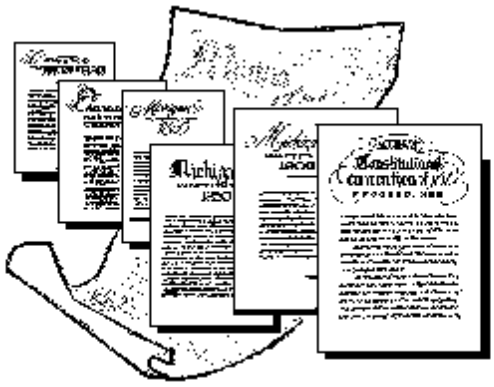
A Comparative Analysis of the Michigan Constitution

Volumes II

Articles X



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X FINANCE AND TAXATION

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1. Tax for State Expenses

Article X: Section 2. The legislature shall provide by law for an annual tax sufficient with other resources to pay the estimated expenses of the state government, the interest on any state debt and such deficiency as may occur in the resources.

Constitutions of 1835 and 1850

The 1835 constitution contained no such provision. The 1850 constitution (Article XIV, Section 1) contained this same provision and the only change in language in the constitution of 1908 was the addition of "by law" to describe the way the legislature shall provide for an annual tax.

Constitution of 1908

Section 2 has not been amended since the present constitution was adopted.

Judicial Interpretation

Michigan courts have made it clear that Section 2 does not prohibit the state from acquiring monies through sources other than taxation.[1]

Other State Constitutions

Section 2 of the Michigan constitution is similar to provisions in the constitutions of North Dakota, Nevada, South Carolina, South Dakota, Wisconsin, Colorado, Kentucky, Oklahoma, Utah, Arizona, Oregon, Washington and West Virginia. Language of these provisions differs primarily with regard to time and concerns such phrases as "each fiscal year," "fiscal year" and "ensuing fiscal year." Although Michigan mentions "an annual tax," it uses the standard "estimated expenses" to imply that the legislature shall balance anticipated tax revenues with anticipated expenditures.

Seven state constitutions give added substance to requirements such as the Michigan provision that taxes must cover "such deficiency as may occur in the resources" by granting authority to the legislature to levy taxes, in the year following any fiscal

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[1] Black v. Liquor Control Commission, 323 Mich. 290.

year when expenses exceed income, sufficient with other sources of income to pay the deficiency in addition to estimated expenses for that year (Arizona, Oklahoma, Oregon, South Carolina, South Dakota, Oregon and Wisconsin). Two other states make such a levy to cover deficiencies mandatory during the ensuing year (West Virginia) or two years (Nevada).

In contrast to constitutional instruction to the legislature to provide revenues sufficient to cover expenditures (such as Michigan's Section 2) eight state constitutions limit the amount which may be appropriated to the amount of revenue available or anticipated (Colorado, Idaho, Montana, Utah, Nebraska, New Jersey, Oklahoma and Texas). Illinois limits annual appropriations for "ordinary and contingent expenses" to the amount of revenues authorized to be raised during periods for which the appropriation is made.

Other State Constitutions

A provision comparable to Section 2 appeared in the 1948 edition of the Model State Constitution as a part of a larger section relating to the legislative budget procedure. This section has been omitted, however, in the proposed revision of the Model.

> Legislative Budget Procedure. No special appropriation bill shall be passed until the general appropriation bill, as introduced, by the governor and amended by the legislature shall have been enacted, unless the governor shall recommend the passage of an emergency appropriation or appropriations, which shall continue in force only until the general appropriation bill shall become effective. The legislature shall provide for one or more public hearings on the budget, either before a committee or before the entire legislature in committee of the whole. When requested by not less than one-fifth of the members of the legislature it shall be the duty of the governor to appear in person or by a designated representative before the legislature, or before a committee thereof, to answer any inquiries with respect to the budget.
>
> The legislature shall make no appropriation for any fiscal period in excess of the income provided for that period (emphasis supplied). The governor may strike out or reduce items in appropriation bills passed by the legislature, and the procedure in such cases shall be the same as in case of the disapproval of an entire bill by the governor. (Article VII: Section 704)

This section of the 1948 Model State Constitution stands between two other sections relating to the budget and the expenditure of money and must be considered in connection with them as a part of the overall control of finances. Note that Section 705 gives the governor the authority to reduce expenditures when it becomes apparent that revenues are not adequate to meet appropriations.

> The Budget. Three months before the opening of the fiscal year, the governor shall submit to the legislature a budget setting forth a complete plan of proposed expenditures and anticipated income of all departments, offices and agencies of the state for the next ensuing year. For the preparation of the budget the various departments, offices and agencies shall furnish the governor such information, in such form, as he may require. At the time of submitting the budget to the legislature, the governor shall introduce therein a general appropriation bill to authorize all the proposed expenditures set forth in the budget. At the same time he shall introduce in the legislature a bill or bills covering all recommendations in the budget for new or additional revenues or for borrowing by which the proposed expenditures are to be met. (Article VII: Section 703)

The preliminary discussion draft of the new Model contains a provision similar to Section 703 above (Section 6.03).

> Expenditure of Money. No money shall be withdrawn from the treasury except in accordance with appropriations made by law, nor shall any obligation for the payment of money be incurred except as authorized by law. No appropriation shall confer authority to incur an obligation after the termination of the fiscal period to which it relates. The governor shall have authority to reduce expenditures of state departments, offices and agencies under appropriations whenever actual revenues fall below the revenue estimates upon which the appropriations were based and, through allotments or otherwise, to control the rate at which such appropriations are expended during the fiscal year, provided that the legislature may exempt specific appropriations from the exercise of this power by the governor (emphasis supplied). (Article VII: Section 705)

The preliminary discussion draft omits the governor's power to reduce or control the rate of expenditures during the fiscal year.

Comment

The Michigan provision amounts to an instruction to the legislature to use its taxing power to assure the state sufficient revenue to pay its bills. This is an indirect association of the taxing power with the budget process. The Michigan constitution contains no specific section relating to budget procedure and no provisions for a single general appropriation bill. By inference, the legislature is expected (under Section 2) to provide revenues sufficient to satisfy the cumulative totals of whatever appropriations are made. It is significant in this respect that Section 2 uses the word shall instead of may and specifies an annual tax sufficient with other resources to pay the estimated expenses. While other resources clearly include surpluses or balances, they can include borrowed funds only within a ceiling of $250,000 of "debts to meet deficiencies in revenue" (Article X, Section 10).

The absence of any constitutional provision for a general appropriation bill (approximately one-half of the states have such a provision) related to a formalized budget procedure makes the implied relationship between state expenditures and state tax revenues difficult to implement and cumbersome to enforce. Some examples of how other state constitutions have sought to solve this problem are indicated below.

The Oklahoma constitution (Article X, Section 23) provides for official estimate of all resources available to the state (and each state fund) prior to the convening of each session of the legislature and states that "all appropriations made in excess of such estimate shall be null and void." Further provision is made for adjusting such estimates to reflect legislative tax changes and inter-fund transfers and "the amount of such adjusted estimate shall be the maximum amount which can be appropriated for any purpose from any fund for each year." It is further provided that this estimate "shall exceed the average total revenue which accrued to each such fund for the last three preceding fiscal years," to which may be added any unappropriated cash surplus.

The New Jersey constitution (Article VIII, Section II (2)) provides that "...All moneys for the support of the State government and for all other State purposes as far as can be ascertained or reasonably foreseen, shall be provided for in one general appropriation law covering one and the same fiscal year. No general appropriation law or other law appropriating money for any State purpose shall be enacted if the appropriation contained therein, together with all prior appropriations made for the same fiscal period, shall exceed the total amount of revenue on hand and anticipated which will be available to meet such appropriations during such fiscal period, as certified by the Governor."

The California constitution (Article IV, Section 34) provides that the governor shall present at each regular session of the legislature a complete budget of all proposed expenditures and all estimated revenues. If proposed expenditures exceed estimated revenues "the Governor shall recommend the sources from which the additional revenue shall be provided." There is a further provision that "the budget shall be accompanied by an appropriation bill covering the proposed expenditures" and "until the budget bill has been finally enacted, neither house shall place upon final passage any other appropriation bill, except emergency bills recommended by the Governor, or appropriations for salaries, mileage and expenses of the Senate and Assembly."[2]

California (Article IV, Section 34a) also provides that appropriations from the general fund, exclusive of appropriations for the public school system, "shall not exceed by more than 5 percentum the appropriations...for the preceding year unless two-thirds of all the members elected to each house of the legislature vote in favor thereof." Procedures are provided for cutting back appropriations made in excess of

[2] New York constitution is similar, but not identical. California is one of nine states with constitutional restrictions against adopting any appropriations prior to enactment of a general appropriation bill.

this limitation.

The Missouri constitution (Article IV, Section 27) provides that the governor may control the rate of expenditure during the period of appropriation, by allotment or other means, and may reduce expenditures below appropriations whenever actual revenues are less than revenue estimates upon which the appropriations were based.

Property taxes are the "residual" tax source in the American system of taxation and constitutional provisions such as Michigan's Section 2 have their roots in the property tax. The requirement that the legislature shall levy "an annual tax sufficient with other resources" relates, as a last resort, to an annual property tax. In this respect "other resources" include all state tax sources other than the property tax. Although many states, like Michigan, levy no general property taxes for state purposes, they accomplish this by collecting non-property tax revenues sufficient to make application of the "residual" property tax unnecessary.

2. Laws Imposing Taxes

Article X: Section 6. Every law which imposes, continues or revives a tax shall distinctly state the tax, and the objects to which it is to be applied; and it shall not be sufficient to refer to any other law to fix such tax or object.

Constitutions of 1835 and 1850

The 1835 constitution contained no similar provision. Section 6 was carried forward from the constitution of 1850 (Article IV, Section 14) without change.

Constitution of 1908

This section has not been amended since the present constitution was adopted

Judicial Interpretation

Michigan courts have ruled that when the object for which a tax is raised is apparent from the statute providing it, a statement in detail on the manner in which it is to be expended is not necessary.[3]

While the courts have been liberal in interpreting this section, they have ruled that the scope of tax laws cannot be extended by implication or forced construction, and language, if dubious, is not to be resolved against the taxpayer.[4]

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[3] Moreton v. Secretary of State, 240 Mich. 584; Detroit Automobile Club v. Secretary of State, Id.; Reading v. Secretary of State, Id.

[4] Waterways Navigation Co. v. Corporation & Securities Commission, 323 Mich. 153.

It has been determined that provisions of the corporation act imposing annual privilege fees and referring to another section of the corporation act for the purpose of computing the privilege tax does not violate the restrictions imposed by Section 6.

Other State Constitutions

Article X, Section 6 of the Michigan constitution is identical with New York's provision (Article III, Section 22).

Comparison with other state constitutions requires a separation of Section 6 into its two parts – 1) the requirement that tax laws must state the object to which the tax is to be applied and 2) the requirement that tax laws must state the tax without reference to other laws.

North Carolina provides that tax laws must state the object to which tax is to be applied (Article V, Section 3, Section 7). Other states requiring that laws distinctly state tax objects are Arizona, Arkansas, Kansas, North Dakota, South Carolina, South Dakota, Washington and Wyoming. States requiring a statement of tax purposes are Ohio, Oregon, Kentucky and Oklahoma. Kentucky and Oklahoma extend this requirement to local ordinances as well as legislative acts.

State constitutions containing the second requirement that tax laws must state the tax without reference to other laws are Arizona, Iowa, and Virginia.

Comment

Selection of the phrase "objects to which it is to be applied" to describe what a law must say about the tax it imposes opens the door to various interpretations. This may be interpreted to describe the purpose for which the tax is to be used, or it may be interpreted to describe the thing that is to be taxed. Past decisions of Michigan courts have accepted it as descriptive of the purpose. Greater clarity of such an interpretation could be assured by following the lead of Ohio, Oregon, Kentucky, and Oklahoma in use of the word "purpose."

Except as it concerns taxation for support of certain services or purposes through dedicated funds, the requirement could be rendered unnecessary by a general provision that taxes may be levied only for a public purpose or for the support of legislative appropriations for such purposes.

The provision of Section 6 that "it shall not be sufficient to refer to any other law to fix such tax or object" is in effect a requirement that each law imposing taxes must be sufficiently explicit to be capable of standing alone. Although this provision is frequently discussed when new tax legislation is adopted, it has been the subject of little litigation in Michigan. Based upon an analysis of opinions developed by New York courts as a result of litigation under the identical provision of the New York constitution, the Michigan attorney general has expressed an "opinion that a tax

imposed on a percentage of the federal income tax required to be reported and paid to the United States under the Internal Revenue Code in effect on May 1, 1959, does not violate Section 6 of Article X of the Michigan Constitution."[5]

The opinion of the attorney general indicated a literal interpretation of the restriction in terms of a reference to any other law. He called attention to the fact that the legislative bill (House Bill 628, 1959) "does not make reference to the federal income tax laws, but instead refers to an extrinsic fact; i.e., the amount of income tax required to be paid or reported to the United States pursuant to the Internal Revenue Code in effect on May 1, 1959."

3. Power of Taxation – Surrender by Contract

Article X: Section 9. The power of taxation shall never be surrendered or suspended by any grant or contract to which the state or any municipal corporation shall be a party.

Constitutions of 1835 and 1850

Section 9 was new material in the 1908 constitution and the earlier constitutions contained no similar provision.

Constitution of 1908

Section 9 has not been amended since the present constitution was adopted.

Other State Constitutions

With slight variation in language, provisions similar to Section 9 appear in the constitutions of more than one-half of all states. Two states (Missouri and Alaska) qualify the same provision by adding exceptions authorized by their constitutions. These exceptions, however, relate to delegation of taxing powers to local governments and are thus exceptions more in form than substance. New York provides an exception for securities issued for public purposes pursuant to law. In a number of states the declaration is made in terms of power to tax corporations and their property.

The Model State Constitution also contains a similar provision with the assumption that it, together with a restriction that no tax shall be levied except for a public purpose, is about all that is necessary for a constitution to say about taxing powers.

> The power of taxation shall never be surrendered, suspended or contracted away. (Article VI, Section 6.01)

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[5] Michigan Attorney General, Opinion Re: Constitutionality of House Bill No. 628 (June 8, 1959) page 17 and page 14.

Comment

In this basic declaration (Section 9) Michigan follows what has become accepted as a good constitutional policy. The power to tax is an inherent power of sovereign states and constitutional statement is sometimes criticized as stating the obvious. The significance of provisions such as in Michigan's Section 9 is not their declaration of power to tax, but rather their reservation of that power to public purposes.

4. Specific Taxes

Article X: Section 4. The legislature may by law impose specific taxes which shall be uniform upon the classes upon which they operate.

Constitutions of 1835 and 1850

The 1835 constitution contained no reference to specific taxes.

The 1850 constitution was amended in 1900 to read as follows:

> "The state may continue to collect all specific taxes accruing to the treasury under existing laws. The legislature may provide for the collection of specific taxes from corporations. The legislature may provide for the assessment of the property of corporations, at its true cash value by a state board of assessors and for the levying and collection of taxes thereon. All taxes hereafter levied on the property of such classes of corporation as are paying specific taxes under the laws in force on November sixth, A.D. nineteen hundred, shall be applied as provided for specific state taxes in section one of this article."[6] (Article 14, Section 10).

Constitution of 1908

This section was the subject of considerable debate in the constitutional convention of 1908 when an amendment was proposed to include a reference to real estate mortgages and to provide that "the legislature may by law impose specific taxes, which shall be uniform, upon real estate mortgages and upon the classes upon which they operate".[7]

The amendment failed of adoption because it was believed to impose restrictions upon the general authority of the legislature to impose specific taxes. It was argued that mortgages could be taxed without the amendment.

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[6] J.R. No. 1 (Ex. Sess. of 1900), ratified at November election of 1900.

[7] Proceedings and Debates (February 19, 1908) pp. 1336-1338.

Section 4 has remained unchanged since the present constitution was adopted.

Judicial Interpretation

Michigan courts have held that the state constitution permits two general methods of taxation, ad valorem and specific, and that a tax on an occupation or privilege, whether called a license, occupation or privilege tax, is a specific tax and not an ad valorem tax on property.[8] Also that a tax which requires no assessment other than listing and classification of subjects to be taxed and which imposes a sum by bead or number or by some standard of weight or measurement is a specific tax.[9] The constitutional rule of uniformity forbidding double taxation has no application to property paying specific taxes.[10]

Other State Constitutions

The term "specific taxes" is used to describe legislative power to tax in only two state constitutions other than Michigan (Arizona and Oklahoma). These states simply provide that the legislature may provide for the levy and collection of specific taxes and rely upon general provisions for uniformity. Kentucky has a similar provision for legislative enactment of "special taxes" by general law only. Illinois and Texas have provisions to the effect that specification of subjects and objects of taxation shall not deprive the legislature of power to tax other subjects or objects consistent with principals of taxation fixed by constitutions.

Without reference to the term "specific taxes," the other 45 state constitutions either contain no comparable reference to taxes other than ad valorem taxes, or they name the kinds, of taxes which may or may not be adopted.

The Model State Constitution contains no similar provision.

Comment

Section 4 is in effect a limitation upon the power of the legislature to impose taxes. As it has been interpreted, the principal limitation has concerned the requirement of uniformity and is not very different from the provision that "All taxes shall be uniform upon the same class of subjects" (Minnesota, New Mexico, Oklahoma, Arizona, Colorado, Delaware, Idaho, Kentucky, Missouri, Montana and Pennsylvania). By classifying a tax as specific, the Michigan legislature may tax almost any subject on a uniform basis according to reasonable classification.

Michigan courts have never ruled directly on the question of whether or not a tax measured by net income would be termed a "specific tax" permitted under Section 4

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[8] C. F. Smith Co. v. Fitzgerald, 270 Mich. 659.

[9] Shivel v. Kent County Treasurer, 295 Mich. 10.

[10] Shapero v. Department of Revenue, 322 Mich. 124.

or a property tax subject to the uniformity rule of Section 3.[11] A recent opinion by the attorney general expressed his belief that "an income tax, either flat rate or graduated," would be a specific tax under Section 4 and that graduated rates "would not otherwise impair its validity."[12]

The Michigan Constitutional Revision Study Commission (Subcommittee on Taxation and Finance, June 27, 1942) included Section 4 together with Section 3 in its recommendation that "...the uniformity clause...could be redrafted to permit the legislature to graduate and classify all types of taxes, both ad valorem and specific, providing, however, for uniformity within classes" (p. 7). The Subcommittee was concerned with the "constitutional uncertainty" associated with distinctions between ad valorem taxes and specific taxes. The Subcommittee stated: "Under the present constitution, in drafting tax measures, there is the constant fear that the tax will be called a property tax, and the legislature rightly refuses to take chances with necessary revenue producing measures" (p. 6).

5. Uniform Rule of Taxation

Article X: Section 3. The legislature shall provide by law a uniform rule of taxation, except on property paying specific taxes, and taxes shall be levied on such property as shall be prescribed by law: Provided, That the legislature shall provide by law a uniform rule of taxation for such property as shall be assessed by a state board of assessors, and the rate of taxation on such property shall be the rate which the state board of assessors shall ascertain and determine is the average rate levied upon other property upon which ad valorem taxes are assessed for state, county, township, school and municipal purposes.

Constitutions of 1835 and 1850

The 1835 constitution contained no such provision. The 1850 constitution (Article XIV, Section II) contained this same provision and the only change in the 1908 constitution was the grammatical substitution of "a" uniform rule for "an" uniform rule.

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[11] In Shivel v. Kent County Treasurer, 259 Mich. 10; 294 N.W. 78 (1940), the Michigan court quoted with approval from Young v. Illinois Athletic Club, 310 Ill. 75, 81; 141 N.E. 369 to the effect that "an income tax is an assessment upon the income of the person and not upon any particular property from which that income is derived."

[12] Michigan Attorney General, Opinion Re: Constitutionality of House Bill No. 628 (June 8, 1959).

Constitution of 1908

A proposal to provide that "the legislature may classify property for the purpose of taxation and shall provide a uniform rule for the taxation of the several classes" was defeated in the constitutional convention of 1908.[13] Section 3 has not been amended since the present constitution was adopted.

Judicial Interpretation

Michigan courts have tended to interpret this requirement liberally. It has held that "presumption of constitutionality applies more strongly to tax statutes than to laws generally, and taxing system will be held invalid only where it clearly violates fundamental law"[14] and that the restriction upon the power of taxation "does not compel adoption of iron rule of equal taxation, nor prevent variety of differences in taxation, or discretion in selection of subjects, or classification for taxation of properties, businesses, trades, callings or occupations."[15]

While the state is committed by constitution and statutes to the basic principles of uniformity in matters pertaining to taxation of property under general tax laws,[16] the rule of uniformity does not extend to property paying specific taxes.[17]

Other State Constitutions

While virtually every state constitution contains some provision relating to uniform taxation of property, there is a wide variation in language and content of these provisions. Some of the differences concern the extent to which property may or may not be classified for taxation.

Property tax classification is a term used to describe property tax procedures whereby properties of different classes are (1) assessed according to different standards or at different percentages of the same standard, or (2) taxed at different rates. Although "unofficial" classification is a common result of failure by local assessors to apply constitutional or statutory standards of uniformity, "official" classification can result only when provided by statutory standards consistent with constitutional provisions permitting (or not prohibiting) such variation among property classes.

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[13] Michigan Constitutional Convention of 1908, Proceedings and Debates, p. 890 (January 21, 1908).

[14] Thoman v. City of Lansing, 315 Mich. 566.

[15] W. S. Butterfield Theatres, Inc. v. Department of Revenue. 353 Mich. 345.

[16] School District No. 9, Pittsfield Township Washtenaw County v. Washtenaw County Board of Supervisors, 314 Mich. 388.

[17] Shivel v. Kent County Treasurer, 295 Mich. 10.

Eleven state constitutions contain direct reference to the power of the legislature to classify property for assessment purposes. These references range from a simple provision that all property be defined and classified by law (Idaho) to a statement that nothing in the constitution shall be construed to prevent valuation of different classes of property by different means or methods (Oklahoma). Missouri lists three classes including (1) real property, (2) tangible personal property and (3) intangible personal property and permits the legislature to provide further classification of personal property (classes 2 & 3). California allows classification of personal property only and Washington accomplishes the same purpose by requiring real estate to constitute one class. Maryland permits the legislature to provide for classification of improvements on land and personal property as it may deem proper. Georgia establishes classification of tangible property and one or more classes of intangible personal property and permits the legislature to adopt different tax rates and methods for different classes. Ohio takes the opposite approach by forbidding classification for purposes of levying taxes at different rates, but permits classification with taxes levied at a uniform rate.

Classification accomplished through maximum tax rate limitations is illustrated by the West Virginia constitutional maximums as follows:

personal property, including intangibles, used in agriculture	$0.50 per $100
property occupied exclusively by owner for residence or farms occupied and cultivated by owner or bona-fide tenants	$1.00 per $100
all other property situated outside of municipalities	$1.50 per $100
all other property situated within municipalities	$2.00 per $100

In states where “official” property tax classification has been applied, it has been used, for the most part, to distinguish between real estate and personal property. This kind of classification has been particularly well developed in Ohio where personal property is assessed at different ratios and it was the basis for new legislation adopted in New Jersey in 1960. The New Jersey constitution requires that all real estate shall be assessed for taxation according to the same standard and says nothing about personal property.

Only three states use a general classification of both real and personal property for assessment purposes. The most notable is Minnesota (adopted in 1913); West Virginia and Montana also use classification, while North Dakota adopted such a system in 1917 and abolished it in 1923. Minnesota has 13 classes of property subject to varying rates of assessment ranging from 5 percent to 50 percent of “full and true value.” This is done under a constitution which contains no reference to classification at all.

The Michigan provision (Section 3) apparently does not permit classification of property within the general property tax itself, but the same purpose can be achieved through the grant of legislative authority to subject classified property to "specific taxes." This exception causes the Michigan provision to be comparable in effect to provisions in more than 20 states requiring uniformity of taxation for property within the same class.

Some state constitutions relate the "uniformity rule" to standards of assessment in terms of value. The Michigan constitution does not specify what the uniform rule must be, but Section 7 fills this void by specifying "all assessments hereinafter authorized shall be on property at its cash value." These two articles together cause the Michigan rule to be comparable with Arkansas, Tennessee, Maine, Idaho, and Utah which provide for uniform taxation of property according to its value.

Inclusion of provision specifying taxation of property assessed by a state board of assessors at the average local property tax rate within the constitutional uniform rule of taxation (Section 3) is peculiar to Michigan. A number of states provide state assessment for utility and other property by constitutional mandate and some of them apply average local property tax rates to such assessments by legislative act. Michigan stands out only in that it makes special reference to uniform state assessments in addition to the general reference to uniform taxation and specifies the average rate.

Constitutional requirements concerning uniform taxation are sometimes looked upon as unnecessary and the Model State Constitution contains no such provision. Such provisions are in the nature of restrictions upon legislative authority in the matter of taxation.

Comment

Section 3 is the basic property tax requirement in Michigan and the one which underlies the entire tax environment. Although it imposes no restrictions upon the power of the legislature to "prescribe by law" what property is taxable and what property is exempt, it does establish the requirement that all taxable property not paying specific taxes shall be subject to a "uniform rule" of taxation. This exception for "property paying specific taxes" is the authorization under which the legislature is enabled to classify property for special treatment, or to adopt other tax measures commonly regarded as non-property taxes. Such specific taxes may be in lieu of property taxes or they may be in addition to them.

These restrictions and requirements are responsible for the development of a legislative tax language designed to draw distinctions between property taxes and specific taxes to meet judicial interpretations of Section 3. In some instances this language appears to draw a distinction without a difference.

The Michigan Constitutional Revision Commission of 1942 (Subcommittee on Taxation and Finance; June 27, 1942) recommended that "...the uniformity clause in the Michigan Constitution as now worded is an unnecessary obstacle to effective tax legislation, and that there would be great advantage to the State if Sections 3 and 4 could be redrafted to permit the legislature to graduate and classify all types of taxes, both ad valorem and specific, providing, however, for uniformity within classes."

6. Assessment of Property of Public Utilities

Article X: Section 5. The legislature may provide by law for the assessment at its true cash value by a state board of assessors, of which the governor shall be ex-officio a member, of the property of corporations and the property, by whomsoever owned, operated or conducted, engaged in the business of transporting passengers and freight, transporting property by express, operating any union station or depot, transmitting messages by telephone or telegraph, loaning cars, operating refrigerator cars, fast freight lines or other car lines and running or operating cars in any manner upon railroads, or engaged in any other public service business; and for the levy and collection of taxes thereon.

Constitutions of 1835 and 1850

The constitution of 1835 contained no comparable provision. Article XIV, Section 10 added to the 1850 constitution by amendment in 1900 provided:

> The state may continue to collect all specific taxes accruing to the treasury under existing laws. The legislature may provide for the collection of specific taxes from corporations. The legislature may provide for the assessment of the property of corporations, at its true cash value by a state board of assessors and for the levying and collection of taxes thereon. All taxes hereafter levied on the property of such classes of corporations as are paying specific taxes under the laws in force on November sixth, A.D. nineteen hundred, shall be applied as provided for specific taxes in section one of this article.

The amendment was adopted after a state assessed tax upon telephone and telegraph lines was held unconstitutional as a property tax in violation of the uniformity rule.[18] This tax had been levied at the average rate for all taxes and the con-

[18] Pingree v. Auditor General, 120 Mich. 95.

stitutional amendment was recommended to make its readoption possible. Governor Pingree asked for the amendment because, "Under our Constitution, as construed by the Supreme Court of Michigan, it is practically impossible to frame a law by which property of railroad, telegraph, telephone and express companies can be taxed upon its true value unless we resort to local taxation."[19]

Constitution of 1908

Section 5 has not been amended since the present constitution was adopted and has been the subject of little litigation.

Other State Constitutions

While state assessment of utility property in general, and railroad property in particular, is common among the states, Michigan stands out in the way its constitution spells out the procedure by which the legislature may provide for such state assessment. The nearest thing to it is a provision of the Georgia constitution to the effect that the legislature may provide different methods and time of returns, assessments, payment and collection of ad valorem taxes on public utilities, but not a greater basis or higher rate than other properties.

The California constitution (Article XIII, Section 14) lists the properties which shall be assessed by the state board of equalization as that owned by (1) railroad companies, street railways, and interurban electric railways, (2) sleeping, dining, drawing, refrigerator, oil, stock, fruit and other car companies operating upon railroads within state, (3) express companies, (4) telegraph and telephone companies, (5) gas or electric companies. Note that this California provision includes gas and electric companies not listed in Michigan's Section 5, but does not contain the Michigan phase "or engaged in any other public service business." In this respect, the Michigan provision is narrower in actual listing of utility property, but apparently broader in legislative authority to extend state assessment than the California provision. The Michigan provision thus is more like the Oklahoma provision relating to all railroad and public service property (Article X, Section 21).

North Dakota has a provision similar to that of California supplemented by an "all other" provision restricted to property "used directly to carry persons, property or messages" (Article XI, Section 179). Although North Dakota includes light, heat or power facilities in its listing of state assessed property, its "all other" provision is thus more narrow than Michigan's.

Comment

Section 5 must be considered in terms of the environment in which its predecessor section originated as an amendment to the 1850 constitution (Article XIV, Section 10). Although it describes a procedure for taxing public service corporations not

[19] Michigan Legislature, House Journal, Extra Session, 1900.

unusual among states, Michigan is apparently unusual among states in that its supreme court ruled at one time (1898) that such a procedure could be followed only if specifically provided by a constitutional exception to the "uniformity" rule of taxation. This presumably accounts for the fact that Michigan has a provision which other states have, for the most part, found unnecessary to include within their constitutions.

Inclusion of the definition "by whomsoever owned" in the definition of utility property clearly indicates that this provision is not limited to corporate-owned property.

Inclusion of "other public service business" within the listing of corporate property for which the legislature may provide for state assessment would seem to cause Michigan's Section 5 to place no obstacle in the way of legislative provision for such assessments of any utility property. In this respect, the only limitation upon legislative authority to provide for state assessment of utility property would seem to relate to the method of assessment rather than to the kinds of utilities. The implication is that Michigan, under its present constitution, could follow the practice of some of the other states in broadening the coverage of state assessed utilities to include gas and electric companies, if the legislature elected to do so.

7. Assessments

Article X: Section 7. All assessments hereafter authorize shall be on property at its cash value.

Constitutions of 1835 and 1850

The 1835 constitution contained no such provision. Section 7 was carried forward from the constitution of 1850 (Article XIV, Section 12) without change.

Constitution of 1908

Section 7 has not been amended since the present constitution was adopted.

Judicial Interpretation

Michigan courts have ruled that requirements of this section that all assessments shall be on property at its cash value relate to assessments upon rate basis for ad valorem taxes and not upon specific taxes imposed by legislative act.[20] Also, that the final authority for determining true cash value of property for purposes of taxation is the state board of equalization;[21] and that cash value means not only property which may be put to valuable uses, but that which has a recognizable pecuniary value inherent in itself and not enhanced or diminished according to the person who owns or uses it.[22]

[20] Shivel v. Kent County Treasurer, 295 Mich. 10.

[21] School District No. 9, Pittsfield Township, Washtenaw County v. Washtenaw County Board of Supervisors, 341, Mich. 388.

[22] Hudson Motor Car Co. v. City of Detroit, 136 F. (2d) 574.

Other State Constitutions

The principal distinction among state constitutions in the matter of assessment standards concerns the choice between fixed constitutional standards and more general provisions that assessments must be according to standards established by legislation and the extent to which classification of property is permitted.

The Michigan provision that property shall be assessed "at its cash value" is more precise than most state constitutional provisions.

It compares with California "at full cash value," Kentucky "at fair cash value," Louisiana "at actual cash value," South Carolina "upon actual value," Virginia "at fair market value."

Assessments at something less than full value are provided in Washington "50% of true and fair value;" Oklahoma, "not over 35% of fair cash value;" South Dakota, "never to exceed actual value;" Texas, "at (not) more than its fair cash market value;" and New York, "shall in no case exceed full value."

Modifications of the inflexibility of assessments "at" a standard are found in constitutions of Mississippi, "according to true value;" Alabama, "exact proportion to value;" Utah, "according to its value in money;" Arkansas, Tennessee and Ohio "according to value;" Idaho and Illinois, "in proportion to value;" Maine "according to just value."

Other states rely upon legislative acts to establish assessment standards within the framework of general constitutional requirements concerning powers of taxation and uniformity. Some of them by constitutional direction such as in the new state of Alaska which prescribes that "standards for appraisal of all property assessed by the State or its political subdivisions shall be prescribed by law."[23]

Others, such as the new state of Hawaii accomplish the same purpose with constitutions which contain no direct reference to assessments.

The New Jersey constitution stands midway between these different approaches with a provision that "property shall be assessed for taxation under general laws and by uniform rules. All real property assessed and taxed locally or by the State for allotment and payment to taxing districts shall be assessed according to the same standard of value...."[24]

Comment

By whatever name it may be called, the traditional standard of value for property assessments relates to market value and the Michigan standard of "cash value" is no exception. In this respect the choice of words to describe value is of no great consequence.

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[23] Alaska State Constitution, Article IX, Section 3.

[24] New Jersey State Constitution, Article VIII, Section 1.

Constitutional provision of the "cash value" standard is in fact a restriction upon the authority of the legislature to provide by law any other standard or provide for the assessment of property at any percentage of value lower than 100 percent. If Michigan wishes to continue this restriction, there is some advantage in retaining the exact language in order to preserve the accumulated body of judicial interpretations. Customary assessment of property at something less than the constitutional (or statutory) standard complicates tax appeal procedure in discrimination cases arising from assessments above the average but lower than the constitutional standard. From this standpoint, there is much to be said in support of changing the constitutional standard to more nearly reflect actual practices or to leave the matter of assessment standards to legislative action.

8. Equalization of Assessments

Article X: Section 8. In the year 1911, every fifth year thereafter and at such other times as the legislature may direct, the legislature shall provide by law for an equalization of assessments by a state board, on all taxable property, except that taxed under laws passed pursuant to sections 4 and 5 of this article.

Constitutions of 1835 and 1850

The 1835 constitution contained no provision for equalization of assessments.

The 1850 constitution was amended in 1900 to contain the same language (Article XIV, Section 13) as Section 8 with the exception that the year 1901 was the starting point and the taxes excepted were then contained in Section 10 of that constitution.

Constitution of 1908

This section was the subject of extended debate in the constitutional convention of 1908 and language from the prior constitution (1850 as amended) was adopted after rejection of a proposal by the committee on taxation and finance that the board should consist of the governor, the attorney general, the auditor general, the commissioner of the state land office and the three members of the board of state tax commissioners coupled with an additional provision that "The Legislature shall by law, in 1909, to take effect not later than 1911, provide and put into operation methods by which property subject to ad valorem assessment shall be assessed at a uniform value." The state board of tax commissioners had declared property valuations were too low and the commissioners were therefore said not to be in a position to act as impartial judges in the matter of property assessments.[25]

Section 8 has not been amended since the present constitution was adopted.

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[25] Michigan Constitutional Convention of 1908, Proceedings and Debates, (Feb. 4, 1908) pp. 1181-1190; (Feb. 5, 1908) pp. 1238-1245.

Judicial Interpretations

This section is an old one and court recognition of practices under it is well established.

Other State Constitutions

Michigan is one of nine states which provide by constitution for state boards or commissions responsible for equalization of assessments (Michigan, California, Colorado, Idaho, Missouri, Montana, Nebraska, Utah and Wyoming). Among these states, Utah and Idaho assign responsibility to the state tax commission and Wyoming simply instructs the legislature to provide by law for a board of equalization. The other five states (including Michigan) indicate the membership or specify the way it is to be appointed.

The New York constitution requires the legislature to provide "for review and equalization of assessments for purposes of taxation" (Article XVI, Section 2) without indicating what provisions shall be made. Similar provisions are in the constitutions of Arizona and Texas. Although New Mexico does not establish a board of equalization by constitution, it has a constitutional provision forbidding members of the state board of equalization from receiving favors from railroads (Article XX, Section 1).

Comment

While property assessment equalization procedures are common among the states, more of them are provided by legislative act than by the constitution. The Michigan provision is in effect an instruction to the legislature to provide for equalization. Except for stating that equalization shall be provided "by a state board," it follows the sound practice of leaving procedure to legislative determination.

The Michigan exclusion of specific taxes from equalization is unusual because the Michigan concept of specific taxes is itself unusual. The Michigan exclusion of property assessed by the state board of assessors is also unusual, but five of the "equalization board" states have a provision for constitutional assignment of responsibility for assessing corporation property to the same boards.

9. 15 Mill Limitation

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Article X: Section 21. The total amount of taxes assessed against property for all purposes in anyone year shall not exceed one and one-half per cent of the assessed valuation of said property, except taxes levied for the payment of interest and principal on obligations heretofore incurred, which sums shall be separately assessed in all cases: Provided, That this limitation may be increased for a period of not to exceed twenty years at anyone time, to not more than a total of five per cent 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: Provided further, That this limitation shall not apply to taxes levied in the year 1932.

Constitutions of 1835 and 1850

There was no similar provision in either the 1835 or 1850 constitutions.

Constitution of 1908

The 1908 constitution as originally adopted did not contain a comparable provision. This provision, popularly known as the fifteen mill amendment, was added to the 1908 constitution by amendment proposed by initiatory petition and adopted at the general election of November 8, 1932. As originally worded, it provided that the limitation specified could be increased for a period of not to exceed five years by a two-thirds vote. An amendment to this section was proposed by initiatory petition and adopted in 1948 to provide for the 20 year increase by simple majority vote.

Previous to the adoption of the 15 mill limit amendment in 1932 there had been no similar limitation in the constitution or in statute.

The Michigan supreme court in commenting on the circumstances leading to the adoption of the 15 mill limit in 1932, has stated:

> The burden of unrestricted property taxation had grown to the point of confiscation. The people were aroused and determined to restrict—permanently—the power of property taxation which then reposed generally in legislative (state and local) hands. Added to their tax

> troubles, the people were enduring a great and widespread economic depression...with homes and farms everywhere threatened by sale for delinquent property taxes and with the legislature failing to take decisive action in the direction of tax limitation, a desperate electorate took matters into its own lawful hands.[26]
>
> Careful study of the amendment leads to these conclusions: clearly the intent was to provide by the fundamental law of the state, which had not theretofore contained such provision, a general limitation upon the exercise of the taxing power of the state. The evil or abuse sought to be remedied was excessive taxation imposed by governmental agencies without the consent of those upon whom the burden was placed.[27]

Judicial Interpretation & Opinions of the Attorney General

The language of Article X, Section 21, has been subjected to frequent interpretation both through court decisions and opinions of the Michigan attorney general. These interpretations have produced the following limitations and clarifications:

Cities and villages are exempt from its provisions. Only the state government, counties, townships and, at least in part, school districts are affected. (School District of the City of Pontiac v. City of Pontiac, 262 Mich. 338; City of Hazel Park v. Municipal Finance Commission, 317 Mich. 582; Hall v. Ira Township, 348 Mich. 402; Bacon v. Kent-Ottawa Metropolitan Water Authority, 354 Mich. 159)

The word “electors” means those electors voting on the proposition to increase millage, rather than all qualified registered electors. (Wilcox v. Board of Commissioners of Sinking Fund of City of Detroit, 262 Mich. 699)

Neither principal nor interest of obligations refunding pre-1932 debt is subject to Article X, Section 21. (Wilcox v. Board of Commissioners of Sinking Fund of City of Detroit, 262 Mich. 699; Chemical Bank & Trust Co. v. County of Oakland, 264 Mich. 673)

The words “assessed valuation” mean local assessed valuation as equalized by the state. (St. Ignace City Treasurer v. Mackinac County Treasurer, 310 Mich. 108; Waterford Township v. Oakland County Tax Allocation Board, 312 Mich. 556; Morley Brothers v. Carrollton Township Supervisor, 312 Mich. 607; School District No. 9, Pittsfield Township, Washtenaw County v. Washtenaw County Board of Supervisors, 341 Mich. 388)

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[26] Black, J., in Bacon v. Kent-Ottawa Authority, 354 Mich. 159.

[27] Quoted by Black, J., Ibid., from School District v. City of Pontiac, 262 Mich. 338, 347, 348.

Local assessors may apply the equalization factor to rates rather than valuations. (Attorney General's Opinion, June 13, 1945)

Use tax is not subject to fifteen mill limitation. (Banner Laundering Co. v. State Board of Tax Administration, 297 Mich. 419)

Special assessments are not subject to fifteen mill limitation. (Graham v. City of Saginaw, 317 Mich. 427)

Certain metropolitan authorities are not municipal corporations within the meaning of the fifteen mill amendment and are therefore subject to its terms (Morse v. Wayne County Supervisors, 355 Mich. 100) while other metropolitan districts are such municipal corporations and are therefore not so subject (Attorney General's Opinion No. 3462, November 19, 1959).

A port commission is subject to the fifteen mill amendment. (Attorney General's Opinion No. 2924, March 15, 1957)

An approving vote by electors of a school district authorizing a bond issue requiring taxation in excess of mills guaranteed to school districts is not equivalent to an approving vote of a millage increase in the amount of the taxes needed. (In re School District No. 6, Paris and Wyoming Townships, Kent County, 284 Mich. 132, but see Article X, Sections 27 and 28, added to the constitution by amendment subsequent to this decision, in effect authorizing such a double approval vote.)

A legislature can effect changes in a municipal charter removing that charter from the provisions of the fifteen mill amendment as well as can the voters of that municipality. (Council of City of Saginaw v. Saginaw Policemen & Firemen Retirement System Trustees, 321 Mich. 641)

A charter township is a municipal corporation within the meaning of that term in the fifteen mill amendment and consequently is not subject to the provisions of that amendment. (Charter Township of Warren v. Municipal Finance Commission, 341 Mich. 607)

Also significant here are the provisions of Sections 27 and 28 of Article X dealing with school district borrowing. These provisions will be considered elsewhere, but their effect is to permit school districts to levy taxes unlimited as to rate or amount, outside of the provisions of the fifteen mill limitation, for payment of specified types of bond issues.

Statutory Implementation

As noted under "Judicial Interpretation," cities and villages are not automatically included under the limitation. In 1949 the legislature amended the general property tax act to prohibit a municipality from including a tax limitation in its charter which would reduce the combined taxing power of the other units in the county to less than fifteen mills.

The legislature has provided by law for a procedure to allocate the fifteen mills among the overlapping taxing jurisdictions in the county which are subject to the limitations. In each county there is a six-member county tax allocation board composed of the county treasurer, the chairman of the board of county auditors if there be such a board, and if not, the chairman of the finance or ways and means committee of the board of supervisors, the county school superintendent, and three other members appointed by the probate judge(s)—a member of a school board, a representative of a city, and a representative of the public at large—a total of six members.

Under certain specified limitations, each unit of government subject to the limitation is entitled to a minimum allocation—the county 3 mills, school districts 4 mills, and townships 1 mill. Community college districts are allocated a minimum of 1/1000 of a mill under certain circumstances and, if the state were to levy a general property tax, its rate would also have to be allocated. The remaining millage is allocated by the county tax allocation board on the basis of "needs" of the respective units.[28]

Other State Constitutions

It is difficult to make valid comparison of Michigan's tax rate limitation and those in other states. Just as judicial decisions have interpreted the meaning of Michigan's provision, so the provisions of other states have been interpreted by their courts. Thus, a comparison of the wording of the various constitutional provisions themselves does not provide a satisfactory comparison of the effect of the limitations in the various states. It is beyond the scope of this paper to attempt a comprehensive comparison, but certain facts should be noted.

Many other states have tax rate limitations generally similar to the fifteen mill amendment. In twenty-six states there is either a statutory or constitutional limitation on the rate of state taxes, and in forty states there is some limitation on the tax rates of political units.[29] Nineteen states, including Michigan, incorporate their tax rate limitations into their constitutions, and two additional states have consti-

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[28] See M.S.A. 7.61ff. for the Property Tax Limitation Act.

[29] Graves, American State Government, 4th edition, D. C. Heath & Co. Boston, 1953, page 531.

tutional provisions authorizing the legislature to set limitations.[30] Only some twelve states have over-all property tax limitations, nine of these, including Michigan, listing these limitations in their constitutions.[31]

The types of limitations vary greatly. The oldest and most widely used type is one setting maximum rates for various funds or purposes. Newer limitations employ percentage amounts of collections in previous years. Other limitations are based on maximum rates per valuation or governmental unit, or maximum dollar amounts per capita, or a stated maximum dollar amount, or a ratio between property tax collections and collections of other taxes.[32]

The millage amounts specified in formulas employing limitations based on that factor vary from five to fifty mills, with the average being approximately twenty-four mills. Most states permit an increase in the maximum amount specified upon proper vote of the electorate of the taxing district, and often with the concurrence of the legislature. There is usually no limitation fixed upon the amount of this permissible increase. Also nearly all states exclude from the effects of their tax rate limitations taxes levied for payment of principal and interest on debt existing previous to the enactment of the limitation, and a large minority of states exclude from those provisions taxes levied for payment of all debt.[33]

Many recent texts and studies in the area advise against the inclusion of tax rate limitations in a state's constitution.[34] The Model State Constitution prepared by the committee on state government of the National Municipal League (5th edition, 1948) and the 1961 revised draft contain no such limitations, and the constitutions of our two newest states, Alaska and Hawaii, also have no such provisions.

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[30] Index Digest of State Constitutions, Legislative Drafting Research Fund, Columbia University, 2nd edition, 1959.

[31] Manual on State Constitutional Provisions, prepared for the constitutional convention of the territory of Hawaii, 1950, by the Legislative Reference Bureau, University of Hawaii; and Graves, supra, page 532.

[32] Graves, supra, page 531.

[33] Manual on State Constitutional Provisions, supra; Graves, supra; Index Digest of State Constitutions, Supra.

[34] Manual on State Constitutional Provisions, supra; Graves, supra; Constitutional Studies, prepared on behalf of the Alaska Statehood Committee for the Alaska Constitutional Convention by the Public Administration Service, November, 1955, Volume 3, Section IX, page 18.

Comment

In the Michigan supreme court decision in the case of Bacon v. Kent-Ottawa Authority (354 Mich. 159) Mr. Justice Black noted that:

> Through and by means of an attritional series of judicial decisions the fifteen mill amendment has been bruised, beaten and backed to the brink of sterile and forceless words. No intervening act of the electorate brought this about.

There are indications in that decision that the process of attrition spoken of above is at an end.

As of today the fifteen mill limitation does not cover cities, villages, the few charter townships, certain metropolitan districts, special assessment districts, and school districts in certain specific financing situations. (See Article X, Sections 27 and 28)

The political entities still subject to the restrictions of the fifteen mill limit are the state itself, counties, the 1,200 odd unchartered townships, school districts (as to operating taxes and short term bond issues) and a few metropolitan authorities. The state does not now levy a general property tax and has none in prospect. Townships can escape the limitation by incorporation as charter townships, but only a handful have done so.

Figures available from the state tax commission show that in 1960 a total of $851 million was levied in property taxes consisting of the following:

(in millions of dollars)

	Regular Taxes	Extra Voted	Debt Service Prior to 1932	Total
Counties	$133.3	$ 12.8		$146.1
Townships	7.6	5.2		12.8
Schools	216.9	217.1	$ .2	434.2
City and Village Taxes	224.1	3.1	30.9	258.1
Total	$581.9	$238.2	$31.1	$851.4

While it is not possible to break down these figures precisely between the levies subject to the millage limitation and those not subject, a rough approximation would be that slightly less than 70% of the total or about $590 million is subject to the provisions of Section 21 (within the fifteen mills and millage extra voted by the people).[35] Thus, while the provisions of Section 21 have been “bruised and beaten”

[35] This includes all county taxes and almost all township and school taxes.

the section has not been completely broken. The limitation still applies to a major portion of the property taxes levied by local units in Michigan.

One of the most significant of the "attritional series of judicial decisions" was the ruling, cited previously, that the limitation applied to state equalized valuations. From 1933 to 1944 the term "assessed value" as used in the amendment was considered to be the local assessed value. In 1944 the court held that "assessed value" meant the local assessment as changed or corrected through the process of county equalization—thus, the limitation applied to the county equalized value. In 1954 in the Pittsfield case, the court held that "assessed value" meant the local assessment as proved or changed and corrected through the statutory process of county and state equalization;—thus, the state equalized value became the base against which the limitation applied.

In terms of 1960 valuations, the potential significance of these changes can be noted. The local assessed valuation or the state in 1960 was $16.6 billion. The county equalized valuation was $20.8 billion, about 25 per cent higher than local assessed. The state equalized value was $24.9 billion, about 20 per cent higher than county equalized values and 50 per cent higher than local assessed value. Thus, the use of state equalized values as the base against which the limitation applies enables the units of government subject to the limitation to increase property taxes they levy by 25 per cent over what they could levy on county equalized values and by 50 per cent over what they could levy on local assessed values. This application of the limitation to state equalized valuations has made available a very significant potential increase in the general property taxes levied by the local units subject to the limitation.

It is of interest to note that in 1932 prior to the fifteen mill limit the total amount of general property taxes levied in Michigan was $217 million at an average state tax rate of $32.79 per $1,000 of state equalized valuation. In 1933 after the millage limitation the total dropped to $159 million and the average state tax rate dropped to $27.39. It is not possible to distinguish between the effects of the millage limitation and the effects of the depression. The average state tax rate fluctuated between 1933 and 1947, but generally hovered around the $27 level. Following 1947 the average state tax rate began a gradual although not regular increase and in 1960 the average rate reached $35 per $1,000 of state equalized valuations.

Possible Areas of Revision. The convention may wish to consider a number of possible alternatives in connection with this section.

It is beyond the scope and purpose of this paper to attempt to provide either solutions to the problems involved or to present the kinds of detailed information that will be needed in finding appropriate solutions to these problems. However, consideration might be given to these questions:

1. Should there be a constitutional limitation on the amount of property taxes levied in Michigan or should this matter be left to the discretion of the legislature? In the absence of a specific constitutional provision the legislature would have the power to prescribe tax rate limitations. It should be noted that there is some controversy as to whether tax rate limits have any real effect on the level of property taxes in a state. Further, there is a question as to whether a low tax rate limit has any more effect on the property tax level than a high limit.[36]

2. If a tax rate limitation is to be included in the constitution then consideration should be given to the following questions:

a) Should the limit apply to all units of government which levy property taxes—cities, villages, townships, school districts, counties, metropolitan districts, the state and any other political unit? If not, which units should be excluded and what, if any, limitations should apply to them?

b) Should the limit cover all purposes for which property taxes might be levied—special assessments, operating millage, debt service, capital outlay millage, etc.? If not, which purposes should be included and which excluded?

c) What should the rate limitation be? This will, of course, depend in part on which units are subject to the limitation.

d) To what base should the limitation be applied—local assessed, county equalized, or state equalized? This question should be reviewed in connection with the constitutional provision on assessment and equalization.

e) If there is to be a millage limitation applying to several overlapping local units, should a provision be included in the constitution for allocating the millage among them?

f) Should there be, as at present, a limit that can be increased by vote of the people up to some stipulated maximum limit? Or, should the limit apply only to the rate that can be set by local governing bodies with no maximum rate specified if approved by vote of the people? Or, should there be only a maximum rate that can be levied by local governing bodies with no provision for a vote of the people?

g) Should the present twenty year time limit be continued; should approval by a simple majority of voters be adequate; should any voter or only property owners be able to vote on the question?

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[36] See the Michigan Tax Study Staff Papers, "The General Property Tax," pp. 230-232.

These questions, as well as others, should be considered in relation to revision of Section 21. There are several of these areas that require further comment.

Units of Government Subject to a Limitation. One problem that can arise as a result of the present system of having only certain units subject to the tax limitation while other overlapping units are not subject to it is a possible uneconomic allocation of functional responsibilities among the various levels of government. For example, counties might be the level of government that could most efficiently and economically provide a certain function, such as public health services. However, as a result of the millage limitation the county may be unable to finance a county-wide health service, leaving this service to be provided by the cities in the county which have the financial resources to do so under their more flexible charter tax rate limitation. This can be even more true in the financing of public improvements such as sewer and water facilities. Such improvements may have to be provided on a less economic piecemeal basis because the county or metropolitan authority lacks the taxing authority to provide the required facility. Even though it may be the same taxpayers who are paying the cost, the decision as to which level of local government will provide a service or a facility must be based in some instances on the question of which of the overlapping units has the more flexible tax rate limitation. Factors such as which unit can provide the service most responsibly, efficiently, and economically may often be ignored because of the problem of millage limitations.

Effect on Capital Financing. In respect to financing capital facilities several other problems stem from the millage limitation. One problem is that restrictions on the governing bodies' ability to levy taxes can often encourage the governing body to resort to other devices to finance improvements. For example, a unit may use "revenue bonds" for facilities which do not in fact produce revenues and that could be more economically financed through full faith and credit bonds. A second problem is that faith and credit bonds issued by the units subject to the millage limitation (except for schools—see Article X, Sections 27 and 28) are limited tax bonds rather than unlimited tax bonds. It is necessary to get voter authorization for the millage required to meet the debt service requirements and this results in what are called limited tax bonds. In contrast, an unlimited tax bond issued by a local unit not subject to the fifteen mill limit can pledge the full faith and credit of the community to paying off the bonds. Limited tax bonds are at a competitive disadvantage with unlimited tax bonds in the bond market, most bond buyers preferring the latter. Finally, the twenty year time limit on extra voted millage necessitates the issuance of shorter term bond issues than might otherwise be desirable under some circumstances.

It is possible to impose tax limits in respect to operating funds and eliminate them for debt service funds. In Michigan the voters have approved two constitutional amendments (Article X, Sections 27 and 28) relating to school districts which achieve this end. Debt service for school bonds is now excluded from the millage limitation. The vote authorizing school bonds automatically authorizes whatever millage is necessary to meet the debt service requirements—hence, unlimited tax bonds. Further, under the provision of Section 28 the twenty year time limit does not apply, thus permitting longer term bond issues. Operating funds remain under the limitation provisions.

B. DEDICATION OF TAX REVENUES FOR SPECIFIC PURPOSES

1. Primary School Interest Fund

Article X: Section 1. All subjects of taxation now contributing to the primary school interest fund under present laws shall continue to contribute to that fund, and all taxes from such subjects shall be first applied in paying the interest upon the primary school, university and other educational funds in the order herein named, after which the surplus of such moneys shall be added to and become a part of the primary school interest fund.

Constitutions of 1835 and 1850

There was no comparable provision in the constitution of 1835. The constitution of 1850 included the following provision as a part of Article XIV, Section 1:

> Specific Taxes; Disposition. Section 1. All specific state taxes, except those received from the mining companies of the upper peninsula, shall be applied in paying the interest upon the primary school, university and other educational funds and the interest and principal of the state debt in the order herein recited, until the extinguishment of the state debt, other than the amounts due to educational funds, when such specific taxes shall be added to, and constitute a part of the primary school interest fund. The legislature shall provide for an annual tax, sufficient with other resources, to pay the estimated expenses of the state government, the interest of the state debt and such deficiency as may occur in the resources.

Constitution of 1908

Section 1 was developed in the 1908 constitution as a way to continue the same tax support for the primary school fund as was provided in the constitution of 1850. It has not been amended since the present constitution was adopted.

A proposal to channel some of the primary school fund money “toward the constructing and maintaining of manual training, domestic science, mechanical, industrial and technical schools” was not accepted after extensive debate in the constitu-

tional convention of 1908.[37] The convention delegates apparently received voluminous mail and other communications indicating strong popular sentiment to retain in the constitution existing provisions relating to the primary school fund and its support.

Judicial Interpretation

Michigan courts have ruled that provisions of the 1850 constitution, providing that all specific taxes should belong to the primary school interest fund, were retained in the constitution of 1908, but only as to the sources of revenue as they existed before its adoption, leaving the state free in dealing with every other source of revenue, every other subject of taxation.[38] The courts have also ruled that "subjects of taxation," as used in the constitution, means something more than corporation, public utility or individual taxpayer who may be made liable for tax by legislative enactment; it connotes the underlying principle on which the tax is designed and imposed.[39]

Apparently the legislature is free to repeal any specific tax dedicated by Section 1 to the primary school interest fund and replace it by another tax measured in a different way upon the same taxpayers without dedicating the new tax.

Other State Constitutions

Although provisions for the support of public schools are common in state constitutions and references to permanent school funds are the rule, constitutional dedication of particular state taxes for this purpose is not so common. The West Virginia dedication of "money and taxes" formerly payable to a permanent fund appears to be the only state other than Michigan with a constitutional provision preserving tax dedications by reference from a prior provision.

Texas provides an "available school fund" with constitutional revenues from 1/4 of revenue from state occupation taxes, a poll tax of $1 on state inhabitants between 21 and 60 years old and 1/4 of the net revenue from the motor fuel tax. Oklahoma provides for payment to a school fund of school taxes upon property of railroads, pipelines, telegraph companies or public service corporations. Missouri specifies no tax, but requires that at least 25 per cent of state revenue, exclusive of interest and

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[37] Constitutional Convention of 1908, Proceedings and Debates, June 29, 1850, pp. 1096-1103.

[38] Union Steam Pump Co. v. Secretary of State, 216 Mich. 261 (Michigan Statutes Annotated 1936) Vol. 1, p. 407.

[39] Western Electric Co. v. Department of Revenue, 312 Mich. 582; also Duluth S. S. & A. R. Co. v. Corporation and Securities Commission, 353 Mich. 636. (Michigan Statutes Annotated, 1959 Cumulative Supplement, Vol. 1, pp. 171, 172).

sinking fund, be applied annually to the support of the free public schools. South Carolina provides similar dedication of revenues from sale or license of alcoholic beverages exceeding that allowed by law to counties and municipal corporations. Utah provides that taxes on income and intangible property be allocated to support the public school system, together with other moneys not to exceed 75 per cent of the minimum school program. Several states prescribe a minimum amount of money without reference to its source (for example, Delaware $100,000, Pennsylvania $1,000,000). Various smaller dedications include fines, escheats, etc. The Model State Constitution contains no provision comparable to Section 1.

In most instances, state constitutional provisions accomplish little more than to establish school funds which are supplemented by legislative appropriation.

Comment

There is more emotion associated with the Michigan constitutional dedication of certain specific taxes to the primary school interest fund than there are tangible benefits derived from it. School support resulting from this provision (Section 1) is a small part of total amount of state support provided for local schools. From the standpoint of effective dedication of state tax revenues for local schools, Section 1 is vastly overshadowed by Section 23 dedicating sales taxes. The taxes dedicated to the primary school interest fund include the inheritance tax, corporation organization fees, foreign insurance companies' tax, and the four ad valorem taxes on railroads, telephone and telegraph, car loaning, and express companies. During the fiscal year 1959-60 these taxes yielded $57 million in revenues.

2. State Sales Tax, Distribution

Article X: Section 23. There shall be returned to local governmental units by the method hereinafter set forth, l/2 cent of a state sales tax levy on each dollar of sales of tangible personal property on the 1946 statutory base (not rate). The state disbursing authority shall remit to counties as a whole on a population basis and payment shall be made to the county treasurer who shall remit to the respective cities, townships and villages within the county on a per capita basis. Population computation shall be based on the last and each succeeding state-wide federal census for purposes of division among counties and upon the same basis or upon any special federal county-wide census, whichever is later, for intra-county division purposes. There shall be excluded from such computation 50 per cent of the total number of persons who are wards, patients or convicts committed to or domiciled in any city institution located outside the boundaries of said city or committed to or domiciled in any county, state or federal tax supported institution, provided such persons were included in said federal census. All remittances provided shall be made on a quarterly basis.

There shall be set aside for the school districts 2 cents of a state sales tax levy on each dollar of sales of tangible personal property on the 1946 statutory base (not rate), to be allocated among said school districts by law. Such taxes so collected shall be deposited in a special school aid fund and be expendable only by legislative appropriations for aid to the school districts and school employees' retirement purposes as shall be provided by law. Said school aid fund shall be separate and distinct from the state general fund.

Prior to any division or allocation of the sales tax, the cost of collection as determined by the department of revenue shall be deducted from total collections and credited to the general fund of the state.

The legislature shall by law appropriate from the school aid fund for such public school employees' retirement systems as shall from time to time be in effect under the laws of this state an amount which shall not be less than 5 per cent nor more than 7-1/2 per cent of the salaries of school district employees participating in the respective retirement systems. Such percentages shall apply only to that portion of salary as may be provided by law. At no time shall the legislature levy a sales tax of more than 4 per cent.

Constitutions of 1835 and 1850

The Michigan constitutions of 1835 and 1850 contained no similar provision. The nearest thing to it was the dedication of specific taxes in the 1850 constitution. (See Section 1 above.)

Constitution of 1908

Section 23 was added to the present constitution by amendment proposed by initiatory petition and adopted at the November election in 1946. A proposal by joint resolution of the 1947 legislature to repeal this section failed of ratification at the November election of 1948. It was amended in 1954 and again in 1960 to its present form.

Commonly referred to as "the sales tax diversion amendment," Section 23, as originally adopted in 1946, required payment to local governments of portions of "total sales tax revenues" as follows:

1/6 to townships, cities and villages on per capita basis
1/6 to school districts on school census basis
44.77 per cent to school districts on basis of formula adopted by the legislature of prior year's sales tax revenue

The amendment adopted in 1954 established a 3 per cent sales tax rate ceiling and provided that the "cost of collection as determined by the department of revenue shall be deducted from total collections." This same amendment provided that the distribution should be as follows:

> 1/2 cent of sales tax on 1946 statutory base to cities, townships and villages on per capita basis
>
> 2 cents of sales tax on 1946 statutory base to school districts on basis of formula adopted by legislature

The amendment of 1954 also provided for exclusion of 50 per cent of persons "who are wards, patients or convicts committed to or domiciled in any city institution located outside the boundaries of said city..." or "in any county, state or federal tax supported institution..." from the census count used as basis for distributing sales tax to cities, townships and villages. It provided that the legislature shall appropriate from school funds for school employees' retirement systems an amount "not less than 5 per cent nor more than 7-1/2 per cent of salaries of school district employees participating in the respective retirement systems."

The amendment of 1960 increased the sales tax rate ceiling from 3 per cent to 4 per cent without changing the portions payable to townships, cities, villages and school districts. This amendment was adopted after the supplemental state use tax on retail sales of 1 per cent, adopted in 1959, had been declared in violation of the 3 per cent sales tax limitation imposed by Section 23.[40] Its purpose was to enable the state to collect revenues from a 1 per cent additional sales tax for its own purposes as a replacement of revenues it had sought from the 1 per cent use tax.

Judicial Interpretation

Section 23 has been the subject of extensive litigation. The amendment of 1954 providing for deduction of cost of collection grew out of a court ruling that for the purpose of determining local shares, "'sales tax levy' must be taken to mean sales tax money collected, ... and there must be excluded from consideration all such items as expenses of collection."[41]

The same decision rendered prior to the 1954 amendment held that direct distributions of 1 cent of sales tax levy to cities, townships, villages and schools included only the sales tax itself without reference to "...refunds, appropriations made therefrom, license fees and penalties arising from enforcement of the law..." but that the percentage (44.77 per cent) which must be appropriated by the legislature "to provide for continuance of annual school grants" applied to "total sales tax revenue" including license fees, interest and penalties.

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[40] Lockwood V. Nims (October 22, 1959).

[41] City of Jackson v. Commissioner of Revenue, 316 Mich. 694.

Michigan courts have ruled that, except for the provision directing annual legislative grants to school districts, Section 23 is self-executing and does not require implementation by legislation.[42] Also, that the legislature cannot establish the state as a school district for purposes of appropriating part of sales tax revenue for support of state institutions or functions assumed directly by the state government.[43]

Opinion of the Attorney General

The reference in the amendment to the "1946 statutory base (not rate)" has led to some question as to whether this restricts the legislature's power to change the base of the tax as prescribed by law. However, the attorney general has ruled sales of food and fuels could be exempted from the sales tax act without violating this provision.[44]

Other State Constitutions

Although various provisions appear in several state constitutions regarding sharing of state taxes with local schools and other local governmental units (see discussion of Section 1), no other state constitution contains detailed apportionments similar to Michigan's Section 23 relative to sales taxes or any other tax of so large a magnitude.

Comment

Section 23 is an example of legislation by constitution. It has the effect of dedicating a large source of state tax revenue in such a way as to influence the entire state financial environment.

Although it assures local governments in general and local schools in particular of substantial non-property tax revenues, it does so in a way which bypasses the kind of legislative determination and review ordinarily associated with legislative responsibility for overall financial planning and adjustment to changing circumstances.

Prior to the adoption of the sales tax diversion amendment in 1946, the sales tax had been the major source of revenue for the state government. In the fiscal year 1945-46 the sales tax constituted almost 87 per cent of general fund-general purpose tax revenues. By fiscal 1960 the state's one-half cent share of the three cent sales tax amounted to less than 18 per cent of general fund-general purpose tax revenues. The one cent increase in the sales tax, effective January 1, 1961, is not dedicated, making a total of one and one-half cent of the four cent sales tax available for general fund-general purpose financing. In fiscal 1961-62 it is estimated that the sales tax will constitute about 40 per cent of general fund-general purpose tax revenues.

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[42] City of Jackson v. Commissioner of Revenue, 316 Mich. 694.

[43] Board of Education of Detroit v. Superintendent of Public Instruction, 319 Mich 436.

[44] Op. Atty. Gen., January 26, 1956, No. 2470.

In July, 1955, a separate school aid fund was created in accordance with the 1954 amendment to Section 23. Under provisions of this amendment two cents of the sales tax were earmarked for aid to local school districts with the thought that such aid would be limited to the revenue yield of this part of the tax together with other revenues of the fund. In the interval since 1954, a dollar-per-pupil formula was developed to distribute aid to the local school districts. The cost of this formula increased more rapidly than annual income of the school fund.

For fiscal 1958, the legislature by law dedicated a one-cent cigarette excise tax and a four per cent liquor excise tax to the school aid fund and in 1958 began also to appropriate a general fund supplement to the school aid fund in order to meet the statutory school aid formula.

In fiscal 1961-62 the excise taxes dedicated to the school aid fund will yield about $28 million and the sales tax about $210 million; it is estimated that a general fund appropriation of $44 million will be required to supplement the sales tax and excise taxes to payout the statutory formula.

Constitutionally restricted state revenues (sales tax primary school interest fund, and gasoline and weight taxes) now account for approximately 50 per cent of total state revenues.

3. Gas and Weight Taxes

by
Miller, Canfield, Paddock and Stone
John H. Nunneley

Article X: Section 22. All taxes imposed directly or indirectly upon gasoline and like fuels sold or used to propel motor-vehicles upon the highways of this state, and on all motor vehicles registered in this state, shall, after the payment of the necessary expenses of collection thereof, be used exclusively for highway purposes, including the payment of public debts incurred therefor, and shall not be diverted nor appropriated to any other purpose; provided, the legislature may provide by law a method of licensing, registering, and transferring motor vehicles and their certificates of title, and licensing and regulating motor vehicle dealers and operators; and may prescribe charges sufficient to pay for the enforcement thereof. The provisions of this section shall not apply to the general sales tax, the use tax, the fees and taxes collected under the auto theft and operators' and chauffeurs' license laws which are used for regulatory purposes; the application fees and mileage fees appropriated to the Michigan public utilities commission by Act

No. 254 of 1933; the franchise or privilege fees payable generally by corporations organized for profit; nor to ad valorem taxes payable generally by manufacturers, refiners, importers, storage companies, and wholesale distributors on gasoline and like fuels held in stock or bond, and by manufacturers and dealers on motor vehicles in stock or bond.

Constitutions of 1835 and 1850

There was no similar provision in the Michigan constitutions of 1835 or 1850.

Constitution of 1908

This provision, sometimes known as the "anti-diversion amendment" was added to the 1908 constitution by amendment proposed by initiatory petition and adopted at the general election of November 8, 1938. It was brought about because of the use of moneys derived from gasoline and weight taxes[45] for other than highway purposes by the state legislature, particularly during the depression years in the early 1930's. It was felt by the sponsors of the amendment that such taxes collected from users of the highways of the state were in a different category than general taxes, and were more in the nature of a privilege tax collected from and paid only by those using highways. Hence, it was argued, the funds collected from such use should be earmarked for the improvement and construction of highways. The voters of Michigan agreed by a substantial majority.

This amendment has become firmly ingrained into the state fiscal picture and no serious attempts have been made by the state legislature to raid said funds. Because of this amendment the construction and necessary renovation and maintenance of highways has continued in Michigan within the limits of funds provided by gasoline and weight taxes irrespective of the financial condition of the state's general funds. This amendment, as will be shown later, is the cornerstone upon which the highway program now under way is based.

Opinions of the Attorney General

Occasionally some minor attempts have been-made to justify use of said funds for purposes claimed to be related to highway purposes, but these attempts have usually met with failure because of adverse opinions of the attorney general. An attempt to appropriate such funds to pay uniformed state police patrolling highways was ruled unconstitutional by the attorney general (Op. Atty. Gen. March 17, 1958, No. 3250). No attempt has resulted in a law which necessitated a Michigan supreme court decision.

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[45] By weight taxes is meant the annual license fees on motor vehicles based upon the weight thereof.

Statutory Implementation

How firmly ingrained into the Michigan fiscal picture this amendment has become can be demonstrated by the following recent history of Michigan highway financing:

1. Such taxes are collected by the state and distributed quarterly to the state highway department, the various county road commissions, and the cities and villages based upon a statutory formula. The current distribution formula is set forth in Act 51, public acts of 1951; as amended, as: state highway department, 47 per cent thereof; the various county road commissions, 35 per cent thereof; and the various incorporated cities and villages, 18 per cent thereof. The sums so distributed are earmarked and can be used under the above amendment and the law solely and only for highway purposes or for payment of debts incurred for such purposes. They constitute the basic funds to enable such units of government to construct, maintain and operate the highways and streets under their respective jurisdictions.[46]

2. The state legislature by amendments to Act 205, public acts of 1941, authorized the issuance of limited access highway bonds secured by contractual pledges of the state highway department, and contracting cities, villages and counties of specified portions of their highway revenues derived from state-collected and returned gasoline and weight taxes. These pledges constitute the total security for such bonds. Under said act the following principal amount of bonds has been issued by the state for the following purposes:

Purpose	Principal Amount
Ford-Lodge Expressway (three series)	$100,000,000
Detroit-Toledo Expressway	20,000,000
Grand Rapids Expressway	10,000,000
Farmington-Brighton Expressway	5,000,000
Fenton-Clio Expressway	10,000,000
Grand Haven-Muskegon Expressway	11,000,000
Detroit-Toledo Expressway-Rockwood North	5,000,000
Midland-Bay City Expressway	17,000,000
Northwestern Expressway	25,000,000
Total	$203,000,000

The balance of principal outstanding as of June 30, 1961, was $165,035,000.00.

3. The state legislature by Act 87, public acts of 1955, as amended, authorized the state highway department to issue bonds secured by pledges of necessary gasoline

[46] During the fiscal year ending June 30, 1960, such taxes were distributed as follows: state highway department $98,657,304.63; county road commissions $73,468,205.58; and incorporated cities and villages $37,783,648.78.

and weight taxes returned to the state highway department pursuant to law.[47] Under said act the state highway department issued bonds in the aggregate principal amount of $25,000,000 for trunk line highway construction. Bonds in the principal amount of $20,840,000 of this issue were outstanding as of June 30, 1961.

4. The state legislature by comprehensive amendments adopted in 1957 to Act 51, public acts of 1951, as amended, greatly expanded the bonding powers of the state highway department, and extended said bonding powers to counties. Such bonds are secured by these constitutionally earmarked gasoline and weight taxes, and such bonds together with outstanding bonds are given a prior lien for their payment against such funds. Under this authorization the state highway department has issued, as of August 1, 1961, a total of $260,000,000 of highway bonds to carry out its highway construction program, receiving, in the case of interstate highways, 90 per cent federal participation in addition, and on other trunk lines 50 per cent participation. This bonding program enabled the state to put up its matching money immediately. Federal aid has been a major factor in supplementing bond moneys in all cases where bonds have been issued by the state. An additional $100,000,000 has been authorized, and $50,000,000 issued, to finance the local share of the new expressway system being constructed in Detroit, and $18,000,000 issued to pay the local share of completion of the Grand Rapids expressway. These bonding provisions are a necessary and integral part of the current major highway program under way in the state.

5. There have been issued, thus, by the state highway department $521,000,000 in principal amount of highway bonds, of which $465,280,000 are outstanding as of June 30, 1961. These bonds in no way involve the credit of the state of Michigan but are payable solely out of pledged amounts of gasoline and weight taxes earmarked by the above amendment for “highway purposes, including the payment of public debts incurred therefor.”

6. In addition to the above bonds which have been issued by the state highway department, bonds of like nature have been and are being issued by incorporated cities and villages of the state for street purposes under the provisions of Act 175, public acts of 1952, as amended, secured primarily by pledges, within statutory limits, of such highway funds returned to them pursuant to law. Said bonds are known as “motor vehicle highway fund bonds” and total many millions of dollars. Also, counties are authorized to issue bonds of like nature under the provisions of Act 51, public acts of 1951, as amended. St. Clair county has issued $2,900,000 of such bonds, and other counties are in the process of issuance. Under Act 143, public acts of 1943, as amended, many counties have issued road notes secured by gasoline and weight tax moneys returned to them.

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[47] The bonding provisions of this law were repealed by the amendments adopted to Act 51, public acts of 1951, as amended, referred to herein. The outstanding bonds and their security were fully preserved in said amendments.

Judicial Interpretation

The Michigan supreme court has sustained this type of bond and the security pledged therefor. The court passed upon legal questions involved at the time of the first issue of Ford-Lodge expressway bonds in 1951, in the case of State Highway Commissioner v. Detroit Controller, 331 Mich. 337, and the following brief quotes from said decision are pertinent:[48]

> Vehicular taxes, almost since their origin, have been earmarked exclusively for highway purposes, PA 1915, No. 302 (CL 1948, § 256.1 et seq. (Stat Ann § 9.1431 et seq.)), PA 1925, No. 2. In 1938, the Constitution of 1908 was amended to include article 10, § 22. This section provides:
>
> > All taxes imposed directly or indirectly upon gasoline and like fuels sold or used to propel motor vehicles upon the highway of this state and on all motor vehicles registered in this State, shall. . . be used exclusively for highway purposes, including the payment of public debts incurred therefor.
>
> Vehicular taxes have often been termed privilege taxes for the use of the State's highways. They are paid only by motor vehicle owners and users, and the moneys derived therefrom are used solely for the benefit of those persons who paid the tax.
>
> * * *
>
> Nor would a constitutional amendment which had the effect of impairing the bondholder's security be valid, for the supreme court has held that an amendment to a State Constitution is passing a law for the purpose of the contracts clause. Railroad Company v. McClure, 77 US (10 Wall) 511 (19 L ed 997); Russell v. Sebastian, 233 US 195 (34 S Ct 517, 58 L ed 912, Ann Cas 1914C 1282). The pledge is irrevocable as any statute or amendment to the Constitution impairing the obligation of the bonds would be invalid insofar as it affected bonds theretofore issued.

In view of these decisions it could certainly be argued with considerable merit that any attempt to do away with the constitutional earmarking of motor vehicle taxes as set forth in Section 22, Article X, of the present constitution would be invalid under the contracts clause of the United States Constitution (Article 1, Section 10) as having the effect of impairing the security of the above specified outstanding bonds.

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[48] See also Nichols v. State Administrative Board, el al, 338 Mich. 617.

Other State Constitutions

Constitutional earmarking of gasoline taxes occurs in 28 states and of motor vehicle taxes, in 27 states. Twenty-six states earmark both taxes, but only two states (California and Florida) earmark only gasoline taxes and only Nebraska earmarks only motor vehicle taxes. It is common to include administrative and collection costs of the tax(es) as an allowable purpose for which the revenues derived therefrom may be used. With but few exceptions these revenues are specifically set aside for roads and highways, bridges, and other purposes incident to the provision of vacilities for and supervision over, vehicular travel on public roads and highways. Arizona uses revenues from motor vehicle taxes for local units. Nebraska uses revenues from the same source for distribution to both the state and to local units, with no requirement as to purpose. Pennsylvania includes the construction and improvement of facilities for air navigation as a legitimate use of motor vehicle tax receipts. Finally, Oregon allows use of revenues from gasoline and motor vehicle taxes for the acquisition, development, use, maintenance, and care of parks, scenic, recreational and historic areas and the publicity thereof. The Model State Constitution does not earmark any taxes.

Comment

While there are many arguments which can and will be advanced against the constitutional earmarking of general tax revenues collected by the state, it is suggested that the revenues derived from gasoline and weight taxes as presently earmarked fall into a different category for the following reasons:

1. Such taxes do not fall within the category of general taxes, but are more in the nature of privilege taxes collected from users of the highways, and thus should be used for highway purposes. Constitutional earmarking is the only sure means by which this purpose can be realized. As stated by the Michigan supreme court in State Highway Commissioner v. Detroit Controller, 331 Mich. 337, at p. 350:

> Vehicular taxes have often been termed privilege taxes for the use of the State's highways. They are paid only by motor vehicle owners and users, and the moneys derived therefrom are used solely for the benefit of those persons who paid the tax.

2. A removal of the present constitutional earmarking may impair the security of presently outstanding bonds in the principal amount of $465,280,000 issued by the state, as well as many additional millions of dollars of bonds issued by cities and villages, and notes and bonds issued by counties, all secured by pledges of gasoline and weight tax revenues. A removal of a very important factor in the security

thereof—the constitutional earmarking of such funds which "shall be used exclusively for highway purposes, including the payment of public debts incurred therefore"—would be dangerous from a legal standpoint in that it may result in court invalidation of such removal of the provision from the new constitution.

The constitutional earmarking is of prime importance to the above type of bond as enhancing their security and making them more saleable at a favorable interest rate. For example, all official statements issued in connection with each bond series issued by the state highway department contain the following statement, or one in similar language:[49]

Constitutional Provisions

> This amendment was popularly known as the 'anti-diversion amendment' proposed by initiative petition and adopted by the electors of the State at the general election of November 8, 1938. It effectively prevents the legislature of the State from diverting these specific tax moneys to any other purpose except highways or the payment of debts incurred for highway purposes. It is a very effective anchor securing the type of highway bonds herein described as these bonds are debts incurred for highway purposes. Thus, the taxes out of which these bonds are payable and which are pledged as a security for payment thereof, are constitutionally earmarked and cannot be used or appropriated by the State legislature for any other purpose. The general fund or general taxes of the State are in no way involved or pledged for the payment of these bonds.

Such attempt, as a practical matter, may also impair the future credit of the state.

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[49] Taken from official statement issued in connection with state trunkline highway bonds, series VI, in the aggregate principal amount of $35,000,000.00, dated August 1, 1961.

C. CONTROL OF STATE FUNDS

1. State Depositories

Article X Section 15. No state money shall be deposited in banks other than those organized under the national or state banking laws. No state money shall be deposited in any bank in excess of 50 per cent of the capital and surplus of such bank. Any bank receiving deposits of state money shall show the amount of state money so deposited as a separate item in all published statements.

Constitutions of 1835 and 1850

The constitutions of 1835 and 1850 contained no comparable provision.

Constitution of 1908

Section 15 has not been amended since the present constitution was adopted.

Judicial Interpretation

This section has been the subject of little litigation.

Other State Constitutions

Section 15 is unusual among state constitutional restrictions concerning the deposit of state, money in that it limits such deposits to 50 per cent of the bank's capital and surplus and requires that state deposits must be separately reported in all published statements. Although such restrictions may be imposed by legislative act or by administrative practice in some states, they are not set forth in any other state constitution.

The Michigan restriction of state deposits to national or state banks is provided only in California and New Mexico. Wyoming qualifies a similar restriction with "whenever practicable" and California makes an exception for deposit of monies in banks outside the state for payment of principal or interest of its own bonds at the place where payable. Maryland leaves the choice of depositories to the treasurer with approval of the governor and Missouri adds approval of the state auditor to a similar selection. Montana provides a state depository board consisting of the governor, state auditor and state treasurer. Indiana permits the legislature to invest trust funds "in a bank with branches on unquestionable security." Colorado,

Minnesota and South Carolina do no more than require the legislature to provide by law for safekeeping of state funds. Montana supplements a similar requirement with the provision for national or state banks mentioned above.

The Model State Constitution contains no comparable provision.

Comment

Section 15 is the type of constitutional provision which few states have found necessary and the restrictions imposed by it are in greater detail than any other state has found necessary. At the same time, it is a type of provision which "does no harm" in that it imposes no undue restriction upon the state's financial management. Its provisions are of a nature which might be described as "good law" and may be questioned only on the grounds of the necessity to do in the constitution what could be done by the legislative act.

2. Payments from Treasury

Article X: Section 16. No money shall be paid out of the state treasury except in pursuance of appropriations made by law.

Constitutions of 1835 and 1850

The Michigan constitution of 1835 contained one article which provided essentially the same restrictions provided in Sections 16 and 17 (Article X) of the present constitution:

> No money shall be drawn from the treasury but in consequence of appropriations made by law, and an accurate statement of the receipts and expenditures of the public money shall be attached to and published with the laws annually (Article XII, Section 4).

Section 16 of the present Michigan constitution is identical with a provision of the 1850 constitution (Article XIV, Section 5).

Constitution of 1908

Section 16 has not been amended since the present constitution was adopted.

Judicial Interpretation

Michigan courts have ruled that appropriations can be made by constitutional provision as well as by legislative act,[50] but they have also ruled that payments from the general fund of the state cannot be made except in accordance with appropriations by the legislature.[51] In this last ruling, the court determined that it could not direct the legislature to appropriate money from the general fund to cover deficiencies "in mandatory payments provided by constitutional appropriations."

These interpretations make it clear that the legislature has complete control of all state money not clearly designated for a particular purpose or use in a particular way by the constitution.

Other State Constitutions

Michigan is one of 39 states with constitutional provisions that require "appropriations made by law" as a condition for paying money from the state treasury. New Mexico, Maine and North Dakota accomplish the same purpose by requiring an appropriation authorizing payment and New Hampshire requires that payments must be "agreeable to acts of the legislature." The language of these provisions is not identical, but the intent is the same, except that a few states exclude payments of interest on the public debt (New Mexico, Montana, Wyoming). Hawaii provides that provision for control of rate of expenditures of appropriated state moneys shall be made by law. Oklahoma and Missouri also have provisions for allotting appropriations during the fiscal year and keeping them within available revenues.

The Model State Constitution contains essentially the same provision as Michigan's Section 16.

Comment

Section 16 is consistent with what is recognized as good constitutional policy. It requires all expenditures of money to be authorized by the legislature or by the constitution and thus places the state in a position to exercise controls at the point of appropriation.

3. Public Moneys; Statement of Receipts and Expenditures

Article X: Section 17. An accurate statement of the receipts and expenditures of the public moneys shall be attached to and published with the laws passed at every regular session of the legislature.

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[50] Civil Service Commission v. Auditor General, 302 Mich. 673.

[51] Board of Education of Detroit v. Superintendent of Public Instruction, 319 Mich. 436.

Constitutions of 1835 and 1850

Section 17 (as well as Section 16) has its origin in one section of the Michigan constitution of 1835, which provided that:

> No money shall be drawn from the treasury but in consequence of appropriations made by law, and an accurate statement of the receipts and expenditures of the public money shall be attached to and published with the laws annually. (Article XII, Section 4)

Section 17 of the present constitution is identical with Article XVIII, Section 5 of the constitution of 1850.

Constitution of 1908

Section 17 has not been amended since the present constitution was adopted.

Judicial Interpretation

Provisions of Section 17 have been in Michigan constitutions since the state was first organized. Their interpretation is well established and the section has been the subject of little litigation.

Other State Constitutions

Michigan is one of nine states which require by constitution the publication of an accurate statement of receipts and expenditures together with legislative session laws (others are California, Florida, Indiana, Iowa, Maryland, Oregon, South Carolina and Tennessee). Nineteen other states have constitutional provisions for the publication of statements of accounts.

The Model State Constitution contains no provisions comparable to Section 17, but does provide that all state expenditures shall be matters of public record.

Comment

Although all states do not have such a constitutional requirement, it is recognized as good practice to publish accounts of revenues and expenditures and some form of public reporting is practiced in every state.

Although publication is possible without constitutional mandate, it would be difficult to be critical of the provisions contained in Section 17.

4. Accounts of Public Officials

Article X: Section 18. The legislature shall provide by law for the keeping of accounts by all state officials, boards and institutions, and by all

> county officials; and shall also provide for the supervision and audit thereof by competent state authority and for uniform reports of all public accounts to such authority. Such systems of account shall provide for accurate records of all financial and other transactions and for checks upon all receipts and disbursements of all such officials, boards and institutions; and shall be uniform for all similar boards, institutions and county officials. All public accounts and the audit thereof shall be public records and open to inspection.

Constitutions of 1835 and 1850

The Michigan constitutions of 1835 and 1850 contained no provisions comparable to Section 18.

Constitution of 1908

Section 18 has not been amended since the present constitution was adopted.

This section was the subject of extended debate in the constitutional convention of 1907-08. It was forced out of the committee on miscellaneous provisions to the floor of the convention over the objections of the chairman of that committee.[52] Principal support for it developed in recognition of inadequate record keeping by the state and its local governments. It was modeled principally after new systems of state auditing which had been installed in Wyoming and Ohio and the proposal extended to municipalities as well as to the state and counties. Villages and school districts were also brought into the debate. Objections were raised to the effect that such a provision would generate a large and costly bureaucracy of accountants and that it was a proper subject for legislative action rather than for the constitution. This last objection was countered by the argument that the legislature had always had the necessary authority and had not exercised it. An effort to substitute “may” for “shall” was defeated.[53]

Judicial Interpretation

In view of the background of its adoption, it is interesting to note that Section 18 has been the subject of little litigation.

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[52] Michigan Constitutional Convention of 1908, Proceedings and Debates, January 2, 1908, pp. 487, 499, 500.

[53] Ibid., January 15,1908, pp. 771-775, January 29, 1908, p. 1080, February 20, 1908, pp. 1383-1388.

Other State Constitutions

Michigan stands alone among states with its constitutional requirement that the legislature must provide for a system of accounting. Connecticut, Maryland and New York place this function with the comptroller; Missouri places it with the state auditor; and Oklahoma with the state examiner. Michigan and Oklahoma require the legislature to provide for keeping of accounts. Michigan and West Virginia make public accounts public records open for inspection.

Constitutional requirements concerning audits and examinations of state accounts vary primarily in terms of who is made responsible. Michigan, Kentucky and Wisconsin require the legislature to provide for audits. Alaska requires the auditor to conduct post-audits "as prescribed by law" and Vermont simply requires that the treasurer's accounts must be audited annually. Other constitutional provisions for audit require examination by the comptroller (four states), the governor (four states), the grand jury (Colorado), secretary of state (Oregon), state auditor (six states) and state examiner (four states). Governors in nine states are under constitutional requirement to account to legislatures for moneys paid out to them or received. The Delaware treasurer must settle accounts annually with the legislature. Maryland permits the lower house of the legislature to examine records and appoint auditors, and Virginia requires the legislature to appoint a standing auditing committee.

Although state constitutions contain various provisions relating to county finances, Michigan is exceptional in the completeness of its requirement for state audits and uniform reports and availability of public accounts and audits for inspection. The nearest comparable provisions are the Virginia requirement that the legislature shall provide for examination of officers charged with collection and disbursement of public funds, and the Pennsylvania and Idaho requirements that the legislature provide for accountability for all fees collected and public and municipal moneys paid. Washington has a similar provision, but excludes combined city-counties or counties which have adopted home rule charters.

Although the Model State Constitution says nothing about uniform systems of accounts, it requires the legislature to appoint an auditor to conduct post audits as follows:

> Post-audit. The legislature shall appoint an auditor to serve at its pleasure. The auditor shall conduct post-audits as prescribed by law and shall report to the legislature and to the governor.

Comment

Although general requirements for audit are coming more and more to be subjects of basic law, the detailed subject matter of Section 18 is commonly regarded as more legislative than constitutional and its treatment in the various state constitutions is

in no way uniform. It was first introduced into the Michigan Constitution in 1908 as a way to force the legislature to make suitable provision for uniform accounts and audits and must be appraised against this background.

5. Ineligibility of Certain Persons to Public Office

Article X: Section 19. No collector, holder or disburser of public moneys shall have a seat in the legislature, nor be eligible to any office of trust or profit under this state, until he shall have accounted for and paid over, as provided by law, all sums for which he may be liable.

Constitutions of 1835 and 1850

The Michigan constitutions of 1835 and 1850 (Article IV, Section 8 and Article IV, Section 6, respectively) contained sections restricting dual office-holding by legislators in the manner provided in Article V, Section 6 of the present constitution. This restriction was all that was provided in this regard by the 1835 constitution.

The 1850 constitution added the further restrictions (Article IV, Section 18) upon civil appointments and interests in contracts with the state or counties as provided in Article V, Section 7 of the present constitution. The 1850 constitution also added a section (Article IV, Section 30) making a collector, holder or disburser of public moneys ineligible for a seat in the legislature. This section was carried forward into the 1908 constitution as Article, X, Section 19.

Constitution of 1908

Section 19 of the present constitution is identical with Article IV, Section 30 of the 1850 constitution with the single exception of an editorial change substituting or for nor. This section has not been amended since the present constitution was adopted.

Judicial Interpretation

Section 19 is well established in Michigan constitutional law and has been the subject of little litigation.

Other State Constitutions

Michigan is one of twelve states with constitutional provisions that collectors or holders of public moneys are ineligible for membership in the legislature while continuing to be collectors or holders and prior to the time when proper accounting

has been made. (Others are Illinois, Iowa, South Dakota, Tennessee, West Virginia, Ohio, Maryland, Louisiana, Texas, Arkansas and Kentucky.) Mississippi has a similar provision applicable to persons "liable as principal for public moneys unaccounted for" and New Hampshire applies the restriction to "collectors of excise and state and continental taxes." Delaware makes former state treasurers ineligible until financial settlement and discharge of balance due.

Georgia makes a defaulter for public money or any legal taxes required of him ineligible.

Michigan is also one of twelve states which provides by constitution that collectors or holders of public moneys are ineligible for office of trust or profit prior to the time when proper accounting has been made (others are Arkansas, Colorado, Illinois, Iowa, Indiana, Oregon, Louisiana, Maryland, Tennessee, Texas and West Virginia). Mississippi has the same provision for offices of trust or profit as for membership in the legislature. California, Georgia and Nebraska provide ineligibility in case of defaults or fraud. Wisconsin makes any defaulter to the United States or to state or local governments ineligible for an office of trust or profit.

It is notable that although there are some duplications in the two lists of 12 states, there are also some differences between them.

The Model State Constitution contains no provision comparable to Section 19.

Comment

Constitutional provisions such as Michigan's Section 19 have their origin in efforts to assure that legislators and public officials will not be in a position to create policies or circumstances under which they may profit as collectors and holders of public moneys or under which they may combine the functions, of collector or custodian with those of director or spender. In contrast to the more common practice of excluding particular officers or officials, these provisions exclude all collectors, holders or disbursers of public money and thus seek to avoid any question of incompatibility of interest. The lessons of history suggest the wisdom of protecting the integrity of handlers of public money.

D. LIMITATIONS OF STATE INTEREST AND ACTIVITIES

1. Stock, Interest of State in

Article X: Section 13. The state shall not subscribe to, nor be interested in the stock of any company, association or corporation.

Constitutions of 1835 and 1850

The 1835 constitution contained no similar provision.

Section 13 of the present constitution is identical with Article XIV Section 8 of the 1850 constitution except for the substitution of nor for or.

Constitution of 1908

Section 13 has not been amended since the present constitution was adopted.

Judicial Interpretation

Section 13 is an established provision of long standing and has not been the subject of much litigation. Its interpretation has been literal and Michigan courts have ruled that it prohibits state investments in building and loan associations and that the same prohibition applies to investments by school districts which are state agencies.[54] The attorney general has ruled, however, that it does not prohibit insurance of state risks by contract with mutual insurance companies.[55]

Other State Constitutions

Michigan is one of 27 states with constitutional prohibitions against state ownership of stock. Although the precise language of these provisions varies among the states, their general content is surprisingly uniform. It is their purpose to prevent the state from assuming the role of joint owner or joint participant in private activities. Ohio states that the state is “not to be joint owner or stockholder in any company” and four other states (Pennsylvania, Florida, Georgia and South Carolina)

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[54] Michigan Savings & Loan League v. Municipal Finance Commission, 347 Mich. 311.

[55] Opinion of the Attorney General, No. 0-1323, September 28, 1943.

forbid joint ownership in any company, association or corporation. West Virginia has the same restriction without the word corporation. Tennessee adds municipalities to the things in which the state cannot become a stockholder and Virginia forbids interest in company, association or corporation "for purpose of aiding in construction or maintenance of its work." Louisiana says the state shall "not purchase or subscribe to stock of or become part owner in any corporation or association, or for any private enterprise." The Utah restriction includes bonds as well as stocks.

There are some exceptions provided in some of the state provisions. For example, California excepts mutual water company associations or corporations and makes special allowances for irrigation districts. Oregon permits the state to receive donated stock and Nevada excepts corporations formed for educational or charitable purposes. Arizona, Montana and Colorado provide exceptions for stocks coming into state ownership by operation or provision: of law through such things as tax foreclosures, breach of bond, etc.

Comment

The popularity of constitutional restrictions such as Michigan's Section 13 is a direct outgrowth of the unhappy historical experience of many states in seeking to encourage development through public participation in private ventures. The hard-learned lesson of this experience is that governmental functions of regulation and control are incompatible with entrepreneurial functions of self-interest, and especially so under conditions of divided ownership. It is significant, however, that the new state constitutions in Missouri, New Jersey, Alaska and Hawaii contain no such restriction. Its absence permits investment of state funds in corporate stocks, subject to whatever investment controls are provided.

It is not entirely clear whether this provision applies to "public corporations" or only to agencies of the state. For example, can a university own stock in an endowment fund or could a city pension fund own stock under this provision? These are questions which might be clarified.

2. Internal Improvements

Article X: Section 14. The state shall not be a party to, nor be interested in, any work of internal improvement, nor engage in carrying on any such work, except:

1. In the development, improvement and control of or aiding in the development, improvement and control of public roads, harbors of refuge, waterways, airways, airports, landing fields and aeronautical facilities;

2. In the development, improvement and control of or aiding in the development, improvement and control of rivers, streams, lakes and water levels, for purposes of drainage, public health, control of flood waters and soil erosion;

3. In reforestation, protection and improvement of lands in the state of Michigan;

4. In the expenditure of grants to the state of land or other property.

Constitutions of 1835 and 1850

The constitutional history of Michigan in the matter of internal improvements is the story of extreme changes in position. The 1835 constitution contained the following provision:

> Internal improvement shall be encouraged by the government of this state; and it shall be the duty of the legislature, as soon as may be, to make provision by law for ascertaining the proper objects of improvement in relation to roads, canals and navigable waters; and it shall also be their duty to provide by law for an equal, systematic, economical application of the funds which may be appropriated to these objects.[56] (Article XII, Section 3)

As originally adopted, the 1850 constitution provided:

> The state shall not be a party to, or interested in any work of internal improvement, nor engaged in carrying on any such work, except in the expenditure of grants to the state of lands or other property.[57] (Article XIV, Section 9)

After two amendments adopted in 1893 and 1905, this provision of the 1850 constitution read as follows:[58]

> The state shall not be a party to, nor interested in, any work or internal improvement, nor engaged in carrying on any such work, except in the improvement of or aiding in the improvement of the public wagon roads and in the expenditure of grants to the state of land or other

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[56] Michigan Statutes Annotated (1936), Vol. 1, p.147.

[57] Michigan Statutes Annotated (1936), Vol. 1, p.421.

[58] Joint Resolution No. 9, 1893, ratified at spring election of 1893 and Joint Resolution No. 4, 1905, ratified at April election of 1905.

> property: PROVIDED, HOWEVER, That the legislature of the state, by appropriate legislation, may authorize the city of Grand Rapids to issue its bonds for the improvement of Grand river.[59] (Article XIV, Section 9)

Constitution of 1908

The constitution of 1908 contained a revised statement of the section on internal improvements which provoked surprisingly little debate in the convention and was adopted as follows:

> The state shall not be a party to, nor be interested in any work of internal improvement, nor engage in carrying on any such work, except in the improvement of, or aiding in the improvement of the public wagon roads, in the reforestation and protection of lands owned by the state and in the expenditure of grants to the state of land or other property.[60] (Article X, Section 14)

The original version of Section 14 was amended in 1945 and 1946 to reach its present wording as stated previously. The major amendments were in broadening the exceptions to the prohibition against internal improvements

Judicial Interpretation

This provision has been the subject of extensive litigation relating essentially to two basic questions: (1) authority of local governments to engage in public improvements or to be delegated such authority by the state and (2) definition of internal improvements which are permitted and those which are prohibited. Michigan courts have established that the state has no authority to delegate powers it does not have for its own purposes and that local governments, as instrumentalities of the state, can engage in no improvements forbidden to the state.[61] The courts have tended to decide each question concerning definition of public improvements in terms of particular circumstances as presented in each case. It has been determined that a self-liquidating project is not a work of internal improvement within the constitutional prohibition of Section 14.[62] In general, such public facilities as parks, waterworks, sewers and lighting have been found not in violation of the constitutional prohibition.

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[59] Michigan Statutes Annotated (1936), Vol. 1, p. 184.

[60] Michigan Statutes Annotated (1936), Vol. 1, p. 421.

[61] Oakland County Drain Commissioner v. City of Royal Oak, 306 Mich. 124, and other cases, see Michigan Statutes Annotated (1936), Vol. 1, p. 421.

[62] Oakland County Drain Commissioner v. City of Royal Oak, 306 Mich. 124, also Attorney General ex rel. Eaves v. State Bridge Commission, 277 Mich. 373.

Other State Constitutions

Michigan is one of eight states with constitutional limitations upon state participation in internal improvements. Differences among these limitations relate to exceptions. For example, Alabama, Kansas and Virginia exclude public highways from general limitations. Minnesota permits use of the tax on motor vehicles for roads and Wyoming excludes highways, water and irrigation works and airports and related facilities from requirements of a two-thirds vote of the people for any work of internal improvement. In contrast to these states, Kentucky declares that the state shall not construct any railroad or other highway.

In addition to highways, Alabama excludes harbors and seaports under state management and control up to $10,000,000; airports, facilities, and navigable waterways up to $10,000,000; and hospitals and other health facilities. Maryland permits only limited amounts in particular counties. Minnesota and Wyoming make special provision for works where property is granted to the state.

The Model State Constitution contains no comparable restrictions to those contained in Section 14.

Comment

Section 14 is another provision of the Michigan constitution which has its roots in the state's unfortunate experience with excessive involvement in internal improvements during its first years of existence. Its principal function is to keep the state and its subdivisions out of business and to protect the public purse against burdens of ill-advised ventures. In most instances the restriction has been applied in a manner to permit public facilities commonly associated with governmental services and wholly owned by government. Other states have managed with more or less success to accomplish the same purpose without such a prohibition by relying upon such other constitutional restrictions as those relating to stock ownership, appropriations for private purposes, debt and credit restrictions, etc.

3. Railroads; Acquisition and Disposal by State

Article X: Section 20. It shall be competent for the State to acquire, purchase, take, hold and operate any railroad, or railroad property, belonging to any railroad or railway company in this State heretofore organized under a special charter still in force and effect and constituting a contract between the State and said company,

wherein the right to purchase or acquire has been reserved to the State, whenever in the judgment of the Legislature such acquisition or purchasing is necessary to protect and conserve the rights and interests of the State under such charter or contract. Any and all debts or obligations of such company constituting a lien upon such railroad, or railroad property, may be assumed by the State; and such road or property may be leased, sold or disposed of in such manner as may be provided by law.

Constitutions of 1835 and 1850

The Michigan constitutions of 1835 and 1850 contained no provisions comparable with Section 20 of the present constitution.

Constitution of 1908

Section 20 was added to the present constitution by amendment ratified in 1917.[63]

This amendment must be considered against the historical background of railroad development in Michigan. Early efforts by the state to develop railroads resulted in severe financial difficulties and the state proceeded to divest itself of its railroad holdings.[64] The constitution of 1850 closed the door to future internal improvements of a similar character.[65]

Railroad charters were granted with provisions limiting the amount of taxes payable, but reserving rights to the state to buy the railroads. Similar rights to purchase reserved by other states in similar charters became instruments for changing the charters in a way to permit tax changes.[66] Michigan found this instrument ineffective because of its constitutional restrictions upon internal improvements[67]

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[63] Joint Resolution 3, 1917, ratified at April election, 1917.

[64] See Byron M. Cutcheon, Michigan as a Province, Territory and State, Vol. 3 pp. 280-287 (The Publishing Society of Michigan, 1906).

[65] See discussion of Article X, Section 14, above.

[66] See William G. McLoughlin, The Beginning of the Railroad Tax System of New Jersey (The Historical Society of Hudson County, Paper No. 13, January, 1917).

[67] 1850 Constitution, Article XIV, Section 9; 1908 Constitution, Article X, Section 14.

and the United States supreme court had ruled that the charters were contracts which the state must observe. The constitutional amendment to include Section 20 had as its purpose making the right of the state to purchase railroads effective and thus enabling the state to change the railroad tax.

Judicial Interpretation

Section 20 has not been the subject of litigation.

Other State Constitutions

No other state has a constitutional provision comparable with Michigan's Section 20. The Model State Constitution contains no such provision.

Comment

Section 20 is in the Michigan constitution for the sole purpose of overcoming the prohibition against internal improvements (Section 14) as they relate to railroads and thus to make effective the reservation of the state's right to purchase railroads contained in railroad charters. Its purpose is not to accomplish state ownership of railroads, but rather to give the state greater freedom in developing railroad taxation. It is in the nature of a special provision made against the background of special circumstances peculiar to Michigan arising out of other constitutional provisions.

E. STATE CREDIT AND DEBIT

1. Indebtedness; Limitation

Prepared in Part
by
Miller, Canfield; Paddock & Stone
Stratton So Brown

Article X: Section 10. The State may contract debts to meet deficits in revenue, but such debts shall not in the aggregate at any time, exceed 250,000 dollars. The State may also contract debts to repel invasion, suppress insurrection, defend the State or aid the United States in time of war. The money so raised shall be applied to the purposes for which it is raised or to the payment of the debts contracted. The State may borrow not to exceed 50,000,000 dollars for the improvement of highways and pledge its credit, and issue bonds therefor on such terms as shall be provided by law.

Section 11. No scrip, certificate or other evidence of state indebtedness shall be issued, except for such debts as are expressly authorized in this constitution.

Constitutions of 1835 and 1850

Section 10 has its origins in financial difficulties experienced early in Michigan statehood and associated with excessive state borrowing and bad credit management.[68]

The 1835 constitution as originally adopted contained no limitation on borrowing by the state. As a matter of fact, Article XII, Section 3 of the 1835 constitution directed that works of internal improvement should be encouraged, and required the legislature to provide by law funds for such purpose. Pursuant to this constitutional authorization, the legislature authorized the issuance of $5,000,000.00 in

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[68] Henry M. Utley and Bryon M. Cutcheon, Michigan as a Province, Territory, and State, Vol. 3, pp. 109-180 (The Publishing Society of Michigan, 1906).

bonds for canals and railroads. These bonds were negotiated by Governor Mason to the Morris Canal and Banking Company and to the United States Bank of Pennsylvania. The Canal and Banking Company and the Bank defaulted in making payment for the bonds and, in addition, the works of internal improvement contemplated did not materialize in the way originally contemplated. Accordingly, the people became quite antagonistic to works of internal improvement and to the state's financial participation therein. The 1835 constitution was amended in 1843 to require public referendum for the issuing of any debt "on the credit of the state." This amendment did not establish a dollar amount of debt limit, but it contained some of the language of the present Section 10. The entire amendment appears as follows:

> Amendment No. 2: That the constitution of this state be so amended, that every law authorizing the borrowing of money or the issuing of state stocks, whereby a debt shall be created on the credit of the state, shall specify the object for which the money shall be appropriated; and that every such law shall embrace no more than one such object, which shall be simply and specifically stated, and that no such law shall take effect until it shall be submitted to the people at the next general election, and be approved by a majority of the votes cast for and against it at such election; that all money to be raised by the authority of such law be applied to the specific object stated in such law, and to no other purpose, except the payment of such debt thereby created. This provision shall not extend or apply to any law to raise money for defraying the actual expenses of the legislature, the judicial and state officers for suppressing insurrection, repelling invasion, or defending the state in time of war.[69]

There is some legislative confusion associated with the resolution leading to this amendment to the 1835 constitution and some doubt that it was actually agreed to by the legislature of 1843.[70]

The constitution of 1850 dropped the referendum provision and established a $50,000 debt limit. It contained in two sections virtually the same language that was carried forward into Section 10 of the 1908 constitution as originally adopted.

These sections of Article XIV of the 1850 constitution provided:

> Section 3. The state may contract debts to meet deficits in revenue. Such debts shall not in the aggregate at anyone time exceed fifty thou-

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[69] Joint Resolution, approved March 9, 1843, and ratified at November election, 1844.

[70] Michigan Statutes Annotated (1936), Vol. 1, p. 152.

sand dollars. The moneys so raised shall be applied to the purposes for which they were obtained, or to the payment of debts so contracted.

Section 4. The state may contract debts to repel invasion, suppress insurrection, or defend the state in time of war. The money arising from the contracting of such debts shall be applied to the purposes for which it was raised, or to repay such debts.

The 1850 constitution (Article XIV, Section 7) added a provision similar to the present Section 11.

Constitution of 1908

Section 10, Article X of the constitution of 1908, as originally adopted, raised the amount of permissive debt from $50,000 to $250,000 and contained all of the language of the present Section 10 except the last sentence authorizing $50 million of highway bonds. This sentence was added by amendment ratified in 1919.[71] The specific provision in Section 10 with respect to borrowing for highway improvements has been interpreted as being a one-time authorization and, as soon as the $50,000,000.00 was issued, this authority expired.

Section 11 of the 1908 constitution continued the 1850 provision prohibiting issuing evidences of indebtedness, omitting the 1850 provision "except for the redemption of stock previously issued."

Judicial Interpretation

Michigan courts have ruled that the constitutional limitation upon the power of the state to borrow money for bridge purposes applies only upon indebtedness where the credit of the state is pledged, and that revenue bonds issued by the state which are payable only from tolls of the bridge, are not subject to such limitations.[72] This interpretation of the constitutional limitation also extends to bonds which are not general state obligations, but payable from taxes levied for highway purposes upon gasoline and motor vehicles.[73]

Other State Constitutions

A review of other state constitutional provisions indicates that most states have some sort of limitation on the amount of money that the state can borrow. These are either in the form of provisions similar to Michigan, which virtually prohibit borrowing, or are in the form of a provision permitting borrowing after approval of

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[71] Joint Resolution No. 1, 1919, ratified at April election, 1919.

[72] Attorney General v. State Bridge Commission, 277 Mich. 373.

[73] State Highway Commissioner v. Detroit City Controller, 331 Mich. 337.

electors or permitting borrowing up to a fixed amount. In connection with this, it should be noted that some state constitutional provisions, particularly Missouri, California, Oklahoma, Oregon and Utah, in the constitutional provision restricting state borrowing, also restrict borrowing by local communities such as cities, villages, counties and school districts.

Realistic comparison of Michigan constitutional debt provisions with those in other state constitutions requires that Section 10 and Section 11 be considered together. Section 11 prohibits the issuing of any evidence of state indebtedness "except for such debts as are expressly authorized in this constitution" and Section 10 spells out the exceptions. In this combination, the Michigan provisions are similar to those in 17 other states.

In the matter of the exception provided in Michigan for debt to "meet deficits in revenue," a majority of states authorize the incurrence of debt for such purposes. Of the 18 states, including Michigan, which have, a general constitutional prohibition against incurring any debt, eleven have a provision similar to Michigan's exception to meet deficits in revenue. Both the new constitutions of Alaska and Hawaii permit borrowing to meet deficits in revenue.

General debt limits are provided in varying degrees of stringency in a large number of state constitutions and subject to varying exceptions; Some are expressed in dollar amounts and others are expressed in percentages of assessed values (per cent is most common). It is a common practice to establish a limit which may be exceeded only by referendum.

Debt limits associated directly with debts incurred "to meet deficits in revenue" similar to the Michigan $250,000 limit provided in Section 10 vary widely as indicated below:

Nebraska	$ 100,000	
Texas	200,000	
Illinois	250,000	
Georgia, Kentucky	500,000	
Pennsylvania	1,000,000	
Alabama	300,000	
Ohio	750,000	
Arizona	350,000	
New Mexico	200,000	
Iowa	250,000*	
Washington	400,000*	
Maryland	50,000	without levying tax for interest and redemption

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* Exclusive of losses of permanent school or university funds by default.

South Dakota	$ 100,000	including debt for public improvements
Louisiana	2,000,000	1,000,000 total in one fiscal year, and $100,000 for one budget unit
Missouri	1,000,000	for unforeseen emergency in year without referendum
Utah	1 & 1/2	per cent of taxable values-debts for all public purposes
Colorado	3/4	mill on taxable value up to $100,000,000 and $100,000 thereafter. Maximum for one year 1/4 mill.

Authorization for state borrowing to "repel invasion, suppress insurrection and defend the state" without limitations otherwise provided is a common provision of state constitutions. Although the language varies, similar provisions appear in 44 state constitutions. Michigan is unusual in its inclusion of "aid to the United States in time of war" within this provision, but it is generally assumed that such authorization is implied in the "war and insurrection" provisions of other state constitutions.

Special provisions authorizing state debts for highway purposes and restricting their amount appear in the constitutions of nine states other than Michigan. Limitations upon amount of such debt and its use vary. New York permits use of $60 million for highways and parkways from proceeds of bonds sold for "elimination of railroad crossings and grades and incidental improvements" and also permits the legislature to make the state liable for $500 million of a public corporation to construct throughways. Ohio establishes a ceiling of $500 million of revenue bonds secured by taxes upon vehicles and motor fuels, with a further limitation to $125 million in any single year "and none after March 31, 1962." Pennsylvania establishes a ceiling of $100 million upon bonds for highway purposes "irrespective of any debt" and $10 million for self-supporting toll bridges in addition to including a list of improvements for which the state may issue bonds within a $50 million ceiling. California permits $40 million, Minnesota $150 million, and West Virginia $85 million for state highways and $50 million for secondary roads. Oregon sets the ceiling at 4 per cent of aggregate assessed value of property in the state. Louisiana has detailed provisions for financing specified road and bridge projects.

The Model State Constitution provides:

> No debt shall be contracted by or in behalf of this state unless such debt shall be authorized by law for a single project or object distinctly specified therein.

The new states of Alaska and Hawaii have provisions which apparently reflect lessons learned from the accumulated experience of all states. It is notable that these two new constitutions include one "long" provision and one "short" provision:

> Alaska State Debt: No state debt shall be contracted unless authorized by law for capital improvements and ratified by a majority of the qualified voters of the state who vote on the question. The state may, as provided by law and without ratification contract debt for the purposes of repelling invasion, suppressing insurrection, defending the state in war, meeting natural disasters, or redeeming indebtedness outstanding at the time this constitution becomes effective (Article IX, Section 8).

> Hawaii—Debt Limitation: All bonds and other instruments of indebtedness issued by and on behalf of the state or a political subdivision thereof must be authorized by the legislature, and bonds and other instruments of indebtedness of a political subdivision must also be authorized by its governing body.
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> Sixty million dollars is established as the limit of the funded debt of the state at any time outstanding unpaid. Bonds and other instruments of indebtedness in excess of such limit may be issued when authorized by a two-thirds vote of all the members to which each house of the legislature is entitled provided, such excess debt at the time of authorization, would not cause the total of state indebtedness to exceed a sum equal to fifteen per cent of the total of assessed values for tax rate purposes of real property in the state as determined by the last tax assessment rolls pursuant to law.
>
> Instruments of indebtedness to meet appropriations for any fiscal period in anticipation of the collection of revenues for such period or to meet casual deficits or failures of revenue, which shall be payable within one year, and bonds or other instruments of indebtedness to suppress insurrection, to repel invasion, to defend the state in war or to meet emergencies caused by disaster or act of God, may be issued by the state under legislative authorization without regard to any debt limit.

A sum equal to ten per cent of the total of the assessed values for tax rate purposes of real property in any political subdivision, as determined by the last tax assessment rolls pursuant to law, is established as the limit of the funded debt of such political subdivision at any time outstanding and unpaid. The aggregate, however, of such debts contracted by any political subdivision during a fiscal year shall not exceed two per cent of the total of such assessed values in such political subdivision.

Instruments of indebtedness to meet appropriations for any fiscal period in anticipation of the collection of revenues for such period or to meet casual deficits or failures of revenue, which shall be payable within one year, may be issued by any political subdivision under authorization of law and of its governing body, without regard to the limits of debt herein-above provided.

All bonds or other instruments of indebtedness for a term exceeding one year shall be in serial form maturing in substantially equal annual installments, the first installment to mature not later than five years from the date of the issue of such series, and the last installment not later than thirty-five years from the date of such issue. Interest and principal payments shall be a first charge on the general revenues of the state or political subdivision, as the case may be.

The provisions of this section shall not be applicable to indebtedness incurred under revenue bond statutes by a public enterprise of the state or political subdivision, or by a public corporation, when the only security for such indebtedness is the revenues of such enterprise or public corporation, or to indebtedness incurred under special improvement statutes when the only security for such indebtedness is the properties benefited or improved or the assessments thereon.

Nothing in this section shall prevent the refunding of any indebtedness at any time (Article VI, Section 3).

Comment

The wide diversity of state constitutional provision in the matter of legislative authority to incur debt suggests that all states are seeking ways to avoid accumulated debts and debt service costs. Extreme variation in the amount of debt limits suggests that each amount was more a produce to conditions at that time of adoption rather than of any reasonable program of capacity. Dedication of revenues, especially highway revenues, for the payment of debts has been a common way to get around restrictions upon “general state debt.” Referendum requirements have been more effective in some states than others as restraining influences. Where the state of Michigan has issued its bonds, a specific amendment to the constitution has been approved by the electors. In this connection, veterans’ bonus bond issues were

authorized by specific amendments adding Sections 20a, 23a and 26 to Article X. The mental health hospital bond issue was authorized by adding Section 24 to Article X. State indebtedness to assist in school construction was specifically added by Sections 27 and 28 of Article X.

It does seem that limiting the amount that may be borrowed to meet deficits to $250,000.00 is somewhat unrealistic. At the time that the 1908 constitution was approved, the obligations of the state in various social areas, particularly welfare, were not particularly large and the sources of revenue were considerably more stable. Revenue produced by present sources (whether sales tax, income tax or various business activity taxes) will vary from time to time, depending upon general business conditions. Further, the obligations of the state will also vary from time to time, depending upon business conditions. Unfortunately, it may well result that times when revenues are down, obligations and requirements of the state may be increased. Accordingly, it would seem desirable to permit the state to borrow money to cover expenses during these times. Perhaps some sort of limitation based on a percentage of the budget could be imposed limiting the maximum amount that could be borrowed. It further might be desirable in connection with this to specifically provide that any borrowing must be repaid over a relatively short period of time. Both Alaska and Hawaii permit borrowing to meet deficits in revenues. In Alaska it must be paid before the end of the next fiscal year, and in Hawaii it must be repaid within one year.

It is further desirable to provide specifically in the constitution for procedures for the state borrowing moneys, upon approval of the electors, for major capital improvement purposes. This would avoid the necessity of amending the constitution every time a specific borrowing is required, thus avoiding cluttering up the constitution with specific borrowing authorities, as is presently done. In any event, any constitutional limitation on state borrowing should specifically be confined to the state itself and should not cover subordinate municipal units.

2. State Credit

by
Miller, Canfield, Paddock & Stone
Stratton S. Brown

Article X: Section 12. The credit of the state shall not be granted to, nor in aid of any person, association or corporation, public or private.

Constitutions of 1835 and 1850

There is no provision similar to Article X, Section 12, in the 1835 constitution. For reasons noted in the discussion under Sections 10 and 11 of Article X, a provision

similar to Section 12 was included in the 1850 constitution (Article XIV, Section 6).

Constitution of 1908

The 1908 constitution added the words "public or private" to the 1850 provision. The section has not been amended.

Judicial Interpretation

This section is somewhat similar to Article VIII, Section 25, of the state constitution which prohibits cities and villages from loaning their credit, or collecting any tax "for other than a public purpose." The Michigan supreme court and several attorney general's opinions have held that Section 12, Article X, of the Michigan constitution applies not only to the state but to its several political subdivisions such as counties, cities, villages and school districts. (Detroit Art Museum v. Engle, 187 Mich. 432)

This constitutional provision has been interpreted several times by the Michigan supreme court. In Detroit Art Museum v. Engle, supra, the court held that because of this provision the city of Detroit could not appropriate funds to support the Detroit Art Museum even though the title to the land was in the city and the board of directors had some city-appointed members.

In Skutt v. Grand Rapids, 275 Mich. 258, it was held that this provision of the constitution prohibited a scheme whereby the city of Grand Rapids permitted tax delinquents to work off delinquent city taxes by performing labor for the city.

In Youngglass v. Flint, 345 Mich. 456, the supreme court ruled that this provision prohibited the city of Flint from giving land for a federal armory. In Hays v. Kalamazoo, 316 Mich. 443, the Michigan supreme court held that the city of Kalamazoo could pay dues to the Michigan Municipal League because the city was receiving benefits in the form of professional advice from the League.

Other State Constitutions

Most states (approximately 46 including Michigan) have provisions of this type. The restriction on the grant of state credit, however, in contrast to the Michigan provision, is applied only to private persons, associations or corporations in almost all of these states. Sixteen of these states have provisions which specify further exceptions to the general restriction.[74]

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[74] Index Digest, pp. 950-951.

Comment

It is believed that the prohibition in Article X, Section 12, of the state constitution against lending of credit should be clarified with respect to its application to the investment of public funds. This constitutional provision has been variously interpreted by municipal attorneys in permitting investment of public funds only in United States obligations, only in bonds of federal and state agencies or subdivisions, and in some situations in any securities other than corporate stocks, which is specifically prohibited by Article X, Section 13, of the 1908 constitution.

The background of Article X, Section 12, which involved proprietary participation by the state in the construction of railroads and canals, indicates that perhaps the intention and purpose of this constitutional provision is to prohibit the state or its political subdivisions from participating in a proprietary manner or in various enterprises normally carried on by private enterprise. Since 1908, retirement systems and pension funds have become common things with the state and with its political subdivisions. A narrow interpretation of the subject constitutional provision would seriously hamstring prudent investment of public funds. Moreover, it would seem that over a long period of time better management of public funds could be accomplished by legislative regulation of investment rather than a constitutional prohibition. In any event, Article X, Section 12, of the state constitution should be changed in such a way as to make certain that it does not limit the investment of public funds.

3. State Bonds for Loans to School Districts

Prepared in Part
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Fred M. Thrun

Article X: Section 27. The state may borrow from time to time such amounts as may be required but not to exceed an aggregate of $100,000,000.00, pledge its faith and credit and issue its notes or bonds therefore, for the purpose of making loans to school districts for the payment of principal and interest on school bonds heretofore or hereafter issued for acquiring, constructing, enlarging, improving and equipping school buildings and sites and for the funding or refunding of obligations incurred for 1 or more of the aforesaid purposes.

If the minimum amount necessary to be levied in any calendar year for the payment of principal and interest on the bonds of a

school district issued prior to July 1, 1962, after deducting any funds pledged to and available for the payment thereof, shall exceed 13 mills on each dollar of its assessed valuation as shall loan such school district the amount of such excess, but all loans so made shall not exceed in the aggregate the sum of $100,000,000.00 and shall be, subject to such terms and conditions as shall be prescribed by law. After a school district shall have received such a loan or loans from the state, it shall thereafter levy each year no less than the said 13 mills until the amount loaned has been repaid and any tax collections in an year over and above the minimum requirements for principal and interest shall be used towards the repayment of such loan or loans. The legislature shall prescribe the conditions upon which levies for bond principal and interest shall be included in computing the amount to be loaned by the state under this section, one of which conditions shall be that the maturities on the bonds of any future issue shall conform with statutory requirements, with the last maturity date not less than 25 years from the issuance date on the bonds.

The tax limitation prescribed in section 21 of this article shall not apply to tax levies for any future issue of school district bonds issued prior to July 1, 1962, including refunding bonds and such tax levies shall be without limitation as to rate or amount: Provided, That the bonds of such issue last maturing shall be due in "not less than 25 years" from date of issuance but may be subject to prior redemption in accordance with the provisions thereof.

Section 28. The state, in addition to any other borrowing power, may borrow from time to time such amounts as shall be required, pledge its faith and credit and issue its notes or bonds therefor, for the purpose of making loans to school districts as provided in this section.

If the minimum amount which it would otherwise be necessary for a school district to levy in any year to pay principal and interest on its qualified bonds, including any necessary allowances for estimated tax delinquencies, exceeds 13 mills on each dollar of its assessed valuation as last equalized by the state, or such lower millage as the legislature may prescribe, then the school district may elect to borrow all or any part of the excess from the state. In that event the state shall loan the excess amount to the school district for the payment of principal and interest. If for any reason any school district will be or is unable to pay the principal and

interest on its qualified bonds when due, then the school district shall borrow and the state shall loan to it an amount sufficient to enable the school district to make the payment.

The term “qualified bonds” means general obligation bonds of school districts issued for capital expenditures, including refunding bonds, issued (1) prior to May 4, 1955, (2) on or after May 4, 1955 but prior to July 1, 1962, only if, and to the extent that, such bonds shall have been qualified as provided by law pursuant to section 27 of this article, and (3) on or after July 1, 1962, but prior to July 1, 1972, if such bonds shall be qualified as provided by law pursuant to this section.

After a school district has received loans from the state, each year thereafter it shall levy for debt service, exclusive of levies for nonqualified bonds, not less than 13 mills or such lower millage as the legislature may prescribe, until the amount loaned has been repaid, and any tax collections therefrom in any year over and above the minimum requirements for principal and interest on qualified bonds shall be used towards the repayment of state loans. In any year when such a levy would produce an amount in excess of the requirements and the amount due to the state, the levy may be reduced by the amount of the excess.

Subject to the foregoing provisions, the legislature shall have the power to prescribe and/or limit the procedure, terms and conditions for the qualification of bonds, for obtaining and making state loans, and for the repayment of loans.

The power to tax for the payment of principal and interest on bonds hereafter issued which are the general obligations of any school district, including refunding bonds, and for repayment of any state loans made pursuant to this section, shall be without limitation as to rate or amount.

All rights acquired under section 27 of this article by holders of bonds issued prior to July 1, 1962, shall remain unimpaired.

This section shall take effect on July 1, 1962.

Constitutions of 1835 and 1850

The earlier Michigan constitutions contained no provisions of this type.

Constitution of 1908

These provisions were not a part of the constitution as originally adopted in 1908. They were respectively added by amendment in 1955 and 1960.

1955 Amendment. Section 27 was added to the constitution by an amendment approved by the electors of the state at the general election of April 4, 1955. The provisions of this amendment exempt tax levies for debt charges on future school bonds (issued after 1955 but prior to July 1, 1962) from the provisions of the l5-mill property tax limitation, provided, however, that the last bond in such an issue matured in not less than 25 years. In addition, the amendment permits refunding of outstanding school bonds under the same terms so that they also could be brought out from under the l5-mill limit. These provisions apply to all school districts subject to eligibility requirements prescribed by statute. The school bond loan fund authorized under Section 27 expires July 1, 1962.

1960 Amendment. Section 28 was added to the constitution by an amendment approved by the electors of the state at the November election of 1960. Section 27 of Article X expires as to bonds issued on or after July 1, 1962. Section 28, therefore, is in a sense a continuation of Section 27, but contains some important differences (see Comment, below).

Statutory Implementation

Act 74 of 1955, as amended, prescribes the procedures to be followed by the state for issuing its notes or bonds to provide the funds necessary to be loaned to school districts eligible for loans under the provisions of Section 27 of Article X. The eligibility for such loans was set forth in Act 151 of 1955. The necessity for the latter act is prescribed in Section 27 which states:

> …all loans so made shall not exceed in the aggregate the sum of $100,000,000 and shall be subject to such terms and conditions as shall be prescribed by law.

The statute places the duty of determining “qualification” of any proposed issue of bonds for eligibility for loans from the state in the superintendent of public instruction. The act further denies such eligibility for bonds issued for certain purposes, such as athletic fields and swimming pools.

Act 112 of 1961 provides the procedure for the issuance and sale of bonds and notes of the state to provide the necessary funds to be loaned to eligible school districts under the provisions of Section 28 of Article X.

Act 108 of 1961 prescribes the terms and conditions for qualifying bond issues for eligibility for state loans, and the procedures for obtaining such loans under Section 28.

Judicial Interpretation

Soon after the adoption of Section 27 a test case was presented for decision to the Michigan supreme court because of the refusal of a New York firm of attorneys to furnish its approving opinion as to the validity of a bond issue proposed to be issued in accordance with the provisions of this section. (Graham v. Miller, 348 Mich. 684.) The court, in essence, held that the section was properly presented and adopted by the electors of the state, and that the section was not invalid because of duality of purpose.

Opinions of the Attorney General

The attorney general rendered a comprehensive opinion, dated August 12, 1955, numbered 2236, answering detailed procedural questions presented by the municipal finance commission concerning "unlimited tax" school bonds issued under Section 27.

Other State Constitutions

The constitutions of California and Ohio, in addition to Michigan, authorize state bond issues to provide school sites and buildings. California, like Michigan, makes loans to school districts from bond proceeds. State borrowing in Ohio is authorized for the purpose of acquiring sites and for constructing, equipping or repairing public buildings or structures for classroom facilities which are leased or sold by the state to public school districts that are unable to provide adequate facilities without state assistance.

California's constitution provides that the legislature shall require each district receiving an allocation from the bond fund to repay the loan "on such terms and in such as may be within the ability of the district to pay."

Ohio provides that the bonds are to be payable from state taxes and excises. The proceeds of an excise tax on cigarettes are earmarked to the capital improvements bond retirement fund.[75]

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[75] Index Digest, pp. 955, 958.

Comment

In 1938 the Michigan supreme court upheld the public debt commission in refusing to approve a school bond issue where no increase in the fifteen-mill limitation on taxes had been voted by the electors to provide taxing funds for the payment of principal and interest on the bonds. (In re School District No. 6, Paris and Wyoming Townships, Kent County, 284 Mich. 132.) The requirement to provide an adequate increase in the limitation on taxes was subsequently incorporated in the municipal finance act. (Act 202 of 1943)

Until amended in 1948, the tax limitation provided in Article X, Section 21, could only be increased for a period of five (5) years, and required a 2/3 vote of the qualified electors for approval of any increase. Necessarily, then, school bonds could not have a longer maturity than provided by five (5) years of taxing power. As a result, in general, tax rates for bond issues were necessarily on the average very high and in many cases could not supply the funds necessary for an adequate building program.

To remedy this situation Article X, Section 21, was amended at the general election in November, 1948, to the effect that the limitation on taxes could be increased for a period of twenty (20) years and by a majority vote of the electors.

Although the 1948 amendment did alleviate the situation with respect; to high tax rates for school bond issues in many of the districts of the state, nevertheless, the results were not nearly as good as the sponsors of the amendment had hoped. Purchasers of tax-limited bonds required voted millage increases considerably in excess of the actual requirements at the time of the issuance of the bonds in order to provided adequate safety against declines in valuation or tax collections, and further required that even with a voted increase of twenty (20) years the bond plan required pledged levies sufficient to retire the bonds in approximately fourteen (14) years. Also, in many growing communities where successive bond issues were required to meet the increasing school building needs, the total voted increases for such issues approached and sometimes equaled the total thirty-five (35) mills available. This was largely because the bond issues had to be voted earlier in time than the increases in taxable valuation resulting from increased population and new construction.

Most of the school districts experiencing a rapid growth in population were further penalized as to interest rates by the low ratings given by the bond rating agencies.

Section 28, although in a sense the successor to Section 27, contains important differences resulting from the experience gained under the operation of Section 27. First, it will be noted that there is no limitation on the amount that may be borrowed by the state for the purposes of the section.

Borrowing by school districts from the state loan fund has been considerably less than had been anticipated.[76]

Rating agencies and bond purchasers have objected to the limit of $100,000,000, on the grounds that commitments to qualified bond issues could, in the future, exhaust the fund, even though current borrowings appeared small. The removal of the limit undoubtedly will result in better ratings for qualified bond issues.

Under the provisions of Section 27, bond issues could be qualified for loans only where the last maturity date was not less than twenty-five (25) years from the date of issuance. This provision in Section 27 was included to avoid having relatively short term bonds with high tax rates proposed in order to borrow from the state loan fund. Also, there was the view that the electors of the state were not yet ready to do away with limitation on taxes for relatively short term bond issues. Stated in another way, the provision was to force lower tax rates for school bond issues.

A great many districts continued to issue tax-limited bonds because of the belief that sound financing to meet their particular requirements required bonds with a shorter last maturity than twenty-five (25) years.

No one questions the soundness of such financing in many instances and, therefore, Section 28 leaves the determination of the conditions under which relatively short term bonds may be qualified to the legislature. Act 108 of 1961, referred to above, meets the problem by setting a minimum maturity period for any issue to be qualified in relation of the debt of the district to its taxable valuation.

The act further has liberalized the conditions under which bonds may be qualified by the superintendent of public instruction, and provides for the enforced borrowing by school districts where default appears or is in prospect.

See also the Comment under Article X Section 21 on the 15-mill limitation.

4. Bond Issue Authorizations

Article X: Section 20a. The state shall borrow not to exceed 30,000,000 dollars, pledge its faith and credit and issue its notes or bonds therefor, for the purpose of paying to each person who entered into the military, naval or marine forces of the United States between April sixth, 1917, and November eleventh, 1918, and served honestly and faithfully therein during the late world war and who was a resident in this state at the time of entering such service, the sum of 15 dollars for each month or major fraction thereof, of such service, up to and including August first, 1919.

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[76] As of September 15, 1961, the total amount loaned was $535,500.00 of which $332,323 is outstanding. Figures obtained from the superintendent of public instruction.

Article X: Section 23a. The state shall borrow not to exceed $270,000,000.00, pledge its faith and credit and issue its serial notes or serial bonds therefor, for the purpose of paying to each person, or if deceased to the surviving husband or wife, child or children, or to the surviving dependent mother, father, person standing in loco parentis, brothers and sisters, in the order named, of any person who served in the military, naval, marine or coast guard forces of the United States, including women serving in auxiliary branches thereof, between September 16, 1940, and June 30, 1946, who served honorably and faithfully therein during said period, who was a resident of this state at the time of entering such service and for a period of at least 6 months prior to entering therein, and whose service continued for more than 60 days during said period, the sum of $10.00 for each month, or major fraction thereof, of service during said period in any state of the United States, and the District of Columbia, and the sum of $15.00 for each month, or major fraction thereof, of service during said period outside any state of the United States, and the District of Columbia, but not to exceed a total payment of $500.00 to anyone person: Provided, That there shall be paid to the surviving husband or wife, child or children, or to the surviving dependent mother, father, person standing in loco parentis, brothers and sisters, in the order named, of each person who has heretofore died or who shall thereafter die from service connected—causes incurred between September 16, 1940, and June 30, 1946, a sum equal to the difference between what he has received and the sum of $500.00.

The legislature is authorized and directed to provide for the issuance of serial notes or serial bonds, for the method of and eligibility for payment of the sums herein directed and for the retirement of such notes and bonds as shall be issued hereunder. The legislature is authorized and directed to provide for the borrowing of the money herein provided at the lowest possible cost to the state, and is further authorized and directed to provide by taxation or other means for the retirement of the debt at the earliest possible time. In the event that the cost of the payments herein provided shall be greater than the amount authorized to be borrowed, the legislature is authorized and directed to provide for the payment thereof from the general fund of the state.

Section 25. There shall be paid, from the moneys authorized to be borrowed under the provisions of section 23 of this article for the payment of a bonus with respect to military service, to the surviving husband or wife, child or children, or to the surviving mother or father, or surviving dependent person standing in loco parentis, dependent brothers and dependent sisters, in the order named, of any person who has heretofore died or who shall hereafter die from service connected causes and who served in the military, naval, marine or coast guard forces of the United States, including women serving in auxiliary branches thereof, between June 27, 1950, and the termination of the state of national emergency, which state of national emergency was proclaimed on December 16, 1950, who served honorably and faithfully therein during such period, who was a resident of this state at the time of entering such service and for a period of at least 6 months prior to entering therein, the sum of $500.00: Provided, That the termination of the national emergency for the purpose of this section shall be determined by act of the legislature of this state, and the liability of the state for the purposes herein set forth shall not exceed the total amount that may be borrowed under the provisions of said section 23 of this article.

Section 26. The state shall borrow not to exceed $80,000,000.00, pledge its faith and credit and issue its serial notes or serial bonds therefor, with maturities of not to exceed $1,000,000.00 in each of the years 1956 to 1965, both inclusive, and $13,000,000.00 in each of the years 1966 to 1968, both inclusive, and $14,000,000.00 in each of the years thereafter, for the purpose of paying to each person, or if deceased to the surviving husband or wife, child or children, or to the surviving mother, father, person standing in loco parentis, brothers and sisters, in the order named, of any person who served in the military, naval, marine or coast guard forces of the United States, including women serving in auxiliary branches thereof, between June 27, 1950, and December 31, 1953, who served honorably and faithfully therein during said period, who was a resident of this state at the time of entering such service and for a period of at least 6 months prior to entering therein, and whose service continued for more than 60 days during said period, the sum of $10.00 for each month, or major fraction thereof, of service during said period in any state of the United States, and the District of Columbia, and the sum of $15.00 for each month, or major fraction thereof, of service during said period outside any state of the United States, and the District of Columbia, but not to

exceed a total payment of $500.00 to any one person: Provided, That there shall be paid to the surviving husband or wife, child or children, or to the surviving dependent mother, father, person standing in loco parentis, brothers and sisters, in the order named, of each person who has heretofore died or who shall hereafter die from service connected causes incurred between June 27, 1950, and December 31, 1953, a sum equal to the difference between what he has received and the sum of $500.00: Provided further, That no payment shall be made under the provisions of this section in any case in which payment has been made or shall hereafter be made under the provisions of section 25 of this article, payment both under the provisions of this section and section 25 of this article being expressly prohibited.

The state administrative board is authorized and directed to provide by resolution from time to time for the issuance and sale of serial notes or serial bonds at the lowest possible cost, and the legislature is authorized to provide for the method of and eligibility for payment of the sums herein directed. For the retirement of such notes and bonds as shall be issued hereunder, there is appropriated from the general fund each year during their life a sum equal to the amount of principal and interest payments due and payable in each such year. The powers and duties conferred by this amendment on the state administrative board are self-executing.

Section 24. The state may borrow not to exceed $65,000,000.00 to plan, acquire, construct and equip hospitals for the mentally ill and epileptics, and training schools for mental defectives and the tuberculosis hospitals and issue bonds pledging the full faith and credit of the state, on such terms as shall be provided by law.

Constitutions of 1835 and 1850

The constitutions of 1835 and 1850 did not contain these provisions.

Constitution of 1908

These provisions were not included in the constitution of 1908 as originally adopted. They were added by amendment as follows:

Section 20a—Military Service Bonus, World War I—Approved April, 1921.
Section 23a—Military Service Bonus, World War II—Approved November, 1946.
Section 25 –Death Benefit, Korean Period—Approved April, 1951.
Section 26 –Military Service Bonus, Korean Period—Approved November, 1952.
Section 24 –Hospital Building Fund—Approved, November, 1950.

There has been little or no litigation in connection with these sections.

As of June 30, 1960, the bonds issued pursuant to these provisions were as follows:

Section	Purpose	Total Amount of Bonds Issued (in millions)	Amount Outstanding June 30, 1960 (in millions)	Final Maturity
20a	Military Service WWI	$ 30.0	0	1942
23a	Military Service WWII	230.0	65.3	1965
26	Military Service Korea	60.0	55.0	1970
25	Death benefit—Korea—no bonds issued—paid from funds under Section 23a.			
24	Hospital Building Fund	65.0	39.6	1971

Comment

Consideration might be given to deleting these provisions from the constitution. The benefits still payable under them and the interests of the bond holders could be protected by including a “saving clause” in the schedule of a revised constitution—to the effect that nothing in this constitution be construed as in any way impairing the obligation of the state in connection with any benefits conferred by or issue of bonds authorized by the provisions of Article X, Sections 20a, 23a, 24, 25, and 26 of the constitution of 1908 and the obligation of the state in connection with said sections is specifically recognized.