		
N M	Art IX, §§7, 9, 16	×			×	×	×
N Y.	Art VII, §§11, 12	×			×	×	
N C	Art. V, §4	×		×	×	×	
N D	Art. XII, §182				×		
Ohio	Art VIII, §§1, 2	×		×	×		
Okla	Art X, §§16, 23, 24, 25	×			×		
Ore	Art XI, §7		×		×	×	×
Pa	Art IX, §§4, 5, 16, 21	×		×	×	×	×
R I.	Art XXXI, §§1, 2		×		×		
S. C	Art X, §10	×					
S D.	Art XIII, §§1, 2, 16	×	×		×	×	
Tex	Art III, §49	×		×	×		
Utah	Art XIV, §§1, 2, 5		×		×		
Va	Art XIII, §§184, 184a, 187	×		×	×		
Wash	Art VIII, §§1, 2, 3	×			×	×	
W Va	Art X, §4	×		×	×		
Wis	Art VIII, §§4, 6, 7	×			×		
Wyo	Art XVI, §1		×		×		
Total		30	16	11	41	10	5

<sup>1</sup> Includes provision to repel invasion, suppress insurrection, defend the State and assist the United States in time of war



Forty-one jurisdictions have such special provisions authorizing indebtedness for casual deficits, extraordinary expenses or other general purposes. The outer limit of indebtedness for such purposes is provided by 34 of the provisions. This is established by means of monetary ceilings in 28 States. In others, a percentage of the assessed valuation of property, of the debt reduction in the previous year, of the general appropriation, or taxes or other anticipated income constitutes the controlling factor. In terms of dollars the limitations range from 50,000 to 3,500,000. In terms of valuation (including both the valuation of taxable property and the assessed valuation of taxable property) they range from one-half to one and one-half percent.

Procedure prescribed to operate under these special circumstances varies. For example, in Kansas and Wisconsin a majority vote of all members elected to each house is necessary, while in Minnesota a two-thirds vote of each branch of the legislature is required for enabling legislation. In Virginia and Wyoming voter approval of the special indebtedness is required.<sup>154</sup> Some provisions require the legislature to provide for levying an annual tax sufficient to pay the interest and principal when due. Some stipulate a maximum time period for discharging the indebtedness. For example, a Minnesota mandate provides that debts not in excess of \$250,000 may be incurred to defray extraordinary expenses, provided such debt be authorized by a law which shall levy an annual tax sufficient to pay the interest annually and the principal within 10 years.<sup>155</sup> In Wisconsin, a five year maturity period is specified,<sup>156</sup> while in other jurisdictions the enabling legislation establishes the time limit.<sup>157</sup> In some States the provisions must be followed regardless of the purpose of the indebtedness, while in others they need not.<sup>158</sup>

Forty-three jurisdictions have provisions authorizing special State indebtedness for

refunding, defense,<sup>159</sup> or other particular purposes (Table 10).

Eleven jurisdictions authorize indebtedness for refunding purposes.<sup>160</sup> In Missouri such refunding bonds must mature not more than 25 years from date.

Forty-one jurisdictions authorize indebtedness for defense purposes.<sup>161</sup> As a matter of procedure, in Alabama such enabling legislation must receive a two-thirds vote in the legislature, while the Florida provision constitutes the only purpose for which State indebtedness may be contracted without a constitutional amendment.

In some jurisdictions exceptions to the normal indebtedness provisions are provided for other particular purposes. Among these are provisions authorizing indebtedness to provide for a failure in the revenue,<sup>162</sup> in anticipation of taxes due,<sup>163</sup> or to meet expenses not provided for.<sup>164</sup> In Arkansas, Michigan, New Mexico, Oregon and Pennsylvania exceptions for highway purposes are found.

For normal indebtedness, a constitutional amendment is necessary in Michigan, New Mexico, Oregon and Pennsylvania, while voter approval of a referendum is necessary in Arkansas. However, in Michigan the State may exceed its \$250,000 special indebtedness provision and borrow not in excess of \$50 million for the improvement of highways.<sup>165</sup> In New Mexico the State may temporarily exceed its special indebtedness

<sup>159</sup> Includes provision to repel invasion, suppress insurrection, defend the State and assist the U.S. in time of war.

<sup>160</sup> ALA. CONST amend XXVI, ARK CONST amend 20, GA CONST art VII, §3 (§2 5601), KY CONST §49, MO CONST art III, §37, N.C. CONST art V, §4, OHIO CONST art VIII, §2, PA CONST art IX, §4, TEX CONST art III, §49, VA CONST art XIII, §184, W.VA CONST art X, §4.

<sup>161</sup> ALASKA CONST art IX, §8, ALA CONST amend XXVI; ARIZ CONST art IX, §5, CAL CONST art XVI, §1, COLO CONST art XI, §3, DEL CONST art VIII, §3, FLA CONST art IX, §6, GA CONST art VII, §3 (§§2 5601-02), IDAHO CONST art VIII, §1, ILL CONST art IV, §18, IND CONST art X, §5; IOWA CONST art VII, §4, KAN CONST art XI, §8, KY CONST §49, LA CONST art IV, §2, MAINE CONST art IX, §14, MD CONST art III, §34, MASS CONST [§193] art LXII, MICH CONST art X, §10, MINN CONST art IX, §7, MONT CONST art XIII, §2, NEB CONST art XIII, §1, NEV CONST art IX, §3, N.J. CONST art VIII, §2, N.MEX CONST art IX, §7, N.Y. CONST art VII, §11, N.C. CONST art V, §4, N.D. CONST art XII, §182, OHIO CONST art VIII, §2, OKLA CONST art X, §24, ORE CONST art XI, §7, PA CONST art IX, §4, R.I. CONST art XXXI, §1, S.D. CONST art XIII, §2, TEX CONST art III, §49, UTAH CONST art XIV, §2, VA CONST art XIII, §184, WASH CONST art VIII, §2, W.VA CONST art X, §4, WIS CONST art VIII, §7.

<sup>162</sup> For example, ILL CONST art IV, §18, IOWA CONST art VII, §2, KY CONST §49, N.MEX CONST art IX, §7, WASH CONST art VIII, §1.

<sup>163</sup> For example, N.Y. CONST art VII, §11, N.C. CONST art V, §4.

<sup>164</sup> For example, WASH CONST art VIII, §1.

<sup>165</sup> MICH CONST art X, §10.

<sup>154</sup> VA CONST art XIII, §184a, WYO CONST art XVI, §§1, 2.

<sup>155</sup> MINN CONST art IX, §5.

<sup>156</sup> WIS CONST art VIII, §6.

<sup>157</sup> For example, MONT CONST art VIII, §2, S.D. CONST art XIII, §2.

<sup>158</sup> For example, MD CONST art III, §34 expressly provides that \$50,000 may be borrowed to meet temporary deficiencies without a tax being levied.

authorization for highway purposes provided the total amount of bonds, payable from taxes levied on property, outstanding at any one time shall not exceed \$2 million.<sup>166</sup> In Oregon the legislative assembly may exceed its \$50,000 special indebtedness ceiling to build and maintain public roads provided such liability does not exceed four percent of the assessed valuation of all property of the State.<sup>167</sup> In Pennsylvania the State may exceed its special indebtedness provision to issue bonds in the amount of (a) \$100 million to improve and rebuild highways,<sup>168</sup> (b) \$10 million to acquire toll bridges,<sup>169</sup> (c) \$50 million for highways along with other purposes.<sup>170</sup>

In Arkansas, on the other hand, for the purpose of assuming and refunding road improvement district bonds an exception to the normal voters consent was granted.<sup>171</sup>

Twenty-four constitutions expressly require or provide some method or means of paying off or retiring State indebtedness. For this purpose Alabama<sup>172</sup> pledges its State income tax, and Indiana provides<sup>173</sup> that all revenue derived from the sale of any public works and from the net annual income thereof, and any remaining surplus derived from taxation for general State purposes be annually applied, under the direction of the general assembly, to the payment of the principal of the public debt. Other jurisdictions require that a tax be levied,<sup>174</sup> that ways and means exclusive of loans be provided,<sup>175</sup> or that a tax or other source of revenue be provided or provision made therefor.<sup>176</sup> Virginia requires that a sinking fund be created and maintained.<sup>177</sup>

Sixteen jurisdictions specify a time limit

for the payment of the indebtedness. This period ranges from 10 to 75 years.<sup>178</sup> In New York no debt may be contracted for a period longer than the probable life of the work or purpose for which the debt is contracted, and must be paid in equal annual installments the first of which shall be payable not more than 40 years from the time contracted.<sup>179</sup>

### *Provisions Applying to County Governments*

County forms of government exist pursuant to constitutional or legislative mandate. They possess only the powers conferred by such authorizations. Constitutional indebtedness provisions then, as are found in 33 jurisdictions, enable the counties to become indebted, set a limit on such indebtedness and establish procedures for the contracting and discharge thereof (Tables 11 and 12).

In 27 jurisdictions county indebtedness normally is authorized by voter approval of a referendum (Table 11). In five of these jurisdictions this procedure constitutes the only procedure for a county to incur indebtedness. Such a referendum must receive a majority vote in 16 jurisdictions; a two-thirds vote in six jurisdictions; and a three-fifths vote in three jurisdictions. In Tennessee, a three-fourths vote is required while the Pennsylvania Constitution provides that the procedure be established by law.

In 20 jurisdictions a maximum amount of indebtedness which may be so contracted is stipulated. This maximum may only be authorized for specified purposes in 11 States. Highway purposes appear to be within the scope of the provisions in Kentucky, Nebraska, New Mexico, North Dakota, Oregon, South Carolina, Texas and Washington.

Eleven jurisdictions establish a maximum maturity period for discharging such indebtedness. The periods range from 5 to 50 years. In 13 States a tax must be levied to pay off the indebtedness and in six

<sup>166</sup> N MEX CONST art IX, §16, See *State v. Romero*, 53 N M 402, 209 P 2d 179 (1949), *State v. Graham*, 32 N M 485, 259 Pac 623 (1927).

<sup>167</sup> ORE CONST art XI, §7.

<sup>168</sup> PA CONST art IX, §4.

<sup>169</sup> *Id.*, §16.

<sup>170</sup> *Id.*, §21.

<sup>171</sup> ARK CONST amend 20.

<sup>172</sup> ALA CONST amend XXVI.

<sup>173</sup> IND CONST art X, §2.

<sup>174</sup> ARIZ CONST art IX, §3, COLO CONST art XI, §4, GA CONST art VII, §3, (§2-5609), IOWA CONST art VII, §5, KAN CONST art XI, §6, KY CONST §50, MD CONST art III, §34 (exceptions are stipulated), MICH CONST art X, §2, MO CONST art III, §37, NEV CONST art IX, §3, N MEX CONST art IV, §29, OHIO CONST art XII, §11, OKLA CONST art X, §4, ORE CONST art IX, §2, S C CONST art X, §11, S D CONST art XI, §1, art XIII, §2.

<sup>175</sup> CAL CONST art XVI, §1, IDAHO CONST art VIII, §1.

<sup>176</sup> N J CONST art VIII, §2, WASH CONST art VIII, §3.

<sup>177</sup> ILL CONST art IV, §18, N D CONST art XII, §182.

<sup>178</sup> VA CONST art XIII, §187.

<sup>178</sup> Ariz, 25 years, Cal, 75 years, Idaho, 20 years, Iowa, 20 years, Ky, 30 years, Me, 25 years, Md, 15 years, Mo, 25 years, N J, 35 years, N M, 50 years, Nev, 20 years, N D, 30 years, Okla, 25 years, S D, 10 years, Utah, 20 years, and Wash, 20 years.

<sup>179</sup> N Y CONST art VII, §12.

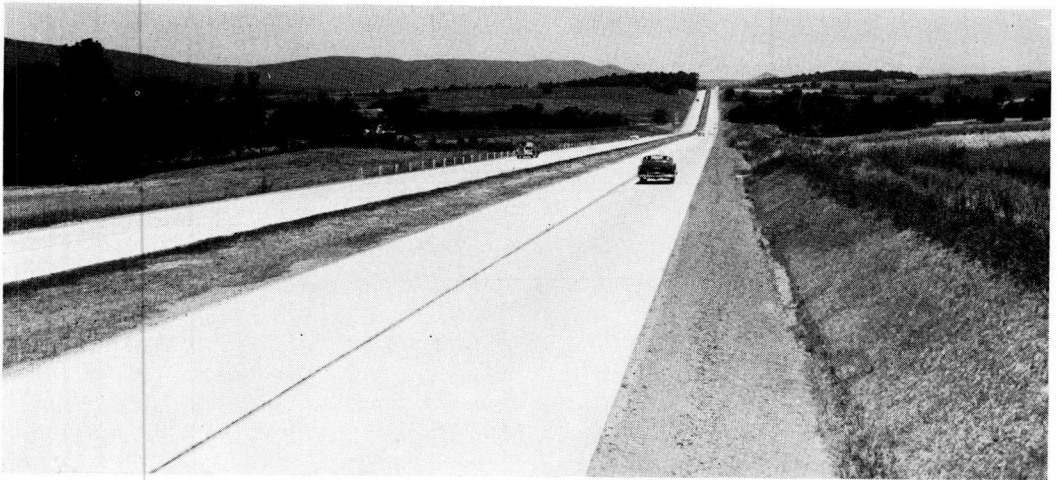


PLATE E

US 22 in Shartlesville, Pennsylvania. Pursuant to constitutional provision, the general assembly may authorize the State to issue bonds, to the amount of \$100 million, to improve and rebuild highways.

Table 11. Constitutional Restrictions on County Borrowing Under a Popular Referendum

State	Citation	Maximum	Tax Levy Required	Sinking Fund Required or Permitted	Maturity Period Specified
Ala.	Art. XII, §222	×			
Ariz.	Art. VII, §13, art. IX, §8	×			
Calif.	Art. XI, §18		×	×	×
Colo.	Art. XI, §6	×			×
Fla.	Art. IX, §6				
Ga.	Art. VII, §7 (§§2-6001, 2-6002, 2-6003)	×	×		×
Idaho	Art. VIII, §3		×	×	×
Ky.	§§157, 157a, 159	×	×	×	×
La.	Art. XIV, §§14(a), (b.1), (e), (h)		×	×	×
Mo.	Art. VI, §§26a, b, c, f	×	×		×
Mont.	Art. XIII, §5	×			
Neb.	Art. XIII, §2	×			
N. M.	Art. IV, §29; art. IX, §§10, 13	×	×		×
N. C.	Art. VII, §7				
N. D.	Art. XII, §§183, 184	×	×		
Okla.	Art. X, §§16, 26	×	×	×	×
Ore.	Art. XI, §10	×			
Pa.	Art. IX, §§8, 10	×	×		×
S. C.	Art. X, §§5, 6	×			
S. D.	Art. XIII, §§4, 5	×	×		
Tenn.	Art. II, §29				
Tex.	Art. III, §52	×	×	×	
Utah	Art. XIV, §§3, 4	×			
Va.	Art. VII, §115a				
Wash.	Art. VIII, §6 (amend. 27)	×			
W. Va.	Art. X, §8	×	×		×
Wyo.	Art. XVI, §§3, 4	×			
Total		20	13	6	11

Table 12 County Indebtedness Authorized by Constitutional Provision Without Voter Approval

State	For Particular Purposes	Within Specified Maximums
Ala., art XII, §224	×	
Ariz., art IX, §8	×	×
Calif., art XI, §18		×
Colo., art XI, §6	×	×
Fla., art IX, §6	×	
Ga., art VII, §7 (§2-6001)	×	×
Idaho, art VIII, §3	×	×
Ill., art IX, §12		×
Ind., art. XIII, §1	×	×
Iowa, art XI, §3		×
Ky., §157		×
La., art XIV, §14e	×	
Mich., art VIII, §12		×
Mo., art VI, §§26a, 28	×	×
Mont., art XIII, §5		×
N. Y., art VIII, §§2, 4		×
N. C., art. V, §4	×	×
N. D., art XII, §183		×
Okla., art. X, §26		×
Ore., art XI, §10	×	×
Pa., art. IX, §8	×	×
S. C., art X, §§5, 6	×	
S. D., art. XIII, §4	×	×
Utah, art. XIV, §3		×
Wash., art VIII, §6		×
W. Va., art. X, §8	×	
Wis., art XI, §3	×	×
Wyo., art. XVI, §§3, 4		×
Total	16	23

jurisdictions a sinking fund is either specifically permitted or required

Nine of the 27 States which normally require that county indebtedness be approved by a referendum also provide exceptions.<sup>180</sup> In eight of these States<sup>181</sup> the exception allows the stipulated maximum amount of indebtedness to be exceeded for the payment of prior debts, refunding or to provide for situations in particular counties. In Idaho, however, the provision does not stipulate a maximum amount of indebtedness which may be incurred. It requires assent for indebtedness by two-thirds of the qualified electors voting and provision for the collection of an annual tax sufficient to pay the interest as it falls due and which will

constitute a sinking fund for the payment of the principal within 20 years. The exception is to this second condition, *i.e.*, the tax requirement, and authorizes water and sewerage treatment plants and systems and off-street parking facilities to be financed by revenue bonds which are to be paid solely from rates and charges for the use of the facilities.

In addition to the county indebtedness which requires voter approval, provisions in 28 jurisdictions authorize the contracting of indebtedness without the approval of the voters. In seven of these jurisdictions<sup>182</sup> the provisions reflect the total amount of indebtedness under the constitution which the county is authorized to contract. In the other 21 States, however, they represent a special procedure (Table 12).

The provisions are of two types. One authorizes indebtedness for particular purposes; the other establishes specific maximums. Provisions of the first type are found in five States<sup>183</sup> and of the second type in 12 States.<sup>184</sup> Eleven States have provisions of both types.<sup>185</sup>

Particular purposes for which county indebtedness may be incurred without voter approval include indebtedness for the payment of existing obligations, casual deficits and expenses incurred because of insurrection, public calamity or defense. Highway purposes are included in Georgia and Louisiana.<sup>186</sup> In Colorado "making or repairing public roads and bridges" is one of the enumerated purposes for which indebtedness may be contracted. A ceiling based on the assessed valuation of taxable property determines the limit.<sup>187</sup>

In California, Idaho, Kentucky, Missouri and Oklahoma, county indebtedness without voter approval is limited to the income and revenue provided for that year. Missouri also allows the indebtedness to equal, in addition to the above, any unencumbered balance from the previous year. In Utah and Wyoming such indebtedness

<sup>182</sup> Ill., Ind., Iowa, Mich., N. Y., S. D., and Wis.

<sup>183</sup> Ala., Fla., La., S. C., and W. Va.

<sup>184</sup> Cal., Ill., Iowa, Ky., Mich., Mont., N. Y., N. D., Okla., Utah, Wash., and Wyo.

<sup>185</sup> Ariz., Colo., Ga., Idaho, Ind., Mo., N. C., Ore., Pa., S. D., and Wis.

<sup>186</sup> GA CONST art VII, §7 (§2-6001), LA CONST art XIV, §§14(b1), 14(c).

<sup>187</sup> COLO CONST art XI, §6.

<sup>180</sup> Ala., Ariz., Idaho, Ore., Pa., S. C., Wash., W. Va., and Wyo.

<sup>181</sup> Ala., Ariz., Ore., Pa., S. C., Wash., W. Va., and Wyo.

may not exceed taxes for the current year. In Oregon a fixed sum of \$5,000 is permissible as is \$10,000 for a single purpose in Montana. In North Carolina indebtedness up to two-thirds of the amount by which the outstanding indebtedness of the county shall have been reduced during the next preceding fiscal year is allowable.

Twelve jurisdictions<sup>188</sup> control this indebtedness by a determination of a percentage of the valuation of taxable property, the assessed valuation of such property or as in New York the average full valuation of taxable real estate. This percentage varies from  $1\frac{1}{2}$  to 10.

In Georgia, Illinois, Kentucky, Ohio, North Dakota, Pennsylvania, South Dakota and Wisconsin a tax must be levied before or at the time of incurring the indebtedness to pay the interest and principal when due. In New York the governmental unit incurring the indebtedness is required annually to provide, by appropriation, for payment of interest and for amortization of the principal of such debt. In Illinois and Wisconsin the indebtedness must be paid off within 20 years (in certain instances 50 years is allowable in Wisconsin). In New York 40 years is the maximum time with an actual time to be determined by law dependent upon the probable usefulness of the purpose for which such indebtedness is contracted. In Georgia, the time limit is 30 years and in Kentucky 40 years.

#### *Provisions Applying to Municipal Governments*

The constitutions in 41 jurisdictions contain indebtedness provisions which apply to cities, towns, townships, villages, municipalities, school districts, road districts, taxing districts and other political subdivisions (Table 13).

Kansas, Michigan, Mississippi, Nevada, Ohio, Oregon and West Virginia provisions require the enabling legislation for the gov-

ernmental units to provide for (restrict) the contracting of indebtedness.<sup>189</sup>

Provisions in 24 States allow a specified amount of indebtedness without voter approval. The limiting factor of such indebtedness is income and revenue or anticipated taxes for the year in eight States;<sup>190</sup> the value or assessed value of taxable property in 14 States;<sup>191</sup> and, the amount indebtedness was reduced in the preceding year in one State.<sup>192</sup> For temporary loans, the meeting of casual deficiencies, defense or the discharge of prior obligations, the maximums may sometimes be exceeded.

Provisions in 29 jurisdictions allow municipal indebtedness upon approval by the voters. Such a referendum must receive a majority vote in 15 jurisdictions;<sup>193</sup> a two-thirds vote in seven jurisdictions;<sup>194</sup> a three-fifths vote in three jurisdictions;<sup>195</sup> and a three-fourths vote in one jurisdiction.<sup>196</sup> In Pennsylvania the procedure is to be established by law.

In 17 of these States the maximum amount of indebtedness that may be so authorized is specified. All maximums are in terms of value or assessed value of the taxable property within the jurisdiction.

In 13 States exceptions to the voter approval procedure are specified.<sup>197</sup> Such exceptions specifically applicable to highway matters are found in Alabama, for the improvement of streets,<sup>198</sup> in Idaho, for off-street parking facilities.<sup>199</sup>

Other provisions requiring tax levies, sinking funds, antidiversion of funds<sup>200</sup> and the maturity period for the bonds are also found. In addition, the provisions in Arkansas and Louisiana limit the maximum interest payable per annum for such indebtedness to 6 percent.

<sup>189</sup> KAN CONST art XII, §5, MICH CONST art VIII, §20, MISS CONST art IV, §80, NEV CONST art VIII, §8, OHIO CONST art XVIII, §13, art XIII, §6, art XII, §4, ORE CONST art XI, §5, W VA CONST art VI, §39a.

<sup>190</sup> Cal, Idaho, Ky, Mo, Okla, SC, Utah, and W Va.  
<sup>191</sup> Ariz, Ga, Ill, Ind, Iowa, Me, Mont, N Y, N D, Pa, S D, Va, Wash, and Wis.

<sup>192</sup> N C.  
<sup>193</sup> Alaska, Ala, Ariz, Ark, Colo, Fla, Ga, La, Md, N Mex, N C, N D, S C, Utah, and Va.

<sup>194</sup> Cal, Idaho, Ky, Mo, Neb, N D, and Tex.

<sup>195</sup> Okla, Wash, and W Va.

<sup>196</sup> Tenn.

<sup>197</sup> Alaska, Ala, Ariz, Colo, Fla, Idaho, Ky, N D, Pa, S C, Tex, W Va, and W Va.

<sup>198</sup> ALA CONST art XII, §225.

<sup>199</sup> IDAHO CONST art VIII, §3.

<sup>200</sup> See Table 18.

<sup>188</sup> Ariz, Ga, Ill, Ind, Iowa, Mich, N Y, N D, Pa, S D, Wash, and Wis. In addition, Colorado allows for \$150 on each \$1000 of assessed valuation in counties in which assessed valuation of taxable property exceeds \$5 million and \$300 on each \$10,000 in counties having an amount under \$5 million.

Table 13 Municipal Indebtedness Authorized by Constitutional Provision

State	Citation	Specific Amount Without Voter Approval	Voter Approval Required	Maximum Amount Stipu- lated	Tax Levy Required	Sinking Fund Required or Permitted	Maturity Period Specified	Maximum Interest Set	Shall be Covered by Enabling Legislation
Ala	Art XII, §§222, 225		×	×					
Alaska	Art IX, §9		×						
Ariz	Art VII, §13, art IX, §8	×	×	×					
Ark	Art XVI, §1		×		×			×	
Calif	Art XI, §18	×	×		×	×	×		
Colo	Art XI, §8		×	×	×		×		
Fla	Art IX, §6		×						
Ga	Art VII, §7 (§§2-6001 to 2-6003)	×	×	×	×		×		
Idaho	Art VIII, §3	×	×		×	×	×		
Ill	Art IX, §12	×			×		×		
Ind	Art XIII, §1	×	×						
Iowa	Art XI, §3	×							
Kan	Art XII, §5								×
Ky	§§157, 158, 159	×	×	×	×	×	×		
La	Art XIV, §§14 (a), (b), (e), (h), (i)		×		×	×	×	×	
Me	Art IX, §15	×							
Md	Art XI, §7 <sup>1</sup>	×	×				×		
Mich	Art VIII, §20								×
Miss	Art. IV, §80								×
Mo	Art. VI, §§26a, b, c, d, f	×	×	×	×		×		
Mont	Art XIII, §§3, 6	×	×						
Neb	Art XIII, §2		×	×					
Nev	Art VIII, §8								×
N M	Art IX, §§9, 12, 13		×	×	×		×		
N Y	Art VIII, §§2, 4	×					×		
N C	Art II, §14; art V, §4; art VII, §7	×	×						
N D	Art XII, §§183, 184	×	×	×	×				
Ohio	Art XIII, §6, art XII, §11, art XVIII, §13				×				×
Okla	Art X, §26	×	×	×	×	×	×		
Ore	Art XI, §5								×
Pa	Art IX, §§8, 10, 15	×	×	×	×		×		
S C	Art VIII, §§5, 6, 7	×	×	×		×			
S D	Art XIII, §§4, 5	×			×				
Tenn	Art II, §29		×						
Tex	Art III, §52; art XI, §5		×	×	×	×			
Utah	Art XIV, §§3, 4, 5	×	×	×					
Va	Art VIII, §127	×	×						
Wash	Art VIII, §6 (amend 27)	×	×	×					
W Va	Art VI, §39a; art X, §8		×	×	×		×		×
Wis	Art XI, §3	×			×		×		
Wyo	Art XVI, §§4, 5	×	×	×					
Total		24	29	17	18	7	15	2	7

<sup>1</sup> Applies to City of Baltimore only

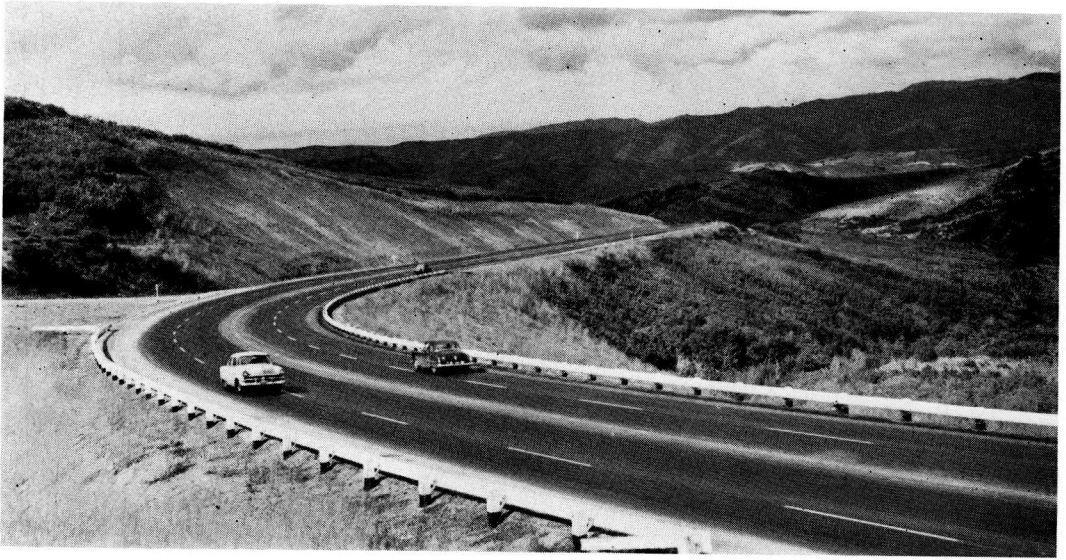


PLATE F

US 40 between Salt Lake City and Gorgoza, Utah. The Utah constitution provides that municipal indebtedness to a stipulated maximum may be authorized upon approval by the voters for highway or other purposes.

### *Provision for Highway Bond Issues*

The Kansas constitution expressly prohibits the issuance of bonds for the State highway system.<sup>201</sup> The constitutions in 15 other States however, authorize bonds for highway purposes, although some of the provisions are now obsolete either because the authorized funds have been spent or the provision has been superseded. Typical provisions specify who is authorized to become indebted, the purpose, the term, the amount of interest to be paid and the funds from which the indebtedness will be discharged (Table 14).

Under the terms of the enabling constitutional provisions the highway department or some other State department may incur the indebtedness in 12 jurisdictions, counties in 4 jurisdictions and cities in 2 jurisdictions. In some instances prior approval by the voters<sup>202</sup> or some other governmental entity<sup>203</sup> is required.

### ANTIDIVERSION OF FUNDS

#### *Antidiversion of Highway User Funds*

Twenty-six States have constitutional provisions dedicating funds to highway purposes<sup>204</sup> (Tables 15, 16 and 17). Such provisions are termed frequently "Antidiversion" or "Good-Roads Amendments."

These provisions follow the proposition that various funds are raised as an incidence of motor vehicle transportation and should therefore be used by the government for highway purposes. A factor to be considered in connection with antidiversion provisions and one which gives a reason for their existence is contained in the 1934 Hayden-Cartwright Act, which reads in part:

Since it is unfair and unjust to tax motor-vehicle transportation unless the proceeds of such taxation are applied to the construc-

<sup>204</sup> In addition, the following State constitutional provisions require tax laws to state an object or purpose, to which the revenue derived is dedicated. These theoretically could serve the same purpose as an antidiversion provision. Ariz., art. IX, §3; Ark., art. XVI, §1; Colo., art. XI, §4; Iowa, art. VII, §7; Ga., art. VII, §3 (§2-5609, §2-6101); Kan., art. XI, §5; Ky., §180; Md., art. III, §34; N.Y., art. III, §22; N.C., art. V, §7; N.D., art. XI, §175; Ohio, art. XII, §5; Okla., art. X, §19; Ore., art. IX, §3; S.C., art. X, §3; S.D., art. XI, §9; art. X, §2; Wash. art. VII, §5 and Wyo., art. XV, §13.

<sup>201</sup> KAN. CONST. art. XI, §9.

<sup>202</sup> For example, LA. CONST. art. VI §§22(e), 23; OHIO CONST. art. VIII, §2c.

<sup>203</sup> For example, ALA. CONST. amend. XVIII; ARK. CONST. art. XVI, §1; IDAHO CONST. art. VIII, §3.

Table 14 Constitutional Provisions for Highway Bond Issues

State	Citation	Date Ratified	Amount	Who Is Authorized	Purpose	Annual Interest(%)	Term	Payment From
Ala.	Amend XI, (art XX)	1922	\$25 million	Highway commission or department	For the construction, improvement, repair & maintenance of public roads, highways and bridges.	6	by law	Special annual license or privilege tax on all vehicles
	Amend XVIII	1924	6½% of assessed value of property in Mobile County	Mobile County	For the construction or improvement of concrete or better than concrete surfaced public roads and public bridges and to connect Mobile & Baldwin Counties.			Annual property tax
	Amend XXI, (art XXa)	1927	\$25 million	Highway commission or department	For the construction, improvement repair and maintenance of public roads, highways and bridges.	6	by law	Excise tax of 2¢ per gallon upon gasoline or substitute, or an adequate license or excise tax on any other motive power used to propel vehicles
	Amend XLII	1940	\$900,000		To retire prior to maturity the bonds of the Alabama Bridge Commission outstanding on July 1, 1939	3	by law (15 yrs maximum)	Gasoline excise tax subject to prior pledge by Art XXa.
	Amend LXXXVII	1951	\$25 million		For supplying the State's share of the cost of acquiring, constructing, and improving public roads, highways and bridges in conjunction with the United States			Gasoline excise tax subject to prior pledges
Ark	Art XVI, §1	1926	Sums approved by voters	Cities of first and second class	Purchasing rights-of-way and street cleaning apparatus, constructing, widening or straightening streets, alleys, boulevards, viaducts and bridges	6	35 yrs.	Direct special tax on real and personal property
Calif	Art XVI, §2	1919	\$40 million	State treasurer	To be used by the State department of engineering for the acquisition, construction and improvement of State highways	4½	1965	
	Art XVI, §3	1920		State highway finance board	Superseded art XVI, §2 The highway finance board was established and interest changed but no new indebtedness authorized	6		
Colo	Art XI, §3	1920, 1922	\$11 million	State highway commission	For the construction and improvement of public highways	5	10 yrs.	



Fla.	Art IX, §16	1942		State board of administration	To retire bonds issued prior to July 1, 1931, by the counties or special road or bridge districts, to establish a sinking fund to meet future requirements and for use on roads and bridges.		50 yrs	Two cents per gallon gasoline tax.
Idaho	Art VIII, §3	1950	Amount necessary	Any city or village	To pay cost of owning, purchasing, constructing, extending & equipping off-street parking facilities.			User revenues
La.	Art. IV, §2	1952	Portion of Royalty Road Fund	Parish governing authority	To construct black top, concrete or other hard-surfaced roads, highways, bridges and tunnels or to purchase, operate and maintain automobile ferries.	5	20 yrs	Royalty Road Fund
	Art IV, §12(a)	1940	\$7 million (other purposes not concerned with highways also included)	Board of liquidation of the state debt	To reimburse the general highway fund the sum transferred from it to the public school fund in 1940	5	20 yrs	The 1 47 mill tax for the state bond and interest tax fund
	Art VI, §22(d)	1928	Proportion of highway user taxes.	Board of liquidation	For payment of highway commission deficit incurred prior to 1928 and to construct paved State highways and bridges.	5	20 yrs	One cent per gallon gasoline tax
	Art VI, §22(e)	1930	\$68 million <sup>1</sup>	La highway comm with consent of state advisory board	For the construction of paved State highways and bridges.	5	25 yrs	Four cents per gallon gasoline tax
	Art VI, §23	1956	\$60 million	Board of highways with consent of state advisory board	For the construction, maintenance, improvement and extension of State highways with necessary bridges, overpasses, underpasses and tunnels	4	25 yrs	Long range highway fund
Mich	Art X, §10	1919	\$50 million	State	For the improvement of highways		by law	
Minn	Art XVI, §12	1956	\$150 million	Legislature	For the establishment, location, construction, reconstruction, improvement, and maintenance of the trunk highway system	5	20 yrs	Trunk highway fund If inadequate, property taxes or direct appropriation
N Mex	Art IX §16	1921	\$2 million	Legislature	For construction and improvement of State highways and to secure Federal-Aid			Vehicle license and other fees.
N Y	Art VII, §14	1942	\$300 million	Legislature	For the elimination under State supervision of railroad crossings at grade and for incidental improvements connected therewith		40 yrs.	
	Art VII, §14	1942	\$60 million	Legislature	For the construction and reconstruction of State highways and parkways		40 yrs	

Table 14 Constitutional Provisions for Highway Bond Issues (Continued)

State	Citation	Date Ratified	Amount	Who Is Authorized	Purpose	Annual Interest(%)	Term	Payment From
N Y	Art X, §6	1951	\$500 million	Legislature	For payment of bonds of public corporation created to construct thruways		40 yrs	
Ohio	Art VIII, §2c	1953	\$500 million	State	For acquisition of rights-of-way and for construction and reconstruction of highways on the State highway system		1972	Fees, excise or license taxes levied by the State relating to registration operation or use of vehicles on public highways, or to fuels used to propel such vehicles
Pa	Art IX, §4	1923	\$100 million	State	To improve and rebuild the highways of the commonwealth			Tolls.
	Art. IX, §16	1933	\$10 million	State	To acquire toll bridges			
	Art IX, §21	1945	\$50 million	State	For the construction of highways among other purposes.			
Tex	Art III, §52	1904	One-fourth assessed value of real property	Any county, political subdivision of a county, any number of adjoining counties, any political subdivision of the State, or any defined district which may or may not include towns, villages, or municipal corporations	For the construction, maintenance and operation of macadamized, graveled or paved roads and turnpikes, or in aid thereof			Taxes as the legislature may authorize
W Va	Good Roads Amendment of 1920	1920	\$50 million	State	To build, construct, maintain or to assist in building, constructing and maintaining a system of State roads and highways		30 yrs	Annual State tax to be provided for by law
	Good Roads Amendment of 1928	1928	\$35 million	State	To build, construct, maintain or to assist in building, constructing and maintaining a system of State roads and highways		30 yrs	Annual State tax to be provided for by law
	Fifty Million Dollar Bond Issue for Roads Amendment	1948	\$50 million	State	To build and construct or for assisting in building and construction of a system of State secondary roads and highways		30 yrs	Annual State tax to be provided for by law

<sup>1</sup> By eight other enabling provisions Louisiana Constitution, art VI, §22 authorizes an additional \$94 million worth of bonds for highway purposes

Table 15 Highway User Funds Dedicated

State	Citation	Registration, Ownership, and License Fees	Vehicle Use or Operation Fees	Motor Fuel Tax			General or License Fee	Use	Certain Highway User Taxes Exempted
				Manufacture	Sale	Distribution			
Ala	Amend XCIII	×	×					×	Vehicle use tax; pump tax License tax License fees
Ariz	Art IX, §14	×	×					×	
Calif	Art XXVI			×	×	×		×	
Colo	Art X, §18		×				×		
Fla	Art IX, §16							×	
Ga	Art VII, §9 (§2-6204(b))	×					×	×	
Idaho	Art. VII, §17	×			×			×	
Iowa	Art VII, §8	×					×	×	
Ky.	§230	×	×				×	×	Excise tax on motor vehicles Excise tax on registration Fees, taxes from auto theft, operators', chauffeurs' license laws
La	Art. IV, §2c; art VI, §§22, 23; art VI-A		×		×		×	×	
Me	Art IX, §19	×	×					×	
Mass	[§218] art LXXVIII	×	×					×	
Mich	Art X, §22	×			×			×	Motor vehicle sales tax Charges paid to Board of R R Comm
Minn	Art XVI, §§9, 10		×	×	×	×		×	
Mo	Art IV, §30		×	×	×	×		×	
Mont	Art XII, §16	×	×					×	
Nev	Art IX, §5		×				×		
N H.	Pt 2, art 6-a	×	×		×			×	
N D	Art LVI	×					×		
Ohio	Art XII, §5a	×	×					×	
Ore	Art IX, §3	×	×		×	×		×	Gross production & ad valorem taxes on motor fuel Operator license, vehicle use and certificate of ownership fees
Pa	Art IX, §18	×	×					×	
S D	Art XI, §8	×	×				×		
Tex	Art VIII, §7a	×						×	
Wash	Art II, §40	×			×	×		×	
W Va	Art VI, §52	×					×		
Wyo	Art XV, §16	×	×					×	
	Total	20	17	3	9	5	9	19	10

tion, improvement, or maintenance of highways, after June 30, 1935, Federal aid for highway construction shall be extended only to those States that use at least the amounts now provided by law for such purposes in each State from State motor vehicle registration fees, licenses, gasoline taxes and other special taxes on motor-vehicle owners and operators of all kinds for the construction, improvement and maintenance of highways and administrative expenses in connection therewith, including the retirement of bonds for the payment of which such revenues have been pledged, and for no other purposes,

under such regulations as the Secretary of Agriculture shall promulgate from time to time <sup>205</sup>

*Highway User Funds Dedicated*—A basic premise for an antidiversion provision is that certain funds are obtained from highway user and fuel taxes as an incidence of motor vehicle transportation and should

<sup>205</sup> 23 USC 126(a), (b). See *The Final Report of the Commission on Intergovernmental Relations*, 84th Congress, 1st Session, House Document 198, page 220 (1955) which recommends the repeal of these provisions.

Table 16 Permissible Expenditures of Highway User Funds

State	Citation	Highway Purposes or Improvements	Construction, Reconstruction	Maintenance and Repair	Purchase Right-of-Way	Payment of Highway Obligations	Traffic Regulation and Supervision	Enforce Traffic or Motor Vehicle Laws	Miscellaneous <sup>1</sup>
Ala	Amend XCIII		×	×		×	×	×	
Ariz	Art IX, §14		×	×		×		×	×
Calif	Art XXVI	×	×	×	×	×	×	×	
Colo	Art X, §18	×	×	×					
Fla	Art IX, §16		×			×			
Ga <sup>4</sup>	Art VII, (§2-6204(b))	×	×	×					
Idaho	Art VII, §17		×	×		×	×		
Iowa	Art VII, §8	×	×	×		×			
Ky	§230		×	×	×	×		×	
La.	Art VI, §22		×	×		×			
Me	Art IX, §19		×	×		×		×	
Mass	[§218] art LXXVIII		×	×		×		×	
Mich	Art X, §22	×				×		×	
Minn	Art XVI, §§2-12	×				×		×	
Mo	Art IV, §30	×	×	×		×		×	×
Mont	Art XII, §1b		×	×		×			×
Nev.	Art IX, §5		×	×					
N H	Pt 2, art. 6-a		×	×		×	×		
N. D	Art LVI		×	×		×			
Ohio	Art XII, §5-a	×	×	×		×		×	×
Ore.	Art. IX, §3		×	×		×	×		×
Pa	Art IX, §18		×	×		×	×	×	×
S D	Art. XI, §8	×	×	×					
Tex	Art VIII, §7-a		×	×	×	×	×	×	
Wash	Art. II, §40, amend 18	×	×	×	×	×	×	×	
W. Va	Art. VI, §52		×	×		×			
Wyo	Art XV, §16		×	×		×		×	
	Total	10	25	24	4	23	8	13	6

<sup>1</sup> Includes air navigation facilities, indigent funds, and highway publications

<sup>2</sup> Provision reads "for the payment for property, including but not restricted to rights of way"

<sup>3</sup> Provides for the "supervision" of State highways

<sup>4</sup> Constitution provides that dedicated highway funds shall be used "to defray the cost of all activities incident to providing and maintaining an adequate system of public roads and bridges"

be used for highway purposes. Accordingly, antidiversion provisions designate specific funds to highway use. Table 15 shows a breakdown by State of the funds involved. As shown, all of the listed States dedicate certain highway fuel and user tax receipts. The majority of the provisions dedicate specific funds, such as those derived from license and registration fees, to highway uses. Georgia, Louisiana, Minnesota and Missouri have somewhat different provisions but their effect is similar. The Georgia provision requires that the general assem-

bly make the aggregate of the fixed appropriation for highway purposes in each general appropriation act an amount not less than the total motor fuels and motor vehicle license taxes received by the State treasury for the immediately preceding fiscal year, less the amounts of refunds, rebates and collection costs authorized by law.<sup>206</sup> The Louisiana constitution creates a special fund, known as the Long Range Highway Fund, with revenues to be derived

<sup>206</sup> GA CONST art VII, §9 (§2-6204(b))

Table 17 Antidiversion of Funds

State	Dedicated Highway User Taxes	Funds Raised by Incurring Debt	Other Dedicated Taxes
Ala	Amend. XCIII		
Ariz	Art. IX, §14	Art IX, §5	Art. IX, §3
Ark			Art. XVI, §11
Calif	Art XXVI	Art XVI, §1	Art XVI, §1
Colo	Art X, §18	Art XI, §4	Art. XI, §§4, 8 <sup>1</sup>
Del		Art. VIII, §3 <sup>2</sup>	
Ga	Art VII, §9 (§2-6204(b))	Art VII, §3 (§2-5603)	Art. VII, §3 (§2-5609)
Idaho	Art VII, §17	Art VIII, §1	Art. VIII, §1
Ill		Art. IV, §18	Art. IV, §18
Iowa	Art VII, §8	Art VII, §§2, 4, 5	Art. VII, §5
Kan.		Art XI, §8	Art. XI, §§5 6
Ky	§230	§§49, 178	§180
La	Art IV, §2c, art IV, §§22, 23, art VI-A		
Me	Art IX, §19		
Md			Art III, §34
Mass	[§218] art LXXVIII	[§195] art LXII	
Mich	Art X, §22	Art X, §10	
Minn.	Art XVI, §§9 5, 10.5	Art IX, §8	Art IX, §5
Mo	Art. IV, §30	Art. VI, §29	
Mont	Art XII, §1(b)	Art VIII, §3	
Nev.	Art IX, §5		Art IX, §3
N. H	Pt 2, art 6-a		
N J		Art. VIII, §2, par. 3	Art. VIII, §2, par 3
N M		Art. IX, §9	Art. IX, §12
N Y		Art VII, §12	
N C			Art V, §7
N. D	Art LVI		Art XII, §182
Ohio	Art. XII, §5a	Art. VIII, §§1, 2	Art. XII, §5
Okla		Art. X, §§16, 24	Art. X, §19
Ore	Art IX, §3		Art IX, §3
Pa.	Art. IX, §18	Art. IX, §5	
S D	Art. XI, §8		Art. XI, §9
Tex	Art. VIII, §7-a		
Utah		Art. XIV, §§1, 2, 5	
Wash	Art II, §40 (amend 18)	Art VIII, §§1, 2, 3	Art. VIII, §3
W Va	Art VI, §52		
Wis.		Art VIII, §7	Art VIII, §6
Wyo	Art XV, §16		
Total	26	24	23

<sup>1</sup> Colorado—When the debt is paid or discharged, tax shall cease and the balance to the credit of the fund shall be placed to the credit of the general fund of the State (art XI, §4)

<sup>2</sup> Delaware—Money remaining after accomplishment of purpose may be disposed according to law (art VII, §3)

from specifically enumerated tax sources<sup>207</sup> In addition, ten percent of the royalties received by the State from all mineral leases granted by the State on State-owned land or the title to which is in the public for mineral development is dedicated to the Royalty Road Fund for specific highway purposes<sup>208</sup> Missouri requires<sup>209</sup> that all

State revenue derived from highway users be used for specified highway purposes. Local governments in California may dedicate revenues from off-street parking facilities to pay for their cost<sup>210</sup> The Minnesota constitution<sup>211</sup> creates a highway user tax distribution fund, a trunk highway fund, a county State-aid highway fund and a

<sup>207</sup> LA CONST art VI, §23

<sup>208</sup> *Id.*, art IV, §2

<sup>209</sup> MO CONST art IV, §30

<sup>210</sup> CAL CONST art XI, §181

<sup>211</sup> MINN CONST art XVI, §§5 to 12

municipal State-aid street fund. It further provides for the imposition of certain taxes and the selling of bonds which are to be paid into these respective funds dedicated to highway uses. A Florida provision requires that a portion of the levied gasoline tax be used for county highway, special road or bridge district bonds or other highway purposes.<sup>212</sup>

Ten jurisdictions<sup>213</sup> list or except certain funds which are not dedicated to highway purposes (Table 15). Of these, five States, Alabama, Arizona, California, Michigan and Washington provide for the exemption of certain motor vehicle or operator license taxes from those funds specifically dedicated for highway purposes. In addition, California, Michigan and Missouri exempt sales tax funds while both Maine and Massachusetts exempt excise taxes imposed on vehicle registrations. Montana provides that the fees and charges paid to the Board of Railroad Commissioners by motor carriers pursuant to law are not dedicated for highway purposes and Texas allocates one-fourth of the net revenues from motor fuel taxes to its Available School Fund.

*Expenditure of Highway User Funds Permitted*—Generally, the antidiversion amendments not only indicate the sources of funds to be dedicated to highway uses but also specify the purposes for which these funds will be used (Table 16). The provisions, for the most part, specify that the administrative costs and expenses of the enabling acts, together with the refunds, rebates and adjustments which they allow, constitute legitimate expenditures of the funds. Highway functions upon which the funds may be spent are listed, some in great detail, enumerating specific highway activities. Several provisions dedicate the funds to highway purposes in general, while others dedicate the funds to highway purposes and enumerate various functions which constitute such purposes, although they are not intended in all cases to be exhaustive listings. Montana<sup>214</sup> permits ex-

penditures to be "authorized by the State legislature for dissemination of public information relating to the public highways, roads, streets and bridges of the State of Montana and the use thereof." Oregon<sup>215</sup> provides that the dedicated funds "may be used for the acquisition, development, maintenance, care and use of parks, recreational, scenic or other historic places and for the publicizing of any of the foregoing uses and things."

Both Missouri<sup>216</sup> and Washington,<sup>217</sup> have provisions for the creation of a special fund to be utilized for highway purposes. Missouri declares that the purpose of such a fund is for the construction and maintenance of an adequate system of connected State highways. Specific fees and taxes, less certain expenditures are dedicated which "shall be credited to a special fund and stand appropriated without legislative action" for enumerated purposes and no other. Such purposes include among others: payment of the principal and interest on any outstanding State road bonds, completing, widening, improving and maintaining the State system of highways; reimbursing counties and other State political subdivisions for roads and bridges taken over by the State as part of the State system of highways; locating, relocating, establishing, acquiring, constructing and maintaining supplementary State highways and bridges, tunnels, interstate highways, State highways and bridges through State parks, public areas and reservations, any highway when necessary to comply with any Federal law which is a condition to the receipt of Federal funds.

The Washington provision, on the other hand, provides that specified revenues shall be paid into the State treasury and placed in a special fund to be used exclusively for highway purposes. Such highway purposes are construed to include: the necessary operating, engineering and legal expenses for the administration of public highways, county roads and city streets and for the construction, reconstruction, maintenance and repair of these facilities including ac-

<sup>212</sup> FLA CONST art IX, §16

<sup>213</sup> ALA CONST amend XCIII, ARIZ CONST art IV, §14, CAL CONST art XXVI, §4, ME CONST art IX, §19, MASS CONST [§218] art LXXVIII, MO CONST art IV, §30, MICH CONST art X, §22, MONT CONST art XII, §1(b), TEX CONST art VIII, §7-a, WASH CONST art II, §40

<sup>214</sup> MONT CONST art XII, §1(b)

<sup>215</sup> ORE CONST art IX, §3

<sup>216</sup> MO CONST art IV, §30

<sup>217</sup> WASH. CONST art II, §40



PLATE G

US 85 in Wyoming. Wyoming is one of the 26 States having an antidiversion or "good roads" amendment in their constitutions.

quisition of rights-of-way and policing by the State of public highways; and the payment or refunding of any obligation of the State or any of its political subdivisions. The Minnesota constitution also sets up highway funds to be used solely for specified purposes and authorizes the State to levy special highway fuel and user taxes which shall be paid into these respective funds.<sup>218</sup> The Louisiana Royalty Road Fund is subject to withdrawal by the State department of highways for exclusive use of building and constructing black top, concrete or other hard-surfaced roads, highways, bridges and tunnels and purchasing and maintaining automobile ferries in the parish from which the revenue is obtained.<sup>219</sup> In addition, article VI, section 23 of the constitution dedicates certain revenues to the Long Range Highway Fund to provide for the construction, maintenance, improvement and extension of State highways, bridges and tunnels, and for the construction of roads and bridges on the parish road system.

Only three States have provisions which expressly allow the temporary use of dedicated funds. California permits the temporary loan to the State general fund on condition that the money shall be repaid

to the funds from which they were borrowed.<sup>220</sup> However, it provides that highway user funds may be transferred to the State general fund for the support of the public schools and the State university but be returned only from any excess required to operate the school facilities.<sup>221</sup> Georgia provides that in the event of invasion of the State by land, sea or air, its highway user funds be utilized upon the executive order of the governor for defense purposes.<sup>222</sup> Loans from the highway user funds are permitted in Pennsylvania for a period not exceeding eight months.<sup>223</sup>

Several States also have constitutional provisions which specify that highway user funds may be distributed to local entities or used for the construction and maintenance of highways other than on the State system. Such provisions are contained in the constitutions of Arizona, California, Georgia, Massachusetts, Minnesota, Pennsylvania, Texas, Washington and Wyoming.<sup>224</sup> Florida distributes funds from its State Roads Distribution Fund to counties based upon area, population and the coun-

<sup>220</sup> CAL. CONST. art. XXVI, §3.

<sup>221</sup> *Id.*, art. XXVI, §4.

<sup>222</sup> GA. CONST. art. VII, §9 (§2-6204(b)).

<sup>223</sup> PA. CONST. art. IX, §18.

<sup>224</sup> ARIZ. CONST. art. IX, §14; CAL. CONST. art. XXVI; FLA. CONST. art. IX, §16; GA. CONST. art. VII, §9 (§2-6204(b)); MASS. CONST. [§218] art. LXXVIII; MINN. CONST. art. XVI, §§5 to 12; PA. CONST. art. IX, §18; TEX. CONST. art. VIII, §7-a; WASH. CONST. art. II, §40; WYO. CONST. art. XV, §16.

<sup>218</sup> MINN. CONST. art. XVI, §§5 to 12.

<sup>219</sup> LA. CONST. art. IV, §2.

ties' participation in the cost of State road construction. Georgia provides for grants to counties for aid in county road construction. From its Highway User Tax Distribution Fund, Minnesota allocates specified percentages to both the county State-aid highway and municipal State-aid street funds. Texas permits highway user funds for the payment of the principal and interest on county and road district bonds. On the other hand, Arizona, California, Massachusetts, Pennsylvania, Washington and Wyoming have more general provisions which permit the use of highway user funds for the construction and maintenance of highways and streets in counties and municipalities.

Cases have arisen under these various antidiversion provisions which illustrate their application. A widow whose husband's death was allegedly caused as a result of the negligent maintenance of a bridge and approach by the Minnesota state highway department brought a mandamus action.<sup>225</sup> A 1929 law<sup>226</sup> directed the commissioner of highways to pay a specified sum out of the trunk highway fund to the widow. This the commissioner refused to do. The action followed and the commissioner's position was upheld by the court. In so ruling the State supreme court relied upon the State's antidiversion amendment<sup>227</sup> stating the following:

The people of the State desired better highways. They created a fund for the purpose of locating, building, improving and maintaining such highways. To protect and preserve that fund and make certain that it should be used only for the purposes stated, they placed in the article a specific limitation that the fund should be used solely for the purposes stated. The language used is clear and limits the power of the legislature, as well as all other persons, in the use of the fund.<sup>228</sup>

The court continued that though the legislature was well within its power in granting compensation to the petitioner, it could not grant such compensation out of a fund clearly set aside by constitutional provision solely for other specified purposes.

Recent opinions by the supreme courts of Maine<sup>229</sup> and New Hampshire<sup>230</sup> involved their respective antidiversion amendments. In both instances, legislation authorizing the State to pay public utility relocation costs arising from the construction of the Interstate Highway System was under consideration. Although the wording of the antidiversion amendments is similar, the courts reached opposite conclusions concerning the constitutionality of such legislation. The New Hampshire constitution, part II, article 6a reads as follows:

All revenue in excess of the necessary cost of collection and administration accruing to the State from . . . shall be appropriated and used exclusively for the construction, reconstruction and maintenance of public highways within this State, including the supervision of traffic thereon and payment of the interest and principal of obligations incurred for said purposes, and no part of such revenues shall, by transfer of funds or otherwise, be diverted to any other purpose whatsoever.

Article IX, section 19 of the Maine constitution reads:

All revenues derived from . . . shall be expended solely for cost of administration, statutory refunds and adjustments, payment of debts and liabilities incurred in construction and reconstruction of highways and bridges, the cost of construction, reconstruction, maintenance and repair of public highways and bridges under the direction and supervision of a State department having jurisdiction over such highways and bridges and expenses for State enforcement of traffic laws and shall not be diverted for any purposes . . .

Initially, both courts found that the legislatures could change the common law rule and allow payments for utility relocation. The New Hampshire court stated that utility relocation was an integral part of highway improvement. The legislature, therefore, if it chose to do so, could validly declare that the utility relocation costs were to be a part of the highway "relocation and reconstruction" costs and should be paid out of highway funds.

The Maine court, however, was of the opinion that the relocation of a utility facility could not be deemed to be part of

<sup>225</sup> *State v. Babcock*, 181 Minn. 409, 232 N.W. 718 (1930).

<sup>226</sup> Minn. Laws 1929, Ch. 394, §1.

<sup>227</sup> MINN. CONST. art. XVI, §2.

<sup>228</sup> *State v. Babcock*, 181 Minn. 409, 232 N.W. 718, 719 (1930).

<sup>229</sup> Opinion of the Justices, 152 Me. 449, 132 A.2d 440 (1957).

<sup>230</sup> Opinion of the Justices, 132 A.2d 613 (N.H. 1957).



the "construction or reconstruction" of a highway within the meaning of the anti-diversion provision. Therefore, it declared that the expenditure of dedicated highway revenues for such purposes would violate the constitutional prohibition against the expenditure for such purposes of funds derived from other sources.

For the most part, whether or not an expenditure is permitted depends upon the interpretation of the antidiversion provision. The effect of listing authorized expenditures might be considered to be all inclusive when, in actuality, they may not be intended to be.

### *Antidiversion of Other Funds*

In addition to the antidiversion of highway user funds, provisions in 23 constitutions prohibit the diversion of funds raised by contracting a debt for a specific purpose to another purpose. Seventeen of these further prohibit the proceeds of taxes levied for the purpose of discharging the debt being diverted to some other purpose at least until the debt, including the principal and interest, has been discharged (Table 17).

### PROHIBITED RELATIONSHIPS BETWEEN GOVERNMENTAL ENTITIES AND NON-GOVERNMENTAL ENTITIES

Many constitutional provisions prohibit certain relationships between governmental and non-governmental entities. Such provisions deal with "faith" and "credit," joint ownership and the assumption of obligations.

### *Credit and Faith of the Government*

Forty-five jurisdictions have provisions dealing with the faith and credit of the government (Table 18). In general all of the provisions with the exception of one in South Dakota,<sup>231</sup> prohibit the situation from arising wherein a non-governmental project can avail itself of and utilize the faith and credit of the government.

<sup>231</sup> S.D. CONST. art. XIII, §1. In South Dakota, for the purpose of developing and improving its economic facilities, the State may engage in works of internal improvement, may own and conduct proper business enterprises and may loan or give its credit to, or in aid of any association, or corporation organized for such purposes.

Forty-one of the provisions by their terms prohibit the credit of the State being thus used.<sup>232</sup> A Colorado provision specifies both the credit and faith of the State, a Rhode Island provision deals only with the faith of the State.

In 25 jurisdictions such provisions apply to units of government other than the State. These provisions apply to county units of government in 22 jurisdictions, to cities in 21 jurisdictions, to towns or townships in 19 jurisdictions, to municipalities in 8 jurisdictions, and to other governmental subdivisions in 15 jurisdictions.

By their terms, the provisions forbid that the credit and faith of the governmental units be loaned in 31 jurisdictions, be given in 26, be pledged in 12 or be granted in 5.

Particular entities to whom the credit and faith of the governmental units shall not be loaned, granted, given, pledged or extended is specified in all provisions with the exception of Alaska and New Jersey.<sup>233</sup> Among these, individuals, public and private corporations, associations and municipalities are included.

Exceptions to the provisions are found in some States.<sup>234</sup> However, the Kentucky exception "for the purpose of constructing or maintaining bridges, turnpike roads or gravel roads" is the only one specifically applicable to the highway function.<sup>235</sup> Nevertheless, the interpretation of these provisions will vary among jurisdictions depending upon the facts presented. In a recent Delaware case<sup>236</sup> a declaratory judgment action was brought by the Wilmington Parking Authority, a State agency, against a taxpayer of the city to determine

<sup>232</sup> In addition DEL. CONST. art. VIII, §4, prohibits the pledge of the credit of the State, by the guarantee or the indorsement of bonds or other undertakings of any county, municipality or corporation other than pursuant to any act of the general assembly passed with the concurrence of three-fourths of all members elected to each house. On Table 18, however, no entry has been made to show this provision. Its existence is noteworthy, but presumably a legislative enactment enables such actions. A separate provision as shown on Table 18 relates to activities of other units of government. See also, ALASKA CONST. art. IX, §6, and CONST. art. XI, §7, and CONST. art. XXVI, §1.

<sup>233</sup> ALASKA CONST. art. IX, §6 prohibits such action except for a public purpose, N.J. CONST. art. VIII, §2, prohibits such action in any case.

<sup>234</sup> For example, Minn., Nev., N.Y., N.C. and N.D. CONST. §179. See also §177a which provides that the credit of the commonwealth may be given, pledged or loaned to any county for public road purposes.

<sup>236</sup> *Wilmington Parking Authority v. Ranken*, 105 A.2d 614 (Del. 1954). See also *State of Tennessee v. Southern Bell Tel. and Tel. Co.*, 319 S.W.2d 90 (Tenn. 1958), *State Highway Comm'n v. Southern Union Gas Co.*, 65 N.M. 87, 332 P.2d 1007 (1958).

Table 18 Constitutional Prohibitions Concerned with the Credit and Faith of the Government <sup>1</sup>

State	Citation	Credit	Faith	Of						Shall Not Be					To Any					
				State	County	City	Town or Township	Municipality	Other Subdivision	Pledged	Lent	Loaned	Granted	Given	Individual	Company	Corporation	Association	Municipality	Private Undertaking
Ala	Amend I (art IV, §93)	X		X							X				X					
Alaska	Art IX, §6	X		X <sup>2</sup>											X					
Ariz	Art IX, §7	X		X	X	X	X	X	X			X			X		X	X		
Ark	Art XVI, §1	X		X	X	X	X	X		X	X				X		X			
Calif	Art IV, §31	X		X	X	X	X	X		X					X		X			
Colo	Art XI, §1	X	X	X	X	X	X	X	X	X	X				X	X	X	X		
Del	Art VIII, §8	X		X	X	X	X	X		X	X				X	X	X			
Fla	Art IX, §10	X		X	X	X	X			X					X	X	X	X		
Ga	Art VII, §3 (2-5604)	X		X			X			X			X		X	X	X	X		
Idaho	Art VIII, §2	X		X										X	X		X		X	
Ill	Art IV, §20	X		X										X	X		X			
Ind	Art XI, §12	X		X										X	X		X			
Iowa	Art VII, §1	X		X										X	X		X			
Ky	§§177, 179 <sup>4</sup>	X		X	X	X	X		X	X <sup>4</sup>				X <sup>4</sup>		X <sup>4</sup>	X	X	X <sup>4</sup>	
La	Art IV, §12	X		X					X	X			X		X		X			
Me	Art IX, §14	X		X											X		X			
Md	Art III, §§34, 54	X		X	X						X		X		X		X			
Mass.	[§192] Art LXII	X		X										X	X		X			
Mich	Art VIII, §25, art X, §12	X		X			X		X				X		X		X			X
Minn	Art IX, §10	X		X										X	X		X			
Miss	Art VII, §183, art XIV, §258	X		X	X	X	X	X		X				X	X		X			
Mo	Art III, §39, art VI, §23	X		X	X	X	X	X	X	X	X			X	X		X			
Mont	Art XIII, §1	X		X	X	X	X	X	X					X	X		X			
Neb	Art XIII, §3	X		X										X	X		X			
Nev	Art VIII, §9	X		X										X <sup>5</sup>		X		X		
N H	Pt 2, art V	X									X			X			X			
N J	Art VIII, §2, ¶1	X		X								X		X			X			
N M	Art IX, §14	X		X	X			X	X	X	X			X			X			
N Y	Art VII, §8, art VIII, §1	X		X	X	X	X	X	X	X				X	X		X		X	
N C	Art V, §4	X		X										X	X		X			X
N D	Art XII, §185	X		X					X					X	X		X			
Ohio	Art VIII, §§4, 6	X		X	X	X	X	X		X				X	X	X	X			X
Okla	Art X, §§15, 17	X		X	X	X	X	X	X	X				X	X	X	X		X	
Ore	Art XI, §9	X		X	X	X	X	X							X	X	X			
Pa.	Art IX, §§6, 7	X		X	X	X	X	X	X	X					X	X	X			
R I	Art XXXI, §1	X	X	X											X	X	X			
S. C	Art X, §6	X		X						X					X	X	X			
Tenn	Art II, §§29, 31	X		X	X	X	X							X	X	X	X		X	
Tex	Art III §§50, 52, 52-b	X		X							X			X	X	X	X			
Utah	Art VI, §31	X		X	X	X	X	X	X		X				X		X			X
Va	Art XIII, §185	X		X	X	X	X						X		X		X			
Wash	Art VIII, §§5, 7, art XII, §9	X		X	X	X	X	X				X		X	X	X	X			
W Va	Art X, §6	X		X									X		X		X		X	
Wis.	Art VIII, §3	X		X										X	X		X			
Wyo	Art XVI, §6	X		X	X	X	X		X					X	X		X			
Total		45	2	41	22	21	19	8	15	12	11	31	5	26	37	13	39	35	5	4

<sup>1</sup> Read entire line for full force of provision<sup>2</sup> Public credit may not be used except for a public purpose<sup>3</sup> Provision reads "donated"<sup>4</sup> Applicable to the State only<sup>5</sup> See §§157a and 179 for highway purpose exceptions

the constitutionality of the Parking Authority Act of 1951 and the legality of actions taken by the authority because of the manner in which the condemned property was to be leased

The Delaware constitution provides

No county, city, town or other municipality shall lend its credit or appropriate money to or assume the debt of, or become a shareholder or joint owner in or with any private corporation or any person or company whatever<sup>237</sup>

Enabling legislation authorized any incorporated city or town to create a parking authority, a public body corporate which was declared to be an agency of the State, not of the municipality. To finance the project, the authority was authorized to issue revenue bonds and to pledge the revenues of the authority for payment. It was forbidden to pledge the public credit, but any municipality establishing an authority could appropriate to the authority a sum necessary to acquire the land upon which the parking facility was to be erected. The authority was expressly empowered to lease portions of its buildings or structures for commercial use, if such leasing was necessary and possible for financing and operating the facilities.

The court held that the appropriation was not made directly or for the benefit of a private corporation and therefore not in violation of the constitutional mandate. It stated that the prohibition should not receive too narrow a construction. The history of the adoption of these and similar constitutional provisions in the various States, it added, shows that they were not intended to prevent a municipality from devoting funds to its own public improvements. The evil forbidden was not the investment of municipal funds in a public project operated solely by a municipality or other public body but rather the union of public and private capital or credit.

#### *Joint Ownership*

Provisions in 26 jurisdictions prohibit the joint ownership or interest of governmental

units with non-governmental entities. Such provisions apply to the State alone in 7 jurisdictions; to the State and other units of government in 14 jurisdictions, and only to units of government other than the State in 5 jurisdictions (Table 19).

Aside from this, however, the provisions are similar in effect, i.e., the governmental units may not be interested in, be a stockholder in or a joint owner with any non-governmental enterprise. In some instances exceptions for particular purposes such as for the development of unused water power,<sup>238</sup> or for corporations formed for educational or charitable purposes<sup>239</sup> are found. In Tennessee, presumably any county, city or town may become a stockholder with others in any company, association or corporation upon the assent of three-fourths of the qualified voters.<sup>240</sup>

#### *Transfer of Obligations*

Twenty-three constitutions have provisions prohibiting the transfer of the obligations of one governmental unit to that of another or the transfer of an obligation of a private undertaking to that of a governmental unit (Table 20).

The obligations by the terms of the provisions might be contracts, debts, indebtedness or liabilities. They might belong to governmental units, public corporations, private corporations or others.

In Arkansas, Georgia, Illinois, Indiana, Iowa, Kentucky, Missouri, Montana, Nevada, New York, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, Texas, Utah, Virginia and West Virginia, the State is prohibited from assuming obligations; whereas, in Colorado, Delaware and Louisiana, other units of government as well as the State are included within the terms of the prohibitions.

The State is prohibited from assuming the obligations of other units of government in 18 jurisdictions, of public corporations in 14 jurisdictions, and of private corpora-

<sup>237</sup> DEL. CONST. art. VIII, § 8

<sup>238</sup> IDAHO CONST. art. VIII, § 2

<sup>239</sup> NEV. CONST. art. VIII, § 4

<sup>240</sup> TENN. CONST. art. II, § 29

Table 19 Governmental Joint Ownership Prohibitions

State	Citation	Provisions Applicable To					
		State	County	City	Town or Township	Municipality	Other
Ala	Amend LVIII, §93	×					
Ariz	Art IX, §7	×			×		×
Del	Art VIII, §8		×	×	×	×	
Fla	Art IX, §10	×	×	×	×		×
Ga	Art VII, §3 (§2-5604)	×					
Idaho	Art VIII, §2	×					
Ind	Art XI, §12	×					
Ky	§179		×	×	×		×
La	Art IV, §12	×					
Miss	Art VII, §183; art XIV, §258	×	×	×	×	×	
Mo	Art VI, §23		×	×			×
Mont	Art XIII, §1	×	×	×	×	×	×
Neb	Art XI, §1		×	×	×	×	×
Nev	Art VIII, §9	×					
N Y	Art VIII, §1		×	×	×		×
N D	Art XII, §185	×					×
Ohio	Art VIII, §§4, 6	×	×	×	×		
Okla	Art X, §§15, 17	×	×	×	×		×
Ore	Art XI, §§6, 9	×	×	×	×	×	
Pa	Art IX, §§6, 7	×	×	×	×		×
Tenn	Art II, §§29, 31	×	×	×	×		
Utah	Art VI, §31	×	×	×	×		×
Va	Art XIII, §185	×	×	×	×		
Wash	Art XII, §9; art VIII, §7	×	×	×	×	×	
W Va	Art X, §6	×					
Wyo	Art XVI, §6	×	×	×	×		×
Total		21	18	18	17	7	12

Table 20 Constitutional Prohibitions Against Transfer of Obligations<sup>1</sup>

State	Citation	Binding Upon.		Action Prohibited		Obligations Involved					Belonging to				
		State Only	State and Other Units of Government	Assumption	Payment	Responsible for	Contracts	Debts	Indebtedness	Obligations	Liabilities	Governmental Units	Public Corporations	Private Corporations	Others
Ark	Art XII, §12	×		×	×		×			×	×	×	×		
Colo	Art XI, §1		×	×		×	×				×	×	×	×	
Del	Art VIII, §§4, 8		×	×			×				×	×	×	×	
Ga.	Art VII, §3 (§2-5605)	×		×			×				×	×	×	×	
Ill	Art IV, §20	×		×	×	×	×			×	×	×	×	×	
Ind	Art X, §6	×		×			×				×	×	×		
Iowa	Art VII, §1	×		×		×						×	×	×	
Ky	§176	×		×			×					×	×	×	
La	Art IV, §12		×	×							×	×	×	×	
Miss <sup>2</sup>															
Mo	Art III, §39	×			×					×	×	×	×	×	
Mont	Art XIII, §4	×		×							×	×	×		
Nev	Art IX, §4	×		×				×			×	×	×		
N Y	Art VII, §8	×			×				×		×	×	×	×	
Ohio	Art VIII, §5	×		×			×				×	×	×		
Okla	Art X, §14	×		×			×				×	×	×		
Ore	Art XI, §8	×		×			×				×	×	×		
Pa	Art IX, §9	×		×			×				×	×	×		
R I	Art XXXI, §1	×			×						×	×	×	×	
Tex	Art III, §52-b	×			×					×	×	×	×	×	
Utah	Art XIV, §6	×		×							×	×	×		
Va	Art XIII, §185	×		×				×			×				
W. Va	Art. X, §6	×		×		×	×			×	×	×	×	×	
Total		19	3	17	6	4	1	13	1	1	5	18	14	15	10

<sup>1</sup> Read entire line for full force of provision<sup>2</sup> Art XIV, §258 applies to "Union Bank" and "Planters Bank" bonds only

tions in 15 jurisdictions. Other units of government are prohibited from assuming the obligations of public corporations in Colorado and Louisiana and of private corporations in Colorado, Delaware and

Louisiana. However, parishes in Louisiana may assume the debts of road districts and sub-road districts when authorized by general law <sup>241</sup>

<sup>241</sup> LA CONST art XIV, §14(k)

## INTERGOVERNMENTAL RELATIONS

### FEDERAL-STATE COOPERATIVE ACTIVITY

There are constitutional provisions in several States that, although not limited to Federal-State highway activity, affect cooperative projects. These provisions are usually general in nature and in most cases are not intended to serve as the basic authorization for Federal-State cooperative activity. Only a few of these constitutional provisions actually indicate specific State acceptance of Federal aid or grants.

In most instances, the provisions concerned with this matter set forth what the State may do to meet any requirements after Federal aid has been accepted. For the most part, then, Federal-aid highway programs are carried out under statutory authorizations or mandates.<sup>242</sup>

Only Maryland, Missouri and Oklahoma<sup>243</sup> have specific constitutional provisions enabling them to accept grants or aid of property or money from the Federal Government. In Alaska, the State and its political subdivisions are authorized to cooperate with the United States, its territories, other States and their political subdivisions in matters of common interest.<sup>244</sup> Alaska, Georgia and Missouri have specific constitutional provisions which permit municipalities or other political subdivisions to cooperate with the Federal Government to carry out joint projects.<sup>245</sup>

Because of certain constitutional limitations, which might interfere with a State's acceptance of Federal aid, 13 States<sup>246</sup> have adopted constitutional provisions which permit specific action, if necessary, in order to take advantage of Federal aid. Such provisions deal primarily with financial matters and permit the State to issue special bonds for joint Federal-State proj-

ects or exceed the constitutional debt ceilings. In several instances, these provisions although still existing in the constitution, appear to be executed.

The provisions from Maryland and Missouri grant power to the State to do whatever is required under any Federal grant. Provisions in Alabama, Colorado and Ohio authorize the State to appropriate money and sell bonds in conjunction with activity by the Federal Government. In addition, seven jurisdictions provide exceptions to various constitutional requirements or prohibitions in order to take advantage of Federal aid. These exceptions are as follows: (a) Nevada, New Jersey and New Mexico allow the State to exceed its debt limitation to accept and use Federal funds, (b) Georgia allows any county or municipality to exceed a debt limitation to accept and use funds granted by the Federal Government for specific purposes under certain conditions, (c) Minnesota allows the constitutional mileage limitation to the trunk highway system to be increased in order to meet, use or otherwise take advantage of any Federal aid to the State, and (d) Wisconsin and Wyoming grant exceptions to provisions prohibiting work of internal improvement in order to receive land or other property especially dedicated to the State.

### STATE AND LOCAL COOPERATIVE ACTIVITY

Provisions in the constitutions of Alaska, Georgia, and Missouri authorize intergovernmental agreements for various purposes.<sup>247</sup> For example, in Missouri, any municipality or political subdivision may cooperate with other municipalities or political subdivisions, with another State or its political subdivisions or with the Federal Government for the planning, development, construction, acquisition or operation of any public improvement, facility or for a common service.

<sup>242</sup> See *Federal Aid Provisions in State Highway Laws*, H. R. B. Spec. Rep. 48.

<sup>243</sup> MD CONST art III, §46, MO CONST art III, §38a, OKLA CONST art XVI, §2.

<sup>244</sup> ALASKA CONST art XII, §2.

<sup>245</sup> ALASKA CONST art X, §13, art VII, §2, GA CONST art VII, §6 (§2-5901), MO CONST art VI, §16.

<sup>246</sup> ALA CONST amend LXXXVII, COLO CONST art XI, §3, GA CONST art VII, §7 (§2-6001), IDAHO CONST art IV, §18, MD CONST art III, §46, MINN CONST art XVI, §2, MO CONST art III, §38a, NEV CONST art IX, §3, N. J. CONST art VIII, §2, par. 3, N. MEX CONST art IX, §16, OHIO CONST art VIII, §2c, WIS CONST art VIII, §10, WYO CONST art XVI, §9.

<sup>247</sup> ALASKA CONST art X, §13, art XII, §12, GA CONST art VII, §6 (§2-5901), MO CONST art VI, §16. See generally *Intergovernmental Relations in State Highway Legislation: An Analysis*, H. R. B. Special Report 49.

## INTERNAL IMPROVEMENTS

The term internal improvement includes works of general public utility or advantage, designed to promote facility of intercommunication, trade and commerce, the transportation of persons and property, or the development of the natural resources of the State, such as railroads, public highways, turnpikes, canals, bridges, the improvement of rivers and harbors, systems of artificial irrigation and the improvement of water power, but it does not include the building and maintenance of State institutions

In the development of this country, the various governments, in a number of instances, extended credit and aid to works of internal improvement in the hope that the success of such undertakings would bring prosperity and benefit to the public. As a result of this policy, large governmental obligations were incurred and subsequently severe losses suffered. Faced with such circumstances, many States adopted constitutional provisions prohibiting governmental support for such undertakings. Thirteen jurisdictions<sup>248</sup> presently have constitutional provisions dealing with internal improvements, though their effect and interpretation vary.

What is considered a work of internal improvement is to a great degree dependent upon the particular fact situation, as well as the policy of the State. For example, in Maryland the term "internal improvements" does not include public highways,<sup>249</sup> but in Minnesota the term does.<sup>250</sup>

A 1957 Virginia case<sup>251</sup> shows recent thinking on the matter in that State. In question was the validity of the statute authorizing the State highway commission to provide "bus facilities for the transportation of passengers through or over the

bridge tunnel project being constructed across Hampton Roads."<sup>252</sup> Considering a prohibition relative to works of internal improvement together with its exceptions in the light of historical background, the State supreme court held that the furnishing of such transportation was not a violation of the internal improvement prohibition.<sup>253</sup>

Ten jurisdictions<sup>254</sup> have specific prohibitions relative to works of internal improvements. Alabama and Wyoming prohibit the State's engagement in, Maryland, Ohio and Wisconsin the State's being a party to, Michigan and Virginia the State's being interested in, and Minnesota, Ohio and Wisconsin the State's contracting any debt for purposes of internal improvement. A Nebraska provision prohibits State subdivisions from making donations to internal improvements.

In conjunction with these prohibitions, however, specific exemptions are provided. Alabama, Kansas, Michigan, Minnesota, Virginia, Wisconsin and Wyoming specifically exempt highway operations. Although highway matters are not exempted in Maryland, Nebraska and Ohio, the prohibitions have been declared to have no effect on the highway function in Maryland<sup>255</sup> and Nebraska.<sup>256</sup> In Ohio other constitutional mandates show the prohibition not to be operative in the highway field.<sup>257</sup>

On the other hand, the constitutions of North Dakota, South Dakota and Tennessee tend to encourage rather than restrict internal improvements. In North Dakota, the State, county or city may make internal improvements and a Tennessee provision declares that a well-regulated system of internal improvement, calculated to develop the resources of the State and pro-

<sup>248</sup> ALA CONST art LVIII, §93, KAN CONST art XI, §9, MD CONST art III, §34, MICH CONST art X, §14, MINN CONST art IX, §5, NEB CONST art XIII, §2, ND CONST art XII, §185, OHIO CONST art XII §6, SD CONST art VIII, §9, art XIII, §81, 16, TENN CONST art XI, §10, VA CONST art XIII, §185, WIS CONST art VIII, §10, WYO CONST art XVI, §§6, 9.

<sup>249</sup> *Bonsal v Yellott*, 100 Md 481, 60 Atl 593 (1905).

<sup>250</sup> *Cooke v Iverson*, 108 Minn 388, 122 NW 251 (1909), *State v Balcock*, 161 Minn 80, 200 NW 843 (1924).

<sup>251</sup> *Almond v Day*, 199 Va 1, 97 SE2d 824 (1957).

<sup>252</sup> Code of Va., 1950 §33 253, as amended by Acts 1954, ch 319, p 389.

<sup>253</sup> See, however, the dissenting opinion by Justice Miller.

<sup>254</sup> Ala., Kan., Md., Mich., Minn., Neb., Ohio, Va., Wis., and Wyo.

<sup>255</sup> *Bonsal v Yellott*, 100 Md 481, 60 Atl 593 (1905).

<sup>256</sup> *State v Bone Creek*, 109 Neb 202, 193 NW 767 (1923).

<sup>257</sup> See OHIO CONST art I, §19, art XIII, §5a.

mote the happiness and prosperity of her citizens ought to be encouraged by the general assembly One South Dakota provision declares that the construction and maintenance of good roads are works of necessity and importance in which the State

may engage but no expenditure of money shall be made therefor except by a two-thirds majority vote of the legislature and another provision specifically provides that the State may engage in works of internal improvement.



## LOCAL, SPECIAL OR PRIVATE LAWS

A local law is defined as a law which is applicable exclusively to special or particular places or persons. A special law relates to particular persons or things, is made for individual cases or for particular places or districts and operates upon a selected class rather than upon the public generally. A private law is one which is administered between citizen and citizen. For the most part, there is a dislike for such legislation. A 1951 opinion of the Supreme Judicial Court of Maine,<sup>258</sup> quoting an early governor's inaugural address,<sup>259</sup> advanced the following reasons for prohibiting such legislation:

The title of "Special and Private Laws" is an obnoxious one, conveying suggestions of privilege, favoritism and monopoly, other weighty objections to special laws for private benefit are, that they are obtained at the public expense, and in their passage distract the attention of legislators from matters of public interest.

Many objects have been hitherto specially legislated upon although they were amply provided for by general laws. The reason why the general laws have not been resorted to to a greater extent (for purposes of incorporation), is not so far as I am informed, to be found in any insufficiency or defect of those laws, but in the greater ease and simplicity of the method of application to the Legislature and in the fancied higher sanction of an authority proceeding directly from it . . .

Somewhat similar language may be seen from a 1941 Texas case.<sup>260</sup>

The purpose of this constitutional inhibition against the enactment of local or special laws is a wholesome one. It is intended to prevent the granting of special privileges and to secure uniformity of law throughout the State as far as possible. It is said that at an early period in many of the states the practice of enacting special and local laws became "an efficient means for the easy enactment of laws for the advancement of

personal rather than public interests."

It was for the suppression of such practices that such a provision was adopted in this and many of the other states of the Union.

Forty-one States have constitutional provisions concerning local, special or private laws. A majority of these either prohibit the passage of all local, special or private laws where a general law can be made applicable,<sup>261</sup> or enumerate specific instances where such laws are prohibited. Those provisions which specifically prohibit such legislation applying to highway activities are indicated in Table 21. In Georgia, Mississippi, North Carolina, New York and Texas where the passage of such laws in specific instances is prohibited, the legislature is, however, empowered to pass general laws covering the subject matter.

On the other hand, the legislatures in Massachusetts and South Carolina are specifically authorized to enact local or special laws in certain instances.<sup>262</sup> The Massachusetts legislature may enact such laws to lay out, widen or relocate highways or streets, and authorize the commonwealth, or any county, city or town to take in fee more property than is needed for highway construction. Similarly, the South Carolina legislature is authorized to enact local or special laws to lay out, open or alter roads or highways.

Generally the State constitutional provisions prohibit the passage of local, special or private laws to lay out, open, alter or vacate streets, alleys, roads or highways. Exceptions are found in Oklahoma and Texas where the legislatures are prohibited from passing any special or local laws except as otherwise provided in the constitution. A more specific exception is contained in the Delaware constitution which provides that the general assembly may by a vote of two-thirds of all members of each

<sup>258</sup> Opinion of the Justices, 146 Me 316, 80 A 2d 866, 868 (1951).

<sup>259</sup> Inaugural Address of Governor Selden Connor delivered before the Fifth Maine Legislature when it convened in 1876 as found in the Act and Resolves of 1876, pages 145, 165.

<sup>260</sup> Miller v El Paso County, 130 Tex 370, 150 SW 2d 1000, 1001 (1941).

<sup>261</sup> For example, see ALASKA CONST art II, §19, KAN CONST art II, §17, MINN CONST art IV, §33, and MISS CONST art IV, §87.

<sup>262</sup> MASS CONST (§11), art X, S C CONST art II of amendments.

Table 21 Highway Purposes for Which Local, Special and Private Laws are Prohibited by State Constitutions

State	Citation	Establish, Alter, Maintain Roads	Vacate and Close Roads	Charter and License Bridges, Ferries, Toll Roads	Assess Road Taxes
Ala	Art IV, §104			×	
Ariz	Art IV, §19	×	×		
Ark	Art V, §24, amend 14		×		
Calif.	Art IV, §25	×	×	×	
Colo.	Art V, §25	×	×	×	
Del	Art II, §19	×	×		
Fla	Art III, §20		×	×	
Ga	Art III, §7 (§2-1917)			×	
Idaho	Art III, §19	×	×	×	
Ill	Art IV, §22	×	×	×	
Ind	Art IV, §22	×	×		×
Iowa	Art III, §30		×		×
Ky	§59	×	×	×	
La	Art IV, §4	×	×	×	
Minn	Art IV, §33	×	×		
Miss	Art IV, §90	×	×	×	
Mo	Art III, §40	×	×	×	
Mont	Art V, §26	×	×	×	
Neb	Art III, §18	×	×	×	
Nev.	Art IV, §20		×	×	
N J	Art IV, §7	×	×		
N M	Art IV, §24	×	×	×	
N Y	Art III, §17	×	×	×	
N C.	Art II, §29	×	×	×	
N D.	Art II, §69	×	×	×	
Okla	Art V, §46	×	×	×	
Ore.	Art IV, §23	×	×	×	×
Pa	Art III, §7	×	×	×	
S D	Art III, §23	×	×	×	
Tex	Art III, §56	×	×	×	
Utah	Art VI, §26	×	×	×	
Wash	Art II, §28	×		×	
W Va	Art. VI, §39	×	×	×	
Wis.	Art IV, §31	×		×	
Wyo	Art III, §27	×	×	×	
Total		30	31	28	3

<sup>1</sup> Roads extending through at least three counties are excepted in Delaware, roads extending through more than one county and military roads are excepted in New Mexico, Washington and Wisconsin

<sup>2</sup> Laws providing for election or appointment of supervisors also prohibited

<sup>3</sup> Applicable only to bridges wholly within the State

<sup>4</sup> Not to be construed as restricting power of Legislature to establish and regulate toll charges

house enact legislation for the laying out, opening, alteration or maintenance of any road or highway which forms a continuous road or highway extending through at least a portion of the three counties of the State. New Mexico and Wisconsin have similar exceptions applied to State roads extending into more than one county and military roads.

The constitutions in Louisiana, Missouri, New York, Oklahoma, Pennsylvania and Texas provide that no local, special or pri-

vate laws shall be passed to incorporate or relate to bridges and ferries except for the erection of bridges crossing streams which form State boundaries. Provisions in South Dakota, Utah, Washington and Wisconsin prohibit such laws authorizing persons to keep ferries operating wholly within the State. California, Indiana, Iowa and Oregon prohibit such legislation for the assessment or collection of taxes. Indiana and Oregon also prohibit such legislation for the election or appointment of supervisors

## SUITS AGAINST THE STATE

It is an established principle of jurisprudence, based upon public policy, that the sovereign cannot be sued without its consent<sup>263</sup> Accordingly, no suit, whether at law or in equity, is maintainable against the State either in its own courts or the courts of a sister State unless it has consented to be sued or has otherwise waived its immunity Because the construction, maintenance and operation of highways constitute a primary governmental function<sup>264</sup> such immunity protects State highway departments as well as other administrative agencies.<sup>265</sup>

Twenty-five jurisdictions have constitutional provisions dealing with the subject Alabama<sup>266</sup> and Illinois<sup>267</sup> provisions declare that the State shall never be made a defendant in any courts of law or equity An Arkansas provision<sup>268</sup> specifies that the State shall never be made a defendant in any of her courts, whereas a West Virginia prohibition<sup>269</sup> declares that the State shall never be made a defendant in any court of law or equity except in the State of West Virginia

On the other hand, provisions in 20 constitutions provide that the legislature shall<sup>270</sup> or may<sup>271</sup> direct in what courts

suits may be brought against the State and the procedure to be followed In addition, the constitution in Idaho has two provisions establishing a procedure for handling claims against the State One provides that the supreme court shall have original jurisdiction to hear claims against the State, but that its decision shall be merely recommendatory No process in the nature of execution shall issue and its decision shall be reported to the next session of the legislature for its action.<sup>272</sup> The other provides for a board of examiners with power to examine all claims against the State<sup>273</sup> Immunity from suit, however, does not extend its protective cloak to cases where private property is taken for public purposes. Consent to be sued or waiver of immunity in such instances may be based on the limitations upon the right of eminent domain,<sup>274</sup> or as in North Carolina where it has been declared that where private property has been appropriated by the State for public purposes, the right of the owner to recover adequate compensation will be entertained by the courts as an exception to the principle that the sovereign cannot be sued without its consent<sup>275</sup>

In other instances, such as where a governmental official operates outside his governmental capacity, a suit against him personally is not construed to be a suit against the State

<sup>263</sup> *Beers v. State of Arkansas*, 61 U.S. (20 How.) 527, (1858); *Memphis & C.R. Co. v. State of Tennessee*, 101 U.S. (11 Otto) 337 (1880); *Curtis & Hill Gravel & Sand Co. v. State Highway Comm.*, 91 N.J. Eq. 421, 111 Atl. 16 (1920)

<sup>264</sup> *Atkin v. Kansas*, 191 U.S. 207 (1903); *Sherman v. U.S.*, 282 U.S. 25 (1930)

<sup>265</sup> *Miller v. Port of New York Authority*, 18 N.J. Misc. 601, 15 A.2d 262 (1939)

<sup>266</sup> ALA. CONST. art. I, §14

<sup>267</sup> ILL. CONST. art. IV, §26

<sup>268</sup> ARK. CONST. art. V, §20

<sup>269</sup> W. VA. CONST. art. VI, §35

<sup>270</sup> ALASKA CONST. art. II, §21, ARIZ. CONST. art. IV, §18, CAL. CONST. art. XX, §6, DEL. CONST. art. I, §9, NEB. CONST. art. V, §22, S.D. CONST. art. III, §27, WASH. CONST. art. II, §26, WIS. CONST. art. IV, §27

<sup>271</sup> FLA. CONST. art. III, §22, IND. CONST. art. IV, §24, KY. CONST. §231, LA. CONST. art. III, §35 (see also LA. CONST. art. XIV, §14(1) which authorizes any person in in

terest to enforce the imposition and collection of taxes necessary to pay the principal and interest of any bonded debt of any subdivision), NEV. CONST. art. IV, §22, N.D. CONST. art. I, §22, OHIO CONST. art. I, §16, ORE. CONST. art. IV, §24, PA. CONST. art. I, §11, S.C. CONST. art. XVII, §2, TENN. CONST. art. I, §17, WYO. CONST. art. I, §8

<sup>272</sup> IDAHO CONST. art. V, §10

<sup>273</sup> IDAHO CONST. art. IV, §18

<sup>274</sup> *Chick Springs Water Co. v. State Highway Dep't*, 159 S.C. 481, 157 S.E. 842 (1931)

<sup>275</sup> *Sale v. State Highway & Pub. Works Comm'n*, 242 N.C. 612, 89 S.E.2d 290 (1955)

## MISCELLANEOUS PROVISIONS

### HOURS OF WORK

The constitutions in Arizona, California, Colorado, Idaho, Montana, New Mexico, New York, Ohio, Oklahoma, Utah and Wyoming<sup>276</sup> have provisions relative to hours of work. The provisions generally are applicable to public works carried on or aided by the State or other political entity. However, the provisions in Colorado and Montana are more specific. In Colorado, the general assembly is authorized to set the hours of employment of persons engaged in branches of industry or labor which it determines injurious or dangerous to health, life or limb. The Montana constitution declares that a period of eight hours shall constitute a day's work in all industries, occupations, undertakings and employments except farming and stock raising. It appears that highway activities are embraced in both these provisions.

A maximum 8-hour day is provided for in all cases. Although such a work day is specified in Arizona and California, the respective legislatures are directed to enact laws to make the mandate effective.<sup>277</sup> In Colorado, the general assembly is required to provide by law for the 8-hour day in certain types of employment. The Montana provision prohibits an increase in the work day but allows for its reduction whenever the legislature determines by law that it will better promote the general welfare. The California, Colorado, New York and Ohio mandates include so-called "emergency provisions" which permit exceptions under certain circumstances.

In New York, a maximum 5-day work week is provided for, whereas the Ohio provision stipulates a maximum 6-day (48-hour) work week. In cases of extraordinary emergency, exceptions are provided.

The provisions in Arizona and California

<sup>276</sup> ARIZ. CONST. art. XVIII, §1, CAL. CONST. art. XV, §17, COLO. CONST. art. V, §25a, IDAHO CONST. art. XIII, §2, MONT. CONST. art. XVIII, §4, N. MEX. CONST. art. XX, §19, N.Y. CONST. art. I, §17, OHIO CONST. art. II, §37, OKLA. CONST. art. XXIII, §1, UTAH CONST. art. XVI, §6, WYO. CONST. art. XIX, §2.

<sup>277</sup> See *City of Phoenix v. Yates*, 69 Ariz. 68, 208 P.2d 1147 (1949).

specify that the legislature shall provide penalties for the enforcement of the mandates.

### CONTRACTS

The constitutions of Arkansas, Louisiana and Kentucky have provisions concerning contracts.

The Arkansas provision<sup>278</sup> requires that all contracts for erecting or repairing public buildings or bridges in any county, or for materials, be given to the lowest responsible bidder under regulations provided by law. A Louisiana provision<sup>279</sup> subjects contracts for the construction of certain paved highways and bridges to the approval of the board of liquidation of the State debt or the State advisory board. A Kentucky provision<sup>280</sup> dealing with the payment of claims declares that no county, city, or town or other municipality shall ever be authorized or permitted to pay any claim created against it, under any agreement or contract made without express authority of law, and all such unauthorized agreements or contracts shall be null and void.

### PARTICULAR ROADS

Provisions in Washington and New York deal with particular roads. The Washington<sup>281</sup> provisions fix the right of municipal corporations to extend their streets over intervening tidelands. A New York provision<sup>282</sup> declares that lands of the State constituting the forest preserve shall be kept as wild forest lands. The provision specifically states, however, that it was not intended to prevent the State from constructing, completing and maintaining any highway heretofore specifically authorized by constitutional amendment. No roads appear to be authorized by the New York constitution, however. A 1935 Attorney General's Opinion<sup>283</sup> states that the pro-

<sup>278</sup> ARK. CONST. art. XIX, §16.

<sup>279</sup> LA. CONST. art. VI, §22(d), (e).

<sup>280</sup> KY. CONST. §162.

<sup>281</sup> WASH. CONST. art. XI, §5, art. XV, §3.

<sup>282</sup> N.Y. CONST. art. XIV, §1.

<sup>283</sup> 1935 Opinions New York Attorney General 300.

vision authorizes the conservation commission to construct dirt roads or trunk trails in forest preserves for purposes of aiding and protecting them from fire hazards. Such roads are not public highways and public use is not allowable.

#### ROADSIDE ADVERTISING

Massachusetts has a provision<sup>284</sup> declaring that advertising on public ways, in public places and on private property within public view may be regulated and restricted by law.

#### CONVICT LABOR

Provisions in Arizona, Louisiana, Mississippi, Oklahoma and Texas<sup>285</sup> authorize convict labor to be used under certain cir-

cumstances for highway purposes. Arizona prohibits the employment of any alien upon any State, county or municipal work but permits State, county or municipal prisoners to perform street or road work. The other States reserve to the legislature the authorization to use such labor. In addition, Mississippi provides for local option by the board of county supervisors.

#### WORKERS' RIGHTS

In New Jersey<sup>286</sup> and New York<sup>287</sup> persons in public employment have the right to organize and make known their grievances through representatives of their own choosing. In New York, laborers, workmen or mechanics engaged in the performance of any public work may not be paid less than the rate of wages prevailing in the same trade or occupation in the locality.

<sup>284</sup> MASS CONST (§180) art I.  
<sup>285</sup> ARIZ CONST art XVIII, §10, LA CONST art III, §33, MISS CONST art IV, §85, OKLA CONST art XVI, §1, TEX CONST art XVI, §24.

<sup>286</sup> N J CONST art I, para 19  
<sup>287</sup> N Y CONST art I, §17

## APPENDIX A

The following tables contain citations to State constitutional provisions arranged according to the major topics covered in the text of this report, as follows:

- Table 22* Highway Administration
- Table 23.* Acquisition of Property
- Table 24* Finance: Taxation
- Table 25* Finance. Indebtedness
- Table 26* Finance Highway Bond Issues,  
and Antidiversion of Funds
- Table 27* Finance: Prohibited Relationships Between Governmental  
and Non-Governmental Entities
- Table 28* Intergovernmental Relations;  
Internal Improvements, Local,  
Special or Private Laws, Suits  
Against the State, and Miscellaneous Provisions

Table 22 Highway Administration

	State Legislature	State Highway Department	County Court	State and Local Administrative Body	Special Road District
State	State constitutions make State legislatures responsible for carrying out specific duties or grant broad powers relative to highways. Some legislatures are authorized to appropriate funds for highway purposes, incur debts, engage in construction and maintenance and authorize or provide for a State system.	These provisions authorize or create State highway departments and provide for powers and duties, makeup, operation of such agencies and dismissal or removal of personnel.	Local courts are empowered to carry out specific highway duties.	Specific responsibility is placed in State highway departments (distinguished from provisions creating or authorizing such departments), county supervisors or commissioners, township highway commissioners or local governments.	State constitutions authorize the creation of road districts and other special construction areas. Such provisions empower these units to raise funds and to perform local highway functions.
Ala	Amends XI (art XX), XXI (art XXa), LVIII, §93	Amend 42	Art. VII, §28	Amend XI (art XX)	Amend XV
Ark	Art IV, §36				
Calif	Art XI, §3	Art VI, §19 1 (19 2)	Art. VI, §6 (§2-4102)	Art XI, §3 Art VII, §9 (§2-6204(b))	Art XI, §7½
Colo	Art VII, §9 (§2-6204(b)), art VII §2 (§2-5501)				
Ga	Art IV, §30				
Ill	Art XI, §9				
Kan	Art VI, §19				
La	Art VIII, §§26, 27				
Mech	Art XVI, §§1 to 7				
Minn	Art IV, §85, art VI §170				
Miss	Art XIV, §1				
Mo	Art XVI, §1				
N M	Art XI, §7	Art IV, §§12, 29, 31, 32, 33 Art V, §14	Art. VI, §14	Art VI, §19 Art IX, §19 Art VIII, §§18, 27, 28 Art XVI, §§2 to 4 Art VI, §170 Art IV, §§12, 29, 31, 32, 33	Art. XIV, §14(c), art VI, §20
N Y	Art IX, §§4, 16, 21				
N C	Art XIII, §9	Art VIII, §24	Art VIII, §24	Art VII, §§2, 13 Art XI, §10 Art XV, §3, art XI, §5	Art III, §52d
Okla	Art XVI, §24				
Ore	Good Roads Amends of 1920, 1928, Fifty Million Dollar Bond Issue for Roads Amend				
Pa	Art VIII, §10				
S D	Art XVI, §9				
Tex					
Wash					
W Va.					
Wis					
Wyo					

Table 23 Acquisition of Property

State	Due Process	Just Compensation		Time Compensation Is to Be Paid	Fixing Compensation	Benefits	Marginal Land
		Taking	Damaging				
Ala	Art I, §13	Art I, §23, art XII, §235	Art XII, §235	Art I, §23, art XII, §235	Art XII, §235	Art I, §23	
Alaska	Art I, §7	Art I, §18, art VIII, §16	Art I, §18				
Ariz	Art II, §4	Art II, §17	Art II, §17	Art II, §17	Art II, §17	Art II, §17	
Arc	Art II, §8	Art II, §22, art XII, §9	Art II, §22	Art XII, §9	Art XII, §9	Art XII, §9	
Calif	Art I, §13	Art I, §14	Art I, §14	Art I, §14	Art I, §14	Art I, §14	Art I, §14½
Coio	Art II, §25	Art II, §15	Art II, §15	Art II, §15	Art II, §15	Art II, §15	
Conn	Art I, §§9, 12	Art I, §11					
Del	Art I, §§7, 9	Art I, §8					
Fla	Dec of Rights, §12	Dec of Rights, §12, art XVI §29		Art XVI, §29	Art XVI, §29	Art XVI, §29	
Ga	Art I, §1 (§2-103)	Art I, §3 (§2-301)	Art I, §3 (§2-301)	Art I, §3 (§2-301)			
Idaho	Art I, §13	Art I, §14		Art I, §14	Art I, §14		
Ill	Art II, §2	Art II, §13	Art II, §13		Art II, §13 art XI, §14		
Ind	Art I, §12	Art I, §21		Art I, §21			
Iowa	Art I, §9	Art I, §18		Art I, §18	Art I, §18	Art I, §18	
Kan	Bill of Rights §18	Art XII, §4		Art XII, §4		Art XII, §4	
Ky	§11	§§13, 242	§242	§§13, 242	§242		
La	Art I, §2	Art I, §2, art VI, §19 1	Art I, §2, art VI, §19 1	Art I, §2, art VI, §19, art IV, §15			
Me	Art I, §19	Art I, §21					
Md	Dec of Rights, §23	Art III, §§40, 40A, 40B		Art III, §§40 40A, 40B	Art III, §§40, 40A, 40B		
Mass	[§13] Art XII	[§11] Art X					[§11] Art X Art XIII, §5
Mich	Art II, §16	Art XIII, §§1, 2		Art XIII, §1	Art XIII, §§1, 2		
Minn	Art I, §§2, 7	Art I, §13, art X, §4	Art I, §13	Art I, §13			
Miss	Art III, §14	Art III, §17	Art III, §17	Art III, §17, Art IV, §10	Art III, §17		
Mo	Art I, §10	Art I, §§26, 28	Art I, §26	Art I, §26	Art I, §26, art XI, §4		Art I, §27
Mont	Art III, §27	Art III, §14	Art III, §14	Art III, §14	Art III, §15		
Neb	Art I, §3	Art I, §21	Art I, §21				
Nev	Art I, §8	Art I, §8, art VIII, §7		Art I, §8			
N H	Pt I, arts 14, 15	Pt I, art 12					
N J		Art I, ¶20		Art I, ¶20			Art IV, §6, ¶3
N M	Art II, §18	Art II, §20	Art II, §20				
N Y	Art I, §6	Art I, §7			Art I, §7		Art I, §7
N C	Art I, §§17, 35						
N D	Art I, §13	Art I, §14	Art I, §14	Art I, §14	Art I, §14	Art I, §14	
Ohio	Art I, §16	Art I, §19, art XIII, §5		Art I, §19	Art I, §19, art XIII, §5	Art I, §19	Art XVIII, §10
Okla	Art II, §7	Art II, §24	Art II, §24	Art II, §24	Art II, §24	Art II, §24	
Ore	Art I, §10	Art I, §18, art XI, §4		Art I, §18, art XI, §4			
Pa	Art I, §9	Art I, §10, art XVI, §8	Art XVI, §8	Art I, §10	Art XVI, §8		Art XV, §5
R I	Art I, §10	Art I, §10					Art XVII, §1
S C	Art I, §5	Art I, §17, art IX, §20		Art I, §17, art IX, §20	Art IX, §20	Art IX, §20	
S D	Art VI, §2	Art VI, §13, art XVII, §18	Art VI, §13, art XVII, §18	Art VI, §13	Art VI, §13, art XVII, §18	Art VI, §13	



Table 23 Acquisition of Property (Continued)

State	Due Process	Just Compensation		Time Compensation Is to Be Paid	Fixing Compensation	Benefits	Marginal Land
		Taking	Damaging				
Tenn	Art I, §§8, 17	Art I, §21					
Tex	Art I, §§13, 19	Art I, §17	Art I, §17	Art I, §17			
Utah	Art I, §7	Art I, §22	Art I, §22				Art XI, §5
Vt	Ch I, art 4	Ch I, arts 2, 9					
Va	Art I, §11	Art IV, §58, art I, §6	Art IV, §58, art I, §6				
Wash	Art I, §3	Art I, §16	Art I, §16	Art I, §16	Art I, §16	Art I, §16	
W Va	Art III, §10	Art III, §9	Art III, §9	Art III, §9	Art III, §9		
Wis	Art I, §9	Art I, §13, art XI, §2					Art XI, §3a
Wyo	Art I, §6	Art I, §§32, 33	Art I, §33				

Table 23 Acquisition of Property (Continued)

State	Due Process	Just Compensation		Time Compensation Is to Be Paid	Fixing Compensation	Benefits	Marginal Land
		Taking	Damaging				
Tenn	Art I, §§8, 17	Art I, §21					
Tex	Art I, §§13, 19	Art I, §17	Art I, §17	Art I, §17			Art XI, §5
Utah	Art I, §7	Art I, §22	Art I, §22				
Vt	Ch I, art 4	Ch I, arts 2, 9					
Va	Art I, §11	Art IV, §58, art I, §6	Art IV, §58, art I, §6				
Wash	Art I, §3	Art I, §16	Art I, §16	Art I, §16	Art I, §16 Art III, §9	Art I, §16	
W Va	Art III, §10	Art III, §9	Art III, §9	Art III, §9			
Wis	Art I, §9	Art I, §13, art XI, §2					Art XI, §3a
Wyo	Art I, §6	Art I, §§32, 33	Art I, §33				

Table 24 Finance Taxation

State	Limitation on Taxing Power	Special Highway Taxes	Miscellaneous*
Ala	Art XI, §§214, 215, 216	Amends XI (art XX), XVIII, XIX, XXI (art XXa), LXVI, LXXXVII, art XI, §215	Art XI, §21
Alaska	Art X, §2		
Ariz	Art IX, §6, art VII, §13	Art IX, §11	Art IX, §§3, 9
Ark	Art XII, §4, art XVI, §§5, 8, 9; art XIX, §27	Amend 3, art XVI, §1	Art. V, §§31, 39; art XVI, §11
Calif	Art XI, §20, art IV, §34a		
Colo	Art X, §11, art XI, §8	Art X, §6, art XI, §3	
Fla	Art IX, §1	Art IX, §§13, 16	Art IX, §§2, 3, 5, 7
Ga	Art VII, §1 [§2-5402(3)]		Art VII, §§2, 3, 4 (§§2-5501, 2-5609, 2-5701)
Idaho	Art VII, §§9, 15		Art VII, §15
Ill	Art IX, §§8, 9		Art IV, §18
Iowa			Art. VII, §7
Kan	Art XII, §5	Art. XI, §10	Art XI, §5
Ky	§§157, 157a	§157a	§180
La	Art X, §§3, 10, 13; art VI, §20, art XIV, §§8, 11, 12	Art VI, §§22, 23 (5); art IV, §2, 2(c), art X, §10	Art X, §§10, 17, art XIV, §14 (j)
Mich	Art VIII, §§20, 26, art X, §21	Art VIII, §§10, 26, art. X, §22	Art X, §6
Minn	Art IX, §1, art XI, §5	Art XVI, §§9, 10, 12, art. IX, §5	Art XI, §5
Miss	Art IV, §80		
Mo	Art X, §§8, 11a, 11b, 11c, 11d	Art X, §§12a, 12b	Art X, §§10a, 10b
Mont	Art XII, §§4, 5, 9		Art XII, §4
Neb.	Art VIII, §§5, 6	Art VIII, §1	
Nev	Art VIII, §8, art X, §2	Art II, §7	
N M.	Art VIII, §2; art IX, §12		
N Y.	Art VIII, §10		Art III, §22
N C	Art V, §6		Art V, §3
N D	Art XI, §174; art VI, §130		Art XI, §175
Ohio	Art XIII, §6, art XVIII, §13, art XII, §2	Art VIII, §2c	Art XII, §5
Okla	Art X, §§7, 9		Art X, §§9, 19
Ore	Art XI, §§5, 11		Art IX, §3
S C	Art VIII, §3, art X, §6	Art X, §§13-A, 17	Art X, §§3, 5
S D	Art XI, §§1, 10, art X, §§1, 2		Art XI, §§1, 9
Tenn	Art II, §29		Art II, §29
Tex	Art VIII, §9, art XI, §§4, 5	Art VIII, §§1-a, 9, art III, §§52, 52d	Art VIII, §1-a, art XI, §6
Utah	Art XIII, §§5, 7; art XI, §5		Art XIII, §5
Va	Art XIII, §§170, 188		Art XIII, §171
Wash	Art VII, §2 (amend 17), §9		Art VII, §5
W Va	Art X, §§1, 7; art VI, §39a		
Wyo	Art XV, §§4, 5, 6; art XIII, §3		Art XV, §13

\* Includes provisions such as those requiring (a) that the object of the tax levied be specified, (b) taxes be levied for the expenses of government and to pay debts, and (c) those which specify tax prohibitions or specific purposes for which taxes may be levied

Table 25 Finance Indebtedness

State	Incurred by State			Incurred by County	Incurred by Municipality
	By Constitutional Amendment	By Referendum	By the Legislature		
Ala	Amend XXVI (Art XXIII)			Art XII, §§222, 224	Art XII, §§222, 225
Alaska		Art IX, §§8, 10, 11			Art IX, §§9, 10, 11
Ariz	Art. IX, §5			Art VII, §13; art IX, §8	Art VII, §13, art IX, §8
Ark		Amend 20			Art XVI, §1
Calif		Art XVI, §1		Art XI, §18	Art XI, §18
Colo	Art. XI, §3		Art VIII, §3	Art XI, §6	Art XI, §8
Del					
Fla	Art IX, §6			Art IX, §6	Art. IX, §6
Ga.	Art. VII, §3, (§§2-5601, 2-5602)			Art VII, §7, (§§2-6001, 2-6002, 2-6003)	Art VII, §7 (§§2-6001 to 2-6003)
Idaho		Art VIII, §1		Art. VIII, §3	Art VIII, §3
Ill		Art IV, §18		Art IX, §12	Art IX, §12
Ind	Art X, §5			Art XIII, §1	Art XIII, §1
Iowa		Art VII, §5		Art XI, §3	Art XI, §3
Kan		Art XI, §7			Art XII, §5
Ky		§50		§§157, 157a, 159	§§157, 158, 159
La	Art IV, §2			Art XIV, §§14 (a), (b 1), (e), (h)	Art XIV, §§14 (a), (b), (e), (h), (i)
Me		Art IX, §14			Art IX, §15
Md			Art III, §34 [§194] art LXII		Art XI, §7
Mass				Art VIII, §12	Art VIII, §20
Mich	Art X, §10				Art IV, §80
Minn.	Art IX, §§5, 7				Art VI, §§26a, 26b, 26d, 26f
Miss.		Art III, §37		Art VI, §§26a, 26b, 26c, 26f, 28	Art XIII, §§3, 6
Mo	Art. III, §37	Art XIII, §2		Art XIII, §5	Art XIII, §2
Mont		Art VIII, §2, ¶3		Art XIII, §2	Art VIII, §8
Neb	Art VIII, §1				
Nev	Art IX, §3				
N J					
N. M	Art IV, §29, art IX, §§7, 8	Art VII, §11		Art IV, §29, art IX, §§10, 13	Art IV, §29, art. IX, §§9, 12, 13
N Y		Art V, §4		Art VIII, §§2, 4	Art VIII, §§2, 4
N C				Art VII, §7; art V, §4	Art II, §14, art V, §4; art VII, §7
N. D			Art XII, §182	Art XII, §§183, 184	Art XII, §§183, 184
Ohio	Art. VIII, §§1, 2				Art XIII, §6, art. XII, §11, art XVIII, §13
Okla		Art X, §25		Art X, §§16, 26	Art X, §26
Ore	Art XI, §7			Art XI, §10	Art XI, §5
Pa	Art IX, §4			Art IX, §§8, 10	Art IX, §§8, 10, 15
R I		Art XXXI, §1			
S C		Art X, §11		Art X, §§5, 6	Art VIII, §§5, 6, 7
S D	Art XIII, §2			Art XIII, §§4, 5	Art XIII, §§4, 5
Tenn.				Art II, §29	Art II, §29

Table 25 Finance Indebtedness (Continued)

State	Incurred by State			Incurred by County	Incurred by Municipality
	By Constitutional Amendment	By Referendum	By the Legislature		
Tex	Art III, §49	Art VIII, §3		Art III, §52	Art III, §52; art XI, §5
Utah	Art. XIV, §§1, 2			Art XIV, §§3, 4	Art XIV, §§3, 4, 5
Va	Art XIII, §§184, 184a			Art VII, §115a	Art VIII, §127
Wash				Art VIII, §6 (amend 27)	Art VIII, §6 (amend. 27)
W. Va	Art X, §4			Art X, §8	Art VI, §39a; Art X, §8
Wis	Art VIII, §§4, 6, 7			Art XI, §3	Art XI, §3
Wyo	Art XVI, §§1, 2			Art XVI, §§3, 4	Art XVI, §§4, 5

Table 26 Finance Highway Bond Issues and Antidiversion of Funds

State	Highway Bond Issues	Antidiversion of Funds		
		Dedicated Highway Taxes	Other Dedicated Taxes	Funds Raised by Incurring Debt
Ala	Amends XI (art XX), XVIII; XXI (art XXa), XLII; LXXXVII	Amend XCIII		
Ariz		Art IX, §14	Art IX, §3	Art IX, §5
Ark	Art XVI, §1		Art XVI, §11	
Calif	Art XVI, §§2, 3	Art XXVI, art XI, §18½	Art XV, §1	Art XVI, §1
Colo	Art XI, §3	Art X, §18	Art XI, §§4, 8	Art XI, §4
Del				Art VIII, §3
Fla	Art IX, §16	Art. IX, §16		
Ga.		Art VII, §9 (§2-6204(b))	Art VII, §3 (§2-5609)	Art VII, §3 (§2-5603)
Idaho	Art VIII, §3	Art VII, §17	Art VIII, §1	Art VIII, §1
Ill			Art IV, §18	Art IV, §18
Iowa		Art VII, §8	Art VII, §5	Art VII, §§2, 4, 5
Kan.			Art XI, §§5, 6	Art XI, §8
Ky		§230	§180	§§49, 178
La	Art IV, §§2, 12 (a), art VI, §§22, 22(d), 22(e), 23	Art IV, §2c, art VI, §§22, 23; art VI-A		
Me		Art IX, §19		
Md.			Art III, §34	
Mass		[§218] art LXXVIII		[§195] art LXII
Mich	Art X, §10	Art X, §22		Art X, §10
Minn	Art. XVI, §12	Art XVI, §§9 5, 10 5	Art IX, §5	Art IX, §8
Mo		Art IV, §30		Art VI, §29
Mont		Art XII, §1 (b)		Art VIII, §3
Nev		Art IX, §5	Art IX, §3	
N H		Pt II, art VI-a		
N J			Art. VIII, §2, ¶3	Art. VIII, §2, ¶3
N M	Art IX, §16		Art IX, §12	Art IX, §9
N Y	Art VII, §14; art. X, §6			Art VII, §12
N C			Art V, §7	
N D		Art LVI	Art XII, §182	
Ohio	Art VIII, §2c	Art XII, §5a	Art XII, §5	Art VIII, §§1, 2
Okla			Art X, §19	Art X, §§16, 24
Ore		Art IX, §3	Art IX, §3	
Pa	Art IX, §§4, 16, 21	Art IX, §18		Art IX, §5
S D		Art XI, §8	Art XI, §9	
Tex	Art III, §52	Art VIII, §7-a		
Utah				Art. XIV, §§1, 2, 5
Wash		Art II, §40 (amend 18)	Art VIII, §3	Art VIII, §§1, 2, 3
W Va	Good Roads amends, 1920, 1928, \$50 Million Bond Issue for Roads amend, 1948	Art VI, §52		
Wis				
Wyo		Art XV, §16	Art VIII, §6	Art VIII, §7

Table 27 Finance Prohibited Relationships Between Governmental and Non-Governmental Entities

State	Credit and Faith	Joint Ownership	Transfer of Obligations
Ala	Amend LVIII, (§93)	Amend LVIII, (§93)	
Alaska	Art IX, §6		
Ariz	Art IX, §7	Art IX, §7	
Ark	Art XVI, §1		Art XII, §12
Calif	Art IV, §31		
Colo	Art XI, §1		Art XI, §1
Del	Art VIII, §§4, 8	Art VIII, §8	Art VIII, §§4, 8
Fla	Art IX, §10	Art IX, §10	
Ga	Art VII, §3 (§2-5604)	Art VII, §3 (§2-5604)	Art VII, §3 (§2-5605)
Idaho	Art VIII, §2	Art VIII, §2	
Ill	Art IV, §20		Art IV, §20
Ind	Art XI, §12	Art XI, §12	Art X, §6
Iowa	Art VII, §1		Art VII, §1
Ky	§179	§179	§176
La	Art IV, §12	Art IV, §12	Art IV, §12; art XIV, §14 (k)
Me	Art IX, §14		
Md	Art III, §§34, 54		
Mass	[§192] art LXII		
Mich	Art VIII, §25, art X, §12		
Minn	Art IX, §10		
Miss	Art VII, §183, art XIV, §258	Art VII, §183, art XIV, §258	Art XIV, §258
Mo	Art III, §39, art VI, §23	Art VI, §23	Art III, §39
Mont	Art XIII, §1	Art XIII, §1	Art XIII, §4
Neb	Art XIII, §3	Art XI, §1	
Nev	Art VIII, §9	Art VIII, §9	Art IX, §4
N H	Pt II, art V		
N J	Art VIII, §2, ¶1		
N M	Art IX, §14		
N Y	Art VII, §8, art VIII, §1	Art VIII, §1	Art VII, §8
N C	Art V, §4		
N D	Art XII, §185	Art XII, §185	
Ohio	Art VIII, §§4, 6	Art VIII, §§4, 6	Art VIII, §5
Okla	Art X, §§15, 17	Art X, §§15, 17	Art X, §14
Ore	Art XI, §9	Art XI, §§6, 9	Art XI, §8
Pa	Art IX, §§6, 7	Art IX, §§6, 7	Art IX, §9
R. I	Art XXXI, §1		Art XXXI, §1
S. C	Art X, §6		
Tenn	Art II, §§29, 31	Art II, §§29, 31	
Tex	Art III, §§50, 52, 52-b		Art III, §52-b
Utah	Art VI, §31	Art VI, §31	Art XIV, §6
Va	Art XIII, §185	Art XIII, §185	Art XIII, §185
Wash	Art VIII, §§5, 7; art XII, §9	Art XII, §9	
W Va	Art X, §6	Art X, §6	Art X, §6
Wis	Art VIII, §3		
Wyo	Art XVI, §6	Art XVI, §6	

Table 28

State	Intergovernmental Relations		Internal Improvements	Local, Special or Private Laws	Suits Against the State	Miscellaneous				
	Federal-State	State and Local				Workers' Rights	Hours of Work	Convict Labor	Contracts	Roadside Advertising
Ala	Amend LXXXVII	Art X, §13, art XII, §2	Amend LVIII, (§93)	Art IV, §104	Art I, §14					
Alaska	Art XII, §2			Art II, §19	Art II, §21					
Ariz				Art IV, §19	Art IV, §18		Art XVIII, §1	Art XVIII, §10	Art XIX, §16	
Ark				Art V, §24, amend 14	Art V, §20					
Calif				Art IV, §25	Art XX, §6		Art XX, §17			
Colo	Art XI, §3			Art V, §25			Art V, §25a			
Del				Art II, §19	Art I, §9					
Fla				Art III, §20	Art III, §22					
Ga	Art VII, §7 (§2-6001)			Art III, §7 (2-1917)						
Idaho	Art IV, §18			Art III, §19	Art V, §10, art IV, §18		Art XIII, §2			
Ill		Art VII, §6 (§2-5901)	Art XI, §9	Art IV, §22	Art IV, §26					
Ind				Art IV, §22	Art IV, §24					
Iowa				Art III, §30						
Kan					Art II, §17					
Ky				§59	§231				§162	
La				Art IV, §4	Art III, §35, art XIV, §14 (i)			Art III, §33	Art VI, §22 (d), (e)	
Me				Art IV, §13						
Md	Art III, §46			Art III, §34						
Mass				[§11] Pt I, art X						
Mich				Art X, §14						
Minn	Art XVI, §2			Art IX, §5						
Miss		Art VI, §16	Art XIII, §2	Art IV, §33						
Mo	Art III, §38a			Art IV, §§87, 90				Art IV, §85		
Mont				Art III, §§40, 41						
Neb				Art V, §26			Art XVIII, §4			
Nev	Art IX, §3			Art III, §18	Art V, §22					
N J	Art VIII, §2, ¶3			Art IV, §20	Art IV, §22	Art I, ¶19				
N M	Art IX, §16			Art IV, §7		Art I, §17				
N Y				Art IV, §24			Art XX, §19			
N C				Art III, §17			Art I, §17			
N D				Art II, §29						
Ohio	Art VIII, §2c		Art XII, §185	Art II, §69	Art I, §22		Art II, §37			
Okl	Art XVI, §2			Art V, §§32, 46	Art I, §16		Art XXIII, §1	Art XVI, §1		



Ore			Art IV, §23	Art IV, §24				
Pa			Art III, §7	Art I, §11				
S C			Art II of amend	Art XVII, §2				
S D		Art VIII, §9, art XIII, §§1, 16	Art III, §23	Art III, §27				
Tenn		Art XI, §10	Art XI, §8	Art I, §17				
Tex			Art III, §§56, 57, art VIII, §9, art XI, §2			Art XVI, §24		
Utah		Art XIII, §185	Art VI, §26		Art. XVI, §6			
Va.			Art II, §28	Art II, §28				
Wash			Art VI, §39	Art VI, §35				
W Va			Art IV, §31	Art IV, §27				
Wis	Art VIII, §10	Art VIII, §10	Art III, §27	Art I, §8				
Wyo	Art XVI, §9	Art XVI, §§6, 9			Art XIX, §2			

## APPENDIX B

### TABLE OF CASES CITED

	Page
<i>Almond v Day</i> , 199 Va 1, 97 S E 2d 824 (1957) . . . . .	63
<i>Appleby v Buffalo</i> , 221 U S 524 (1911) . . . . .	19
<i>Arkansas State Highway Comm'n v Clayton</i> , 226 Ark 712, 292 S W.2d 77 (1956) .	14
<i>Ash v Cummings</i> , 50 N H 591 (1872) . . . . .	19
<i>Atkin v Kansas</i> , 191 U S 207 (1903) . . . . .	67
<i>Bean v. Humphrey</i> , 223 Ark 118, 264 S W 2d 607 (1954) . . . . .	14
<i>Beers v State of Arkansas</i> , 61 U S (20 How ) 527 (1858) . . . . .	67
<i>Bonsal v. Yellott</i> , 100 Md 481, 60 Atl 593 (1905) . . . . .	63
<i>Bowen v. Lewis</i> , 201 Ga 482, 40 S E 2d 80 (1946) . . . . .	16
<i>Bragg v Weaver</i> , 251 U S 57 (1890) . . . . .	22
<i>Chicago, Burlington and Quincy R R Co v Chicago</i> , 166 U S 226 (1897)	19
<i>Chick Springs Water Co v State Highway Dep't</i> , 159 S C 481, 157 S E 842 (1931) . . . . .	67
<i>City of El Dorado v Union County</i> , 122 Ark 184, 182 S W 899 (1916)	16
<i>City of Phoenix v Yates</i> , 69 Ariz 68, 208 P 2d 1147 (1949) . . . . .	68
<i>Coles County v. Goehring</i> , 209 Ill 142, 70 N E 610 (1904) . . . . .	29
<i>Connolly v Woods</i> , 13 Idaho 591, 92 Pac 573 (1907) . . . . .	27
<i>Connor v. Blackwood</i> , 176 Ark 139, 2 S W 2d 44 (1928) . . . . .	16
<i>Cooke v. Iverson</i> , 108 Minn. 388, 122 N W 251 (1909) . . . . .	63
<i>Corzter v. Krupp</i> , 224 U S 290 (1912) . . . . .	22
<i>Curtis and Hill Gravel and Sand Co v. State Highway Comm'n</i> , 91 N J Eq 421, 111 Atl 16 (1920) . . . . .	67
<i>Duignan v United States</i> , 274 U S 195 (1927) . . . . .	24
<i>Eason v Spence</i> , 232 N C 579, 61 S E 2d 717 (1950) . . . . .	17
<i>Eller v. Board of Educ</i> , 242 N C 584, 89 S E.2d 144 (1955) . . . . .	19
<i>Erwin v. Mississippi State Highway Comm'n</i> , 213 Miss 885, 58 So 2d 52 (1952)	17
<i>Freedman Bros v J H Mathes</i> , 55 Tenn. 488 (1872) . . . . .	29
<i>Goodrich Falls Elec Co v Howard</i> , 86 N H 512, 171 Atl 761 (1934) . . . . .	19
<i>Gray v Hall</i> , 203 Cal 306, 265 Pac 246 (1928) . . . . .	17
<i>Hagler v Small</i> , 307 Ill 460, 138 N E 849 (1923) . . . . .	39
<i>Hicks v Bristol</i> , 102 Va 861, 47 S E 1001 (1904) . . . . .	32
<i>Jones v. North Georgia Elec Co</i> , 125 Ga 618, 54 S E 85 (1906)	25
<i>Joslin Mfg Co v Providence</i> , 262 U S 668 (1923) . . . . .	22
<i>Kane v City of Chicago</i> , 392 Ill. 172, 64 N E 2d 506 (1946) . . . . .	25
<i>Kane v Lapre</i> , 69 R I 330, 33 A 2d 218 (1943) . . . . .	17
<i>Kearney v Case</i> , 79 U S (12 Wall ) 275 (1871) . . . . .	24
<i>Kohl v United States</i> , 91 U S 367 (1875) . . . . .	17
<i>McCoy v Kenosha County</i> , 195 Wis 273, 218 N W 348 (1928)	17
<i>McKinney v Deneen</i> , 231 N C 540, 58 S E 2d 107 (1950) . . . . .	19
<i>Memphis &amp; C R Co v State of Tennessee</i> , 101 U S 337 (1880)	67
<i>Muller v El Paso County</i> , 136 Tex 370, 150 S W 2d 1000 (1941) . . . . .	65
<i>Miller v Port of New York Authority</i> , 18 N.J Misc 601, 15 A 2d 262 (1939) .	67
<i>Mitchell v Lowden</i> , 288 Ill 327, 123 N E 566 (1919) . . . . .	39
<i>Northeastern Gas Transmission Co v Collins</i> , 138 Conn. 582, 87 A 2d 139 (1952)	17
<i>Olson v United States</i> , 292 U S 246 (1934) . . . . .	19
<i>Opinion of the Justices</i> , 146 Me 316, 80 A 2d 866 (1951) . . . . .	65
<i>Opinion of the Justices</i> , 152 Me 449, 132 A 2d 440 (1957) . . . . .	56
<i>Opinion of the Justices</i> , 132 A 2d 613 (N H 1957) . . . . .	56
<i>Ottawa Hunting Ass'n v State</i> , 178 Kan 460, 289 P 2d 754 (1955) . . . . .	25
<i>Parrish v. Claxon Truck Lines</i> , 286 S W 2d 508 (Ky 1956) . . . . .	17
<i>Perego v Dodge</i> , 163 U S 160 (1896) . . . . .	24
<i>Petition of Mt Washington Road Co</i> , 35 N H 134 (1857) . . . . .	19

	<i>Page</i>
<i>Petition of State Highway Comm'r</i> , 279 Mich 285, 271 N W 760 (1937) ..	19
<i>Piscataqua Bridge v New Hampshire Bridge</i> , 7 N H 35 (1834) . . .	19
<i>Prewitt v Warfield</i> , 203 Ark 137, 156 S W 2d 238 (1941)	16
<i>Public Water Supply Dist No. 2 v State Highway Comm'n</i> , 244 S W 2d 4 (Mo 1951) . . . . .	14
<i>Rose v Baskins</i> , 178 S C 69, 182 S E 153 (1935) . . . . .	37
<i>Sale v. State Highway and Pub Works Comm'n</i> , 242 N C. 612, 89 S E 2d 290 (1955) . . . . .	17, 19, 67
<i>Sherman v United States</i> , 282 U S 25 (1930) . . . . .	67
<i>Slansky v State</i> , 192 Md 94, 63 A 2d 599 (1949) .. . . .	17
<i>State v Babcock</i> , 161 Minn 80, 200 N W 843 (1924) . . . . .	63
<i>State v Babcock</i> , 181 Minn 409, 232 N W 718 (1930) . . . . .	56
<i>State v Ballance</i> , 229 N C 764, 51 S E 2d 731 (1949)	17
<i>State v Board of Regents</i> , 167 Kan 587, 207 P 2d 373 (1949) . . . . .	38
<i>State v Bone Creek</i> , 109 Neb 202, 193 N W 767 (1923)	63
<i>State v Coleman</i> , 96 Conn 190, 113 Atl 385 (1921)	7
<i>State v Demerritt</i> , 103 A 2d 106 (Me , 1953) .. . . .	17
<i>State v Graham</i> , 32 N M 485, 259 Pac 623 (1927) . . . . .	42
<i>State v Romero</i> , 53 N M 402, 209 P 2d 179 (1949) . . . . .	42
<i>State v Southern Bell Tel and Tel Co</i> , 319 S W 2d 90 (Tenn , 1958)	57
<i>State v Yelle</i> , 46 Wash 2d 166, 279 P 2d 645 (1955) . . . . .	17
<i>State Airport Comm'n v May</i> , 51 R I 110, 152 A 2d 225 (1930) . . . . .	17
<i>State ex rel Capitol Addition Bldg Comm v Conneally</i> , 39 N M 312, 46 P 2d 1097 (1935) . . . . .	38
<i>State ex rel. Fatzer v Armory Bd</i> , 174 Kan 369, 256 P 2d 143 (1953) . . . . .	38
<i>State ex rel Portsmouth v Kountz</i> , 129 Ohio St 272, 194 N E 869 (1935) .. .	29
<i>State Highway Comm'n v Southern Union Gas Co</i> , 65 N M 87, 332 P 2d 1007 (1958) . . . . .	57
<i>Thompson v The Androscoggin River Improv Co</i> , 58 N H 108 (1877) . . . . .	19
<i>Vanhorne's Lessee v Dorrance</i> , 2 U S (2 Dall ) 303 (1795)	6
<i>Wilmington Parking Authority v Ranken</i> , 105 A 2d 614 (Del , 1954) . . . . .	57
<i>F W Woolworth Co v Berlin</i> , 82 N H 154, 130 Atl 741 (1925) . . . . .	19
<i>Yancey v State Highway and Pub Works Comm'n</i> , 222 N C 106, 22 S E 2d 256 (1942) . . . . .	19

## APPENDIX C

### HAWAII—PERTINENT CONSTITUTIONAL PROVISIONS AFFECTING HIGHWAY OPERATIONS

#### *Highway Administration*

No specific reference to Highway Department.

#### *Acquisition of Property*

Due process clause, art. 1, §4 Just compensation required when property is taken—art 1, §18

#### *Finance*

*Taxation* No specific provisions on limitation of taxing power or special highway taxes.

*Indebtedness.* Bonds and other instruments of indebtedness for the State and its political subdivisions must be authorized by the legislature Indebtedness of a po-

litical subdivision must also be authorized by its governing body. Limitations on the amount of indebtedness that the State and political subdivisions may incur are also specified. art VI, §3.

No specific reference is made to highway bond issues or antidiversion of funds

*Prohibited Relationships Between Governmental and Non-Governmental Entities*  
The Hawaiian Constitution provides that the public credit be used for a public purpose only art VI, §6

#### *Intergovernmental Relations*

The legislature may provide for cooperation on the part of Hawaii and its political subdivisions with the United States, or other States or territories or their political subdivisions art XIV, §5

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THE NATIONAL ACADEMY OF SCIENCES—NATIONAL RESEARCH COUNCIL is a private, nonprofit organization of scientists, dedicated to the furtherance of science and to its use for the general welfare. The ACADEMY itself was established in 1863 under a congressional charter signed by President Lincoln. Empowered to provide for all activities appropriate to academies of science, it was also required by its charter to act as an adviser to the federal government in scientific matters. This provision accounts for the close ties that have always existed between the ACADEMY and the government, although the ACADEMY is not a governmental agency.

The NATIONAL RESEARCH COUNCIL was established by the ACADEMY in 1916, at the request of President Wilson, to enable scientists generally to associate their efforts with those of the limited membership of the ACADEMY in service to the nation, to society, and to science at home and abroad. Members of the NATIONAL RESEARCH COUNCIL receive their appointments from the president of the ACADEMY. They include representatives nominated by the major scientific and technical societies, representatives of the federal government, and a number of members at large. In addition, several thousand scientists and engineers take part in the activities of the RESEARCH COUNCIL through membership on its various boards and committees.

Receiving funds from both public and private sources, by contribution, grant, or contract, the ACADEMY and its RESEARCH COUNCIL thus work to stimulate research and its applications, to survey the broad possibilities of science, to promote effective utilization of the scientific and technical resources of the country, to serve the government, and to further the general interests of science.

The HIGHWAY RESEARCH BOARD was organized November 11, 1920, as an agency of the Division of Engineering and Industrial Research, one of the eight functional divisions of the NATIONAL RESEARCH COUNCIL. The BOARD is a co-operative organization of the highway technologists of America operating under the auspices of the ACADEMY-COUNCIL and with the support of the several highway departments, the Bureau of Public Roads, and many other organizations interested in the development of highway transportation. The purposes of the BOARD are to encourage research and to provide a national clearinghouse and correlation service for research activities and information on highway administration and technology.

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