# ARE JUDGMENT LEVIES, JUDGMENT BONDS, AND OTHER TAXES AUTHORIZED WITHOUT LIMITS PERMITTED UNDER THE MICHIGAN CONSTITUTION?

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# ARE JUDGMENT LEVIES, JUDGMENT BONDS, AND OTHER TAXES AUTHORIZED WITHOUT LIMITS PERMITTED UNDER THE MICHIGAN CONSTITUTION?

Table of Contents

## MICHIGAN SUPREME COURT AND COURT OF APPEALS DECISIONS DISCUSSED IN THIS REPORT (IN ORDER OF DISCUSSION)

1. Wattles v City of Lapeer, 40 Mich 624; 1879
2. Torrent v City of Muskegon, 47 Mich 115; 1881
3. Shippy v Mason, 90 Mich 45; 1892
4. Ironwood Water Works Co. v City of Ironwood, 99 Mich 454; 1894
5. Hammond v Place, 116 Mich 628; 1898
6. Harsha v City of Detroit, 261 Mich 586; 1933
7. Simonton v City of Pontiac, 268 Mich 11; 1934
8. Attorney General v City of Detroit, 164 Mich 369; 1911
9. Young v City of Ann Arbor, 267 Mich 241; 1934
10. School District v City of Pontiac, 262 Mich 338; 1933
11. In re School District No. 6, Paris and Wyoming Townships, Kent County, 284 Mich 132; 1938
12. Morley Brothers v Carrollton Township Supervisor, 312 Mich 607; 1945
13. Stream Control Commission v City of Port Huron, 305 Mich 153; 1943
14. Stream Control Commission v City of Port Huron, 323 Mich 541; 1949 (see also Attorney General Opinion No. 988 June 29, 1949)
15. Port Huron Mayor v Port Huron Treasurer, 328 Mich 99; 1950
16. Warren Township v Municipal Finance Commission, 341 Mich 607; 1954
17. Bacon v Kent-Ottawa Metropolitan Water Authority, 354 Mich 159; 1958
18. Southfield Township and the City of Troy v Twelve Towns Relief Drains, 357 Mich 59; 1959
19. Lockwood v State Commissioner of Revenue, 357 Mich 517; 1959
20. Roosevelt Park v Norton Township, 330 Mich 270; 1951
21. Dooley v City of Detroit, 370 Mich 194; 1963
22. Butcher v Township of Grosse Ile, 387 Mich 42; 1972
23. Advisory Opinion re Constitutionality of 1973 PA 1 and 2, 390 Mich 166; 1973
24. Alan v Wayne County, 388 Mich 210; 1972
25. Pearsall v Williams, 93 Mich App 231; 1979
26. Tax Committee v Grosse Ile Township, 129 Mich App 477; 1983

## ARE JUDGMENT LEVIES, JUDGMENT BONDS, AND OTHER TAXES AUTHORIZED WITHOUT LIMITS PERMITTED UNDER THE MICHIGAN CONSTITUTION?

The Michigan Constitution limits directly or requires the Legislature to limit the power of local governments to tax and incur debt, and it calls for voter approval of local taxation and borrowing. In the recent and not so recent past, however, taxpayers in several Michigan communities have been subject to court-ordered property taxes in excess of voter-approved limits to pay outstanding debts incurred by their local governments. For example:

* In August 1985, the Wayne County Circuit Court ordered the City of Ecorse to issue $4.0 million in judgment bonds to finance an operating deficit. The principal and interest were to be repaid over the next fifteen years from the proceeds of an ad valorem property tax. In 1986, a 2.56 mill tax was imposed for the first year's debt repayment.

* In August 1984, the Berrien County Circuit Court ordered the City of Benton Harbor to impose a judgment levy each year for the next thirty years to finance a $2.6 million unfunded liability in the police and fire pension fund. This amounted to a 4.25 mill property tax in 1985.

* In June 1984, the Wayne County Circuit Court ordered the City of Hamtramck to impose a one-year judgment levy of 9.6 mills to pay a police and fire arbitration award. The levy was to finance approximately $1.4 million in "back-pay" due to the city's police and fire personnel. In July 1987, the Hamtramck property tax levy will include a two-year Wayne County Circuit Court ordered judgment to pay a fire arbitration award and a three-year Wayne County Circuit Court ordered judgment to pay cost-of-living payments previously due to city employees. The total amount of the two judgments to be levied over the next three years is yet to be finally determined by the court; however, the estimated liability of the city currently exceeds $3 million (the equivalent of a one-year 30-mill property tax levy).

* In May 1973, the Wayne County Circuit Court ordered the City of Detroit to impose a one-year judgment levy of 3.22 mills to pay past-due obligations of $18.7 million to the city's general retirement system.

In each case (and several others not identified above), the property taxes imposed by an order of the court were in excess of the property tax rates authorized by the local electorate in the municipality's charter. In fact, the citizens of Hamtramck voted down a property tax increase to finance the above-mentioned 1984 arbitration award the day before the court ordered the judgment levy. It is unclear, however, what authority the tax increase was to be levied under since the city was already levying the 20-mill charter limit authorized by state statute.

Each of the cases cited above involves a home rule city; however, unlimited property taxes imposed without voter authorization may be levied by virtually all types of local units of government in Michigan. Authority to levy taxes outside existing limits has been granted by the Legislature under several statutes adopted over the years. These statutes include:

* The Revised Judicature Act (PA 236 of 1961), which authorizes the court to order a tax levy to satisfy a judgment against certain

municipalities. Any municipality is also authorized under the act to issue bonds in order to pay a judgment. The municipality may then levy a property tax each year sufficient to pay the principal and interest due on the bonds. The act defines a municipality as any governmental authority having the power to levy an ad valorem property tax.

* Solid Waste, Refuse, Garbage, Sewage and Waterworks Act (PA 320 of 1927, commonly called the Court Ordered Bond Act in the legal and finance communities) which authorizes the state Water Resources Commission, Department of Natural Resources, Department of Public Health, or a court of competent jurisdiction to order the issuance of bonds which pledge the full faith and credit of a county, city, village, or township to construct, operate, and maintain sewage systems, solid waste facilities, etc. Bonds issued under court order are not subject to debt limits and are to be repaid by the levy of an annual property tax without consideration of the tax limitations fixed by law or charter.

* Drain Code of 1956 (PA 40 of 1956), which authorizes a county drain commissioner to impose special assessments on, and/or issue special assessment bonds for any county, city, village, or township for up to 30 years to finance drainage projects. The governmental unit subject to the special assessment is authorized to levy annually an ad valorem property tax without limitation as to rate or amount to pay the special assessment and/or the principal and interest due on the special assessment bonds. The taxing authority granted under the drain code is in addition to any taxes that the public corporation is authorized to levy.

* County Public Improvement Act (PA 342 of 1939); Sewage Disposal, Water Supply and Solid Waste Management Act (PA 233 of 1955); and Sewage Disposal and Water Supply Districts Act (PA 211 of 1956) all of which authorize local units of government to contract with agencies established under these acts to provide specific services. The local units are authorized to impose property taxes without limitation as to rate or amount to finance these contractual obligations.

These statutes do not necessarily represent all the statutes that authorize taxes to be imposed or debt to be incurred outside existing limitations on the taxing and borrowing authority of local governments.

This report focuses on the primary issue raised by all such laws: Does the Michigan Constitution give the Legislature power to authorize local governments to impose taxes and contract debts without voter approval and without or outside defined limits? A strong argument can be made that such laws violate the spirit, if not the letter of constitutional provisions on local government in Article 7 and the power to tax in Article 9 of the 1963 Constitution (and similar provisions in the 1908 Constitution). This report walks the reader through the labyrinthian history of tax limitation and local home rule in Michigan by examining the intent of the framers of Michigan's Constitutions and amendments added by the electorate, as well as how the State Supreme Court has construed these provisions throughout the state's history. Finally, the report shows how judgment levies, judgment bonds, and the other taxes and debt currently authorized without regard for limitations can be reconciled with the spirit of this state's framework for local tax limits.

## Fiscal Limits And The Beginnings Of Local Government In Michigan

As early as 1850, the citizens of Michigan authorized the Legislature to provide by law for the creation of cities and villages. Article XV, Section 13, of the 1850 Constitution stated: "The Legislature shall provide for the incorporation and organization of cities and villages, and shall restrict their powers of taxation, borrowing money, contracting debts, and loaning their credit." (There were no similar provisions in Michigan's first Constitution adopted in 1835. In fact, there was no "Local Government" article in the 1835 Constitution, merely a few passing references to counties and townships, and Article XV of the 1850 Constitution was titled "Corporations.") Stated simply, Article XV, Section 13, of the 1850 Constitution required that as a part of the process of incorporation, the Legislature must place restrictions on cities' and villages' power to tax, borrow money, contract debt, and loan their credit.

These provisions, however, did not grant home rule to local governments. It was not until the adoption of the 1908 Michigan Constitution that home rule -- the right to local self-determination -- was granted to the citizens of cities and villages in Michigan. Under the 1850 Constitution, the Legislature would grant a "municipal charter" by enacting a "local act." This legislation spelled out the powers, duties, responsibilities, organization, and boundaries of the city or village being incorporated. A separate act was adopted for each municipality, and the "charter" could only be altered or amended by the state Legislature.

As required by the Constitution, each municipal charter contained limits on the municipality's ability to impose taxes and contract debts. It should be noted that taxes and debts are intertwined in that the funds used to repay a debt are usually generated from the imposition of a tax. Since Michigan's constitutional declaration of rights always has prohibited the Legislature from enacting a law impairing the obligation of a contract (notes, bonds, and other certificates of indebtedness are considered contracts), it was and continues to be necessary to harmonize the legislative requirement to limit the taxing authority of cities and villages with this prohibition. As a result, municipalities were authorized to incur debt and impose general taxes up to certain limits, and to impose debt taxes without limit to repay legally incurred debt.

Although municipal charters technically authorized an "unlimited" tax for debt retirement, the tax was, in fact, limited since the ability to contract debt was limited. The Legislature usually required the retirement of debt to be spread relatively evenly over the repayment period, thereby preventing the imposition of a large tax during one period and a small one in another period. Thus, Article XV, Section 13, was put into effect in each municipal charter by the imposition of absolute limits on general taxes and relative limits on debt taxes based on the amount of legally authorized debt outstanding.

The State Supreme Court issued four decisions before the turn of the century pertinent to this discussion. Two decisions involved general taxing powers, and two involved debt limits and debt taxes. The Court also rendered one decision concerning the payment of a court-ordered judgment and made passing reference to court judgments in one of the debt cases.

### General Taxing Powers

The charter of the City of Lapeer (Local Acts 1875) limited property taxes to 1.25 percent (12.5 mills) of

assessed value. Property was to be assessed at true cash value; however, the local assesssors arbitrarily fixed assessments at one-fourth of cash value. The city attempted to levy a tax of 28.69 mills and was sued by a taxpayer **(Wattles v City of Lapeer)**. The city argued that if property had been assessed at true cash value, the millage rate would have been 7.17 mills (within the legal limit). The Court decided that any property tax exceeding 12.5 mills was illegal, irrespective of the assessment practices in Lapeer.

In its 1879 decision, the Court said: *There is one objection, however, that is insurmountable, and that points to a fatal defect in jurisdiction. It is that the tax levied was largely in excess of the limit expressly fixed by law. The city charter (Local Acts 1875 p. 352 sect. 5) declares that the aggregate amount of tax which the city may raise in any one year by general tax, exclusive of taxes for schools and school-house purposes, and of certain exceptional taxes not now in question, shall not exceed one and one-fourth per cent on the assessed value of all the real and personal property in the city made taxable by law....*

*The constitution requires the Legislature to restrict the power of municipalities to tax (1850 Constitution Article XV Section 13), and the legislature only performed an imperative duty when they imposed the limitation on Lapeer. The city officers who disregard it subordinate the law and the constitution itself to their arbitrary discretion. If the people taxed acquiesce and pay their taxes, they may not afterwards be heard to complain, but if they refuse, the courts have no power to compel them.* (emphasis added.)

In a case involving the City of Muskegon **(Torrent v City of Muskegon)**, a taxpayer sued to prevent the city from constructing a building to be used as a city hall and to house the fire department. The plaintiff charged that the building was more expensive than would be needed, that no power was given by the charter to build a city hall, and that it would be unlawful to undertake such a large expenditure without a vote of the local citizens. The Court ruled that power to erect public buildings is an illustration of what may be regarded as public necessities, and since the construction costs were to be financed out of regular operating revenues, the plaintiff had no basis to sue.

In this 1881 decision, the Court said: *It is provided by the charter that the city may raise annually for its general purposes not more than seven per cent on the property assessable; which at present rates would be about one hundred thousand dollars.... This tax levy is under the discretion of the common council. It appears clearly enough that at the present rates of expenditure for public purposes, the city may, if it chooses, raise money enough to pay for this expenditure, and that there is no controlling financial reason against it, if lawful....*

*The Constitution of this State... contemplates that the Legislature shall create cities and other municipalities with full powers of beneficial legislation. The checks on extravagance are therein prescribed as to be found in limiting their powers of taxation and borrowing money, or incurring debts. Art. 15 Sect. 13. When the Legislature of the State prescribes the limits of financial action, it must be assumed to permit all reasonable and proper expenditures within those limits.* (emphasis added.)

**Judgments**

In an 1892 case involving the City of Au Sable **(Shippy v Mason** -- Mason was a supervisor of the city), the plaintiff sued the city to recover damages awarded for injuries sustained due to a defective highway. The plaintiff requested that the Court order a judgment

against the city in the amount of the awarded damages. The Court ordered the judgment pursuant to PA 312 of 1887. Unfortunately, there is no discussion in the court decision of the city's taxing authority. The Court, however, did say that the judgment was a part of the city tax, and this could, by implication, be construed to mean that it was to be levied from within the existing taxing authority.

The Court said, in part: *Act No. 312, Laws of 1887, plainly points out the manner of the assessment and collection of this judgment. Act No. 312... provides in substance that it shall be the duty of the supervisor or supervisors or assessing officer or officers, upon receiving a properly certified transcript of a judgment against a city, to assess the same, without any other or further certificate or certificates than such certified transcript or transcripts, as a part of the city tax, upon the taxable property of said city upon the then next tax roll of such city.* (emphasis added.)

**Contracting and Repaying Debts**

The charter of the City of Ironwood (Local Acts 1893) provided that the bonding authority of the city could not exceed three percent of the 1892 equalized valuation. The charter also provided that in the event that the city purchased the Ironwood Waterworks Company and the Hurley Water Company, the total indebtedness of the city could not exceed five percent. The city attempted to purchase the two companies, but since the combined sale price would have exceeded the charter provisions related to bonded indebtedness, the city did not issue bonds and complete the transaction. In 1894, the Waterworks Company sued the city in an attempt to force the sale **(Ironwood Water Works Co. v City of Ironwood)**. The Court ruled that the amount of the bonds exceeded the indebtedness authorized by the charter and, if issued, the bonds would be void.

In its decision, the Court said: *A municipal corporation cannot, either expressly or impliedly, incur a debt beyond the charter restriction.... Credit to counties, school districts, and municipal corporations is not given upon the faith of the property they own, but upon the legality of the debt contracted, and the ability to raise it by taxation, whether such debt be bonded or otherwise.*

The second debt related court case involved the City of North Muskegon **(Hammond v Place** -- Place was the city assessor). At the time of the suit (1898), the bonded indebtedness of the City of North Muskegon was $35,000 and the assessed value was $33,000. The city annually spread on the tax roll an amount sufficient to pay the interest and bonds as they came due. Delinquent taxes to pay past due principal and interest exceeded $25,000; the plaintiff attempted to force a judgment of this size, which would place taxes above the rate allowed by the charter (3% of value). The Court ruled that since the bonds were a legally contracted debt, the city must levy sufficient taxes to pay the interest as it came due. Following are excerpts from the Court's decision. Note that the Court speculates that the judgment authority was granted so that a municipality could not repudiate its legal obligations:

*The validity of a contract made by a municipal corporation necessarily involves the right to raise by taxation the amount which it has agreed to pay. The right to contract must be limited by the right to tax, and if, in the given case, no tax can be lawfully levied to pay the debt, the contract is void for want of authority to make it....*

*Creditors of a municipal corporation are, of course, chargeable with notice that any limitation to taxation controls, and cannot be exceeded.... So the constitutional limitations as to*

*rate of taxation must control. Our Constitution imposes upon municipalities no limitations to taxation, but leaves that power in the legislature. So also, where the law provided that the aggregate of all taxes levied or ordered by any corporation shall not exceed 16 mills, it was held that the assessor would not be compelled by the writ of mandamus to enforce a tax levied in excess of that amount....*

*None of these cases, however, involves the enforcement of the payment of bonds valid when issued, and merged in judgments. The contention means this: That the municipality may avoid its legal obligations by the reduction of its valuation, and making its running expenses equal to the limit of taxation. This is practical repudiation.... Possibly in contemplation of such results, a special statute was enacted, providing for the assessment of judgments rendered against municipalities.... It clearly provides for the payment of judgments, exclusive of the limitations to taxation established by municipal charters.* (emphasis added.)

**Summary: The Status of Tax and Debt Limits, 1850-1907**

The Michigan Supreme Court ruled that under the 1850 Constitution, the Legislature had an imperative duty to impose tax and debt limits on cities and villages. Taxes for general operating purposes could not exceed those statutory limits **(Wattles v City of Lapeer)**, and local units could levy taxes up to those limits **(Torrent v City of Muskegon)**. It also appears that non-debt related judgments were to be levied from within the limits **(Shippy v Mason)**. Cities and villages could not incur debt exceeding the constitutionally required, legislatively established debt limits **(Ironwood Water Works Co. v City of Ironwood)**, and once debt was issued, sufficient taxes must be imposed to repay the debt.

The Court also concluded that the Legislature adopted the judgment statute to insure that cities and villages repaid all legally issued debt. A contract with a municipal corporation was valid only if the municipal corporation had the legal authority to raise by taxation the amount which it had agreed to pay. The right to contract was limited by the right to tax, and if no tax could be lawfully levied to pay the debt, the contract was void for lack of authority to make the contract **(Hammond v Place)**. Since the 1850 Constitution was silent on the subject, the Legislature had a blank check on granting taxing and borrowing powers to counties, townships, and school districts.

## Home Rule And The 1908 Constitution

Home rule was first authorized in Michigan by provisions in the 1908 Constitution requiring that the Legislature, through use of general law, provide for the incorporation of cities and villages. Specifically, Article 8, Section 20, stated: "The legislature shall provide by a general law for the incorporation of cities, and by a general law for the incorporation of villages; such general laws shall limit their rate of taxation for municipal purposes, and restrict their powers of borrowing money and contracting debts." Article 8, Section 21 stated: "Under such general laws, the electors of each city and village shall have power and authority to frame, adopt and amend its charter and to amend an existing charter of the city or village and, through its regularly constituted authority, to pass all laws and ordinances relating to its municipal concerns, subject to the Constitution and general laws of this state."

Simply stated, the Legislature was required under the 1908 Constitution to provide for the incorporation of cities by adopting a general law that authorized local citizens to frame, adopt, and amend a city charter. The general law adopted by the Legislature must also limit the rate of taxation imposed by a city for municipal purposes and restrict its power to borrow money and contract debt. It is crucial to understand the relationship of these requirements: there must be a tax limitation and a debt limitation, both of which must be placed in the general act providing for the incorporation of a city through the process of drafting and adopting a charter by the local electorate. The Constitution required the Legislature to adopt a similar law for villages.* In order to avoid any misinterpretation concerning this new home rule authority, the Constitution (Article 5, Section 30) prohibited the Legislature from adopting a local or special act where a general act could be made applicable, and required a two-thirds vote of the Legislature and a majority vote of the local electorate before a local act could take effect. This provision, in effect, prohibited the Legislature from unilaterally adopting and/or amending a local charter.

Pursuant to the constitutional mandate of local home rule, the Legislature adopted PA 278 and 279 of 1909 which provided for the incorporation of villages and cities, respectively. Briefly, the Home Rule Cities Act authorized city charters to provide for "taxes in a sum not to exceed two percent (20 mills) of the assessed value of all real and personal property in the city," and "for borrowing money on the credit of the city in a sum not to exceed eight percent of the assessed value of all real and personal property in the city." The eight percent debt limit could be raised to an aggregate of ten percent if general obligations were issued to finance public transportation facilities. Debts incurred specifically for public transportation could not exceed four percent of assessed value.

It is of interest to note that in the transition between "local act" charters and home-rule charters, PA 279 provided the following general restrictions: "No city shall have power to increase the rate of taxation now fixed by law (a local-act charter), unless the authority to do so shall be given by a majority of the electors of said city;" and "in cities where the amount of money which may be borrowed is now limited by law, such limit shall continue until it shall be raised or lowered by a two-thirds vote of the electors."

Two exceptions to the eight percent (or ten percent) debt limit were authorized by the Legislature under the Home Rule Cities Act. First, a city could issue mortgage bonds outside the limit to acquire and operate a public utility if the indebtedness did not impose any liability on the city (pursuant to a constitutional provision to be discussed in a court case following). Second, "in case of fire, flood or other calamity, the legislative body may borrow for the relief of the inhabitants of the city and for the preservation of municipal property." These emergency bonds were "not to exceed one-fourth of one percent of the assessed value of all real and personal property in the city, due in not more than three years, even if such loan would cause the indebtedness of the city to exceed the limit fixed in the charter."

* Since the taxing and borrowing powers for cities and villages have been similar throughout the years, and most of the case law involves the powers granted to cities, the focus on home-rule taxing and borrowing in this report will be directed primarily toward cities.

The Legislature placed an additional safeguard in the Home Rule Cities Act which required that all bonds (except special assessment, refunding, and emergency bonds) must be approved by a three-fifths vote of the city electors before they could be issued by the city. The 1908 Constitution continued to prohibit the Legislature from enacting laws impairing the obligations of contracts; consequently, cities retained authority to levy unlimited property taxes to repay legally incurred debt.

**The Court Interprets Home-Rule Tax and Debt Limits**

After home-rule authority was granted to cities and villages, the State Supreme Court rendered four major decisions concerning the duties of the Legislature under Article 8, Section 20, of the 1908 Constitution. In two principal cases, the Court outlined the responsibility and authority of the Legislature over city and village tax and debt limits, and in two other cases defined the term "debt" subject to legislative limitation.

**The Authority of the Legislature.** In the first case involving the duty of the Legislature under Article 8, Section 20 **(Harsha v City of Detroit)**, a question arose concerning the authority of the Legislature to amend the Home Rule Cities Act and increase the tax and/or debt limits. The plaintiff in the case was the holder of a bond issued by the city at a time when the home-rule act limited municipal debt to eight percent of assessed value. The home-rule act (and the city charter) were subsequently amended to permit municipalities to borrow money up to a limit of ten percent of assessed value. The plaintiff sued, claiming the increase in the debt ceiling impaired the obligation of her bond (an increase in the debt ceiling meant an increase in the tax rate to pay back the bond, and any increase in the tax rate increased the possibility of a default on the bond). The Court ruled that the Legislature was exercising its constitutional power when it increased the debt ceiling and the action did nothing to impair outstanding obligations.

In its decision, the Court said: *The legislature may regulate the amount of municipal indebtedness and the rate of taxation of cities. It is expressly authorized by Article 8, Section 20, of the Constitution so to do. Its powers are plenary. It may increase or decrease the limit of bonded indebtedness and the rate of taxation for municipal purposes, subject to the prohibition in the Constitution of this State and of the United States that such legislation shall not operate directly upon contracts so as to impair their obligation by abrogating or lessening the means of their enforcement. There is no constitutional provision against changing the limit of bonded indebtedness or limiting the rate of taxation for municipal purposes which in cities under the home-rule act obtained when plaintiff acquired her bond. She had no contract with the State or with defendant city that the limit of bonded indebtedness or the rate of taxation for municipal purposes might not be changed. She was bound to know the legislative power of the State over the limit of bonded indebtedness and the rate of taxation for municipal purposes of defendant city contained in the Constitution, and that the legislature possessed full power and authority by legislative action to increase the limit of the defendant city's power to borrow money and the rate of taxation for municipal purposes. Her contract was at all times subject to the right of the State, through its legislative department, to exercise its constitutional powers and functions.*

The second case involved the power of the Legislature to authorize unlimited taxes to repay legally contracted debt. Although the Legislature had granted this authority previously in several specific statutes, PA 273 of 1925 was

adopted to provide a general act to regulate the issuance of bonds and other obligations by municipalities in Michigan. (Municipality was defined in the act as a county, township, city, village, or school district.) In a case involving the City of Pontiac **(Simonton v City of Pontiac)**, the plaintiff sought to force the city to spread on the tax rolls, levy, and collect sufficient taxes to cover the amount due bondholders. Bonds had been sold pursuant to the statute that required the municipality to levy taxes sufficient to pay annual principal and interest on outstanding bonds. The Court, citing the case of **Hammond v Place** that required a municipality to meet its legal obligations, ordered that the taxes must be levied.

The Court delineated the responsibilities of the Legislature under the Constitution as follows: *In the address to the people adopted by the constitutional convention at the time it voted to submit the present Constitution, it was stated that while each city was left to frame, adopt and amend its charter provisions, which had reference to its local concerns, the legislature had the power to... and it was necessary to impose certain powers and prohibitions designed to secure conservative action on the part of those to become responsible for the future conduct of such affairs. For this reason, the power to limit the rate of taxation and restrict debts was left to the legislature, where it would be subject to such changes as might be necessary by changing conditions....*

*The legislature in the exercise of this power thus reserved, adopted Act 273, Pub. Acts 1925, which specifically stated that no limitation in any statute or charter shall prevent the levy and collection of the full amount of taxes required solely for the payment of debts, and made it necessary for the city to include in the amount of the taxes levied each year a sum sufficient to pay the annual interest and the installments of principal on its obligations falling due before the time of the following tax collection.*

**The Definition of Debt.** The Court was also called upon to determine what liabilities constitute a "debt," thereby requiring legislative limitation pursuant to Article 8, Section 20, of the 1908 Constitution. In 1911, the Attorney General sued the City of Detroit **(Attorney General v City of Detroit)** to restrain the common council from placing a proposed amendment to the city charter on the ballot. The amendment would give the city the right to own and operate the street railroads located in the city.

In addition to Article 8, Section 20, cited above, at issue was the interpretation of Article 8, Sections 23 and 24. The pertinent provisions of these sections were as follows: "Subject to the provisions of this Constitution, any city or village may acquire, own and operate... public utilities for supplying... transportation to the municipality and the inhabitants.... When a city or village is authorized to acquire or operate any public utility, it may issue mortgage bonds therefor beyond the general limit of bonded indebtedness prescribed by law: Provided, that such mortgage bonds issued beyond the general limit of bonded indebtedness prescribed by law shall not impose any liability upon such city or village, but shall be secured only upon the property and such revenues of such public utility...."

The Attorney General argued that the Constitution authorized only the issuance of bonds imposing no liability upon the city for the purpose of acquiring public utilities. Since the Home Rule Cities Act authorized the issuance of bonds which did impose a liability for the purpose of acquiring a street railroad, the act was unconstitutional. Further, the act fixed no limit on the amount of such bonds to be issued, although the Constitution re-

quired the fixing of some limit upon city debts.

The Court ruled that a municipality may finance the purchase of a public utility by issuing general bonds (a liability of the city subject to debt limitations) and/or special bonds (no limits and secured only by the property of the utility).

The Court said: *But if any support were needed it is furnished by the debates in the constitutional convention, which make it certain that the members intended to permit the use of both kinds of bonds. The chairman of the committee on cities and villages, having been asked whether it would be possible under that clause ever to issue bonds for a public utility that would be a lien upon the entire property of the city or village replied: Up to the amount of the bonded indebtedness, yes, certainly it would....*

*Under sections 20 and 23 the legislature is authorized to provide for an issue of bonds to the limit restricting the cities' borrowing power. Under section 24 the legislature is authorized to provide for an issue of mortgage bonds beyond the general limit of bonded indebtedness. This is precisely what it has done, and, to nullify its action directly supported by the constitutional provisions, we must import into the Constitution restrictions unwarranted by its language.* (emphasis added.)

The Attorney General charged that "No limit is fixed by the act to the amount of the nonliability mortgage bonds. These bonds, where general bonds have been issued, are debts of the city, and the indebtedness of the city may be increased without limit, although section 20 expressly requires such limitation."

The Court responded to the charge as follows: *The important question raised by this contention is whether the non-liability bonds in reality constitute an indebtedness on the part of the city, within the meaning of the Constitution, so as to require limitation under the provisions of section 20. The language of section 24 is at war with any such construction. That section expressly provides that the limit of general bonded indebtedness required by section 20 shall not apply to the bonds authorized, so long as the bonds themselves impose no liability upon the city and are in the form substantially prescribed.... The Constitution clearly implies that there is to be one "general limit of bonded indebtedness prescribed by law" and that the bonds provided for in section 24 are not to be considered in determining whether such limit has been exceeded.* (emphasis added.)

The second Supreme Court decision on the definition of debt involved "revenue bonds" authorized under PA 94 of 1933. Like mortgage bonds, revenue bonds issued by a municipality under PA 94, as originally adopted, created no obligation on the issuing municipality. The only funds to repay the debt were the revenues to be generated from the facility constructed with the proceeds of the bonds. In a 1934 case, a taxpayer brought suit against the city of Ann Arbor **(Young v City of Ann Arbor)**, to prohibit awarding contracts for the construction of a sewage disposal plant to be financed with revenue bonds. The plaintiff claimed that the Revenue Bond Act (PA 94 of 1933) was unconstitutional in that it provided for the creation of public indebtedness not authorized by the people. The Court ruled that the statute was constitutional because the issuing municipality was not liable for repayment of the debt:

*The legislative power, under the Constitution of the State, is... subject only to... the restraints and limitations imposed by the people upon such power by the Constitution of the State itself....*

*It is claimed that Act No. 94, Pub Acts 1933, is unconstitutional because it violates the debt restrictions imposed by the home-rule act.... The term "indebtedness" may be said to include obligations of every character whereby a municipality agrees, or is bound, to pay a sum of money to another. Usually one of the incidents of municipal indebtedness is that there is a legal right upon its maturity to coerce payment....*

*Act No. 94, Pub Acts 1933... provides that cities may borrow money and issue negotiable bonds.... [t]he principal and interest of the bonds to be payable solely from the revenue derived from the operation of the plant. It is expressly provided that no bond or coupon issued pursuant to this act shall constitute an indebtedness of such borrower within the meaning of any State constitutional or statutory limitation.... The bonds issued in pursuance of this act are to constitute a first lien upon the revenue of the plant.... It is expressly provided that the bonds authorized by and issued under the act shall not be subject to the limitations... provided by the laws of Michigan for... municipal... subdivisions.... The statute is not unconstitutional because it authorizes the issuance of bonds in excess of the limit of bonded indebtedness fixed by the governing statute of the city... "a contract which provides that the contractor shall have no right of recourse against the municipality or its property, or its general power of taxation, and that the only duty of the municipality shall be to levy, collect, and pay over the special assessments, does not create any indebtedness on the part of the municipality within the meaning of the constitutional limitation.... Under such a contract no judgment in personam against the city for non-payment of the cost is justified, no charge can be enforced against its general assets, nor can a resort be had to general taxation for the purpose of satisfying the claim. When the rights of the contractor are so limited, there is no debt within the debt-limit provision of the Constitution." Dillon, Municipal Corporations (5th Ed.)....*

*So the issuance of the bonds provided for under Act No. 94, Pub Acts 1933, will not increase the bonded indebtedness of the city of Ann Arbor. Such bonds are not payable by the city. It does not assume and agree to pay them. It can levy no tax upon the people for their payment.* (emphasis added.)

**Summary: The Status of Tax and Debt Limits, 1908-1932**

With the adoption of the 1908 Constitution, the Legislature was required to adopt a general law which authorized municipal home-rule and provided tax and debt limits. As a result, the electorate of a city or village, by virtue of adopting or amending a municipal charter, granted taxing and debt-issuing authority to the local unit within the limits established by the Legislature. The net effect of Article 8, Sections 20 and 21 was, therefore, to establish the principle of voter approval of all taxes imposed by cities and villages in Michigan.

Since the Constitution required the Legislature to limit the power of cities and villages to tax and contract debt, it also by implication authorized the Legislature to raise or lower the limits as the Legislature saw fit **(Harsha v City of Detroit)**, subject to charter amendment by the local electorate if the limits were increased. The Legislature could alter these powers at any time, so long as the change in power did not impair the repayment of existing obligations. With the implementation of Article 8, Section 20, a municipal charter adopted by the local electorate could authorize taxes of up to 20 mills for operations and could authorize the issuance of debt of up to eight percent of assessed value with unlimited taxing authority to re-

pay the debt **(Simonton v City of Pontiac)**. In addition to the general debt authorization, voter approval was required for each specific debt issue.

The Constitution did not require the Legislature to place debt limits on negotiable obligations such as mortgage or revenue bonds because no debt, and no obligation, was incurred directly by the issuing jurisdiction **(Attorney General v City of Detroit** and **Young v City of Ann Arbor)**. In the case of emergency bonds, however, a debt was being incurred and although the emergency bonds were not subject to the general limits, they were subject to specific limits (0.25% of assessed value due, in not more than three years). It is important to note this distinction because in later years the Legislature began to authorize debt that becomes a liability of the municipality without the debt being subject to any limitations.

The 1908 Constitution, like the 1850 Constitution, was silent on the subject of the taxing and borrowing powers of counties, townships, and school districts. The Legislature had authorized these governmental units, under PA 273 of 1925, to levy unlimited property taxes to repay debts. It is also important to note that at this time most activities of state government were financed from a statewide property tax which had no limitations specified in the Constitution.

## The First Property Tax Revolt

In 1932, during the depths of The Great Depression, an initiative petition was adopted by the electorate which amended Article 10 (the finance and taxation article) of the 1908 Constitution by adding Section 21. For the first time in the history of the state, strict limitations were placed in the Constitution on the amount of property tax that could be levied without voter approval. The amendment, as originally adopted in 1932, read as follows:

"Section 21. The total amount of taxes assessed against property for all purposes in any one 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 five years at any one time, to not more than a total of five per cent of the assessed valuation, by a two-thirds 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."

### The Court Interprets The Intent Of The People

Almost immediately after the amendment was adopted, the State Supreme Court was called upon to determine whether a home-rule unit of government was or could be subject to the new 15- and 50-mill constitutional tax limitation **(School District v City of Pontiac)**. The court ruled that the distribution of the 15 mills authorized to be levied without voter approval was subject to legislative determination. As a consequence, the Legislature could require (but the amendment did not mandate) that all or a part of the tax levy of a municipality come from the 15-mill authorization. Of major importance in this decision is the effect the Supreme Court gave to the various provisions of the 1932 amendment.

*This amendment is a wholly new and additional constitutional provision in this State. It is not a grant of power, but instead a constitutional limitation upon the exercise of the general power of taxation. Heretofore our Constitution contained no such general limitations. The general power of taxation has been and is inherent in state government. Prior to this amendment, the extent to which the legislature might authorize the exercise of this power for public purposes was without general limitation, though there were numerous special limitations in the Constitution....*

*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 to be remedied was excessive taxation imposed by governmental agencies without the consent of those upon whom the burden was placed. At the outset, the framers of the proposed amendment, and later the people who considered its adoption, were confronted with the legal proposition that contractual obligations could not be impaired, and therefore the general exception to the proposed limitation of taxation was made by excepting "taxes levied for the payment of interest and principal on obligations heretofore incurred...." Reading further in the amendment, it clearly appears it also occurred to those interested in its framing and adoption that certain conditions might already exist or might thereafter arise in consequence of which the electors of any assessing district might conclude that the one and one-half per cent constitutional limitation was unduly restrictive.... Hence the provision in the amendment that the specified limit might be increased for a period not exceeding five years at any one time to the maximum limit of five per cent of the assessed valuation by a two-thirds vote of the electors of the assessing district. This provision left in the possession of each assessing district to provide for local needs for which the allocated portion of the one and one-half per cent tax might be deemed to be inadequate; and such provision constituted a second exception to the general taxation limitation contained in the amendment.*

*This brings us to what a fair reading of the amendment indicates is a third exception to the general limitation of taxation, which exception the framers and adopters of this amendment seemingly deemed essential, and which we think gave rise to including in the amendment the words* ***"or when provided for by the charter of a municipal corporation".*** *At this point consideration was evidently given to the well-known fact that in comparatively recent years there had developed in this State the so-called "home-rule" feature of our government. Provision therefor was embodied in the Constitution of 1908 (article 8, sections 20, 21). This was followed by the legislative enactment of the home-rule bill (act 279 of 1909). In the meantime many cities in Michigan have been chartered under the above-cited constitutional provision and legislative enactment. Under the constitutional provision, by the home-rule act, it was sought fundamentally to place in the hands of the electors of the cities chartered thereunder increased power of local governmental control. To this purpose the home-rule act permitted a charter provision authorizing taxation for local municipal needs to the extent of two per cent of the assessed valuation of taxable property. Whether the electors of a home-rule city would vest their city government with the power to tax to the extent of one per cent or to the extent of two per cent was a matter of local determination.... Surely this important condition of State affairs was not overlooked in the framing and consideration of the amendment; and to us it seems that knowledge of these various charter provisions under the home-rule*

*act called to the attention of the framers of this constitutional amendment that a third exception should be embodied therein as to the general limitation they proposed to put upon the exercise of the taxing power. Under constitutional provisions and within the specified limitations, this taxing power had already been delegated to various cities in Michigan; and, as noted above, this fact was well known.... This being true, we are fully convinced that the framers and adopters of this constitutional amendment found themselves confronted with a condition which prompted this third exception to the general limitation of the exercise of the taxing power in cities already constitutionally vested with the power to tax in excess of the proposed limitation. To meet this situation, the quoted phrase was embodied, and for that reason it should be held to mean that "this limitation may be increased" in the cities whose charters already empower them to levy a tax for municipal purposes in excess of the amount which the city might levy under the terms of the 1932 amendment. This construction, we think, is in harmony with the spirit and purpose of the amendment, in that it applies the general limitation of one and one-half per cent to all taxing districts except those wherein by local action a higher percentage of taxation for local needs is expressly authorized; and in these excepted districts the 1932 constitutional limitation is effective as to State, county, and school taxes.*

*With villages and fourth-class cities much the same result follows from the foregoing construction of the 1932 amendment. By constitutional and statutory provisions these municipalities, much like home-rule cities, have been vested with power of regulating taxation within specified limitations. They possessed this power of local self-government prior to the 1932 amendment....*

*The electors of the respective villages and fourth-class cities still have the power, by virtue of and within the above noted constitutional and statutory provisions, to determine and fix the limits within which they may be subjected to taxation for local purposes.*

*In passing, it may also be stated we think there is much force in the argument set forth in the brief for the city of Pontiac that in the framing and adoption of this amendment there was in contemplation the fact that, outside of chartered cities, there was no general limitation upon the exercise of the power of taxation; and that in assessment districts other than cities the limitation in the amendment should be applied unless otherwise determined by the requisite vote of the electors, but that in cities having a charter provision action of this character had already been taken by the local electors in adopting their various city charters, and therefore the action so taken should be respected by excepting such districts from the general limitation of one and one-half per cent embodied in the amendment in so far as the power of taxation was exercised for the city's local needs....* (emphasis added.)

As a result of this decision, the Legislature adopted PA 62 of 1933 (The Property Tax Limitation Act), which created in each county a tax allocation board to determine the distribution of the 15 mills authorized in the amendment. In addition to the landmark interpretation of the Court in **School District v City of Pontiac**, two other major decisions concerning the units of government subject to the limitation were handed down by the Court. In 1938, the Court ruled on whether taxes could be levied without a voted increase in the constitutional limit to repay debt issued after 1932. The Court also rendered a decision concerning the effect of the tax limitation amendment on court-ordered judgments.

**Post-1932 Debt.** In 1937, a local school district sought and received voter approval to issue $150,000 in school building bonds; however, the ballot proposal did not include voter authorization to increase the 15-mill property tax limit. The school district, by resolution, pledged "to levy a tax at such rate as will be sufficient, and that such tax shall have priority over all other taxes within the constitutional and statutory limitations." The public debt commission refused to certify the bond issue because the school district, without voter approval, could not obligate itself to levy a tax sufficient to pay the principal and interest on the bonds. In 1938, the Court was called upon to determine if the debt commission could deny approval of the bond issue **(In re School District No. 6, Paris and Wyoming Townships, Kent County)**. The Court ruled in favor of the debt commission.

*Act No. 62, Pub. Acts 1933... provides in section 5 for the creation of a tax allocation board.... Subdivision (e) provides: "The board shall approve minimum tax rates as follows: for the county, three mills; for school districts, four mills; for townships, one mill".... Subdivision (f) provides: "The board shall divide the balance of the net limitation tax rate between all local units after due consideration of the needs of the several local units...."*

*Plaintiff contends the four mills minimum tax rate is not the limit. In view of the language of Act No. 2, Section 5, Pub. Acts 1937, it is difficult to see how anyone charged with determining or levying taxes, who must include in the amount of taxes levied each year an amount sufficient to pay the annual interest on all such loans and any installments of the principal thereof, falling due before the time of the following year's tax collection, and all payments required to be made to sinking funds, could satisfy his official obligations and perform his duty under the law by merely hoping or trusting to the reasonable discretion of the allocation board for its* ***pro rata*** *share of the excess over and above the requisite minimum to be allocated to the county, school district and township....*

*We cannot sustain the contention that the action of the school district in voting to issue the bonds in question constitutes a pledge upon its part to raise the tax limit in accordance with the elastic provisions of the Constitution....*

*While the people of the school district may have both new buildings and superior instruction if they wish to pay for them by voting increased taxes within the limits of the provisions of the Constitution, they have not as yet done so and the commission properly refused the certificate because the requirements imposed upon the plaintiff school district were not met.*

**Judgments and the Tax Limitation.** The State Supreme Court also attempted to accommodate the tax limitation amendment with court-ordered judgments **(Morley Brothers v Carrollton Township Supervisor)**. In this 1945 case, the township supervisor was ordered by the circuit court to levy certain judgments held against the township. The township claimed "that the county tax allocation board has allocated to the township for township purposes only such percentage of the tax millage as will permit the payment of ordinary operating expenses of the township for governmental purposes, and that obedience to the writ would necessitate the assessment of taxes in excess of the constitutional 15-mill limitation." The Supreme Court ruled that the judgments must be paid, but from within the allocated millage.

*It is undisputed that the plaintiffs herein have unsatisfied judgments against the township.... It is also undisputed that the 15-mill limitation*

*has not been raised by a vote of the electors of said township, and that a division of the taxes under said limitation must be made between two school districts within the township, the township itself, and the county of Saginaw.*

*Admittedly there is some difficulty in reconciling the earlier statute requiring that the amount of a judgment must be assessed on the next tax roll with subsequent legislation enacted as a result of the adoption of the 15-mill tax limitation amendment. However, Act No. 62, Pub. Acts 1933, creating a tax allocation board in each county, supplements 3 Comp. Laws 1929 section 14690, but does not repeal it. These statutes must be read and construed together. While the earlier act (judgment statute) requires the supervisor to spread the amount of the judgments on the next assessment roll, under the later act (tax limitation statute) the county tax allocation board is given the power to decide how much millage shall be allocated for township purposes within the 15-mill limitation.*

**Summary: The Status of Tax Limitations After 1932**

In a definitive statement, the Supreme Court ruled the intent of the 15-mill amendment adopted by the voters in 1932 was to provide a general limitation on the state from imposing or granting local units of government authority to impose property taxes without voter approval. Specifically, the state and nonchartered local units of government could levy, without voter approval, a combined total of up to 15 mills **(School District v City of Pontiac)**. With voter approval, these units could levy up to 50 mills. These units were also authorized to levy property taxes without limit as to rate or amount, sufficient to pay the annual principal and interest on bonds issued prior to the adoption of the tax limitation amendment. After the adoption of the tax limitation amendment, units of government subject to the 15- and 50-mill limit could not issue general obligation bonds without voter approval to increase the constitutional property tax limits contained in Article 10, Section 21 **(In re School District No. 6, Paris and Wyoming Townships, Kent County)**. These units of government must also pay any court-ordered judgments, and absent a vote to increase the constitutional limit, the judgment must be paid from within the allocated millage **(Morley Brothers v Carrollton Township Supervisor)**.

The Legislature was already required by the Constitution to limit the rate of taxation of cities and villages and to restrict their power to borrow money and contract debts. The Constitution required that the tax and debt limits were to be included in the general law that provided for the incorporation of cities and villages. Thus, the tax and debt limits were to be found in the municipal and village home-rule acts and specific limits were to be included in the charter approved by the local electorate.

In summary, after the adoption of the tax limitation amendment in 1932, property taxes in excess of 15 mills could be levied only under the following conditions:

1. To pay the principal and interest on bonds issued before the amendment was approved;

2. With two-thirds approval of the voters, for a period not to exceed five years (the tax limit was amended in 1948 by the electorate to permit an increase by a majority vote for a period not to exceed twenty years); and,

3. Subject to the limits found in voter-approved charters of cities and villages.

## The Age Of "Generated Public Necessity" Leads To The Vacillating Court

Although the tax limitation provisions of the Michigan Constitution appeared fairly restrictive and quite simple in the 1930's, a series of legislative actions and Court interpretations in the 1940's and 1950's led the Supreme Court in a 1958 decision to write: *Through and by means of an attritional series of judicial decisions the 15-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. Bench law made of generated public necessity and pressured regression brings us this day to the last act and final scene.*

During this period the Supreme Court ordered taxes to be levied without limitation under the Court Ordered Bond Act, and the Legislature authorized and the Court sanctioned the creation of "charter" townships with taxing authority outside the constitutional limits. By the late 1950's, however, the Court began a retreat from the assault on property tax limits. In the above-quoted case it rejected a legislative attempt to create other "charter" authorities. Shortly thereafter, the Court ruled that drain taxes are subject to the constitutional limits in nonchartered units but may be imposed outside of any statutory or charter limits in chartered units. Late in 1959, the Court issued a strongly worded opinion on a legislative attempt to circumvent the constitutional limit on the state sales tax and spelled out the principles upon which constitutional limitations are to be viewed.

### Port Huron and the Court Order Bond Act

In February 1936, the state Stream Control Commission (currently named the Water Resources Commission) ordered the City of Port Huron to construct a sewage treatment plant to provide treatment for the sewage of the city before its discharge to state waters. The city failed to comply with the order, so the commission filed suit in 1943 to force compliance with the order and restrain the city from discharging untreated sewage into the Black and St. Clair rivers. The litigation from this order spanned fifteen years and ultimately led to three Supreme Court decisions and one opinion issued by the Attorney General. In the 1943 case **(Stream Control Commission v City of Port Huron)**, although the city claimed that it was financially unable, the Court ruled that the city must comply with an order of the commission.

By 1949, the city had issued revenue bonds to finance the construction. The bonds were to be repaid solely from the net revenues derived from the operation of the treatment facility. Since the city had not yet started construction of the facility, the Stream Control Commission again took the city to court. In February 1949, the Court ordered the city to complete construction within 18 months.

In June 1949, the attorney for the city asked the Attorney General questions concerning PA 320 of 1927 (Court Ordered Bond Act) which authorizes, pursuant to a court order, the sale of general obligation bonds not subject to debt limits and the levy of taxes in excess of the authorized annual tax rate fixed by statute or charter. It is important to note that PA 320 of 1927 authorizes a municipality, on its own initiative, to finance treatment facilities with revenue bonds. The revenues from the facility (user charges) are then used to repay principal and interest on the bonds. Pursuant to a court order, a municipality must issue general obligation bonds to finance the facility rather than issuing revenue bonds. Thus, absent a court order, the users are charged for sewage treatment in proportion to their use;

whereas, with a court order, the taxpayers are charged in proportion to their property value. Section 7 of the PA 320 says: "Whenever a court of competent jurisdiction in this state shall have ordered the installation of a sewage or garbage disposal system... the legislative body... shall have authority to issue and sell the necessary bonds.... The amount of such bonds either issued or outstanding shall not be included in the amount of bonds which the said governmental agencies or municipalities may be authorized to issue under any statutes of this state or charters. Governmental agencies or municipalities issuing bonds hereunder in excess of the limit of the authorized bonded indebtedness fixed by statutes or charters... may raise such a sum annually by taxation as the legislative body or respective legislative bodies may deem necessary to pay interest on such bonds.... Such annual amount may be in excess of the authorized annual tax rate fixed by the statutes or charters."

The Attorney General noted that the charter of the City of Port Huron contained no express provision requiring submission of the question of issuing faith and credit bonds to the electors, and definitely authorized the city commission to authorize and issue general obligation bonds to finance public improvements. However, such power is subject to the applicable laws of the state, and at the time Section 5 of the home-rule act provided that "No city shall have power to... authorize any issue of (general obligation) bonds... unless approved by 3/5 of the electors voting thereon at any general or special election..." The city raised the question as to whether the provisions of Sections 7 and 8 of PA 320 of 1927 constituted an exception to the voter approval requirements in Section 5 of the home-rule act.

The Attorney General opined: "It appears also that the legislature had clearly in mind that there is a positive and substantial difference in the situation in which municipalities find themselves when they are faced with mandatory orders and injunctions with respect to sewage treatment improvements, and situations where a municipality originates projects voluntarily and without the intervention or pressure of the courts. The main difference consists in the fact that, if the court, in the exercise of its jurisdictional powers, orders such improvements, and the qualified electors do not approve the necessary bonds to finance the project, the order may never be carried out, and the legislative body of the municipality, no matter how willing to have the improvements made and to obey the court order, would be without power to proceed.... (emphasis added.)

"The attorney general is of the opinion that... the legislative body of the city of Port Huron has authority to issue the necessary bonds, either mortgage or general obligation, to finance the works required to comply with the mandate of the Supreme Court of this state... notwithstanding any provisions of the Port Huron City charter or of any general statute limiting the issuance of such bonds, and that no vote of the electors is required in connection therewith....

"The provisions of Sections 7 and 8 of the statute above quoted are intended to apply to the special situation where the works to be financed are required to be constructed in order to comply with the order or decree of a court of competent jurisdiction and to free such situations from the restrictions which, under the general provisions of charters and statutes, might prevent the financing of the necessary works. To hold that such general restrictions rather than the special provisions in question apply to works required to be constructed to satisfy court decrees would put in the hands of the electors the power to nullify the decrees of the court and would make such decrees prac-

tically meaningless. The enactment of Section 7 and 8, above quoted, was apparently intended by the legislature to avoid the possibility of any such ridiculous situation.... (emphasis added.)

"Under the provisions of the special act under discussion... bonds... necessary to finance the project, may be issued by the legislative body of the city and any taxes necessary to pay the interest thereon... may be levied... without regard to any limit imposed by statute or charter on authorized annual tax rates of said city."

In 1949, the city issued $1.6 million in revenue bonds for the construction of a sewage-treatment/disposal facility. To meet an increase in the cost of construction of this facility and to finance the construction of a garbage-disposal plant, the city commission adopted a resolution the same year to issue $1.3 million of city general obligation bonds in addition to the previously issued revenue bonds. The resolution providing for the issuance of the general obligation bonds was not submitted to the electorate despite the provision in the home-rule act that states: "No city shall have power... to... authorize any issue of bonds... unless approved by 3/5 of the electors voting thereon at any general or special election."

The home-rule act also required that the public be given notice of any intent to issue bonds and "a petition may be filed... signed by not less than 10% of the registered electors in such city, in which event said legislative body shall submit the question of the issuance of such bonds to the electors... and such bonds shall not be authorized and issued unless a 3/5 vote of the electors voting thereon shall vote in favor thereon."

The city treasurer refused to countersign the general obligation bonds, contending that the bonds were illegal and void because the city failed to give notice of the resolution or submit it to a vote of the electorate pursuant to the requirements of the home-rule act. The city sued the treasurer and, in a 1950 decision, the State Supreme Court ordered the treasurer to countersign the bonds **(Port Huron Mayor v Port Huron Treasurer)**.

The Court cited the provisions of PA 320 of 1927, specifically Section 7 (quoted above on page 18). The Court ruled that although the home-rule act required voter approval, PA 320 of 1927 was a special act that superseded the general act -- even though the provisions cited in the home-rule act were amended in 1941 and the notice requirement expressly applied to all bonds "whether authorized under the provisions of this act or any other act."

The treasurer also questioned whether the city could issue bonds for the construction of a garbage-disposal plant under a court order requiring the construction of a sewage-disposal system (for which self-liquidating revenue bonds rather than general obligation bonds had already been issued). The Court ruled that since PA 320 of 1927 provides for both sewage and garbage disposal systems, including the construction of a garbage-disposal facility under the court order was not improper.

The defendant also contended that additional self-liquidating revenue bonds rather than general obligation bonds should be issued to complete construction. In addressing this issue the Court said: *Whether to issue revenue bonds or general obligation bonds to defray such additional costs became a legislative matter to be decided by plaintiffs. They assert that it might require exorbitant charges to the users of the sewage and garbage systems if they were obligated to pay an increase in charges so as to provide a sufficient amount for the interest and serial-retirement payments on addition-*

*al revenue bonds, had they been issued. There may have been other sound financial reasons not set forth in the record that appealed to the plaintiffs....*

*Defendant further claims that when the ordinance of 1945 was adopted the electors could have asked for a referendum under the charter but they did not do so, as they understood that the entire interest and principal of the cost of the sewer and garbage systems was to be paid from revenues derived from charges to the users of the systems, as hereinbefore noted. Defendant further contends that good faith on the part of plaintiffs required them to raise the extra amounts through additional revenue bonds and that the electors of Port Huron were legally entitled to the opportunity, if they so desired, to approve or reject the proposition through a referendum provided for in the charter. Plaintiffs assert that there is no merit to this latter contention for they were legally bound to carry out the order of this Court and they might have faced an impasse if the electors had rejected a new ordinance or resolution to issue additional bonds. We certainly could not have issued a contempt order against the entire electorate of Port Huron for failure to carry out our peremptory order to complete the sewage-disposal system by October 1, 1950....*

*The further question is raised as to whether defendant may levy a tax for the payment of the general obligation bonds in question even though the tax would be in excess of the tax limitation provided by the city charter. There is nothing in the record to indicate that such a tax would be in excess of the tax limitation provided by the city charter, but even assuming that such would be the case, a home-rule city may levy such a tax for the payment of outstanding bonds even though such tax would be in excess of the city charter tax limitation.... The Constitution of this State vests in the legislature the complete and unrestricted power to limit the rate of taxation of cities for municipal purposes and their powers of borrowing money and contracting debts.... The legislature may regulate the amount of municipal indebtedness and the rate of taxation of cities. It is expressly authorized by article 8 section 20, of the Constitution so to do.* (emphasis added.)

With this series of Port Huron decisions, the Court sanctioned the issuance of general obligation bonds without limits, despite the Court's earlier ruling that the Constitution requires that there be but one general limit on bonded indebtedness prescribed by law and that all debt that imposes a liability on the issuing municipality is subject to that limit. The Court also established that statutes authorizing court-ordered taxes were not subject to the restrictions in any state law or locally-adopted charter. It is interesting to note that the Court, in an attempt to justify this decision, misquoted the Constitution. Under the Constitution, the Legislature is required to limit the taxing and borrowing power of home-rule units of government. The correct paraphrasing in the Court decision should have been "The legislature shall regulate," not "The legislature may regulate." Thus, the assault on voter-imposed tax limits had begun, but was by no means complete.

**Creating "Charter" Townships**

The Legislature authorized the creation of "charter" townships with the adoption of PA 359 of 1947. The local electorate could vote to become a charter township municipal corporation by adopting the charter township act as its local "charter." By this vote, the township came out from under the constitutional tax limitation provisions and was subject to the tax limitations provided in the charter township act.

Warren Township incorporated as a charter township in April 1950, by a vote of its qualified electors pursuant to PA 359 of 1947. In 1954, four bonding proposals totaling $900,000 were submitted to the electorate. A fifth proposal was submitted at the same time, providing that the Article 10, Section 21, 15-mill limit be raised by 1 mill for a period of twelve years to pay the principal and interest on bonds in the principal amount of not to exceed $900,000. All five proposals were approved by the voters. The township submitted a bond application to the state Municipal Finance Commission which pledged the 1-mill, voter-approved property tax increase. The commission amended the application to provide that: "The bonds will be general obligations of Charter Township of Warren payable from ad valorem taxes without limitation as to rate or amount." The commission contended that charter townships are not subject to the provisions of Article 10, Section 21. In a suit filed by the township against the commission **(Charter Township of Warren v Municipal Finance Commission)**, the Supreme Court ruled that the taxes levied by the Charter Township of Warren are not subject to the constitutional limitations, but rather are authorized by the voters when approving the incorporation as a charter unit of government.

In the decision the Court said: *The township claims that its tax rate in all particulars is subject to article 10, section 21, of the Constitution (1908), and the fact that it is a charter township having a statutory charter providing a different tax-rate limitation than that provided by said constitutional amendment does not remove the township from said constitutional limitation.*

*The attorney general, on behalf of the municipal finance commission, claims, on the contrary, that a charter township incorporated under PA 1947, No. 359, as amended, is not subject to the tax-rate limitation in article 10, section 21, of the Constitution (1908); and that the State municipal finance commission correctly construes the following exception in the tax limitation amendment.... The 15-mill constitutional amendment in itself provides for exceptions to limiting to 1-1/2% of the assessed valuation....*

*Under 2 separate and plainly-defined circumstances this proviso permits an increase, to not more than 5% of the assessed valuation, for a period of not more than 20 years, in the amount of the taxes that may be assessed against property in any 1 year. The first circumstance, which is not involved in the instant case, is an increase by a majority vote of the electors in the assessing district. The other is when the increase is "provided for by the charter of a municipal corporation." The precise question before us is whether this last exception, sometimes heretofore called the "third exception," applies to Warren township.*

*Warren township is a municipal corporation. The legislature, in providing for its incorporation as a so-called charter township, has expressly so declared. PA 1947, No. 359, section 1. Said section also expressly provides that the act "shall constitute the charter of such municipal corporation."*

*The question before us then is, what are the provisions, if any, in said act, as to the total amount of taxes that may be assessed for all purposes against property in said township; because that exception in the proviso applies only when the charter of a municipal corporation (in this case the statute) so provides.*

*Said statute provides for assessments for taxes in charter townships. Section 14 of said act, as amended by PA 1949, No. 70, authorizes a charter township to acquire property for public purposes, and provides:*

*"That no taxes shall be levied to acquire any such property, public building, park, or facility, unless such levy shall be approved by a majority of the electors of the township voting thereon at any regular or special township election."*

*It is conceded that a majority of the electors has approved the levy here involved.*

*Section 14a of said act, as added by PA 1953, No. 188, provides that the township may borrow money and issue bonds on the credit of the township to acquire such improvements upon approval thereof by a majority of the electors, "Provided, however, That the net bonded indebtedness of the township incurred for all public purposes shall at no time exceed 10% of the assessed value of all real and personal property in the township: .... Provided further, That such bonds shall be issued subject to the provisions of Act No 202 of the Public Acts of Michigan 1943 (Municipal Finance Act), as amended."*

*Section 27 of said act... authorizes the township board... to appropriate and provide for a levy of the amount necessary to be raised by taxes for municipal purposes of the township, and states as follows:*

*"which levy shall not exceed 1/2 of 1% of the assessed valuation of all real and personal property subject to taxation in the township: Provided, That the electors of each charter township shall have power to increase such tax levy limitation to not to exceed a total of 1% of the assessed valuation of all real and personal property in the township for a period of not to exceed 20 years at any one time."*

*It is obvious that the legislative charter of Warren township in itself provides for a tax limitation....*

*As confined to the issue now before us there is no essential difference between charter townships and incorporated cities and villages. All are municipal corporations. Fourth-class cities have legislative charters; likewise, "general law" villages. The 15-mill tax amendment makes no distinction between charters of municipal corporations, in the exceptions to the 15-mill constitutional limitation.*

As will be shown below, the Court later cited this case as one of the decisions that bruised, beat and backed the 15-mill amendment to the brink of sterile and forceless words. As a result of this decision, all "charter" units, including those whose charter is a state statute, are not subject to constitutional tax limits. The local charter (in this case a state law), adopted by the local electorate, provides the property tax limit. All bonds issued by a charter unit that pledge unlimited taxing authority must also be approved by the voters.

**The Court Calls A Cease-Fire**

With the open invitation extended by the Court to create "charter" units not subject to constitutional tax limitations, the Legislature adopted PA 4 of 1957 which authorized the creation of charter water authorities as municipal corporations. Any two or more cities, villages, or townships could, with a vote of the local electorate, incorporate a water authority. PA 4 of 1957 served as the charter of the water authority. The authority was granted the power to issue general obligation bonds, and impose taxes without limitation as to rate or amount to pay principal and interest on the bonds, for the acquisition and construction of public water-supply facilities. Shortly after the adoption of PA 4, a group of local governments in Kent County and Ottawa County created a water authority which was subsequently challenged in court **(Bacon v Kent-Ottawa Metropolitan Water Authority).** The plaintiff claimed that the taxing authority in

sections 16 and 18 of the act violated the constitutional 15-mill restriction.

In this 1958 decision, the Supreme Court said:

*First: Summary of opinion and legal background.*
*Through and by means of an attritional series of judicial decisions the 15-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. Bench law made of generated public necessity and pressured regression brings us this day to the last act and final scene. By the decree we are due to sign, this Constitutional restriction of the power of property taxation either will live on, probably in its present atrophied form, or perish forever. So far as concerns the power to limit "the total amount of taxes assessed against property for all purposes," the legislature -- in event we sustain sections 16 and 18 of said Act No 4 -- will reign over the Constitution.*

*In the case before us, the defendant authority, proclaiming under Act No 4 that it is a "municipal corporation" within meaning of the last exception set forth in the amendment and that it is armed with a "charter" which exempts it from effect of the amendment, moves now that this Court push the already battered amendment into the abyss where it may be destroyed by and at the will of the legislature. We cannot support the motion....*

*The amendment as adopted by the people in 1932 read this way:*

*"Sec. 21. The total amount of taxes assessed against property... shall not exceed one and one-half per cent.... Provided, that this limitation may be increased... to not more than a total of five per cent of the assessed valuation, by a 2/3 vote of the electors of any assessing district, or when provided for by the charter of a municipal corporation."*

*In 1933 it was rewritten by the Court (School District v City of Pontiac) to read this way:*

*"The total amount of taxes assessed against property... shall not exceed one and one-half per cent.... Provided, That this limitation may be increased... to not more than a total of five per cent of the assessed valuation, by a 2/3 vote of the electors of any assessing district, or (that this limitation may be increased) when provided for by the (present or future) charter of a municipal corporation."*

*From the first parenthetical insertion shown in the quotation just made (that this limitation may be increased) it will be noted that the final exception was thereby freed from the halter of the specified 50-mill limit.... The assault was on but not over. Next and in succession it was held that special assessments do not come within the scope and purpose of the all-inclusive and easily understood phrase: "The total amount of taxes assessed against property for all purposes;" that the legislature could at will modify or amend the charters of municipal corporations, thus authorizing legislation enlarging or diminishing the taxing powers of such corporations without regard for the limitation; that charter townships are "municipal corporations" within the meaning of said final exception; and finally that* [intermediate] *school districts are "municipal corporations" within meaning of such exception. This case presents the close for the kill* (citations omitted).

At this point in the decision the Court inserted a footnote that said: *We are not, in the present case, immediately concerned with the wisdom or legal soundness of any one or all of these amendment-eroding decisions. We are concerned, in this case of Bacon, lest errors of the past (if any) lead or*

*force us into still greater error -- that of authorizing final annihilation of the 15-mill amendment by legislative action.*

The decision went on to say: *Other decisions affecting scope of the amendment require no discussion because they do not relate to or premonish the final step defendant proposes; a holding that since the legislature stands free to set up governmental authorities or entities at will, it may -- merely by calling each such authority or entity a "municipal corporation" and providing in a legislative "charter" for each the power to tax property without regard for the 15-mill limitation -- hand to each such authority or entity the power to utterly nullify the amendment within its charter-defined area....*

*The amendment having been voted into the Constitution as an express limitation of the legislative as well as local power of taxation, it becomes our clear duty to protect whatever remains of the elector-intended right of property taxpayers (mostly home-owners) to say when and to what extent they are to pay more than the amendment-declared maximum millage amount....*

*Second: Interpretation of the constitutional exception -- "When provided for by the charter of a municipal corporation" -- as applied to Act No 4.*

*As we shall see, our duty in exploring this question is to scrutinize the prevailing conditions and the "existing laws" which unitedly formed the circumstances under which this amendment of 1932 was conceived and voted into the Constitution.... But what about the existing law defining "a municipal corporation," with respect to which the people presumptively determined to apply such final exception? Was it intended to include an "authority" which -- a quarter century later -- has been authorized or created by legislative act and dubbed, by legislative fiat, "a municipal corporation"? To speak plainly, an affirmative answer to this question -- if given -- will automatically grant to the legislature the power of outright repeal of a duly-voted constitutional provision.*

*The presumption to which we refer is that the framers and electors meant this exception to be interpreted in accordance with existing laws and legal usages of the time, and also in accordance with common understanding of such existent laws and usages.... Did they bother to resolve a statewide constitutional limitation upon the power of property taxation and, by the same instrument of resolution, mean to provide the legislature with power to nullify the limitation as applied to legislatively manufactured new types of "municipal corporations?" Are we to say that the electors of 1932 planned to hand the existing or any future legislature the power and authority to undo, at will, that which became the essence of their resoundingly successful initiatory effort?....*

*We hold on these sound premises that the defendant authority is not "a municipal corporation" within meaning, purpose, spirit, or intent of the 15-mill amendment. It therefore must be ruled that said Act No 4, insofar as it authorizes levy by such authority of property taxes "unlimited as to rate or amount" is unconstitutional. To such ruling, and for reference in like cases said to be coming here, we are constrained to append the following general thoughts upon the subject of evasion of the Constitution by subterfuge:*

*Appellants charge in their brief, without answer or denial by appellee, that the property tax sections of said Act No 4 constitute an unabashed scheme to defeat a constitutional limitation by political contrivance of unconstitutional nature. We are forced to agree. The act on its face -- speaking as it does in terms of "unlimited" property taxation -- flouts the constitutional tax limitation. The defendant author-*

*ity has conceded in so many words that said Act No 4 was "proposed to and adopted by the legislature" to enable the several involved townships (all of which were and now individually remain fettered by the 15-mill amendment) to levy property taxes without regard for the 15-mill limitation. Such being the case, those sections of the act which purport to authorize unlimited property taxation in these townships should receive short shrift here....*

*We do not question the power of the legislature to call any commission, board, bureau, authority, entity, or tribunal, to which some public or municipal duty or job has been committed or assigned, "a municipal corporation." We do deny legislative power to circumvent the 15-mill amendment by calling any legislative creature "a municipal corporation" when that creature would not, in 1932, have been properly classed as "a municipal corporation"....*

*An affirmance here would give our judicial blessing to an incestuous marriage of various local units of government, at least 3 of which are tax-inhibited by the Constitution, for the purpose of bringing forth an illegitimate property-tax offspring already named -- by the willing and midwifing legislature -- "a municipal corporation." By such a semantic device we are asked to endow the gargantuan child with "unlimited" powers of property taxation some, if not all, of the multiple parents do not enjoy. It should be clear that we cannot do this....* (emphasis added.)

So with this decision, the Court permitted the constitutional restriction on property taxation to live on in its atrophied form. The Court decided that in interpreting the phrase, "When provided by the charter of a municipal corporation," found in Article 10, Section 21, it must use the "common usage" of the words "municipal corporation" when the language was adopted. That is, the Legislature cannot call any new creation a "municipal corporation" so as to circumvent constitutional tax limits. While the Court did call a cease-fire in the assault on property taxes in terms of the 15-mill limitation, the next decision will illustrate that this cease-fire did not apply to the tax limits imposed by the electorate in a local charter.

**Unlimited "Drain Taxes"**

Shortly after the Bacon decision, the Court was called upon to determine if unlimited property taxes could be imposed by charter and noncharter units of government **(Southfield Township and City of Troy v Twelve Towns Relief Drains)**. At issue was the drain code (PA 40 of 1956), which authorized local units to levy unlimited property taxes to pay special assessments imposed on the local unit by the drain commissioner. (Similar provisions existed in the previous drain code -- PA 316 of 1923.) The Court ruled that while drain taxes imposed by nonchartered local units are subject to the constitutional limitations, drain taxes may be imposed outside of charter limitations by chartered units. Once again, it is important to remember that the Constitution requires the Legislature, in a general law (the home-rule act), to limit the power of cities to levy property taxes, and that these limits are to be approved by the local electorate through the adoption of a municipal charter.

In this particular case, a group of Oakland County communities funded a preliminary investigation into establishing a system of relief drains. Both Southfield Township and Troy shared in the cost of this exploratory effort conducted in 1952. However, neither agreed to become a part of the plan which was ultimately devised. Plaintiffs filed separate suits (Royal Oak Township joined the Southfield suit) to enjoin certain actions of the

drainage board in connection with the financing, construction, and assessment of the cost of the relief drains pursuant to chapter 20 of the drain code. Plaintiffs contended that the provisions of the drain code requiring a tax levy to pay drain assessments violated Article 10, Section 21, of the 1908 Constitution. The circuit court ruled the constitutional tax limitation restricted the extent to which townships may participate, but did not limit the extent to which cities may participate in drain projects.

On appeal to the Supreme Court in 1959, Royal Oak Township raised two questions:

1. Is the drain code (sections 473 and 475), insofar as it authorizes assessments of taxes by the county drainage board, without regard for debt limitation of unchartered townships, unconstitutional? and,

2. Is section 474 of the drain code an indirect attempt to flout the constitutional debt limitation of unchartered townships?

The Court responded as follows: *We think the lower court was correct in its ruling that Royal Oak township and the other townships involved in the Twelve Towns Relief Drains were bound by the 15-mill tax limitation prescribed in article 10, section 21 of the Michigan Constitution of 1908, as amended in 1948. It is not necessary for us in this case to restate the history and legal background of the 15-mill amendment.... Suffice it to say that this is another in a long line of attempts by subterfuge to circumvent the effect of the 15-mill limitation in the Constitution....*

*Defendants argue that the township of Royal Oak is a municipal corporation; that the statutes of the State of Michigan are its charter; and that the provisions of sections 474 and 475 of the drain code operate as a charter increase of the 15-mill limitation.... We conclude... that... the townships involved in the Twelve Towns Relief Drains are not municipal corporations within the meaning, purpose, spirit, or intent of the 15-mill amendment.... The taxing power of a township is what it may receive from the allocation of the 15-mills plus any increase voted by its electors. Any participation by the townships shall be so limited....*

*The second question raised by Royal Oak township is: Is section 474 of the drain code an indirect attempt to flout the constitutional debt limitation of unchartered townships, and is it as a consequence in violation thereof?...*

*Under chapter 20, section 474, of the drain code, each public corporation is required to pay the full amount of the installment on or before the due date thereof. The section further provides for the levying of a tax sufficient to pay each installment with interest as the same becomes due unless there shall have been set aside moneys sufficient therefor.*

*It is admitted that that the Twelve Towns Drains is a health project. The legislature in the absence of constitutional limitations can and has provided how this drainage project will be financed.... The general rule is... stated in 16 McQuillin... as follows:*

*"In the absence of constitutional restriction, compulsory taxation may be imposed on a municipal corporation by the legislature in all those cases wherein the municipality acts as the agency of the State government."*

*In adopting section 474 of the drain code the legislature exercised its prerogative that moneys belonging to the township could be used for a health project. This they had a right to do. There is no question here as to the misuse of such moneys by reason of section 474 of the drain code....*

*Royal Oak township contends that section 473 of said act is unconstitutional in that it tends to put all such tax assessments outside the constitutional tax limitation by removing the resulting indebtedness from the statutory or charter limitation.*

*With the exception of unchartered townships, which we have disposed of above, there is no question as to the right of the statute being read into and becoming a part of the charter of the cities involved so as to remove the resulting indebtedness from statutory or charter limitations.*

In this decision, the Court ruled that drain taxes are subject to the constitutional 15- and 50-mill limits when levied by those units subject to the constitutional limits. The Legislature evidently had come to such an understanding as well. Section 475 of the drain code as originally adopted in 1956 provided that: "Assessments made under the terms of this chapter (chapter 20) shall not constitute an indebtedness of a public corporation within any statutory or charter debt limitation, and taxes levied by a public corporation for the payment of such assessments shall not be deemed to be within any statutory or charter limitation." In June 1959, shortly before the court issued its decision, section 475 was amended to add: "Nothing contained in this chapter shall be construed as requiring any county, township, metropolitan district or authority to levy a tax beyond its constitutional tax limitation or any lawful increase thereof."

After the lower court hearing, however, most of Southfield Township was incorporated into the City of Southfield; the Township of Troy was incorporated into the City of Troy; and, a large portion of Royal Oak Township was incorporated into the City of Madison Heights. The court ruled that chartered units of government may levy drain taxes outside of statutory or charter limits because the drain code is to be read as a part of the local charter. The Court specifically said: "The legislature in the absence of constitutional limitations can and has provided how this drainage project will be financed." (emphasis added.)

Previous Supreme Court decisions concerning Article 8, Sections 20 and 21, however, had interpreted the Constitution to require that there "shall" be a tax limitation and a debt limitation on a city or a village, both of which are to be found in the general act providing for the incorporation of the city or village through the process of drafting and adopting a charter by the local electorate. In fact, in the Twelve Towns Relief Drains decision the Court was called upon to interpret the word "shall" in another section of the Constitution (Article 10, Section 23 -- "there shall be returned to local governments...."). The Court said that: *The use of the word "shall" is mandatory and imperative and, when in a command to a public official, it excludes the idea of discretion.* Since the drain code authorizing unlimited property taxes is not a part of the general law providing for the incorporation of cities and villages, it appears that the Legislature exercised discretion it did not possess, and the Twelve Towns Relief Drains decision ignored the significant constitutional limitations on the taxing power of chartered units in Article 8, Section 20, of the Constitution.

**"The Most Pressing Rule For Constitutional Construction"**

Late in 1959, the Supreme Court was called upon to decide the constitutionality of a tax increase adopted by the Legislature **(Lockwood v State Commissioner of Revenue)**. While this case did not directly involve property tax limits, the Court went into great detail as to how constitutional limitations are to be interpreted by the

court and, in passing, made reference to the **Bacon** case decided the previous year involving the constitutional 15-mill limit.

In 1933, the electorate adopted an amendment to the state Constitution which provided that "at no time shall the legislature levy a sales tax of more than 3%." In an attempt to tax those items purchased outside the state (not subject to the sales tax), the legislature imposed a 3% use tax beginning in 1937. In 1959, the legislature amended the use tax statute and increased the rate to 4%. The legislation was also amended to provide that: "if the property used, stored or consumed, had been acquired in a transaction on which the 3% sales tax had been paid then the use tax should be 1% of the price of the property involved." In effect, the statutory change created a 4% sales tax which the Court ruled was in violation of the constitutional provision authorizing a sales tax not to exceed 3%. Of particular interest is that while the **Bacon** case was decided on an 8-0 vote, the **Lockwood** decision split the Court with a 5-3 margin declaring the tax increase unconstitutional. Included in the decision is a strongly worded rebuke by the majority of the dissenting opinion issued by the minority.

*At this point we take judicial notice of what every citizen of this State knows from his daily life. In actual operation of the tax, the accommodation devices are being given their intended effect. A tax of 4% upon retail sales is now being collected by retailers in every city and village and township of Michigan. The citizens of this State are under no illusion -- the tax payable by them upon their retail purchases has been increased above the 3% rate despite the prohibition in their Constitution.*

*We have seen the situation giving rise to the constitutional enactment, and we have seen the words employed by the people. How are they to be interpreted? At this point the defendants find themselves in a dilemma. If they reply that the people were interested in self-protection, in limiting the threat, clearly visible, of taxes on retail sales mounting as the income tax and other taxes have mounted, then they are bound to hold this tax bad for, in conjunction with the sales tax already imposed, it exceeds the 3% limitation. It is the first step in a familiar pattern of tax increases. But they may take the other horn of the dilemma. They may say that the words used, "sales tax," means literally that, namely, the sales tax levied by the particular statute which the citizen was subject to, at the time of the constitutional limitation.*

*But this would freeze, for the life of the constitutional amendment, the sales tax in the precise form used at the time of the amendment, for after change, no matter how slight, it would be no longer the same statute the citizen knew at the time of the constitutional amendment. This literal construction of the words "sales tax" forces the inescapable conclusion that the people have done a futile thing: they have voted themselves a constitutional protection good only until the next session of the legislature....*

*There is no middle ground. Either we construe the constitutional limitation literally or we construe it to accomplish its manifest objective and intent.*

*Which is to be our choice? Actually, there is no choice but one. The unanimous opinion of this Court, written by Mr. Justice Cooley close to a hundred years ago, sets our course.... "They must construe them as the people did in their adoption, if the means of arriving at that construction are within their power...."*

*Our question is a new one, without parallel in the cases cited: May tax be*

*piled upon tax despite a constitutional limitation prohibiting the pyramid? Is the accumulation unobjectionable provided only that the added taxes are taxes upon different "privileges"? If so, the constitutional limitation is utterly without meaning for the only limitation upon the number of "privileges" of the citizen subject to taxation is the ingenuity of the tax collector....*

*To say that we will construe the words "sales tax" literally, as described above, despite the manifest purpose of the constitutional limitation, is to open the door to the process of erosion so well described by Mr. Justice Black in* ***Bacon v Kent-Ottawa Metropolitan Water Authority****, as "an attritional series of judicial decisions" rendering innocuous, and without the intervention of the electorate, a constitutional prohibition.*

*The literal construction of the words, without regard to their obvious purpose of protection, is to make the constitutional safeguard no more than a shabby hoax, a barrier of words, easily destroyed by other words. This canon of constitutional construction we reject. A constitutional limitation must be construed to effectuate, not to abolish, the protection sought by it to be afforded. It was Mr. Justice Campbell who wrote as long ago as the 13th volume of the Michigan reports that:*

*"If the people, in establishing their government, see fit to place restrictions upon the exercise of any privilege, it must be assumed that in their view the exercise of the privilege without the restriction would be inexpedient and dangerous, and would not, therefore, have been permitted. Every restriction imposed by the Constitution must be considered as something which was designed to guard the public welfare, and it would be a violation of duty to give it any less than the fair and legitimate force which its terms require. What the people have said they design, they have an absolute and paramount right to have respected."*

*We come face to face, then, with what has been termed "the most pressing rule for constitutional construction," namely, that "the provisions for the protection of life, liberty and property are to be largely and liberally construed in favor of the citizen."*

*The reasons behind this "most pressing rule" are clear if we will but bear in mind... that it is a Constitution we are construing, our basic charter of government. Here the people have erected their safeguards, not only against tyranny and brutality, but against the oppression of temporary majorities, and the rapacious demands of government itself. Here are found words that are beyond words, principles for which men have died and reckoned not the cost. It is a charter heavy with history, pregnant with the pride of a free people. In it they have said to the government itself, in clause after clause: Thus far you may go, but you shall not cross the line we draw. In our country their prohibition is ironclad. It may refer to encroachment on the citizen's person, on his property, or on his purse. That this is "merely" a tax limitation and not one on freedom of speech, or worship, is immaterial. There are no differences in degrees of protection afforded in the constitutional safeguards. With equal alacrity we halt in his tracks, once his foot crosses the line, the inquisitor, the policeman, the tax collector, the legislator, or the executive. Our question is not how far he has passed over the forbidden line, how serious his encroachment, or how aggravated the arrogance. Our duty arises with the trespass itself.*

*The presumption of constitutionality cloaking all the acts of our co-ordinate branch of government cannot prevail where the statute is "prohibited by the express language of the Constitution or by necessary implication."*

In a concurring opinion, Justice Black wrote: *We shall now proceed to demonstrate from our decided cases why some of our members undertake constitutional construction with the wrong rules. For illustration let us recall the sad history of judicial evisceration of another tax-limitation provision -- the so-called 15-mill amendment.*

*That amendment was, when adopted by the people, trustingly regarded as having limited to the constitutional rate of 1-1/2% the "total amount of taxes assessed against property in any one year." Yet when the right of protection against "special" assessment was asserted under the amendment, our predecessors seized upon the technical distinction (just as they again do here between **sales** taxes and **use** taxes) between **general** taxes and **special** assessments.... They then proceeded to tell the people that by their amendment they had succeeded only in protecting themselves from higher **general** taxes; that the amendment did not include "special" assessments within its protective scope, and that the respective legislative bodies of the State remained free to levy, without limit and without regard for the constitutional limitation, all kinds of "special" assessments. Thus was a big gouge torn from the intended muscle of the limitation, simply because the Court forgot or overlooked the guide of Marshall and Cooley.*

*Now it has always been clear to us that special assessments are "taxes" and that ordinary people by common understanding of their Constitution had an amendment which protected them from additional property taxation, no matter the brand name which any legislative act or judicial decision might stamp on the particular impost or levy against such property. (One's home can be lost just as quickly and finally for nonpayment of "special" assessments as for nonpayment of "general" taxes.) By the same token, and if the defendants are right in the case before us, an ordinary citizen can be denied the right to purchase groceries or, say, a motor car, should he refuse to pay this 1959 imposed tax on that which he would purchase at retail.*

*Here, then, is the old game of cat with mouse the defendants would have us play with the people when similar constitutional limitations are before us. If the Constitution restrict the amount of "taxes" levied against property, we are presumably to tell the complaining taxpayer -- "Ah, yes, but these are **special** assessments." If the Constitution restrict the amount of taxes levied on purchases and sales at retail, we are to say -- to the appealing taxpayer -- "Sure, you are right, but these are **use** taxes" (and so on). Thus, by the doctrinaire notions of our Brothers, the people cannot prevail, no matter what they may write into their Constitution for the purpose of limiting the power of taxation, unless, possibly, they go about the task of writing and adopting a limitational provision in the fine print form -- with at least as many words -- of an insurance policy....*

*Our minority still stands, despite **Bacon's** recent about-face on construction of constitutional tax limitations, just as it did before. From the pre-**Bacon** record of the past, such limitations seem to have been looked upon by them "as great public enemies standing in the way of progress." Indeed our Brothers still appear to regard it the "duty of every good citizen" to give such limitations "a damaging thrust whenever convenient."*

*Our majority, on the other hand, stands for a people's construction of such limitations, a construction which perforce is of greater breadth by the might of popularly understood intention at the time of adoption.*

*Our view stands for the people's understanding of tax limitations that are created by the people. The other view stands for the legislators' and law-*

*yers' interpretation of a tax limitation created by the people. This is where we part.*

*And so our good Brothers would in effect say to the legislature: You may with our blessing levy any tax on the transaction of retail sales, in any amount, so long as you call it by some other name than a sales tax and are careful not to levy it by amendment of the sales tax law. Thus may you get around the Constitution. We say to the legislature, on the other hand: Your membership like our own should always inquire (before enacting or approving tax legislation scrutinized under a constitutional tax limitation) what the people by popular understanding had a right, from the beginning, to expect from the limitation.... We are declaring again,... a great principle of constitutional law for the guidance of legislators, governors, judges and lawyers. The people's intent is supreme. When the constitutionality of legislation is challenged here the Constitution is our first line of inquiry. And we obtain the answer when we look to the laws and the usages, and to the popular knowledge thereof as of the time of adoption of the provision in question....*

*The legislature may have assumed that this Court would continue its inhospitable attitude toward constitutional limitations of tax rates, evidenced by its treatment of the 15-mill amendment during the past 15 years. The Court visibly and admittedly has looked with jaundiced eye on efforts of the people to restrict taxation by constitutional means. So this case is not one for suggestion of "bad motive" on the part of the legislature. Rather, it is one for recognition of that which has been the post-1933 policy of the judicial branch (until the halt was called in* ***Bacon****); for advising the legislature that the present Court turned in* ***Bacon*** *from the disproved doctrines Mr. Justice Carr (author of* ***Lockwood*** *dissenting opinion) has again written, and that a majority of this Court will, in the future, continue adherence to the rules of constitutional interpretation which this Court followed for more than 60 years, beginning in Cooley's time. We seek not to change constitutional interpretation but only to return to the hallowed and time-tested doctrine of our great predecessors....*

*No member of this Court is unaware of the temporary yet dismaying consequences that are due to attend a determination that Act 263 is invalid, even in part. The prospect is no rosier here than on the legislative and executive floors below. Yet we have no alternative when the people have spoken, clearly and forcefully, by their basic instrument of government by law. The remedy, even though it be slower, lies in another forum; that of submission to and decision by the people themselves. They wrote this proviso into the Constitution. Ours is not to rewrite it, or to interpret its intended purpose in such way as will leave it a puppet of the legislature.... And so we say judges have no right to cast ballots, the effect of which is judicial defeat of a properly adopted constitutional amendment, by means of an opinion or opinions deposited in our clerk's office.*

**Court-Ordered Judgments in the Era of Vacillation**

During this period, the Supreme Court decided one case involving a court ordered judgment **(Roosevelt Park v Norton Township)**. Unfortunately, the decision is not entirely clear, although the Court seemed to say that a judgment must be paid from within existing taxing authority. In 1951, the City of Roosevelt Park sued to collect certain moneys claimed to be due from Norton Township. The city asked the court to issue a writ of garnishment against township funds held at a local bank rather than issue a judgment. The city argued that the town-

ship would not be able to levy a tax to pay a judgment in the manner provided by law... because... "the tax rate in Norton Township is in excess of 49 mills and... could not be increased to an amount sufficient to satisfy plaintiff's claims without violating section 21 of article 10 of the state Constitution." The circuit court refused to issue the writ and the Supreme Court upheld the lower court refusal:

*The courts are practically unanimous in holding that the funds or credits of a municipality or other public body exercising governmental functions, acquired by it in its governmental capacity, may not be reached by its creditors by execution under a judgment against the municipality, or by garnishment served upon the debtor or depository of the municipality....*

*The basis for this rule is that municipal funds constitute a trust fund for the accomplishment of certain municipal functions, that to subject municipal funds to levy of execution and garnishment would restrict, thwart and interfere with the proper and orderly functioning of the municipal governmental machinery, and that to allow an individual municipal creditor to reach municipal funds for the satisfaction of his claim would effect a preference in favor of such creditor to the prejudice of other creditors and to the ultimate prejudice of the credit of the municipality. A township is a municipal corporation and as such an instrumentality of the State for purposes of local government. Township funds are in the nature of trust funds and are placed for disposition in accordance with appropriations previously made. Public policy forbids disturbance of these funds as to do so would have a tendency to curtail governmental activities for which these funds were appropriated....*

*In our opinion the sole remedy for the collection of a judgment against a township is provided by CL 1948 section 624.5 (Stat Ann section 27.1654)....*

*Defendant urges that under the case the above statute is ineffectual as the supervisor of the township would not and could not spread the amount of the judgment on the tax rolls. In* ***Morley Brothers v Carrollton Township Supervisor****, a method was suggested for the collection of a judgment.*

So the Court appears to have said that in the year the judgment was awarded the general revenue available to the jurisdiction could not be used to pay the judgment if the funds had been appropriated for other purposes. The Court seemed to say, in referring to the **Morley Brothers** decision, that in the year following the judgment, property taxes levied for operating purposes must first be used to satisfy the judgment and that the judgment levy could not exceed constitutional limits.

**Summary: Local Government Tax and Debt Limits, 1940-1962**

With the adoption of a constitutional property tax limitation amendment in 1932, property taxes could not be imposed in excess of 15 mills without voter approval except to repay debt issued before 1932. The 15-mill limit could be increased up to a total of 50 mills with voter approval. Taxes levied by cities and villages were levied outside the 15- and 50-mill limits, but were subject to voter-approved limits established in the locally-drafted and adopted charter. That is, the citizens of Michigan were protected by the Constitution from taxes levied in excess of 15 mills (excluding pre-1932 debt) without their consent. The local electorate could exchange the constitutional protection for the tax limitations in a local charter which also affords protection from taxes levied without voter approval.

In the Port Huron series of decisions, however, the Supreme Court ruled that taxes may be imposed outside of tax and

debt charter limits by a court order when the court deemed the expenditures to be necessary **(Stream Control Commission v City of Port Huron** and **Port Huron Mayor v Port Huron Treasurer).** The Court also authorized the Legislature to release local units of government other than cities and villages from the 15- and 50-mill limitations by permitting the local unit, with voter approval, to adopt a state law as its local "charter" **(Charter Township of Warren v Municipal Finance Commission).** In 1958, however, the Court called a halt to this practice by declaring that in the future only local units qualifying under the historic definition of the term "municipal corporation" could be released from the 15- and 50-mill limits **(Bacon v Kent-Ottawa Metropolitan Water Authority).**

The Court also ruled that drain taxes are subject to the 15- and 50-mill limits but are not subject to statutory or charter limits **(Southfield Township & City of Troy v Twelve Towns Relief Drains).** As a result of this decision, the Court created a situation whereby the local electorate remained fully protected from taxes levied without their consent (except for the 15 mills authorized in the Constitution) absent a local charter. With the adoption of a local charter, however, the local electorate exchanged full protection afforded by the Constitution for limited protection afforded by a local charter since drain taxes could be levied outside of charter limits and without voter approval.

As with the drain tax ruling, the Court said that court-ordered judgments are to be levied from within constitutional limits **(Roosevelt Park v Norton Township).** The Court did not decide whether judgments are subject to statutory or charter limits. It is conceivable that the Court would have ruled that judgments are not subject to the limits because the Court had decided that court-ordered bonds are not subject to any limits.

## The 1963 Constitution -- "The Property Taxpayers Of Michigan Were Yensed"

As a result of a statewide vote in 1961, a constitutional convention was convened to rewrite the 1908 Michigan Constitution. A draft Constitution was submitted to and adopted by the voters in 1963. The effective date of the 1963 Constitution was January 1, 1964. Of principal concern to this discussion are the provisions of the 1963 Constitution concerning home rule and property tax limitation.

The home-rule provisions of the 1908 Constitution (Article 8, Sections 20 and 21) were subject to minor changes in the 1963 Constitution (Article 7, Sections 21 and 22). During the deliberation process, the word "a" in the first sentence of Article 7, Section 21, as proposed by the local government committee ("The legislature shall provide by a general law for the incorporation of cities and villages....") was inadvertently dropped while being reported from the committee of the whole to the committee on style and drafting. (That is, no action by the Convention delegates was taken to strike the word "a" from the local government proposal.) Unfortunately, the new wording could be construed to fundamentally alter the responsibility and authority of the Legislature. In addition to the minor word changes, the 1963 Constitution authorizes cities and villages to levy taxes other than property taxes, subject to constitutional and statutory limitations.

According to the "Address to the People" by the Constitutional Convention, the property tax limits contained in

Article 10, Section 21, of the 1908 Constitution are retained in Article 9, Section 6, of the 1963 Constitution. "This is a revision of Sec. 21, Article X, of the present constitution which continues in substance the 15-mill limit on property taxes.... The section continues present provisions which permit the electors of any taxing district to vote additional millage, subject to the present 20-year limit and overall 50-mill limit. Cities and villages are excepted, as at present, from the 15-mill limit. The exception is also extended to charter townships, and charter counties organized under the terms of this new document. Such units would be subject only to limitations established in their charters or by law." The Michigan Supreme Court decided in 1972, however, that: *Yes, the property taxpayers of Michigan were yensed* in 1963 by Section 6* because the substance of the 15- and 50-mill property tax limits was not continued in the 1963 Constitution.

**Home Rule Under The 1963 Constitution**

As noted earlier, Article 8, Section 20, of the 1908 Constitution stated: "The legislature shall provide by a general law for the incorporation of cities, and by a general law for the incorporation of villages; such general laws shall limit their rate of taxation for municipal purposes, and restrict their powers of borrowing money and contracting debts." The Constitutional Convention local government committee proposed to rewrite this section as follows: "Sec. a. The legislature shall provide by a general law for the incorporation of cities and villages; such general laws shall limit their rate of GENERAL PROPERTY taxation for municipal purposes, and restrict their powers of borrowing money and contracting debts. EACH CITY AND VILLAGE IS HEREBY GRANTED POWER TO LEVY TAXES FOR PUBLIC PURPOSES SUBJECT TO LIMITATIONS AND PROHIBITIONS SET FORTH IN THIS CONSTITUTION OR LAW." (Caps highlight new language.)

To explain the rewrite of this section, the local government committee reported to the convention as follows: "Section a comment. In 1908, this section was spelled out in great detail because the home-rule concept was new and the delegates wanted to be as precise as possible. They therefore provided for a separate general law for cities and for villages. Home-rule and the avoidance of special act charters is now established practice in Michigan and the change in the first sentence is made only for the sake of brevity and simplicity. In the third line, the term **general property** is used to be specific and to distinguish the limitation on property taxes from the new grant of power to levy nonproperty taxes in the last sentence. The grant of power for nonproperty taxes is added to permit cities and villages that wish to ease the burden on the property tax to act on the basis of clear constitutional authority, for legal opinion as to current taxing powers of cities and villages is conflicting. The committee proposal does not attempt to specify the taxes a municipality might or should adopt, but to make possible a local decision on such matters, subject to limitations and prohibitions contained in this constitution or general laws now existing or that might be adopted by a future legislature...." (emphasis added.)

When asked during the convention debate about the property tax and nonproperty tax limitations in the committee proposal, the committee chairman responded as follows: "We tried to limit in both cases. If you had an ad valorem taxation of any kind, this is clearly limited by the sentence in which the words general property are used.

* In a footnote, the Court said that yensed is "an upper Peninsula colloquialism meaning deluded and duped, or conned and cozened, or beguiled and bilked; sometimes in a ribald or suggestive sense."

If you come over to anything that we commonly call excise taxes or specific taxes or these new kind of taxes, we say this is also limited by the prohibitions: that is, it is subject to any limitations and prohibitions set forth in the constitution or law. So, the legislature makes the limitation in both sets of taxes, both ad valorem general property, and specific. In fact, we went out of our way on the bottom part because we didn't want to have an unlimited rate of specific taxes.

If there is anything wrong with it and it isn't clear, the style and drafting committee can clear it up. Personally, I think it is clear, and the intent is to have a limitation on both." (emphasis added.)

With minor modification to the local government committee proposal (but no action to strike the word "a" in the first sentence), the committee of the whole reported to the committee on style and drafting: "Sec. a. The legislature shall provide by general law for the incorporation of cities and villages; such general laws shall limit their rate of general property taxation for municipal purposes, and restrict their powers of borrowing money and contracting debts. Each city and village is hereby granted power to levy **other** taxes for public purposes subject to limitations and prohibitions set forth in this constitution or law."

The committee on style and drafting changed "general law" in the first sentence to "general laws" and the Convention delegates voted Article 7, Section 21, to read as follows: THE LEGISLATURE SHALL PROVIDE BY GENERAL LAWS FOR THE INCORPORATION OF CITIES AND VILLAGES. SUCH LAWS SHALL LIMIT THEIR RATE OF AD VALOREM PROPERTY TAXATION FOR MUNICIPAL PURPOSES, AND RESTRICT THE POWERS OF CITIES AND VILLAGES TO BORROW MONEY AND CONTRACT DEBTS. EACH CITY IS GRANTED POWER TO LEVY OTHER TAXES FOR PUBLIC PURPOSES, SUBJECT TO LIMITATIONS AND PROHIBITIONS PROVIDED BY THIS CONSTITUTION OR BY LAW.

The distinction between "a general law" and "general laws" could be significant in that the 1908 Constitution clearly required the Legislature to provide one property tax rate limit and debt limit in the general law that authorizes the incorporation of cities or villages (with the limits subject to voter approval by adopting the local charter). The language in the 1963 Constitution could authorize the Legislature to grant tax and debt powers in several general laws which may or may not be incorporated into a municipal charter (and be subject to voter approval). An argument can be made that the constitutional scheme for local tax authority adopted in 1908 continued in effect after the adoption of the 1963 Constitution because the words "Such laws" in the second sentence of Article 7, Section 21 ("Such laws shall limit their rate of ad valorem property taxation....") refers to the "general laws for the incorporation of cities and villages" in the first sentence of Article 7, Section 21.

Clearly the framers of the 1963 Constitution intended that there be only one debt limit and one tax limit and that these be a part of a specific general law providing for the incorporation of cities or villages by charter. Again, the reason for such an arrangement is to insure that the voters are able to approve meaningful overall tax and debt limits when they vote on a charter. Since the adoption of the 1963 Constitution, the Legislature has authorized at least one tax (PA 127 of 1976 -- the garbage tax) which is not a part of the Home Rule Cities Act (and not subject to voter approval).

**The Court Interprets Article 7, Section 21.** In 1963, after the adoption of the new Constitution but before its effective date, the Supreme Court was called upon to rule on the constitutionality of a City of Detroit income tax ordi-

nance **(Dooley v City of Detroit).** In the decision the Court notes the adoption of a new Constitution -- *We observe in passing that Article 7 Section 21 of the Constitution of 1963, not yet effective, provides:*

*"The legislature shall provide by general laws for the incorporation of cities and villages. Such laws shall limit their rate of ad valorem property taxation for municipal purposes, and restrict the powers of cities and villages to borrow money and contract debts. Each city is granted power to levy other taxes for public purposes, subject to limitations and prohibitions provided by this Constitution or by law."*

*The second sentence is expressly applicable only to ad valorem taxes on property, the rate of which the legislature is required to limit. However, by the last sentence other taxes cities and villages are empowered by the new Constitution to levy are subject to limitations and prohibitions imposed by the legislature as well as by the Constitution itself.* (emphasis added.) The Court ruled that, in the absence of constitutional or statutory limits, the city income tax was legal.

**The 1963 Constitution and Property Tax Limits**

It is clear that both the 1908 and 1963 Constitutions provided for a 15- and 50-mill property tax limit. A new provision of the 1963 Constitution authorized a permanent increase in the 15-mill limit to 18 mills, and a fixed allocation of the constitutionally authorized (maximum 18-mill) tax rate by a vote of the county electorate. "Under procedures provided by law, which shall guarantee the right of initiative, separate tax limitations for any county and for the townships and for school districts therein, the aggregate of which shall not exceed 18 mills on each dollar of such valuation, may be adopted and thereafter altered by the vote of a majority of the qualified electors of such county voting thereon."

The "yensing" of the taxpayer occurs as a result of the exceptions provided in the 1963 Constitution to the 15- and 50-mill limits. The property tax limitation amendment adopted in 1932 exempted from the limits taxes imposed to repay debt obligations issued prior to 1932 and the taxes imposed by local governments with tax limits specified in a local charter ("... 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... when provided for by the charter of a municipal corporation..."). The wording in the 1963 Constitution was changed to read: "The foregoing limitations shall not apply to taxes imposed for the payment of principal and interest on bonds or other evidences of indebtedness or for the payment of assessments or contract obligations in anticipation of which bonds are issued, which taxes may be imposed without limitation as to rate or amount; or to taxes imposed for any other purpose by any city, village, charter county, charter township, charter authority or other authority, the tax limitations of which are provided by charter or by general law."

**The Court Interprets the Exceptions in Article 9, Section 6.** In 1972, the Supreme Court issued the first major decision concerning the exceptions to the 15- and 50-mill limits in Article 9, Section 6, of the 1963 Constitution **(Butcher v Township of Grosse Ile).** Faced with the question, Does Article 9, Section 6, permit a township to levy ad valorem taxes without limit as to rate or amount and without a vote of the township electorate, to pay an assessment imposed upon the township by a drainage district board under chapter

20 of the drain code?, the Court discovered *that an insidious "sleeper" has rested and now rests comfortably in the finance and taxation article of the Constitution of 1963. What if anything can be done about it is, of course, something else.*

Four justices signed the majority opinion and the other three justices wrote separate opinions; all four opinions provided different interpretations of the constitutional property tax limitation. All four opinions concluded that the 1963 provisions were not as limiting as those of the previous Constitution and that all local units (including "charter" units) could impose unlimited taxes for indebtedness. The majority opinion and two of the other separate opinions concluded that unlimited taxes for indebtedness can be levied without voter approval. Only Justice T. M. Kavanagh concluded that unlimited taxes for debt must be authorized by the voters.

Justice Black, writing for the majority, said: *My reluctantly inevitable answer is... that (the people) no longer have any of that former 1933-1963 elective control over the fact, extent, or amount of monetary obligations their local public officers may incur on strength of property taxes to be collected, and that all such "taxes may be imposed without limitation as to rate or amount." This is plain constitutional talk. The prodigal sky is now the* ***constitutional*** *limit and the only restraint left is that which the legislature may choose to impose upon local public debts -- whether they are authenticated by bonds or by "other evidences of indebtedness" -- when those debts are contractually made payable out of to-be-levied property taxation....*

*Yet no counsel has been willing to come right out and say what the second paragraph of section 6 plainly manifests; that there now is no* ***constitutional*** *bar against borrowing by local units on strength of taxes to be collected, whether that is done (a) by the issuance and sale of bonds, or (b) by the negotiation of "other evidences of indebtedness", or (c) for the "payment of assessments or contract obligations".*

*Whether the money borrowed is or is not to be used for operating expenses, "taxes imposed" to retire all such borrowing may be levied without limit as to rate or amount, subject only to legislative restriction, if any. I hold then, though loath, that Division 1 was right when it concluded: "We find that although plaintiffs' contentions as regards the 15-mill limitation would be correct if we were still acting under Const 1908, art 10, sec 21, under the present constitutional provision, Const 1963 art 9, sec 6, however, the limitation does not apply to taxes levied to discharge bonded indebtedness."*

In a concurring opinion, Justice Adams agreed that taxes imposed to repay bonds or other evidences of indebtedness of 15- and 50-mill units of government may be levied outside these limits. This opinion also stated that the "charter" unit exception in the second clause was granted because the local charter provides the property tax limits.

*Our task in this case is to construe the language of the Constitution of 1963, art 9, sec 6. We must construe and reconcile insofar as possible all of the language of sec 6. I agree with Justice Black that the language of the second paragraph of sec 6 in large measure cuts away the limitations the first paragraph appears to create. The first paragraph sets forth various limitations -- 15 mills, 18 mills, 50 mills, and 20 years. Paragraph 2 opens with the broad language, "the foregoing limitations shall not apply", -- and then, in separate clauses, two broad categories or classifications are stated as to which the foregoing limitations do not apply. The first clause is the one that concerns us here.*

*Before turning to it, it may be helpful to examine the language of the second clause which is:*

*"The foregoing limitations shall not apply... to taxes imposed for any other purpose by any city, village, charter county, charter township, charter authority or other authority, the tax limitations of which are provided by charter or by general law."*

*Because of this provision, the only tax limitations upon cities, villages, charter counties, charter townships, charter authorities, or other authorities, are limitations contained in the charter of the governmental unit or in the general law of the State of Michigan enacted by the legislature. There is no constitutional limitation....*

*While the last clause of the second paragraph specifically lists certain units of government -- cities, villages, charter counties, charter townships, charter authorities or other authorities -- and specifically omits from such listing counties, townships and school districts, there is no such enumeration of various forms of governmental units in the first clause. Consequently, it must be concluded that the first clause of the second paragraph applies across the board to all forms of governmental instrumentalities or units and that as to any and all such units of government the limitations of the first paragraph are not applicable as "to taxes imposed for the payment of principal and interest on bonds or other evidences of indebtedness or for the payment of assessments or contract obligations of which bonds are issued".*

In the opinion that attempts to afford the most protection against nonvoted taxes, Justice Kavanagh also stated that charter units are limited to the property tax rates authorized by the voters in the local charter: *I am of the opinion that the 15-mill limitation as applied to governmental units not coming under the designation of "city, village, charter county, charter township, charter authority or other authority" is a valid and binding constitutional limitation and that the "nonapplication" clause constitutes no exception to this constitutional limitation. In short, the unchartered defendants cannot tax or levy ad valorem property tax in excess of 15 mills without affirmative vote of qualified electors, where the general obligation bonds and/or debt service rests directly or indirectly upon ad valorem taxation....*

*I must, of course, take at face value the statement addressed to the people that "All bond issues of local units of government will have unlimited tax support." This, however, should not be misconstrued as a grant of power to tax. If it had been intended as such, it was well within the ability and experience of the drafters to so provide as they had in Const 1963, art 9, sec 16. I must, instead, recognize the prefatory remark in the Address that "local government bonds will have unlimited tax support,* ***thus permitting lower cost borrowing.***"

*How was this objective to be accomplished and yet not give local governments unbridled taxing power? To aid in analysis of this question, it is helpful to quote and examine the second clause of the nonapplication paragraph.*

*The law is plain and uncontested that because of this provision the only tax limitations "for any other purpose" upon cities, villages, charter counties, charter townships, charter authorities or other authorities are the limitations voted by the people which are incorporated in the charter of the governmental unit or those limitations enacted into law by the legislature. In short, there is no constitutional limitation upon these governmental units to impose taxes "for any other purposes." Three conclusions may and should be deduced....*

*First, the specific enumeration of certain governmental units -- cities, villages, charter counties, charter townships, charter authorities or other authorities -- specifically and intentionally omits unchartered counties, unchartered townships, and school districts. There is, of course no such enumeration of the various governmental units in the first clause of the second paragraph. Consequently, it must be concluded that the first clause of the second paragraph applies across the board to all forms of governmental units.*

*Second, the exclusionary provision of the second clause of the second paragraph states that the limitation shall not apply to taxes imposed "for any other purposes" by the cities, villages, etc. What are these "other purposes"? I understand the term "other purposes" to mean operational costs covered by operational millage....*

*The only limitation upon the operational costs and, conversely, operational expenditures by cities, villages, chartered counties, etc., is the limitation fixed by vote of the people in the charter. The operational costs and expenditures of the unmentioned governmental units, viz., unchartered counties, unchartered townships and school districts, are by necessary implication, and in the absence of any negativing or "nonapplication" clause, subject to the limitations set out in the first paragraph of art 9, sec 6.*

*Finally and most crucially, nothing in either the second clause of the second paragraph or the first paragraph read in its entirety negates the idea that, as in the past, the municipal power to tax remains limited and, in most instances, subject to referendum.*

*Initially, it is observed that unlike the state, the municipality has absolutely no inherent power to tax and any power of taxation must be delegated to it, either by the constitution itself or by the legislature. 1 Cooley, Taxation, sec 102 (4th ed). Our Court, cognizant of this fundamental principle, has of course held that the antecedent provision of the 1908 Const, art 10, sec 21, is "not a grant of power, but instead a constitutional limitation upon the exercise of the general power of taxation"....*

*Thus, the hotly disputed and controverted language must be construed in favor of the taxpayer in the sense that, although the power to tax has been delegated, it has not been delegated unconditionally or without limitation. To rule otherwise would violate every rule and canon pertaining to delegation of taxing authority.... I would again refer to Cooley's discussion concerning taxation by counties, sec 119 at 266:*

*"In determining the existence or extent of an alleged delegated power to tax, the statute must be strictly construed against the power to tax, and a delegation of power to tax for certain purposes will not be extended so as to authorize taxation for other purposes."*

*The application of such rule to the instant case avoids reading into our constitutional provision a patent absurdity; that the delegated power as to operational expenses would be limited and subject to vote of the people beyond those limits, and yet capital outlay expenditures would be unlimited and not subject to referendum. Any attempt to utilize such categories or devices by a municipality would be suspiciously viewed as an indirect evasion of tax limits. In short, "a limitation on a municipal levy for current expenses cannot be exceeded by using a different designation for such an expense." 1 Cooley, sec 169 at 371.*

*A further consideration which addresses our attention is that in both clause two of the second paragraph and the entire first paragraph referendum is an integral element in increasing taxes*

*within the limits established either by charter or fixed by the constitution. In fact, as relating to unchartered counties, etc., in the first paragraph it is notable that all of the alternatives proposed by the constitutional drafters -- whether it be an increase in excess of the 15-mill limitation, in the form of the "frozen millage" proposal or the "county option" 18-mill proposal -- provided for a vote of the involved taxpayers....*

*To accept defendants' argument that the taxpayers have no voice at the ballot box on bond issues, which may be both long and short term obligations, even though it increases the general ad valorem tax, renders the clear language of the constitution and the created categories of interested voters utterly meaningless. Cities and chartered units are, of course, controlled by vote on the charter provisions. The necessity of voter ratification is consonantly reflected in current, controlling legislation.*

*What is the net effect of our construction of Const 1963, art 9, sec 6, paragraph 2, clause 1? It means that* ***all*** *governmental units with power to tax, including those specified in paragraph 2 clause 2, viz., "city, village, charter county, charter township, charter authority or other authority," as well as unchartered units, are not limited, either as to rate or amount, as to tax imposed for capital outlay expenditures or bonded indebtedness, which is approved by the voters. As to operational expenditures, the maximum millage which may be levied is limited either by the charter provisions for those units subject to paragraph 2, clause 2 or to those unchartered units and school districts subject to paragraph 1 of section 6, in 15-18-50 millage.* (emphasis added.)

**The Difference Between Article 10, Section 21 (1908) and Article 9, Section 6 (1963).** Although the framers of the 1963 Constitution believed that Article 9, Section 6, continued in substance the 15- and 50-mill limits, the Court ruled in **Butcher** that there were significant differences. (The inability to determine the intent of the framers was due, in part, to the lack of debate on the wording of Article 9, Section 6. At one point, the Convention delegates voted to entirely remove the 15- and 50-mill provisions from the Constitution. Five days later, the wording appearing in the final document was introduced and approved with virtually no discussion.) The new language continued the concept that the operating millages of the so-called non-charter units of government (including unchartered counties, unchartered townships, and school districts) were subject to the 15- and 50-mill limits found in the first paragraph of Article 9, section 6.

The 1963 Constitution also continued, but significantly broadened, the second exclusion in the second paragraph, namely: that property taxes levied by charter units of government (including cities, villages, charter counties, charter townships, charter authorities or other authorities) for operating purposes were not subject to the 15- and 50-mill limits. The broad language "charter authorities or other authorities" used in the 1963 Constitution, in effect, ratified the "amendment-eroding decisions" issued by the Supreme Court in the early 1950's (and overturned the 1958 Bacon decision) by authorizing the Legislature to create taxing authorities not subject to constitutional tax limits. The tax limits of these so-called charter units are found in voter-approved charters.

It is of interest to note, however, that PA 90 of 1976 authorized the governing body of a general law township with 5,000 or more residents to incorporate as a charter township without a vote of the township electors. Voter approval of the incorporation was required only if referendum petitions

were signed by the requisite number of township electors. Thus, a local unit subject to the constitutional limit could remove the limit by a simple majority vote of the unit's governing body. Some of the other charter authorities created by the legislature include: community colleges; Huron-Clinton Metropolitan Authority; intermediate school districts (except for millage allocated from within the 15- or 18-mill limit); and a library established by a city, village, or township under PA 164 of 1877 (granted "authority" status in 1986).

The other major change occurring in the 1963 Constitution involves taxes levied to repay debt. Under the first exclusion in the second paragraph, the taxes imposed by all local units (both chartered and unchartered) for the payment of principal and interest on bonds or other evidences of indebtedness, or for the payment of assessments or contract obligations in anticipation of which bonds are issued, are also outside the constitutional limits. These taxes may be imposed without limitation as to rate or amount to repay the debt. In fact, the Court ruled in 1973 that an operating deficit (considered by the Court as "an other evidence of indebtedness") could be repaid with taxes imposed outside the 15- and 50-mill limit **(Advisory Opinion re Constitutionality of 1973 PA 1 and 2)**. Under the 1908 Constitution, taxes levied to repay bonds and other evidences of indebtedness issued by charter units were outside the constitutional limits but debt taxes imposed by noncharter units were levied from within the 15-mill limit or, with voter approval, from within the 50-mill limit.

**Debt Limits and The 1963 Constitution**

As noted earlier, the 1963 Constitution continued to require the Legislature to restrict the power of cities and villages to contract debts. In addition, Article 7, Section 11, of the Constitution provided that: "No county shall incur any indebtedness which shall increase its total debt beyond 10 percent of its assessed valuation." In 1969, the Legislature amended the Revenue Bond Act to provide that: "As additional security... a public corporation, by a majority vote of the members-elect of its governing body, may include as a part of the ordinance authorizing the issuance of such bonds a pledge of its full faith and credit for payment of the principal of and interest on such bonds.... If the net revenues primarily pledged... are... insufficient... the public corporation shall be obligated to pay the bonds and interest thereon in the same manner... as other general obligation bonds... including the levy, when necessary, of a tax on all taxable property thereon without limitation as to rate or amount.... No bond or coupon issued pursuant to this act shall be a general obligation or constitute an indebtedness of the borrower unless its full faith and credit are so pledged. Whether or not a public corporation pledges its full faith and credit for the payment of bonds issued pursuant to this act, the amount of the bonds shall not be included in computing the net bonded indebtedness of the public corporation for the purposes of debt limitations imposed by any statutory or charter provisions." (emphasis added.) At the time, the act defined a public corporation to include a county, city, village, township, school district, port district or metropolitan district, any combination authorized to act jointly, or any authority created by the Legislature.

This amendment in effect authorized these units to pledge their full faith and credit and unlimited taxing authority to repay revenue bonds, without the bonded debt counting toward any debt limits. However, an earlier Supreme Court decision **(Young v City of Ann Arbor)** had said: "The term indebtedness may be said to include obligations of every character whereby a municipal-

ity agrees, or is bound, to pay a sum of money to another." In 1972, the Court was called upon to redefine the term "debt" and relied heavily on the **Young** decision **(Alan v Wayne County)**.

In 1971, Wayne County and the Wayne County Stadium Authority attempted to sell $126 million in "revenue bonds" to finance the construction of a baseball stadium. The county signed an agreement with the authority to lease the proposed stadium. The lease included three significant covenants, which were summarized by the Court: *First, the county obligated its full faith and credit to pay a "Fixed Rental" to the Stadium Authority for the stadium equivalent to the debt service of $371 million on a bond issue which the Authority was to issue. Second, the county covenanted that the bondholders should have the power to enforce the covenants in the Lease, including the county's covenant of its full faith and credit to pay the fixed rental equivalent to the debt service. Third, the county unconditionally covenanted to pay that fixed rental whether the stadium was completed, destroyed, or whatever.* The plaintiff sued claiming that incurring the indebtedness to construct the stadium was in violation of the law in that although the bonds were supposed to be "revenue bonds" in nature, in the hands of the bondholders they would become "unlimited tax bonds." The Court agreed and ruled that the stadium bonds were illegal because the Stadium Authority had no statutory or constitutional power to issue "non-revenue bonds" and that any general obligation bonds issued by a county must be subject to debt limitations.

In the **Alan** decision, The court cited the 1934 decision in **Young v Ann Arbor**: *In conclusion, this Court in effect created a constitutional definition of a "self-liquidating revenue bond" under Act 94 and constitutional debt limits. Bonds issued under Act 94 do escape inclusion as "debt" not simply because they have been issued under Act 94, but rather because of the character of the bonds required by Act 94:*

*A continuing line of cases since **Young** reaffirm the principle that as a **constitutional definition**, "self-liquidating revenue bonds" do not obligate the general taxing power and hence do not create a debt subject to debt limitations....*

*We do not know whether this unconditional contract debt [for the Wayne County Stadium] would raise total county debt above ten per cent of assessed valuation but the approval of the Municipal Finance Commission was premised upon this obligation not being debt. That approval is consequently without legal effect and the bonds are illegal since approval is required as a condition precedent to their issuance by section 27 of Act 94....*

The Court then provided a summary of constitutional and statutory debt rules.

*A. CONSTITUTIONAL "INDEBTEDNESS"*

*The provision we are concerned with here is Const 1963, art 7, sec 11... In construing this section we are mindful of Const 1963, art 7, sec 34, which states: "The provisions of this constitution and law concerning counties... shall be liberally construed in their favor. Powers granted to counties... by this constitution and by law shall include those fairly implied and not prohibited by this constitution."*

*However, we must also pay heed to the historic rule that powers of municipalities involving the imposition of public burdens should be strictly construed....*

*From that duty comes what we have called in **Lockwood v Commissioner of Revenue**, the "most pressing rule" of constitutional construction: "We come*

*face to face, then, with what has been termed "the most pressing rule for constitutional construction," namely, that "the provisions for the protection of life, liberty and property are to be largely and liberally construed in favor of the citizen."*

*In* ***Young****, we said "revenue bonds" were not "debt" because the creditor as obligee would have no recourse against the municipality....*

*We believe the constitutional phrase "any indebtedness" also requires a broad construction so as to include the so-called "secondary obligation" of counties when they back up the bonds of other units of government with a pledge of full faith and credit.*

*The convention comment to Const 1963, art 7, sec 11 indicates that the inclusion of these secondary obligations as "indebtedness" was clearly in mind. That, in fact, was the main reason the county debt limit was raised from three percent to ten percent of assessed valuation.... The county's pledge of credit behind "revenue bonds" is within Const 1963, art 7, sec 11 to the extent pledged. Anything to the contrary in statutes or previous case law is of no effect....*

*We also give notice that the responsibility for seeking determination of what is indebtedness does not rest merely in the lap of chance that someone may contest the issuance of bonds or the incurring of some other obligation.*

*The governmental units who may incur "obligations" and the Municipal Finance Commission who must approve some of these obligations (i.e. those which involve certain kinds of bonds) are forewarned that this Court will not bend and twist the constitution in response to emergencies or pleaded necessity. We will not construe "debt" to mean something just below whatever the aggregate total of obligations a particular distressed municipality has. We will construe debt to mean what the people intended it to mean regardless of its effect on municipal contracts, debts, liabilities, bonds etc.*

*However nicely a transaction is labeled we will look through labels to substance. The constitution was not adopted for the benefit of specialists or technicians. It was adopted by and for the people. We must all consider it in that light and act accordingly. This Court certainly intends to.*

The Court noted that this decision requiring a strict interpretation of municipal debt might conflict with earlier court decisions on the subject. Consequently, the Court said: *The impact of our holding on previous bond issues is not before this Court but whether or not they are valid under the law as stated herein, the rights of* ***bona fide*** *purchasers of such bonds to be paid according to the tenor of the obligations cannot be impaired by the holding of this opinion....*

*B. STATUTORY*

*It is clear that the Constitution not only in art 7, sec 11 but elsewhere (e.g. art 7, sec 2) has spoken to debt limitations. The meaning of debt in the constitution cannot be altered by legislative action.*

*On the assumption that Act 31 could have authorized the stadium bonds, which we have held it can not, the question is whether it could establish a different debt limit from that already contained in MCLA 46.7 (the statute granting general powers to counties). We conclude that the Legislature has the authority to establish or alter debt limitations for unchartered counties within the 10% limit of art 7, sec 11.*

In a footnote immediately following, the Court said: *As to chartered counties the Legislature is under a consti-*

*tutional duty to restrict their power to borrow money and contract debt. See Const 1963 art 7, sec 2. The Legislature is under a similar duty with respect to cities and villages under Const 1963 art 7, sec 21. As to chartered counties, cities and villages therefore any statute which provides an unlimited ability to contract "debt" would be in violation of the constitutional provision requiring the Legislature to limit the ability of these entities to contract debt.* (emphasis added.)

*We now consider... defendants' arguments... whether (a) revenue bonds and (b) tax bonds are subject to or excepted from the limitations of Const 1963, art 9, sec 6.*

*A. Revenue Bonds*

*The exceptions to the first paragraph of art 9, sec 6 are enumerated in the second paragraph in the language quoted above. The critical words are here repeated: "The foregoing limitations shall not apply to* ***taxes imposed****... for the payment of... contract obligations in anticipation of which bonds are issued."*

*Since revenue bonds, including those issued under Acts 31 and 94 in connection with governmental rentals, are in no way tax obligation bonds, payment of rents under Act 31 and 94 bonds are a part of the municipality's normal operating expenses and must come from the municipality's normal revenues, whether they are Federal or state grants, excises or ad valorem taxes, or whatever....*

*Since normal taxes for operating purposes are subject to art 9, sec 6 limitations, likewise any ad valorem taxes producing the municipality's funds from which rents are paid in revenue bond situations must be and are subject to art 9, sec 6 limitations.*

*Acts 31 and 94 authorize the issuance of revenue bonds solely,... Therefore all Act 31 and 94 bonds... are subject to the limitations of art 9, sec 6 for the reasons herein noted....*

*B. Tax Bonds....*

*Reference to the language of art 9, sec 6 quoted above would indicate that all tax bonds where the taxes were imposed for the payment of any of the indicated categories would be free of the limitations in the first paragraph of art 9, sec 6. However, they would all be subject to the 10% limitation of art 7, sec 11.*

*If that part of section 11 of Act 31 above quoted purports to remove the revenue bonds issuable under Acts 31 and 94 from the millage limitations of art 9, sec 6, it is invalid. If it purports to free tax bonds from such limitations, since Acts 31 and 94 do not authorize tax bonds it is of no force and effect.*

In summarizing the decision, the Court said: *As long and complicated as this opinion is, it only begins to reflect the number and scope of the problems that have developed in the structure and practice of our municipal finance law since the adoption of the Constitution of 1963. Some of the problems brought pointedly to light by the accident of this stadium bond case could have been avoided, or at least mitigated, had there been a more searching inquiry in the Municipal Finance Commission and in the few and far-between cases that have arisen in the courts in the past.*

*There is a philosophy that cases should be disposed of by decision on the narrowest possible grounds only. This philosophy is often the part of judicial wisdom and good public policy, especially in an area of finely honed legal distinctions. However, in the apparent chaos and confusion in the field of municipal finance law unearthed in this case, such a narrow*

*view of our duty would be a retreat from responsibility and a pusillanimous public policy. There is here great need for the most comprehensive and the best directions possible to give guidance to administration and practice. Such directions are imperative to reduce the amount of future litigation necessary to establish a reasonably understandable and practical, if not precise, framework within which those concerned can operate in the future. It is for this reason that we have explored a number of issues, each of which would have been equally dispositive of the case, but all of which involve necessary check points for guidelines for the future.*

*Despite our consideration of and ruling on a number of important issues in this case, we have not, nor in the nature of things could we have, fashioned a diamond-cut-sharp template to control all practice and administration for all time to come in this labyrinthian welter of legislation, where the Municipal Finance Commission has been unable to serve either the hopes or the purposes of its original incorporators. Consequently, until the Legislature can bring order out of chaos in this field, so vital to state and local finances and to the concerns of the taxpayer, we declare that the equitable doors of this one court of justice are wide open for direct actions by taxpayers for injunctive protection against more levies "without limitation as to rate or amount" whenever they are able to plead and prove a case of confiscation or irreparable injury.*

In the **Alan** decision, the Court reaffirmed that "indebtedness" includes all instrumentalities that obligate the municipality to make payment upon maturity. The Court noted that the Legislature is under a constitutional duty to restrict the power of chartered units of government to borrow money and contract debt. The Court said that any statute which provides an unlimited ability to contract debt would be in violation of the constitutional provision requiring the Legislature to limit the ability of these entities to contract debt.

Despite this 1972 Supreme Court ruling, the Legislature in 1973 amended the Home Rule Cities Act (PA 81), the Incorporation of Villages Act (PA 80), and the Charter Township Act (PA 83) to allow these governmental units to contract certain types of debt without limitation, even though the debt instruments were a general obligation of the issuing governmental unit. Specifically, the Home Rule Cities Act was amended to provide as follows: "In computing the net bonded indebtedness for the purposes hereof, the following shall not be included:

1. bonds issued in anticipation of the payment of special assessments, even though they are also a general obligation of the city;

2. bonds issued to refund monies advanced or paid on special assessments for water main extensions;

3. motor vehicle highway fund bonds even though they are also a general obligation of the city;

4. revenue bonds;

5. bonds issued or contract or assessment obligations incurred to comply with an order of the water resources commission or a court of competent jurisdiction; and

6. obligations incurred for the water supply, sewage, drainage, or refuse disposal projects necessary to protect the public health by abating pollution."

Similar exclusions were adopted for villages and charter townships. It should be noted that municipal finance

officials believe that judgment bonds may be issued outside debt limitations because of the provisions in No. 5 above: "bonds issued... to comply with an order of... a court of competent jurisdiction." Since judgment bonds are an obligation whereby a municipality agrees, or is bound, to pay a sum of money to another, this interpretation clearly conflicts with previous Supreme Court rulings on local government debt.

In addition to amending the law to permit local governments to contract general obligation debts without limit, the Legislature authorized cities, villages, and charter townships to contract these debts without voter approval. Prior to the 1973 amendment, the Home Rule Cities Act provided that: "No city shall have power to... authorize any issue of bonds... unless approved by a majority of the electors voting thereon...." There were relatively few exceptions to this requirement, such as refunding bonds, emergency bonds, and bonds issued in anticipation of taxes actually levied. In 1973, the Legislature included in the list of exceptions "bonds which the legislative body is authorized by a specific statute to issue without vote of the electors." Many of the statutes that authorize the bonds exempted from the debt limits identified above also authorize the issuance of these bonds without voter approval.

Since 1941, the Home Rule Cities Act also had provided that no city had the power to issue any bonds without a public notice of and the opportunity for a public referendum on the bond issue. The only exceptions to this requirement were refunding bonds and revenue bonds. In 1973, the Legislature amended the Home Rule Cities Act to exempt from public notice and a referendum motor vehicle highway fund bonds, rehabilitation bonds, judgment bonds, and bonds issued to comply with an order of a court of competent jurisdiction. The bonds in each of these new exemptions pledge the full faith and credit and unlimited power of taxation of the issuing jurisdiction. The amendments adopted in 1973 authorizing cities, villages, and charter townships to contract debt without limitation and voter approval, and without public notice and voter referendum in cities, remain in effect today.

Justice Black authored a concurring opinion in the **Alan** case that included the following passage: *The injunction we have affirmed will of course arrest permanently any and all levies of property taxes which the confederate defendants have undertaken to authorize. But that injunction will not check or inhibit further tricky legislation veneered by the phrase "within the meaning of section 6 of article 9 of the constitution." Nothing short of immediate legislative submission to the people, of another adjusted-to-date "15-mill amendment", will restrain the perpetration of more such amercements of property taxpayers, many of whom realize they are being steadily fleeced by the shadowy advancement and manipulation of resolutions, contracts, leases, "evidences of indebtedness", ordinances, charters, statutes, progressively cute amendments of statutes and huge "revenue bond" issues, all keyed behind the scenes to property taxation "without limitation as to rate or amount". Yet, as discovery of bilk usually comes too late and the rights of bona fide purchasers intervene, these taxpayers have no remedy or recourse.* Despite the urging of Justice Black, the Legislature failed to submit to the people a 15-mill amendment. The people, however, took matters into their own hands by successfully circulating an initiative petition to, among other things, amend Article 9, Section 6, of the 1963 Constitution.

## The Second Property Tax Revolt
## (Hell Hath No Fury Like A Taxpayer Yensed)

In 1978, the voters approved an amendment to the 1963 Constitution that established an overall maximum limitation on the amount of state taxes and revenues, limited state expenditures, required a proportion of state revenues be paid to local governments, and prohibited local governments from imposing new taxes or increasing the rates or bases of existing taxes without voter approval, except taxes imposed to repay previously issued debt obligations. Commonly referred to as the "Headlee Amendment," this initiative petition closed the 15- and 50-mill limitation exception in paragraph 2, clause 1 of Article 9, Section 6, that the **Butcher** case had exposed.

The amendment changed paragraph 2, clause 1 to read as follows: "The foregoing limitations shall not apply to taxes imposed for the payment of principal and interest on bonds **approved by the electors** or other evidences of indebtedness **approved by the electors** or for the payment of assessments or contract obligations in anticipation of which bonds are issued **approved by the electors**, which taxes may be imposed without limitation as to rate or amount...." (emphasis added.) Unlimited taxes without voter approval could continue to be imposed to repay bonds issued prior to the adoption of the amendment. Bonds issued subsequent to the amendment, however, required voter approval if unlimited taxes were pledged to pay the debt service requirements. With the adoption of this amendment, therefore, the taxpayer once again had a voice at the ballot box on bond issues.

The amendment also added a new Section 31 to Article 9 that provided: "Units of Local Government are hereby prohibited from levying any tax not authorized by law or charter when this section is ratified or from increasing the rate of an existing tax above that rate authorized by law or charter when this section is ratified, without the approval of a majority of the qualified electors of that unit of Local Government voting thereon.... The limitations of this section shall not apply to taxes imposed for the payment of principal and interest on bonds or other evidences of indebtedness or for the payment of assessments or contract obligations in anticipation of which bonds are issued **which were authorized prior to the effective date of this amendment.**" (emphasis added.) It has been argued that the word "authorized" (section 6 says "issued") in the preceding sentence could be construed to mean that if the local unit had pre-Headlee authority to issue bonds without voter approval, such authority would continue and that the limitation would apply only to any new bonding authority granted to the local unit. Since the Supreme Court ruled in **Butcher** that paragraph 2, clause 1 in the original version of Article 9, Section 6, applied to all local units of government (both charter and noncharter units), the new limitations adopted in 1978 should apply as well. Shortly after the amendment was adopted, the Attorney General issued an opinion stating that all general obligation municipal bond issues must be approved by the voters. Thus far, no Michigan appellate court has ruled directly on this question. However, in a 1983 case involving the imposition of property taxes in excess of the 50-mill limitation by a nonchartered township (Tax Committee v Grosse Ile Township), the Michigan Court of Appeals did say: *After the Headlee amendment had been ratified, the "charter" exceptions were limited for the first time by the*

*necessity of gaining electorate approval for new or increased taxes. Const 1963, art 9, sec 6. Thus, it appears that the only effect the Headlee amendment had upon section 6 was to impose the additional requirement of electorate approval before the exceptions to the 50-mill limitation would be operative.* (emphasis added.) Prior to this decision, a federal district court ruled in 1980 that unlimited taxes without voter approval could be imposed by the court under the Drain Code and the Court Ordered Bond Act because these acts were in existence before the adoption of Section 31 of the Headlee Amendment.

**Post-Headlee Judgments**

Since the adoption of the Headlee amendment in 1978, there has been one decision by the Michigan Court of Appeals on the interaction between the court-ordered judgment levies authorized in the Revised Judicature Act and the new tax limitations in Article 9, Section 31. In this 1979 case **(Pearsall v Williams)**, the court awarded a judgment against Lapeer County and the Lapeer County General Hospital for negligence because of brain damage suffered by a patient at the hospital. The county argued that the judgment levy violated the Headlee amendment requiring voter approval of any tax increase. Although somewhat limited in specific direction, the Court ruling held that the judgment statute and the tax limitation amendment must be construed together.

*Finally, defendant argues that the Parker decision failed to take into account the Headlee tax limitation amendment to the Michigan Constitution which prohibits units of local government from levying new taxes or increasing the rate of existing taxes without prior voter approval. It is defendant's position that the tax amendment creates secondary governmental immunity because the only way for a tort judgment against the county to be enforced is by way of an additional tax assessment which was prohibited by Headlee. We find defendant's contention without merit....*

*It is readily apparent that the amendment does not address itself to the question of governmental immunity. The courts, if at all possible, should avoid a construction of the amendment which would prevent or obstruct the satisfaction of lawful judgments. See* ***Morley Brothers v Carrollton Township Supervisor.***

The **Morley Brothers** case (discussed above on pages 15-16) involved the judgment statute and the original 15- and 50-mill limits adopted in 1932. In that case the Supreme Court said: *Admittedly there is some difficulty in reconciling the earlier statute requiring that the amount of a judgment must be assessed on the next tax roll with subsequent legislation enacted as a result of the adoption of the 15-mill tax limitation amendment. However, Act No. 62, Pub. Acts 1933, creating a tax allocation board in each county, supplements 3 Comp. Laws 1929 section 14690, but does not repeal it. These statutes must be read and construed together. While the earlier act (judgment statute) requires the supervisor to spread the amount of the judgments on the next assessment roll, under the later act (tax limitation statute) the county tax allocation board is given the power to decide how much millage shall be allocated for township purposes within the 15-mill limitation.*

In the **Pearsall** case, the Court of Appeals appeared to say that the judgment must be satisfied, but without violating any tax limitations.

## Where Local Government Constitutional Tax And Debt Limits Stand Today

As the above discussion has disclosed, the current constitutional tax and debt limitations on local units of government in Michigan are as follows:

* For noncharter units of governments, operating millage without voter approval is limited to a combined total of 15 mills. This limit may be increased to a total of not to exceed 50 mills for a period of 20 years with voter approval. Unlimited taxes in excess of the 15- and 50-mill limits may be levied to repay bonds issued, with voter approval, after December 23, 1978. Unlimited taxes in excess of the 15- and 50-mill limits may be levied to repay bonds issued, without voter approval, before December 23, 1978.

* For cities, villages, and charter counties, the Constitution requires that the general law that provides for the incorporation of these units also limit their powers of taxation, borrowing money, and contracting debts. Taxes imposed by these units are not subject to the 15- and 50-mill constitutional limitations, but rather to the limits provided in the general law and incorporated in the locally-adopted charter. Operating taxes imposed by the other so-called "charter authorities" are limited by state statute and/or voter approval, depending on whether the charter authority was created before or after December 23, 1978. As with noncharter units, unlimited taxes may be imposed by cities, villages, charter counties, and other charter authorities to repay bonds issued, with voter approval, after December 23, 1978. Unlimited taxes may be levied to repay bonds issued, without voter approval, before December 23, 1978.

There are several state statutes which authorize local government taxes and the contracting of debt that conflict with the spirit if not the letter of these limitations.

* The Constitution does not appear to countenance unlimited judgment levies authorized in the Revised Judicature Act to be imposed by a city, village, or charter county pursuant to a court order, in that it does not authorize the Legislature to permit these units to levy an unlimited property tax. In addition, the authorization for a judgment levy is not a part of the general law that provides for the incorporation of cities, villages, or charter counties. The same can be said for the local garbage tax (PA 127 of 1976). The Home Rule Cities Act authorizes a property tax of up to 20 mills for municipal purposes. The garbage tax authorization is not a part of the Home Rule Cities Act, and the 3-mill garbage tax is levied without voter approval and outside the 20-mill charter limit. It seems clear from the historic development of the constitutional scheme for local tax authority that the intent was to authorize the Legislature to grant and limit the power to tax within the context of the general law that provides for the incorporation of cities. That is, all property tax authority granted to cities by the Legislature is to originate in, and be limited by, the general law providing for the incorporation of cities. The Constitution was written this way to guarantee that all municipal taxing authority be subject to voter approval through the charter adoption and amendment process.

* Unlimited judgment levies authorized in the Revised Judicature Act to be imposed by a township, school district, or general law county pursuant to a court order without voter approval are difficult to reconcile with the 15-mill limit because the Constitution does not permit taxes exceeding 15 mills to be imposed without voter approval.

* Unlimited judgment bonds authorized in the Revised Judicature Act and the Court Ordered Bond Act to be issued by a city, village, or charter county pursuant to a court order conflict with Supreme Court rulings which state that the Constitution does not authorize the Legislature to permit these units to contract unlimited debt.

* Judgment bonds authorized in the Revised Judicature Act and the Court Ordered Bond Act to be issued by any local government pursuant to a court order without voter approval appear to be incompatible with the constitutional requirement for voter approval of any debt obligation issued after December 23, 1978, that pledges unlimited taxing authority.

* Debts authorized in the Home Rule Cities Act, Incorporation of Villages Act, and Charter Townships Act to be issued outside of any limitation and which impose an obligation on the issuing governmental unit conflict with Supreme Court rulings which state that the Constitution requires the Legislature to limit all forms of general obligation municipal debt.

* Since the Court has ruled that property taxes authorized in the Drain Code are subject to the 15- and 50-mill limits in nonchartered units, drain taxes imposed in charter units should be subject to the protection afforded taxpayers in charter units by the Constitution in lieu of the 15- and 50-mill limits, namely the property tax limits in the local charter. In addition, the drain taxes imposed by cities and villages are authorized by the Drain Code without limitation as to rate or amount, in spite of the constitutional provisions requiring the Legislature to establish limits. The law authorizing such drain taxes also is not a part of the general act providing for the incorporation of cities and villages, even though the constitutional scheme appears to require it.

* The taxing and/or bonding provisions in the County Public Improvement Act; Sewage Disposal, Water Supply and Solid Waste Management Act; and Sewage Disposal and Water Supply Districts Act appear incompatible with both the constitutional requirement that tax and debt limits be placed on cities, villages, and charter counties by the Legislature, and the constitutional limits on imposing taxes or issuing debts without voter approval by townships and general law counties.

As noted in the introduction of this report, judgment levies and judgment bonds imposed outside existing tax and debt limits have been ordered by the courts in a number of communities over the last several years. In addition, taxes are levied on and paid by taxpayers in many local communities in Michigan under the authority of the other statutes identified above, with the taxpayer unaware that these statutes might conflict with the Michigan Constitution. In our system of judicial review, the Michigan courts do not automatically pass judgment on all laws adopted by the Legislature.

The Court can determine if a statute is prohibited by the express language of

the Constitution or by necessary implication only when a statute is challenged. Under the current system, the responsibility to challenge taxes levied without voter approval falls on the individual taxpayer. The Court issued an invitation in the **Alan** decision by saying: *we declare that the equitable doors of this one court of justice are wide open for direct actions by taxpayers for injunctive protection against more levies "without limitation as to rate or amount" whenever they are able to plead and prove a case of confiscation or irreparable injury.*

## Reconciling Tax Limitations And The Payment Of Government Obligations

Although the only short-run solution to the imposition of property taxes without voter approval is challenges mounted by individual taxpayers, in the long-run the concept of tax limitation must be harmonized with the payment of legally incurred government obligations. This is especially true of taxes imposed pursuant to a court order requiring a judgment levy or the sale and repayment of judgment bonds. Unfortunately, the judgment statute has the potential to subvert the constitutionally prescribed fiscal system of local government whereby the local citizens give to the government a fixed amount of money from within which the government is to provide municipal services. This law makes possible a process whereby a profligate local government incurs obligations without limit and has the court present the past-due bill to the local citizens.

The imposition of taxes without the consent of the governed is certainly not a recent issue, as witnessed by a tea party that occurred in the Boston Harbor over two centuries ago. In Michigan, as long ago as 1879, the Supreme Court ruled in the case of **Wattles v City of Lapeer** that taxes cannot be levied in excess of the limit expressly fixed by law. While the Revised Judicature Act does not explicitly state that court-ordered judgments are to be imposed outside of voter-authorized limits, unfortunately this has become an accepted practice in recent years.

Property tax limits expressly fixed by law would be respected if the courts only authorized the tax collecting agent of the government to set aside a portion of the next regular property tax levy sufficient to satisfy the judgment. The judgment would be paid, therefore, from within the taxing authority granted by the voters. This would turn the judgment statute from what some have interpreted to be a law granting the judiciary independent taxing authority to a law granting the judiciary power to "garnishee" a part of the next property tax levy of the local government. It would also put local public officials on notice that they no longer have an unlimited charge account at taxpayer expense, and that they are required to finance government operations from within existing revenue sources.

The case of the Benton Harbor police-fire pension contribution on page 1 of this report can be used for illustrative purposes. If the city charter authorized a tax limit of 20 mills for municipal purposes, the Berrien County circuit court order could have required that 4.25 mills of the 20-mill property tax be contributed to the pension fund. The city would then have been required to finance municipal services with the remaining 15.75 mills, rather than being able to levy 20 mills for municipal purposes and an additional 4.25 mills for the pension fund. The satisfaction of the judgment, in effect, would become a first budget obligation in the

fiscal year following the judgment order. Under this arrangement, the legally incurred obligations of the government would have been satisfied without exceeding the voter-approved tax limits. This kind of harmonizing of the two requirements was set forth by the Michigan Supreme Court in the **Morley Brothers** decision in 1945 and continues to be referenced whenever the courts confront such an issue.

The Revised Judicature Act also authorizes the issuance of court-ordered bonds to satisfy judgments, and a similar concept can be used to harmonize the repayment of the bonds with voter-imposed tax limits. If a judgment is so large that a one-time garnishment would inflict financial hardship on the local government, the court could order the issuance of judgment bonds. Repayment of the principal and interest due each year on the bonds would become a first budget obligation -- to be paid from within existing taxing authority. The local government could seek voter approval of the bond issue, thereby pledging the full faith and credit (and unlimited taxing authority) of the issuing governmental unit. (This procedure was used by the Dearborn School District in 1985 to satisfy a judgment against the school district involving the overpayment of school property taxes by the Ford Motor Company.) Since any judgment bonds impose a direct obligation on the issuing governmental unit, these bonds should be subject to any voter-imposed debt limitation. If the unused debt authority within the limit is insufficient to satisfy the judgment, new bonds could be issued in concert with the retirement of previously issued debt.

This same procedure could be used for bonds issued to construct and maintain sewage systems, solid waste facilities, etc., under the Court Ordered Bond Act. As noted on page 17, the act currently authorizes local units to issue only revenue bonds (that do not impose any general obligation on the issuing municipality) when the local unit acts without a court order. There seems to be little justification for a court to order the issuance of full faith and credit bonds when revenue bonds (to be repaid from user charges) will serve the same purpose. In addition, the constitutional guarantee against the imposition of taxes without the consent of the voters would be protected if the Drain Code, the other acts highlighted in this report, and any other statutes that grant taxing authority required that these taxes be levied within constitutional, statutory, and charter limitations.

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— DATED MATERIAL —