1943

Constitution of Utah - 1943

Utah Code Annotated

CONSTITUTION OF UTAH

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PREAMBLE

Grateful to Almighty God for life and liberty, we, the people of Utah, in order to secure and perpetuate the principles of free government, do ordain and establish this CONSTITUTION.

1. Cabinet for Constitution.
Laws 1939, Ch. 128, directed the secretary of state to purchase or otherwise acquire an appropriate cabinet for the preservation and display of the originally engrossed Constitution of the State of Utah, to be suitably and permanently located in the state capitol building at Salt Lake City, and made an appropriation of $1,000 for such purpose.

2. Definition of Constitution.
The Constitution is a framework erected by sovereign people setting up a form of government whereby and through which they may act collectively in matters of common concern, wherein from their nature individual action would not be orderly or effective, matters in which all have a common interest but not necessarily a common point of view, remedy or solution. State v. Johnson, 100 U. 316, 114 P.2d 1034.

3. Construction of Constitution.

4. — inclusion of Constitution in "law."
In its broadest sense, "law," as used in Constitution, includes Constitution itself. State ex rel. Wells v. Tingey, 24 U. 225, 67 P. 33.

5. — grant or limitation of powers.
State Constitutions are mere limitations and not grants of powers. Salt Lake City v. Christensen Co., 34 U. 38, 95 P. 523, 17 L. R. A. (N. S.) 898.
Ordinarily, state constitutions are limitations on legislative power, and are not grants of power to legislature. Wadsworth v. Santaquin City, 83 U. 321, 28 P.2d 161. See also National Tunnel & Mines Co. v. Industrial Commission, 99 U. 39, 102 P.2d 508.

6. — proceedings of constitutional convention.
Proceedings of constitutional convention may be resorted to in aid of construction and interpretation of constitutional provision. Cooper v. Utah Light & Railway Co., 35 U. 570, 102 P. 202, 136 Am. St. Rep. 1075.

7. — construction by legislature.
When legislature, by its enactments, either expressly or impliedly construes provision of Constitution, courts, in doubtful cases, will accept construction thus given provision and enforce provision in accordance therewith, if ambiguous language of provision is such as admits of such construction. State ex rel. Wells v. Tingey, 24 U. 225, 67 P. 33; State ex rel. Breeden v. Lewis, 26 U. 120, 72 P. 388.

8. — substitution of one word for another.
It is rule of constitutional construction that where one word has been improperly used for another word, or word has been omitted, and context furnishes means of correction, proper word will be deemed substituted or supplied. White v. Rio Grande Western Ry. Co., 25 U. 346, 71 P. 593.

9. — in light of responsible necessities, conditions and circumstances.
Constitution is not to be interpreted alone by its words, abstractly considered, but by its words read in light of necessities and conditions in which its provisions originated and in view of purposes sought to be attained and secured. People ex rel. O'Meara v. City Council of Salt Lake City, 23 U. 13, 64 P. 460; Brummitt v. Ogden Waterworks Co., 33 Utah 285, 93 P. 829.

10. — intent.
It is rule of statutory construction, which may be applied with equal force in constitutional construction, that meaning of general words will be restricted whenever it is found necessary to do so in order to carry out intention of law-making power. State ex rel. Salt Lake City v. Eldredge, 27 U. 477, 76 P. 337.
Court must give effect to constitutional provisions according to their language and obvious intent. Utah Builders' Supply Co. v. Gardner, 86 U. 257, 42 P.2d 989, 103 A. L. R. 932, denying rehearing 86 U. 250, 39 P.2d 327, 103 A. L. R. 928.

11. — all language used to be given effect.
When possible, effect should be given to all of language used in constitutional provision. Halling v. Industrial Commission, 71 U. 112, 263 P. 78.

12. — same word used repeatedly.
Word repeatedly used in Constitution will be presumed to bear same meaning throughout Constitution, unless there is something to show that another mean-

ing was intended. State ex rel. Wells v. Tingey, 24 U. 225, 67 P. 33.

13. — provisos.
It is rule, which applies to construction of Constitution, that proviso should be confined to antecedent next preceding it, unless contrary intention clearly appears. State ex rel. Riter v. Quayle, 26 U. 26, 71 P. 1060.

14. — applicability of maxims.
Maxim "expressio unius est exclusio alterius" is not controlling in construing constitutional provision, but is only one of the aids to determine intention. Attorney General v. Pomeroy, 93 U. 426, 73 P.2d 1277, 114 A. L. R. 726.

15. — prospective operation.
Constitution should operate prospectively only unless words employed show clear intention that it should have retrospective effect. Mercur Gold Mining & Milling Co. v. Spry, 16 U. 222, 52 P. 382.

ARTICLE I

DECLARATION OF RIGHTS

Section 1. [Inherent and inalienable rights.]

All men have the inherent and inalienable right to enjoy and defend their lives and liberties; to acquire, possess and protect property; to worship according to the dictates of their consciences; to assemble peaceably, protest against wrongs, and petition for redress of grievances; to communicate freely their thoughts and opinions, being responsible for the abuse of that right.

Cross-references.
Enabling Act permitting adoption of Constitution, Enabling Act, § 1 et seq.; annotations on subject of police power, Const. Art. I, § 7.

1. Property rights.

2. — in general.
Rights guaranteed by this section are invaded when one is not at liberty to contract with others respecting the use to which he may subject his property or use or employ his time or talents, or the manner in which he may enjoy his property. Golding v. Schubach Optical Co., 93 U. 32, 70 P.2d 871.

3. — taking of property by succession.
Right to take property by succession is not absolute and may be qualified or made conditional by statute. In re Apostolopoulos' Estate, 68 U. 344, 250 P. 469, 253 P. 1117, 48 A. L. R. 1322.

4. — intoxicating liquors.
Former statute prohibiting possession of intoxicating liquors and abolishing property rights therein did not violate this section. State v. Certain Intoxicating Liquors, 51 U. 569, 172 P. 1050.

5. — tobacco.
The Cigarette Law does not infringe this section. State v. Packer Corp., 77 U. 500, 297 P. 1013, followed in 78 U. 177, 2 P.2d 114, aff'd 285 U. S. 105, 76 L. Ed. 643, 52 S. Ct. 273.

A. L. R. notes.
Street meetings, constitutionality of statute or ordinance prohibiting or regulating, 10 A. L. R. 1483; propaganda, legislation against political, social or industrial, 1 A. L. R. 336, 20 A. L. R. 1535, 73 A. L. R. 1494.

Sec. 2. [All political power inherent in the people.]

All political power is inherent in the people; and all free governments are founded on their authority for their equal protection and benefit, and they have the right to alter or reform their government as the public welfare may require.

A. L. R. notes.
Advertising matter, discrimination against nonresidents by statute or ordinance regulating distribution, 22 A. L. R. 1490.
Aliens, restricting right to bear weapons, 34 A. L. R. 63.
— statute precluding from acting as guardians, 39 A. L. R. 943.
Annexation of territory to municipality, equal protection in, 64 A. L. R. 1364.
Attorneys, prohibiting solicitation of business by or for, 53 A. L. R. 279.

— weight and dimensional restrictions, 72 A. L. R. 1004, 86 A. L. R. 281.
Natural gas, regulating exploitation or waste, 24 A. L. R. 307, 51 A. L. R. 280, 78 A. L. R. 834.
Old-age pensions, constitutionality, 86 A. L. R. 912.
Original package, requiring sale of medicines or drugs in, 54 A. L. R. 744.
Physicians and surgeons, discrimination based on school or method of treatment, 16 A. L. R. 709, 37 A. L. R. 680, 42 A. L. R. 1342, 54 A. L. R. 600.
Picketing, statute or ordinance forbidding, 35 A. L. R. 1200.
Plumbers and plumbing, statutes regulating, 36 A. L. R. 1342, 57 A. L. R. 136.
Primary election, exclusion from being candidate or participating in, 70 A. L. R. 1501, 88 A. L. R. 473.
Private employee, statute relating to absence, 28 A. L. R. 616.
Propaganda, legislation against political, social or industrial, 1 A. L. R. 336, 20 A. L. R. 1535, 73 A. L. R. 1494.
Public improvement, statute or ordinance denying right of protest by property owners, 52 A. L. R. 883.
Public officials or employees, statutes authorizing garnishment of salaries or wages of, 22 A. L. R. 760.
Public utilities, statutes providing for consolidation, 66 A. L. R. 1568.
Punishment for same offense, discrimination based on age, color or sex, 3 A. L. R. 1614, 8 A. L. R. 854.
Railroad employees, statutes prescribing qualifications, 58 A. L. R. 569.
Rent laws, constitutionality, 11 A. L. R. 1252, 16 A. L. R. 178.
Reputation, statute predicating criminality upon, 92 A. L. R. 1228.
Sales tax, validity, 89 A. L. R. 1432.
School pupils, transportation at expense of public, 63 A. L. R. 413.
Secret societies, constitutionality of statutes relating to, 43 A. L. R. 914.
"Service letter" acts, constitutionality, 27 A. L. R. 39.
Small loans business, regulation, 69 A. L. R. 581.
Soft drinks, regulation of ingredients, 41 A. L. R. 931.
Sterilization of mental defectives, 40 A. L. R. 535, 51 A. L. R. 862, 87 A. L. R. 242.
Street meetings, statute or ordinance prohibiting or regulating, 10 A. L. R. 1483.
Sunday laws, discriminations in, 8 A. L. R. 566, 20 A. L. R. 1114, 46 A. L. R. 290, 48 A. L. R. 178, 62 A. L. R. 642.
Telegraph companies, imposing absolute liability on, 53 A. L. R. 875.
Trading-stamp legislation, constitutionality, 26 A. L. R. 721.
Trapping animals, statutes to prevent cruelty, 79 A. L. R. 1308.
Usury, denying defense of to corporations, 43 A. L. R. 18, 74 A. L. R. 209.
Wage claim against insolvent, statutes granting lien or preference, 94 A. L. R. 1287.
Wages, penalizing delay in paying, 12 A. L. R. 612.
— regulating time for payment, 12 A. L. R. 614, 26 A. L. R. 1396.
Water companies, population as basis of classification or discrimination in legislation respecting, 45 A. L. R. 1170.
Weights and measures, statute or ordinance requiring commodities to be sold in specified quantity or weight, 6 A. L. R. 436, 26 A. L. R. 28, 90 A. L. R. 1290.
Wholesale produce dealers, regulations affecting, 48 A. L. R. 450.
Workmen's compensation acts, constitutionality of provisions limiting application to residents of state, 12 A. L. R. 1207.
— various features as denying equal protection, 28 A. L. R. 1222, 35 A. L. R. 1061, 53 A. L. R. 1292, 79 A. L. R. 678.

Sec. 3. [Utah inseparable from the Union.]

The State of Utah is an inseparable part of the Federal Union and the Constitution of the United States is the supreme law of the land.

1. Governmental status of Utah.

State of Utah is, but Territory of Utah was not, sovereignty. State ex rel. Bishop v. McNally, 13 U. 25, 43 P. 920.

Government of State of Utah is not continuation of government of Territory of Utah but is separate and distinct therefrom. State ex rel. Bishop v. McNally, 13 U. 25, 43 P. 920.

Sec. 4. [Religious liberty.]

The rights of conscience shall never be infringed. The State shall make no law respecting an establishment of religion or prohibiting

the free exercise thereof; no religious test shall be required as a qualification for any office of public trust or for any vote at any election; nor shall any person be incompetent as a witness or juror on account of religious belief or the absence thereof. There shall be no union of Church and State, nor shall any church dominate the State or interfere with its functions. No public money or property shall be appropriated for or applied to any religious worship, exercise or instruction, or for the support of any ecclesiastical establishment. No property qualification shall be required of any person to vote, or hold office, except as provided in this Constitution.

Cross-references.
Religious toleration, Const. Art. III; school system, 75–1–4.

1. Christianity as part of common law.
In its general incidents, Christianity has been declared to be part of common law. Hilton v. Roylance, 25 U. 129, 69 P. 660, 58 L. R. A. 723, 95 Am. St. Rep. 821; Stewart v. Hilton, 25 U. 160, 69 P. 1134; Matter of Estate of Park, 25 U. 161, 69 P. 671.

2. Applicability of section to election contests.
Election contest under 25–14–5 is maintainable on ground that certain voters were compelled to vote contrary to their wishes and that the number of such votes was sufficient to change result of election. (It was alleged in complaint that voters were compelled to cast their votes in a designated manner by their church and that this was in violation of provisions of this section of Constitution respecting separation of church and state, but court was of opinion that this section of Constitution was not germane to the election contest.) Ewing v. Harries, 68 U. 452, 250 P. 1049.

A. L. R. notes.
Appeal to religious prejudice as ground for new trial or reversal, 78 A. L. R. 1438.
Bigamy, religious belief as defense, 24 A. L. R. 1237.
Deed discriminating or imposing restrictions against persons on account of religion, 9 A. L. R. 120, 38 A. L. R. 1185, 66 A. L. R. 531.
Jury list excluding members of religious sect, 52 A. L. R. 922.
Religious prejudice of juror in criminal case, 73 A. L. R. 1215.
Requirement of vaccination of school children as invasion of right to religious liberty, 93 A. L. R. 1431.
Right to interrogate juror as to prejudice for or against witnesses of particular religious denomination, 1 A. L. R. 1689.
Sectarianism in schools, 20 A. L. R. 1351, 57 A. L. R. 195.

Sec. 5. [Habeas corpus.]

The privilege of the writ of *habeas corpus* shall not be suspended, unless, in case of rebellion or invasion, the public safety requires it.

Cross-references.
Statutory provisions, 104–65; jurisdiction of Supreme Court, Const. Art. VIII, § 4, and 20–2–2; jurisdiction of district court, Const. Art. VIII, § 7, and 20–3–4.

A. L. R. notes.
Whether habeas corpus is a civil or criminal remedy as affecting state's right to appeal from discharge, 10 A. L. R. 401, 30 A. L. R. 1323.

Sec. 6. [Right to bear arms.]

The people have the right to bear arms for their security and defense, but the Legislature may regulate the exercise of this right by law.

A. L. R. notes.
Constitutionality of statutes restricting alien's right to bear arms, 24 A. L. R. 1119, 34 A. L. R. 63.

Sec. 7. [Due process of law.]

No person shall be deprived of life, liberty or property, without due process of law.

Cross-reference.
Eminent domain generally, 104–61.

1. Definitions.

2. — life, liberty and property.
Words "life, liberty, and property," are to be taken in their broadest sense as indicative of the three great subdivisions of all civil right. McGrew v. Industrial Commission, 96 U. 203, 85 P.2d 608.

The right to make or enter into a contract is not an economic right; it is a matter of civil or political liberty and comes under the liberty provision of the due process clause of the Constitution and not under the property provision, since it is not a property right. McGrew v. Industrial Commission, 96 U. 203, 85 P.2d 608.

3. — due process of law.
"Due process of law" comes to us from the Great Charter and is synonymous with "law of the land." It means that a party shall have his day in court—trial. Jensen v. Union Pac. Ry. Co., 6 U. 253, 21 P. 994, 4 L. R. A. 724.

Due process of law requires that notice be given to the persons whose rights are to be affected. It hears before it condemns, proceeds upon inquiry, and renders judgment only after trial. Riggins v. District Court of Salt Lake County, 89 U. 183, 217, 51 P.2d 645.

4. Scope of provision.
Administrative process of the customary sort is as much due process of law as judicial process. Jenkins v. Ballantyne, 8 U. 245, 249, 30 P. 760, 16 L. R. A. 689.

Due process of law is not necessarily judicial process. People v. Hasbrouck, 11 U. 291, 39 P. 918.

Judgment against defendant, not served with process and not appearing either in person or by attorney, would not be due process of law. Blyth & Fargo Co. v. Swenson, 15 U. 345, 49 P. 1027.

Right to acquire, possess and protect property is subject to police power of state. State v. Briggs, 46 U. 288, 146 P. 261.

It is elementary that there can be no judicial action affecting vested rights that is not based upon some process or notice whereby the interested parties are brought within the jurisdiction of the judicial tribunal about to render judgment. Parry v. Bonneville Irr. Dist., 71 U. 202, 207, 263 P. 751.

"Due process of law" requires that, before one can be bound by a judgment affecting his property rights, some process must be served upon him which in some degree at least is calculated to give him notice. Naisbitt v. Herrick, 76 U. 575, 584, 290 P. 950.

5. What constitutes property.

6. — in general.
Property is the right of any person to possess, use, enjoy and dispose of a thing, the term often being used to indicate the res or subject of the property, rather than the property itself. McGrew v. Industrial Commission, 96 U. 203, 85 P.2d 608.

Property embraces all valuable interests which a man may possess outside of himself, that is to say, outside of his life and liberty. It is not confined to mere tangible property, but extends to every species of vested right. McGrew v. Industrial Commission, 96 U. 203, 85 P.2d 608.

The right to work, the right to engage in gainful occupations, and the right to receive compensation for one's work are essentially property rights, as is the right to enjoy the benefits resulting from the work of one so employed, and the right to engage in commerce or legitimate business. McGrew v. Industrial Commission, 96 U. 203, 85 P.2d 608.

7. — animals.
A dog is "property" within meaning of this section. Jenkins v. Ballantyne, 8 U. 245, 30 P. 760, 16 L. R. A. 689, applying Federal Constitution.

8. Police power.

9. — in general.
Police power is not necessarily derived from Constitution but is inherent in state. State ex rel. Cox v. Board of Education of Salt Lake City, 21 U. 401, 60 P. 1013.

State's police power is exercised to promote health, comfort, safety, good morals, and general welfare of people. State ex rel. Cox v. Board of Education of Salt Lake City, 21 U. 401, 60 P. 1013.

The state, or a political subdivision thereof, may not, in the exercise of the police power, take or destroy private property for public use without compensation, where the property is not per se injurious or obnoxious to public health. Bountiful City v. De Luca, 77 U. 107, 121, 292 P. 194, 72 A. L. R. 657. But see concurring opinions of Folland, J., and Cherry, C. J.

Mere declaration by legislature that an act is within exercise of police power is not binding on courts unless act is within scope of such power. Utah Manufacturers' Ass'n v. Stewart, 82 U. 198, 23 P.2d 229.

10. — state's power to surrender or limit.

Police power is power which state cannot surrender. State ex rel. Cox v. Board of Education of Salt Lake City, 21 U. 401, 60 P. 1013.

Legislature may not by any contract limit the exercise of the police power to the prejudice of the general welfare. Utah Manufacturers' Ass'n v. Stewart, 82 U. 198, 23 P.2d 229.

11. Particular statutes, ordinances, subjects, and instances.

12. — agriculture.

13. — — milk control acts.

Milk Control Act, vesting state board of agriculture with authority to establish milk marketing areas and regulate price of milk therein, held unconstitutional as violative of due process of law and as constituting an unlawful delegation of legislative power. Rowell v. State Board of Agriculture, 98 U. 353, 99 P.2d 1.

14. — alcohol and intoxicating liquors.

Former statute prohibiting possession of intoxicating liquors and abolishing property rights therein did not violate this section. State v. Certain Intoxicating Liquors, 51 U. 569, 172 P. 1050.

The prohibition or regulation of manufacture, transportation, sale, and use of alcohol and other intoxicating liquors is an exercise of the police power. Utah Manufacturers' Ass'n v. Stewart, 82 U. 198, 23 P.2d 229.

Former Liquor Control Act held not unconstitutional as violative of this section. Utah Manufacturers' Ass'n v. Stewart, 82 U. 198, 23 P.2d 229.

The liquor nuisance sections of Liquor Control Act (46–0–237 and 46–0–238) do not contravene this section. The legislature in empowering court by 46–0–238 to find "that the material allegations of the petition or complaint are true," did not intend to deprive defendant of an opportunity to be heard. Riggins v. District Court of Salt Lake County, 89 U. 183, 213, 51 P.2d 645.

15. — arrest, and taking property from persons arrested.

Taking property from arrested persons, as authorized by Code of Criminal Procedure, 105–13–14; 105–54–13; 105–54–20, and 105–55–4, does not offend against this provision; it is a proper exercise of the state's police power. Riggins v. District Court of Salt Lake County, 89 U. 183, 216, 51 P.2d 645.

16. — business hours.

Act requiring all mercantile and commercial houses in cities with population of 10,000 or over to close at six p. m. was not valid exercise of police power, and violated right guaranteed by this section to enjoy, acquire, and possess property, most valuable of which is that of alienation, right to vend and sell. Saville v. Corless, 46 U. 495, 151 P. 51, Ann. Cas. 1918 D 198, L. R. A. 1918 A 651.

17. — causes of action.

A cause of action under the Blue Sky Law is a vested right, in the nature of a property right, and ought to be regarded as property in the sense that tangible things are property, and equally protected by the Constitution against arbitrary interference by the legislature. Buttrey v. Guaranteed Securities Co., 78 U. 39, 50, 300 P. 1040.

18. — collection and disposal of garbage.

City ordinance providing particular means for collection and disposal of garbage, held not discriminatory or arbitrary. Salt Lake City v. Bernhagen, 56 U. 159, 189 P. 583.

19. — contracts in general.

Right of contract is subject to such reasonable police regulations as may be enacted to promote public good. Golding v. Schubach Optical Co., 93 U. 32, 70 P.2d 871.

Although legislature may prescribe form in which contracts shall be executed to be valid and binding, it cannot limit rights of parties to incorporate into their contracts, otherwise valid, such terms as may be mutually satisfactory to them. Golding v. Schubach Optical Co., 93 U. 32, 70 P.2d 871.

20. — death certificates.

The matter of requiring death certificates as provided in 35–2–7 comes directly within police power of state. Bozicevich v. Kenilworth Mercantile Co., 58 U. 458, 199 P. 406, 17 A. L. R. 346.

21. — drainage districts.

Drainage Act of 1907 held invalid on ground of depriving owner of property without due process of law. Argyle v. Johnson, 39 U. 500, 118 P. 487.

Drainage Act of 1909, as amended by Laws 1911, held valid, and not to deprive landowner of property without due process of law. State ex rel. Lundberg v. Green River Irr. Dist., 40 U. 83, 119 P. 1039.

The Drainage Law of this state, particularly 24A–0–22, is not unconstitutional in that it makes no provision for notice and an opportunity to be heard as to the annual assessment of lands within the district. Elkins v. Millard

County Drainage Dist. No. 3, 77 U. 303, 318, 294 P. 307.

22. — employment; wages, hours, etc.

Former statute, analogous to 49–3–2, held valid exercise of state's police power. Holden v. Hardy, 169 U. S. 366, 42 L. Ed. 780, 18 S. Ct. 383 (Brewer and Peckham, JJ., dissenting), aff'g 14 U. 71, 46 P. 756, 37 L. R. A. 103 (Bartch and Miner, JJ., concurring specially); State v. Holden, 14 U. 96, 46 P. 1105, 37 L. R. A. 108; Short v. Bullion-Beck & Champion Min. Co., 20 U. 20, 57 P. 720, 45 L. R. A. 603.

Right of one to sell his time and talents is the same, and as inalienable, as right of owner of property to contract respecting use, sale, or enjoyment thereof. Golding v. Schubach Optical Co., 93 U. 32, 70 P.2d 871.

Legislature in 1933 had constitutional power to enact legislation to provide maximum hours, minimum wages, and regulate general conditions of labor at least as to women and minors in any or all industry in the state. McGrew v. Industrial Commission, 96 U. 203, 85 P.2d 608.

Minimum Wage Law does not deprive employer of a property right. McGrew v. Industrial Commission, 96 U. 203, 85 P.2d 608.

Mandatory order of industrial commission fixing minimum wages and maximum hours for women and minors engaged in retail trade held void when it was made after a public meeting at which no evidence was heard and no findings of fact made. McGrew v. Industrial Commission, 96 U. 203, 85 P.2d 608.

23. — indictments and informations.

Right of defendant under this section was not violated by striking from information a letter "s," which had been inserted on name of person, whose signature was alleged to have been forged, without authority some time between appeal and time of second trial. State v. Gorham, 93 U. 274, 72 P.2d 656.

24. — irrigation districts.

25. — — taxation.

Board of directors of irrigation district cannot, after organization of district, make new allotments to land previously excluded, nor include new lands and new parties, and subject their lands, without notice or consent, to taxation, since such would be violative of the due process clauses of the State and Federal Constitutions. Jackson v. Booneville Irr. Dist., 66 U. 404, 243 P. 107.

Taxes levied by irrigation district are special taxes and cannot be levied unless particular benefit is conferred upon the taxpayer in return for his payment. Whitcher v. Booneville Irr. Dist., 69 U. 510, 256 P. 785.

26. — insurance.

Contracts of insurance necessarily fall within police power of state, and may be regulated within reasonable limits. Utah Ass'n of Life Underwriters v. Mountain States Life Ins. Co., 58 U. 579, 200 P. 673.

27. — licenses.

Statute, requiring license to be obtained by persons other than commission merchants, who for purpose of resale obtain from farmers possession or control of farm products without paying cash for same, was a proper exercise of the police power. State v. Mason, 94 U. 501, 78 P.2d 920, 117 A. L. R. 330. (Moffat, J., dissenting.)

28. — limitation of actions.

Right to interpose bar of statute of limitations as defense, once such right has accrued, is vested right which cannot be taken away by legislative enactment. Ireland v. Mackintosh, 22 U. 296, 61 P. 901. For comment unfavorable to result reached in this case, see 14 Harvard Law Review, p. 229.

29. — public improvements.

15–7–50, providing for special improvement guaranty fund, is for public purposes and is not in violation of this provision. Wicks v. Salt Lake City, 60 U. 265, 208 P. 538.

30. — public utility regulation and charges.

The legislative or police power to regulate public utilities of state and fix rates rests upon legal right to secure to consuming public just, uniform, and equitable rates, as applied to service rendered. Utah Copper Co. v. Public Utilities Commission, 59 U. 191, 203 P. 627.

Revocation by public service commission of certificate of convenience and necessity granted to trucking concern was not violative of due process clause, where statutory procedure was followed, except for delay in issuing order. Fuller-Toponce Truck Co. v. Public Service Commission, 99 U. 28, 96 P.2d 722.

31. — taxation in general.

It is not necessary to validity of tax in United States that there shall be regular judicial proceeding; nature of duties to be performed, usages of people, and necessities of government have established method of procedure, respecting taxation, different from that pursued in courts, and following of that

different method has always been regarded as "due process of law." State ex rel. Jennings Bros. Inv. Co. v. Armstrong, 19 U. 117, 56 P. 1076.

32. — tobacco.

The Cigarette Law does not infringe this section. State v. Packer Corp., 77 U. 500, 297 P. 1013, followed in 78 U. 177, 2 P.2d 114, aff'd 285 U. S. 105, 76 L. Ed. 643, 52 S. Ct. 273.

93–2–1, imposing penalty for advertising cigarettes and tobacco on billboards or other places of display, is not invalid as taking property without due process of law. Packer Corp. v. State, 285 U. S. 105, 76 L. Ed. 643, 52 S. Ct. 273, aff'g 78 U. 177, 2 P.2d 114. (Straup and Elias Hansen, JJ., dissenting.)

33. — unemployment compensation.

Unemployment Compensation Law held not unconstitutional as violative of due process of law, whether it was enacted in exercise of taxing or police power. Globe Grain & Milling Co. v. Industrial Commission, 98 U. 36, 91 P.2d 512. (Moffat, C. J., and Larson, J., dissenting.)

34. — uniform land registration acts.

Uniform Land Registration Act of 1917 held not invalid as attempting to serve unknown residents of state by publication only. Ashton-Jenkins Co. v. Bramel, 56 U. 587, 192 P. 375, 11 A. L. R. 752.

35. — vaccination.

Former statute, as well as state's inherent police power, held to have justified action of city boards of health and education in excluding unvaccinated children from schools during time of smallpox epidemic in state. State ex rel. Cox v. Board of Education of Salt Lake City, 21 U. 401, 60 P. 1013. (Baskin, J., dissenting.)

36. — water and irrigation.

Where, in proceeding in state court to obtain permission to enlarge certain irrigating canals, canal owners were allowed only nominal damages because no substantial damages were incurred, Supreme Court of United States held that it would not consider on writ of error objection that canal owners had been deprived of property without due process of law. Provo Bench Canal & Irrigation Co. v. Tanner, 239 U. S. 323, 60 L. Ed. 307, 36 S. Ct. 101, aff'g 40 U. 105, 121 P. 584. (Straup, J., dissenting.)

Metropolitan Water Districts Act held constitutional as against objection act was in violation of due process of law in that taxing powers conferred on district by 100–10–18 were in nature of assessments for benefits and no provision was made as to hearings with respect to such benefits, since tax imposed was general ad valorem tax and not assessment for benefits. Lehi City v. Meiling, 87 U. 237, 48 P.2d 530; Provo City v. Evans, 87 U. 292, 48 P.2d 555.

37. — workmen's compensation.

In application by widow, in her own right and as guardian of her minor children, held minor heirs, including unborn child of deceased employee, were bound by proceedings before industrial commission, notwithstanding that if award was permitted to stand it might expose defendant company to double liability, and would result in taking property without due process of law, and deny to employer equal protection of law, in violation of both Federal and State Constitutions. Utah Copper Co. v. Industrial Commission, 57 U. 118, 193 P. 24, 13 A. L. R. 1367.

Workmen's Compensation Act is not invalid because it delegates to industrial commission power to hear, consider and determine controversies between litigants as to ultimate liability, or their property rights. Utah Fuel Co. v. Industrial Commission, 57 U. 246, 194 P. 122.

Former provision of Workmen's Compensation Law which provided that employer not insured in state insurance fund, on death of employee without dependents, should pay into state insurance fund $750, was held not invalid as denying equal protection of laws or taking of property without due process of law. Salt Lake City v. Industrial Commission, 58 U. 314, 199 P. 152, 18 A. L. R. 259.

42–1–43, of Workmen's Compensation Act authorizing compensation for injury "wheresoever such injury has occurred," held, not to violate this provision, since accident must also arise out of or be in course of employment. Cudahy Packing Co. of Nebraska v. Industrial Commission, 60 U. 161, 207 P. 148, 28 A. L. R. 1394, aff'd 263 U. S. 418, 68 L. Ed. 366, 44 S. Ct. 153.

Industrial commission, though empowered to make own rules of procedure under 42–1–10, and though not bound by formal rules of evidence under 42–1–82, cannot deprive party of constitutional right to fair and impartial hearing. Ocean Accident & Guarantee Corp., Ltd. v. Industrial Commission, 66 U. 600, 245 P. 343.

Notice and an opportunity to be heard are elementary requirements of due process of law when the rights of a party are to be affected by judicial proceedings, and, as industrial commission exercises quasi-judicial functions, and its awards are in effect judgments, an

award annulled on review cannot be amended without notice to employer. Denver & R. G. W. R. Co. v. Industrial Commission, 74 U. 316, 279 P. 612.

Workmen's compensation statutes are not open to constitutional objection because they abrogate common-law defenses or impose liability without fault. Cudahy Packing Co. of Nebraska v. Parramore, 263 U. S. 418, 68 L. Ed. 366, 44 S. Ct. 153 (McKenna, McReynolds and Butler JJ., dissenting), aff'g 60 U. 161, 207 P. 148, 28 A. L. R. 1394.

Liability is constitutionally imposed under workmen's compensation statute if there is causal connection between injury and employment in which employee was then engaged substantially contributing to injury. Bountiful Brick Co. v. Giles, 276 U. S. 154, 72 L. Ed. 507, 48 S. Ct. 221, aff'g 68 U. 600, 251 P. 555.

38. — zoning.

Ordinance creating residence district, and making it unlawful to erect or maintain foundry within district created was valid. Salt Lake City v. Western Foundry & Stove Repair Works, 55 U. 447, 187 P. 829.

Ordinance prohibiting operation of gasoline service stations in certain district unless certain percentage of property owners consented, held unconstitutional. Smith v. Barrett, 81 U. 522, 20 P.2d 864.

39. — miscellaneous.

This section does not make county liable for attorney's fees in defending indigent persons accused of crime. Pardee v. Salt Lake County, 39 U. 482, 118 P. 122, 36 L. R. A. (N. S.) 377, Ann. Cas. 1913 E 200.

17–2–1 and 17–2–2, requiring owner of land, who contracts for a building at a price exceeding $500, to obtain a bond to protect materialmen and laborers, do not violate this provision, because property owner has his remedy in his own hands. Rio Grande Lumber Co. v. Darke, 50 U. 114, 167 P. 241, L. R. A. 1918 A 1193.

Decree rendered under authority of 15–8–15, restraining landowner, without compensation, from grazing his goats on his own land within 300-foot limit of a stream which constituted city's water supply, deprived him of his property without due process of law, it appearing that such land was adaptable and suitable only for grazing purposes. Bountiful City v. De Luca, 77 U. 107, 292 P. 194, 72 A. L. R. 657.

Where wife of defendant in attachment proceeding obtained order releasing property from attachment without notice as required by 104–18–21, plaintiff in attachment proceeding, who by reason of the levy upon the property had an inchoate or contingent interest in such property, was deprived of such interest without notice or opportunity to be heard, and hence, without due process of law, and court was without jurisdiction to enter order of release which was annulled in certiorari proceeding. Hilton Bros. Motor Co. v. District Court in and for Millard County, 82 U. 372, 25 P.2d 595.

A. L. R. notes.

Agriculture, statutes protecting vegetation against disease or infection, 12 A. L. R. 1136.

Amusement places, dance hall regulations, 48 A. L. R. 144, 60 A. L. R. 173.

— pool and billiard rooms and bowling alleys, 20 A. L. R. 1483, 53 A. L. R. 158, 72 A. L. R. 1339.

Animals, statute authorizing seizure and sale of stock running at large, 6 A. L. R. 230, 18 A. L. R. 69.

— statute eliminating scienter as condition to liability for injury by, 1 A. L. R. 1114.

— statute or ordinance providing for destruction of, 8 A. L. R. 67.

Appeal and review, limiting power of reviewing court to declare statute unconstitutional, 66 A. L. R. 1466.

— penalizing unsuccessful attempt to appeal from action of administrative board, 39 A. L. R. 1181.

Arbitration, statutes relating to, 69 A. L. R. 816.

Attorneys, prohibiting solicitation of business, 53 A. L. R. 279.

— providing for disbarment where convicted of crime, 32 A. L. R. 1068.

— regulating fees, 2 A. L. R. 1332, 73 A. L. R. 38, 79 A. L. R. 678, 90 A. L. R. 530.

Automobile carriers, authorizing actions against in any county where route passes and providing for service of process, 81 A. L. R. 777.

— regulation where using highways for hire, 56 A. L. R. 1056, 87 A. L. R. 735.

Automobiles, creating conclusive presumption of negligence in driving while intoxicated, 56 A. L. R. 327.

— giving lien on car for injuries inflicted, 4 A. L. R. 362, 61 A. L. R. 655.

— making owner responsible for injuries inflicted when car driven by another, 61 A. L. R. 866, 83 A. L. R. 878, 88 A. L. R. 174.

Bank deposits, statutes relating to disposition of old, 1 A. L. R. 1048, 31 A. L. R. 398.

Banks, statutory preferences on insolvency, 31 A. L. R. 790.

— statutory liability of officers and directors, 57 A. L. R. 888.

Torrens Law, provisions as to prima facie effect of examiner's report, 19 A. L. R. 62.
— provisions for constructive notice, 11 A. L. R. 722.
Trading stamp legislation, 26 A. L. R. 707.
Undertakers and embalmers, statutes relating to, 23 A. L. R. 71.
Vagrancy statutes and ordinances, 9 A. L. R. 1366, 111 A. L. R. 68.
Validity, construction, and application of regulations regarding taking additional passengers by operator of taxicab, 112 A. L. R. 1415.
Venereal disease, compulsory examination for, 2 A. L. R. 1332.
Wages, regulating assignments of, 37 A. L. R. 872.
— regulating rates on public works, 50 A. L. R. 1480.
War legislation suspending limitations, 16 A. L. R. 1327.
Water, statutes affecting riparian rights, 56 A. L. R. 277.
— statutes prescribing purity for human consumption, 6 A. L. R. 475.
— statutes regulating exploitation or waste, 24 A. L. R. 307.
Weights and measures, statutes regulating time measuring instruments or devices, 37 A. L. R. 134.
— statutes requiring commodity to be sold in certain quantity or weight, 6 A. L. R. 436, 90 A. L. R. 1290.
Wills, provision for forfeiture of rights in case of contest, 67 A. L. R. 52.
Workmen's compensation, denial of review of facts on appeal, 39 A. L. R. 1064.
— penalizing noninsuring or self-insuring employers, 18 A. L. R. 267.
Zoning, creating of restrictive residence districts, 19 A. L. R. 1395, 33 A. L. R. 287, 38 A. L. R. 1496, 43 A. L. R. 668, 86 A. L. R. 659.

Sec. 8. [Offenses bailable.]

All prisoners shall be bailable by sufficient sureties, except for capital offenses when the proof is evident or the presumption strong.

Cross-reference.
Statutory provisions, 105–44.

A. L. R. notes.
Bail pending appeal from conviction, 45 A. L. R. 458, 77 A. L. R. 1235; rape as bailable offense, 118 A. L. R. 1115.

Sec. 9. [Excessive bail and fines. Cruel punishments.]

Excessive bail shall not be required; excessive fines shall not be imposed; nor shall cruel and unusual punishments be inflicted. Persons arrested or imprisoned shall not be treated with unnecessary rigor.

Cross-references.
Statutes concerning order as to amount of bail, 105–44–8, 105–44–9.

1. Cruel and unusual punishments.

2. —sterilization of mental defectives.
Title 89, providing for sterilization of mental defectives under the restrictions therein prescribed, is not "cruel and unusual punishment" within the meaning of this section. Davis v. Walton, 74 U. 80, 276 P. 921.

A. L. R. notes.
Banishment or deportation as cruel and unusual punishment, 70 A. L. R. 100.
Constitutionality of statute disbarring attorney convicted of crime, 32 A. L. R. 1068.
Constitutionality of statute providing for penalty or forfeiture as affected by failure to fix maximum amount, 114 A. L. R. 1126.
Manner of inflicting death sentence as cruel or unusual punishment, 30 A. L. R. 1452.
Statutes relieving against forfeiture of bail or recognizance, 43 A. L. R. 1233.
Sterilization of criminals or mental defectives as cruel and unusual punishment, 40 A. L. R. 535, 51 A. L. R. 862, 87 A. L. R. 242.

Sec. 10. [Trial by jury.]

In capital cases the right of trial by jury shall remain inviolate. In courts of general jurisdiction, except in capital cases, a jury shall consist of eight jurors. In courts of inferior jurisdiction a jury shall consist of four jurors. In criminal cases the verdict shall be unanimous.

In civil cases three-fourths of the jurors may find a verdict. A jury in civil cases shall be waived unless demanded.

Cross-references.
Statutory provisions, 48–0–5, 104–23–6, 104–24–27, 104–26–1, 105–1–8, 105–28–2.

1. In general.
64–1–8, in so far as it provided for imprisonment and authorized court in equity proceedings to impose jail sentence, held unconstitutional as violating this section. State ex rel. Pincock v. Franklin, 63 U. 442, 226 P. 674.

2. Waiver of jury trial.
Notes on demand for jury trial, see also 104–23–6, 104–26–1.

104–23–6 is not in conflict with last provision in this section. State ex rel. Nichols v. Cherry, 22 U. 1, 60 P. 1103.

Where claimant to property sued to quiet title, or in ejectment, his failure to demand jury trial waived right thereto. Gibson v. McGurrin, 37 U. 158, 106 P. 669.

Under this section, court may, of its own motion, direct that a jury be impaneled, and the case submitted to them in the usual way, even though both parties expressly waive a jury. Ogden Valley Trout & Resort Co. v. Lewis, 41 U. 183, 189, 125 P. 687.

The provision that a jury is waived unless demanded is not for the benefit of an adversary; therefore where a jury is in fact present, the adverse party cannot successfully object to a jury trial, and court may waive untimely demand and payment of jury fee. Davis v. Denver & R. G. R. Co., 45 U. 1, 142 P. 705.

Fine authorized by 64–1–8 is not punishment imposed after commission of crime but it is a payment exacted for doing an act prohibited by law and hence contention that section was unconstitutional in injunction proceeding against liquor nuisance on ground that it permitted imposition of punishment in equity proceeding, held without merit. State ex rel. Pincock v. Franklin, 63 U. 442, 226 P. 674.

A. L. R. notes.
Provisions for determining custody or commitment of juvenile delinquents without jury trial as denial of due process, 67 A. L. R. 1082; right to jury trial in disbarment proceedings, 107 A. L. R. 692; right to jury trial in proceeding to determine insanity or incompetency, 91 A. L. R. 88; validity of statute allowing for separation of jury, 34 A. L. R. 1128.

Sec. 11. [Courts open. Redress of injuries.]

All courts shall be open, and every person, for an injury done to him in his person, property or reputation, shall have remedy by due course of law, which shall be administered without denial or unnecessary delay; and no person shall be barred from prosecuting or defending before any tribunal in this State, by himself or counsel, any civil cause to which he is a party.

Cross-references.
See 20–7–25 and Title 104.

1. Rights under, and scope of, section in general.
This section does not create new rights, or give new remedies where none otherwise are given, but places a limitation upon legislature to prevent that branch of the state government from closing the doors of the courts against any person who has a legal right which is enforceable in accordance with some known remedy. Therefore, where no right of action is given or no remedy exists, under either the common law or some statute, this section creates none. Brown v. Wightman, 47 U. 31, 151 P. 366, L. R. A. 1916 A 1140.

Under our Constitution, a right of action exists for any injury or damage to private property, and neither the legislature nor municipalities can interfere with that right. Lewis v. Pingree Nat. Bank, 47 U. 35, 151 P. 558, L. R. A. 1916 C 1260.

While it is duty of attorneys at law, who are officers of court promptly to obey all lawful orders of court and to advise their clients when called on for advice to obey them, yet it is also their duty, in case reasonable doubt exists respecting jurisdiction of court, or that order in question was improvidently made, to preserve and protect legal rights of their clients by assailing any order in proper manner and at proper time. In re Thomas, 56 U. 315, 190 P. 952.

To go into court and collect past-due claim is right guaranteed by Constitution. Karenius v. Merchants' Protective Ass'n, 65 U. 183, 235 P. 880.

In action for dairy products sold,

plaintiff who was assignee of claim could bring action thereon even if claim was assigned for purpose of having action brought thereon, and where assignee was not attorney court did not err in refusing cross-examination as to consideration paid for claim. Perkes v. Utah Idaho Milk Co., 85 U. 217, 39 P.2d 308.

2. Banks and banking.

It was not intended, by adopting this section, to change the law with respect to certain rights which are vested in the state, which alone can exercise sovereign powers. Therefore, it does not prevent the state from reserving to itself the sole right to bring actions for the dissolution of building and loan associations. Union Savings & Investment Co. v. District Court of Salt Lake County, 44 U. 397, 140 P. 221.

3. Criminal law.

4. —suspension of execution of death sentence.

105-37-8, providing that no judge, tribunal, or officer other than those mentioned therein can suspend execution of judgment of death except sheriff as provided in succeeding sections with reference to inquiry as to insanity of defendant, held not invalid as in violation of this section. State ex rel. Johnson v. Alexander, 87 U. 376, 49 P.2d 408.

5. Divorce and separate maintenance.

District court had jurisdiction of matter set forth in wife's counterclaim for separate maintenance after husband had filed complaint against her for divorce, thus invoking court's jurisdiction. Burtt v. Burtt, 59 U. 457, 204 P. 91.

6. Elections.

There is no intimation herein that courts are given power to pass on purely political questions, but it is clearly stated that courts are always open for the enforcement of such rights and redress of such wrongs as from time immemorial have been considered as proper for courts to consider. The power to consider political questions and the vindication of rights growing out of or incidental to such questions is not an inherent power of the courts. Courts can exercise powers respecting political matters only to the extent and in the manner provided by legislature, and election contest is not within jurisdiction of court of equity in absence of statute. Ewing v. Harries, 68 U. 452, 250 P. 1049.

7. Intoxicating liquors.

The liquor nuisance sections of Liquor Control Act (46-0-237 and 46-0-238) do not contravene this section. Riggins v. District Court of Salt Lake County, 89 U. 183, 213, 51 P.2d 645.

8. Limitation of actions.

This section does not preclude the legislature from prescribing a statute of limitations, as, for example, from limiting time within which to assail the regularity or organization of an irrigation district. Horn v. Shaffer, 47 U. 55, 151 P. 555.

9. Public utilities.

This provision applies only to judicial questions, and unless rate established by public utilities commission is clearly oppressive or confiscatory, no judicial question is presented. Salt Lake City v. Utah Light & Traction Co., 52 U. 210, 173 P. 556, 3 A. L. R. 715.

10. Workmen's compensation.

Employers are entitled to have recourse to courts under workmen's compensation act concerning question of their ultimate liability. Industrial Commission v. Evans, 52 U. 394, 174 P. 825.

Workmen's Compensation Act is not invalid because it delegates to industrial commission the power to hear, consider and determine controversies between litigants as to ultimate liability, or their property rights. Utah Fuel Co. v. Industrial Commission, 57 U. 245, 194 P. 122.

11. Waiver of rights under section.

Right to apply to courts for redress of wrong is substantial right, and will not be waived by contract except through unequivocal language. Bracken v. Dahle, 68 U. 486, 251 P. 16.

Sec. 12. [Rights of accused persons.]

In criminal prosecutions the accused shall have the right to appear and defend in person and by counsel, to demand the nature and cause of the accusation against him, to have a copy thereof, to testify in his own behalf, to be confronted by the witnesses against him, to have compulsory process to compel the attendance of witnesses in his own behalf, to have a speedy public trial by an impartial jury of the county or district in which the offense is alleged to have been committed, and the

right to appeal in all cases. In no instance shall any accused person, before final judgment, be compelled to advance money or fees to secure the rights herein guaranteed. The accused shall not be compelled to give evidence against himself; a wife shall not be compelled to testify against her husband, nor a husband against his wife, nor shall any person be twice put in jeopardy for the same offense.

Cross-references.

Rights of defendant, 105–1–8 to 105–1–10; double jeopardy, 105–1–10, 105–25–11 to 105–25–13, 105–8–8 and 105–8–9; time allowed for preparation, 105–25–18.

A. L. R. notes.

Assaults, identity of crimes involving, 78 A. L. R. 1213, 81 A. L. R. 701.

Association, former jeopardy of member of, 1 A. L. R. 431.

Award of venire do novo or new trial after verdict of guilty as to one or more counts and acquittal as to another as permitting retrial or conviction on latter count, 80 A. L. R. 1106.

Brief voluntary absence of defendant from court during trial as ground for error, 100 A. L. R. 478.

Burglary, larceny, and robbery, identity of offenses, 4 A. L. R. 702, 19 A. L. R. 636.

Calling upon accused in the presence of jury to produce document in his possession as violation of privilege against self-incrimination, 110 A. L. R. 101.

Comment on failure of accused to testify in his own behalf as violation of constitutional privilege against self-incrimination, 104 A. L. R. 478.

Constitutionality of statute making failure of bank prima facie evidence of knowledge of insolvency at time of receipt of deposits, 51 A. L. R. 1154.

Continuous transaction constituting complete offense in each county or district as constituting more than one offense, 73 A. L. R. 1511.

Conviction of lesser offense as bar to prosecution for greater on new trial, 59 A. L. R. 1160.

Conviction or acquittal upon charge of murder of, or assault upon, one person as bar to prosecution for like offenses against other person at the same time, 113 A. L. R. 222.

Homicide, identity of offenses, 2 A. L. R. 606, 4 A. L. R. 702, 20 A. L. R. 341.

Juror substituted after completion of panel as sustaining plea of double jeopardy, 28 A. L. R. 849, 33 A. L. R. 142.

Jury discharged for inability of prosecution to present testimony, accused as in jeopardy, 74 A. L. R. 803.

Jury discharged for misconduct or disqualification of member, accused as in jeopardy, 38 A. L. R. 706.

Jury discharged for occurrences during view, accused as in jeopardy, 4 A. L. R. 1266.

Jury not sworn, jeopardy where, 12 A. L. R. 1006.

Limitation statute, discharge under as bar to subsequent prosecution, 3 A. L. R. 519.

Necessity and sufficiency of pleading by prosecution to contest defendant's plea of former jeopardy, 113 A. L. R. 1146.

Perjury, acquittal as bar to prosecution of accused for, 37 A. L. R. 1290.

Plea of former jeopardy as affected by declaration of mistrial after impaneling and swearing of jury on original trial because of errors, or supposed errors, regarding examination or challenging of jurors, 113 A. L. R. 1428.

Plea of former jeopardy where jury is discharged because of illness or insanity of juror, 125 A. L. R. 694.

Possession and transportation of liquor as distinct offenses, 74 A. L. R. 411.

State and federal offenses arising out of same transaction, prosecutions for, 16 A. L. R. 1231, 22 A. L. R. 1551, 24 A. L. R. 1125, 48 A. L. R. 1106.

Sec. 13. [Prosecution by information or indictment. Grand jury.]

Offenses heretofore required to be prosecuted by indictment, shall be prosecuted by information after examination and commitment by a magistrate, unless the examination be waived by the accused with the consent of the State, or by indictment, with or without such examination and commitment. The grand jury shall consist of seven persons, five of whom must concur to find an indictment; but no grand jury

shall be drawn or summoned unless in the opinion of the judge of the district, public interest demands it.

Cross-references.
Statutory provisions, 105–16–1, 105–17 to 105–20.

1. In general.
Right of defendant under this section was not violated by striking from information a letter "s," which had been inserted on name of person, whose signature was alleged to have been forged, without authority some time between appeal and time of second trial. State v. Gorham, 93 U. 274, 72 P.2d 656.

2. Mode of commencing prosecutions.
Statutory provision, 105–16–1.

3. — information.
State did not acquire, on its admission into Union, power to provide, in respect to crime, whether felony or misdemeanor, committed within its boundaries while it was territory, for prosecution on information instead of on indictment. State v. Rock, 20 U. 38, 57 P. 532.

Proceedings against defendant, charged with assault with intent to commit rape, need not be by indictment but may be by information. State v. Imlay, 22 U. 156, 61 P. 557.

Prosecution by information for noncapital felony, committed after statehood, was not, as to defendant, in violation of Federal Constitution. Maxwell v. Dow, 176 U. S. 581, 44 L. Ed. 597, 20 S. Ct. 448 (Harlan, J., dissenting), aff'g 19 U. 495, 57 P. 412.

4. Examination.

5. — necessity in general.
Right of district court to try person for felony rests upon filing of proper indictment by grand jury, or filing of proper information by district attorney or other proper counsel for state, and such information can be filed properly only after accused has been duly bound over and held to answer in district court by magistrate having jurisdiction to investigate charge and determine if there is probable cause to believe that offense has been committed and that defendant is guilty thereof. State v. Freeman, 93 U. 125, 71 P.2d 196.

6. — requisites and sufficiency.
Preliminary hearing conducted by district judge in prosecution for misdemeanor of conspiracy to extort money, held to satisfy requirements of this section. State v. McIntyre, 92 U. 177, 66 P.2d 879.

7. — waiver of examination and its incidents, and effect thereof, in general.
Under this section, the examination may be waived by the accused in every case. If the entire proceeding may be waived, any part thereof may likewise be waived, and such a waiver may be deemed to have taken place, unless accused at the proper time and in a proper manner indicates that he does not waive anything. State v. Gustaldi, 41 U. 63, 68, 123 P. 897.

Under this section, if an accused waives a preliminary examination, he waives the necessity of the magistrate's hearing testimony, and, therefore, there is no testimony to be reduced to writing. State v. Mewhinney, 43 U. 135, 134 P. 632, L. R. A. 1916 D 590, Ann. Cas. 1916 C 537.

If accused waives examination before magistrate, and state consents thereto, all that magistrate has authority to do is to require accused to appear before district court to answer charge contained in complaint and no other. State v. Pay, 45 U. 411, 146 P. 300.

Right to preliminary examination hereunder may be waived by failure to move to quash information. Where information charged both rape and adultery but preliminary examination related only to rape, defendant's failure to move to quash or to demur specially to the information as duplicitous, or to object thereto until after plea of not guilty, constituted waiver of such defenses. State v. Anderton, 69 U. 53, 252 P. 280.

Right to preliminary examination is merely right to have evidence produced in support of complaint, and to produce evidence in answer thereto, so magistrate may determine whether offense has been committed and if there is probable cause to hold defendant for trial; and if defendant does not desire to have it he may waive it, and if he waives it he cannot thereafter claim that he should have had it. State v. Freeman, 93 U. 125, 71 P.2d 196.

By waiving preliminary hearing, defendant waives all formalities and all irregularities in proceeding prior to filing of information. State v. Freeman, 93 U. 125, 71 P.2d 196.

Waiver of preliminary examination is as broad as the privilege, and when defendant waives it he is barred from questioning informalities or making technical objections to regularity of proceedings, and he is thereafter estopped from asserting, in any subsequent pro-

ceeding, anything he could have asserted had the examination taken place, and he cannot claim a discharge because no examination was held. State v. Freeman, 93 U. 125, 71 P.2d 196.

Before defendant can be bound over to district court he is entitled to a preliminary hearing unless with consent of state he waives such hearing; and, if hearing is waived, defendant thereby, impliedly at least, agrees that the evidence the state would have produced would have been sufficient to justify magistrate holding him over, and he thereby consents that he be held for trial, and that no witnesses need be produced. State v. Freeman, 93 U. 125, 71 P.2d 196.

Under territorial laws, held that preliminary examination was not indispensable to finding of indictment or trial thereon, and that, this being so, it would seem to follow that neither would indispensability attach to any steps connected with conduct of such examination. Thiede v. People, 159 U. S. 510, 40 L. Ed. 237, 16 S. Ct. 62, aff'g 11 U. 241, 39 P. 837.

8. — presumption of waiver.

Where defendant, when called on to plead, interposes no objection that he has not been lawfully committed or waived examination before magistrate and goes to trial without objection, examination will be presumed to have been waived. State v. Norman, 16 U. 457, 52 P. 986.

9. — re-examination.

Where defendant was charged by information with fornication and bound over by committing magistrate, but information was quashed on ground that offense was barred by limitations, held court could not authorize district attorney to file new information and place defendant on trial for offense separate and distinct from one charged in first information without again taking defendant before committing magistrate for preliminary examination. State v. Jensen, 34 U. 166, 96 P. 1085.

10. Grand jury.

11. — number of members.

Provision, authorizing grand jury of seven members, held not ex post facto as to defendant whose alleged crime was charged to have been committed before Constitution went into effect. State v. Carrington, 15 U. 480, 50 P. 526. (N. B. This case reaffirms and relies on State v. Bates, 14 U. 293, 47 P. 78, 43 L. R. A. 33, which was followed in State v. Thompson, 15 U. 488, 50 P. 409, which, in turn, was reversed by Federal Supreme Court in 170 U. S. 343, 42 L. Ed. 1061, 18 S. Ct. 620.)

Sec. 14. [Unreasonable searches forbidden. Issuance of warrant.]

The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated; and no warrant shall issue but upon probable cause supported by oath or affirmation, particularly describing the place to be searched, and the person or thing to be seized.

Cross-reference.

Statutory provisions generally, 105–54.

1. Admissibility of evidence obtained by illegal search.

Liquor obtained by means of defective search warrant was admissible in evidence, since admissibility of evidence is not affected by the illegality of means through which it was obtained. State v. Aime, 62 U. 476, 220 P. 704, 32 A. L. R. 375.

A. L. R. notes.

Arrest without warrant, statute authorizing as violating guaranty against unreasonable seizure, 1 A. L. R. 586.

Authority to consent for another to search and seizure, 58 A. L. R. 737.

Automobiles, search without warrant in reliance on description of persons suspected of crime, 60 A. L. R. 299.

Constitutionality of statutory provisions for examination of records, books, or documents for taxation purposes, 103 A. L. R. 522.

Contagious disease, seizing property to prevent spread, 8 A. L. R. 840.

Employee's right to challenge admissibility of evidence wrongfully obtained, 86 A. L. R. 346.

Entry and search without search warrant to make arrest, 5 A. L. R. 263.

Illustrations of distinction, as regards search and seizure, between papers or other articles which merely furnish evidence of crime, and the actual instrumentalities of crime, 129 A. L. R. 1296.

Inspection of books and records, permissible scope of order directing or authorizing, 58 A. L. R. 1263.

Intoxicating liquor, constitutional guaranty as applicable to search for and seizure of, 3 A. L. R. 1514, 13 A. L. R. 1316, 27 A. L. R. 709, 39 A. L.

R. 811, 41 A. L. R. 1559, 74 A. L. R. 1418.
Lawful arrest, articles or property that may be seized on making, 32 A. L. R. 686, 51 A. L. R. 431, 74 A. L. R. 1392, 82 A. L. R. 784.
Liability for improper issuance of search warrant or improper proceedings thereunder, 45 A. L. R. 605.
Liability of peace officer on his bond for unlawful search, 62 A. L. R. 855.
National Industrial Recovery Act regulations as violating guaranty against searches and seizures, 92 A. L. R. 1467.
Quashing search warrant and ordering return of property, jurisdiction in liquor cases under former federal statutes, 65 A. L. R. 1246.
Second warrant for search, issuance after lapse of time for executing first and without additional showing, 85 A. L. R. 113.
Trains, warrants for search of, 7 A. L. R. 121.
United States Constitution as limiting powers of states with respect to search and seizure, 19 A. L. R. 644.
Vaccination, requiring as condition to school attendance as violation of guaranty against unreasonable search, 93 A. L. R. 1431.
Venereal disease, compulsory examination for, 2 A. L. R. 1332.
Weapons, search for and seizure of without warrant on suspicion or information as to lawful possession, 92 A. L. R. 490.

Sec. 15. [Freedom of speech and of the press. Libel.]

No law shall be passed to abridge or restrain the freedom of speech or of the press. In all criminal prosecutions for libel the truth may be given in evidence to the jury; and if it shall appear to the jury that the matter charged as libelous is true, and was published with good motives, and for justifiable ends, the party shall be acquitted; and the jury shall have the right to determine the law and the fact.

A. L. R. notes.
Constitutional guaranties of freedom of speech and of the press as applied to statutes and ordinances providing for licensing or otherwise regulating distribution of printed matter or solicitation of subscriptions therefor, 127 A. L. R. 962.
Gambling information or betting odds, regulating or forbidding dissemination, 47 A. L. R. 1135.
Newspapers and magazines, statutes regulating, 35 A. L. R. 12.
Propaganda, legislation against political, social or industrial, 1 A. L. R. 336, 20 A. L. R. 1535, 73 A. L. R. 1494.
Statutes prohibiting and penalizing blasphemy, 14 A. L. R. 883.
Statutes relating to picketing or boycotts as invasion of right of free speech, 6 A. L. R. 971, 16 A. L. R. 240, 27 A. L. R. 658, 35 A. L. R. 1200.
Street meetings, constitutionality of statute or ordinance prohibiting or regulating, 10 A. L. R. 1483.

Sec. 16. [No imprisonment for debt. Exception.]

There shall be no imprisonment for debt except in cases of absconding debtors.

Cross-reference.
Statutory provisions for civil arrest, 104-15.

1. Validity of imprisonment.

2. —enforcing payment of license taxes.
Arrest, fine, and imprisonment may be resorted to for purpose of enforcing payment of license and occupation taxes. Salt Lake City v. Christensen Co., 34 U. 38, 95 P. 523, 17 L. R. A. (N. S.) 898.

3. —under Bastardy Act.
So long as the imprisonment of the putative father under Bastardy Act is for the purpose of compelling such father to comply with the demand of the court in case he neglects or refuses to do so, and so long as it is not made to appear that by reason of insolvency he cannot pay and is unable to give the security required of him, the imprisonment is not illegal. State v. Reese, 43 U. 447, 135 P. 270.

A. L. R. note.
Constitutional provision against imprisonment for debt as applicable in bastardy proceedings, 118 A. L. R. 1109.

Sec. 17. [Elections to be free. Soldiers voting.]

All elections shall be free, and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage. Soldiers, in time of war, may vote at their post of duty, in or out of the State, under regulations to be prescribed by law.

Sec. 18. [Attainder. Ex post facto laws. Impairing contracts.]

No bill of attainder, ex post facto law, or law impairing the obligation of contracts shall be passed.

1. Ex post facto laws.

Constitutional provision (Const. Art. I, § 13), authorizing grand jury of seven members, held not ex post facto as to defendant whose alleged crime was charged to have been committed before Constitution went into effect. State v. Carrington, 15 U. 480, 50 P. 526. (N. B. This case reaffirms and relies on State v. Bates, 14 U. 293, 47 P. 78, 43 L. R. A. 33, which was followed in State v. Thompson, 15 U. 488, 50 P. 409, which, in turn, was reversed by Federal Supreme Court in 170 U. S. 343, 42 L. Ed. 1061, 18 S. Ct. 620.)

2. Impairment of contracts.

3. — drainage districts.

24A–0–22 of the Drainage Law does not impair the obligation of contract, in that it requires payment of an additional 15 per cent. Elkins v. Millard County Drainage Dist. No. 3, 77 U. 303, 319, 294 P. 307.

Amendment to 24A–0–26, providing for collection of drainage taxes at same time and in same manner as state and county taxes and that lands sold for delinquent district taxes should be sold separately, held not unconstitutional as violating this section. Hanson v. Burris, 86 U. 424, 46 P.2d 400, aff'd, 297 U. S. 378, 80 L. Ed. 728, 56 S. Ct. 511; Millard County v. Millard County Drainage Dist. No. 1, 86 U. 475, 46 P.2d 423.

4. — exemptions from execution.

Former statute which exempted to married men, or heads of families, their earnings from personal services rendered within 60 days next preceding levy of execution, by garnishment or otherwise, held not to have impaired obligation of contracts entered into prior to its enactment. Kirkman v. Bird, 22 U. 100, 61 P. 338, 58 L. R. A. 669, 83 Am. St. Rep. 774.

5. — homesteads.

Former law, increasing homestead exemption from $1000 to $1500, held, under circumstances, not invalid as impairing obligation of contracts. Folsom v. Asper, 25 U. 299, 71 P. 315.

6. — irrigation districts.

100–9–20 of Irrigation District Act, held not invalid as violative of this section. Salter v. Nelson, 85 U. 460, 39 P.2d 1061.

7. — public utility regulation and charges.

Regulation of rates for public utilities is governmental function coming directly within police power of state, and for that reason the establishing or modifying of rates, although contractual, does not violate this provision. United States Smelting, Refining & Milling Co. v. Utah Power & Light Co., 58 U. 168, 197 P. 902.

There is nothing in either Utah Constitution or any statute whereby state has surrendered its right to regulate rates of public utilities at any time; and legislature was clearly within its rights when it authorized public utilities commission to regulate rates and charges of public utilities in existing contracts. United States Smelting, Refining & Milling Co. v. Utah Power & Light Co., 58 U. 168, 197 P. 902.

In fixing of rates for public utility service under Public Utilities Act, the utilities commission is not limited or controlled by provisions of antecedent contracts, but is at liberty to disregard such contracts altogether if they come in conflict with what the commission finds to be reasonable rate under conditions existing at time of making investigation. Utah Hotel Co. v. Public Utilities Commission, 59 U. 389, 204 P. 511.

Revocation by public service commission of certificate of convenience and necessity granted to trucking concern did not constitute impairment of contract between company and state, as prohibition does not apply to administrative acts. Fuller-Toponce Truck Co. v. Public Service Commission, 99 U. 28, 96 P.2d 722.

8. — remedies and changes therein.

Change or limitation of remedy, which does not materially abridge right, does not impair obligation of contract. Kirkman v. Bird, 22 U. 100, 61 P. 338, 58 L. R. A. 669, 83 Am. St. Rep. 774; Salter v. Nelson, 85 U. 460, 39 P.2d 1061.

9. — tobacco.

The Cigarette Law does not infringe this section. State v. Packer Corp., 77 U. 500, 297 P. 1013, followed in 78 U. 177, 2 P.2d 114, aff'd 285 U. S. 105, 76 L. Ed. 643, 52 S. Ct. 273.

10. — unemployment compensation.

Unemployment Compensation Law held not to impair pre-existing contract of employee with employer. Globe Grain & Milling Co. v. Industrial Commission, 98 U. 36, 91 P.2d 512. (Moffat, C. J., and Larson, J., dissenting.)

11. — water and irrigation.

Former statute (Laws 1919, Ch. 67, § 62), authorizing state engineer to appoint water commissioner to distribute waters formerly decreed, is not unconstitutional as impairing obligation of contract or other vested right on ground that it deprives water users under former decree of right under such decree to be heard upon matter of commissioner's compensation, since, under statute, which is mandatory, appointment of water commissioner by state engineer can only be made after consultation with water users. Caldwell v. Erickson, 61 U. 265, 213 P. 182.

12. — workmen's compensation.

42-1-58 of Workmen's Compensation Act which provides that, when any injury is caused by wrongful act of third person, claimant must elect whether to take compensation under act or to pursue his remedy against third person, held valid as against contention that it impairs obligation of contract of employment. Leva v. Utah Fuel Co., 58 U. 388, 199 P. 659.

A. L. R. notes.

Statutes as ex post facto, see the following annotations:

Changes affecting grand jury or substituting information for indictment, 53 A. L. R. 716.

Character of defenses that may be cut off by retrospective legislation, 113 A. L. R. 768.

Constitutional prohibition of ex post facto laws as applicable to statutes relating to joinder of offenses or defendants, 110 A. L. R. 1308.

Constitutionality, construction, and application of statutes empowering court to require judgment debtor to make payment out of income or by instalments, 111 A. L. R. 392.

Defendant's right to elect as to punishment where statutory provision as to punishment is changed after commission of offense, but before conviction, 103 A. L. R. 1041.

Penalty or punishment changed after conviction, 55 A. L. R. 443.

Prohibiting possession of liquor lawfully acquired, 2 A. L. R. 1098, 37 A. L. R. 1386.

Provisions for injunctions against or abatement of liquor nuisances, 49 A. L. R. 646.

Punishment for subsequent offense increased, 58 A. L. R. 21, 82 A. L. R. 347.

Impairment of contract, see the following notes:

Attorneys' fees, statutes providing for, 90 A. L. R. 530.

Automobile carriers, taxation by license, 75 A. L. R. 44.

Bank deposits, statutes relating to disposition of unclaimed, 31 A. L. R. 398.

— statute relating to interest on, 62 A. L. R. 489.

— statutes relating to "freezing" or "stabilizing," 95 A. L. R. 1214.

Bankruptcy or insolvency, statutes relating to preference of claims, 88 A. L. R. 257.

Banks, examination and supervision by public officers as impairing charter rights, 8 A. L. R. 898.

— statutes for aid of bank or depositors where in need of cash, 82 A. L. R. 1025.

— statutes granting preferences on insolvency, 31 A. L. R. 790, 79 A. L. R. 582, 83 A. L. R. 1080.

— statutes providing for conservators, 92 A. L. R. 1258.

Bondholders, protecting as class without consent of all against sacrifice of property on foreclosure, 88 A. L. R. 1270.

Bonds, subsequent issue by public body as impairing obligation to prior creditors, 87 A. L. R. 397.

Carriers, grant of free transportation as contract protected against impairment, 10 A. L. R. 499.

Child labor laws as impairing contracts, 12 A. L. R. 1221.

Constitutional provisions against impairment of obligations of contract as applied to sinking funds for retirement of municipal or other public bonds, 115 A. L. R. 220.

Co-operative marketing of farm products by producers' associations, 77 A. L. R. 405.

Corporations, constitutional or statutory provisions increasing liability of stockholders, 72 A. L. R. 1252.

—use of name implying subjection to government control, 63 A. L. R. 1049.

Debt limit, raising constitutional as impairment of existing contract, 90 A. L. R. 859.

Emergency powers of government, 88 A. L. R. 1519.

Exemption statutes, 93 A. L. R. 177.
Fire, statute imposing absolute liability for, 53 A. L. R. 875.
Franchise rates, state increasing, 3 A. L. R. 730, 9 A. L. R. 1165, 28 A. L. R. 587, 29 A. L. R. 356.
Hours of labor, statute limiting, 90 A. L. R. 837.
Improvement bonds or liens, statutes affecting rights and remedies of holders, 85 A. L. R. 244, 97 A. L. R. 911.
Insurance, statutes relating to amount or basis of computation on settlement under life policy, 17 A. L. R. 962.
—statutes regulating brokers or agents, 72 A. L. R. 1173.
Interest, statutes governing, 87 A. L. R. 462.
Liens for public improvements, giving priority over pre-existing contractual lien, 78 A. L. R. 513.
Limitation of actions, enlargement of period as to existing causes already barred, 46 A. L. R. 1101.
Local improvements, impairment of rights and remedies of owners of property subject to assessment, 100 A. L. R. 164.
— statutes affecting holders or owners of bonds or liens, 85 A. L. R. 244.
Master and servant, statute invalidating contract exonerating employer from liability for injuries to employee, 84 A. L. R. 1303.
Mortgages, fixing upset price on foreclosure or limiting deficiency, 89 A. L. R. 1087.
Redemption period, emergency legislation extending, 86 A. L. R. 1539, 88 A. L. R. 1519.
—statutes extending in general, 1 A. L. R. 143, 38 A. L. R. 229.
Rent laws as impairing contracts, 11 A. L. R. 1252, 16 A. L. R. 178.
Special assessments, statutes impairing or extinguishing lien on sale for taxes, 53 A. L. R. 1140.
Statutes affecting mortgagee's rights and remedies in respect of deficiency as unconstitutional impairment of obligation of contract, 115 A. L. R. 435, 130 A. L. R. 1482.
Statutory enactment or repeal subsequent to tax sale or issuance of tax certificates as affecting rights of holders of tax certificates or purchasers at tax sale, 111 A. L. R. 237.
Street railways, paving ordinances as impairing franchises, 10 A. L. R. 879.
Tax on lender or owner of obligation, statute imposing duty on borrower to collect and pay, 60 A. L. R. 742.
Wages, claims for, statutes giving lien or preference on insolvency of employer, 94 A. L. R. 1295.
—statutes regulating assignments, 37 A. L. R. 875.
—statutes regulating time for payment, 12 A. L. R. 635, 26 A. L. R. 1396.
War moratorium acts, 9 A. L. R. 6.

Sec. 19. [Treason defined. Proof.]

Treason against the State shall consist only in levying war against it, or in adhering to its enemies or in giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act.

Sec. 20. [Military subordinate to the civil power.]

The military shall be in strict subordination to the civil power, and no soldier in time of peace, shall be quartered in any house without the consent of the owner; nor in time of war except in a manner to be prescribed by law.

Sec. 21. [Slavery forbidden.]

Neither slavery nor involuntary servitude, except as a punishment for crime, whereof the party shall have been duly convicted, shall exist within this State.

1. **Nonexistence in one person of vested interest in work or labor of another.**

No man can have a vested interest in the work or labor of another, nor has he a right to insist that another work for him, since such would be violative of this section. McGrew v. Industrial Commission, 96 U. 203, 85 P.2d 608.

Sec. 22. [Private property for public use.]

Private property shall not be taken or damaged for public use without just compensation.

Cross-references.

Eminent domain generally, 104–61; disclaimer of rights in unappropriated land and in land held by the United States or held by Indians, Const. Art. III, par. 2.

A. L. R. notes.

Admissibility on issue of value of real property of evidence of sale price of other real property, 118 A. L. R. 869.

Advertising regulations as taking property without compensation, 74 A. L. R. 469, 79 A. L. R. 552.

Agreement on compensation, sufficiency of attempt, 8 A. L. R. 471.

Attorneys' fees, validity of statute providing for, 11 A. L. R. 895.

Bridge approach interfering with access, right to compensation, 45 A. L. R. 534.

Building line along street, condemnation to establish, 28 A. L. R. 315, 44 A. L. R. 1377.

Building restrictions, as property rights for taking of which compensation must be made, 17 A. L. R. 554, 67 A. L. R. 385, 122 A. L. R. 1464.

—imposing by eminent domain, 8 A. L. R. 594.

Cemetery, damage to property from proximity, 36 A. L. R. 527.

—right to take property under eminent domain as affected by fact that property is already devoted to cemetery purposes, 109 A. L. R. 1502.

City or town planning statutes or ordinances, constitutionality, 12 A. L. R. 679.

Civil rights legislation as taking of property, 49 A. L. R. 506.

Combination of public and private uses or purposes as permitting condemnation, 53 A. L. R. 9.

Consequential damages to property not taken, recovery in other than eminent domain proceeding, 20 A. L. R. 516.

Conveyance as passing right to condemnation proceedings, 82 A. L. R. 1063.

Damages for widening street as including injury to access, 64 A. L. R. 1527.

Dams, statutes relieving person constructing from liability for damage to adjoining property, 6 A. L. R. 1326.

Delay or negligence in condemning property, damages for, 92 A. L. R. 379.

Domestic corporation, right to exercise eminent domain benefiting foreign corporation, 65 A. L. R. 1457.

Dower, wife's right to compensation for interference with inchoate right of, 5 A. L. R. 1347.

Drainage, necessity of taking property for, 65 A. L. R. 504.

Easement, compensation for taking, 98 A. L. R. 640.

Electric railway in street or highway carrying freight as additional servitude, 2 A. L. R. 1404.

Electricity, condemnation of property to furnish to public, 44 A. L. R. 741, 58 A. L. R. 787.

Entry upon or exploration of land before condemnation, 29 A. L. R. 1409.

Extension of municipal boundaries as taking property without compensation, 64 A. L. R. 1360.

Failure to claim compensation in special assessment proceedings, effect, 64 A. L. R. 764.

Good will as element of damages in condemnation, 41 A. L. R. 1026.

Hospital, depreciation of property by erection of municipal, 4 A. L. R. 1012.

Injunction against exercise of power of eminent domain, 133 A. L. R. 11.

Interference with view as matter for consideration in eminent domain, 127 A. L. R. 106.

Interstate use of property taken, effect, 90 A. L. R. 1032.

Interurban railway in city street as additional servitude, 13 A. L. R. 809.

Irrigation of private land, condemnation to secure, 9 A. L. R. 583, 27 A. L. R. 519.

Lack of diligence as affecting right to compensation, 58 A. L. R. 681.

Levee, compensation for land left outside of, 20 A. L. R. 302.

Levee and flood control acts permitting taking of property in emergency, 70 A. L. R. 1295.

Library, condemnation of property for, 66 A. L. R. 1496.

Logging road, condemnation to obtain, 86 A. L. R. 552.

Logs or other materials, statute authorizing hauling or floating through private property, 51 A. L. R. 1199.

Loss or expense incurred by property owner, liability for, 31 A. L. R. 352.

Mine, condemnation of property for spur or railroad connection, 54 A. L. R. 69.

Narrowing or partial vacation of street or highway, right of property owner to compensation, 49 A. L. R. 1254.

Navigation, extension of power of public to improve without compensating riparian owner to improvements not in aid of navigation, 18 A. L. R. 403.

—improvements affecting riparian owner's access, 21 A. L. R. 206, 89 A. L. R. 1156.
Obstruction or diversion of, or other interference with, flow of surface water as taking or damaging property within constitutional provision against taking or damaging without compensation, 128 A. L. R. 1195.
Option to purchase as extending to condemnation award, 68 A. L. R. 1338.
"Owner," meaning in statutes relating to condemnation, 2 A. L. R. 785.
Park land, condemnation for purpose inconsistent with dedication, 18 A. L. R. 1271, 63 A. L. R. 493.
Particular use of property, power to condemn against, 8 A. L. R. 594.
Plans and specifications for work or use, binding effect, 89 A. L. R. 886.
Platting or planning in anticipation of improvement as taking or damaging of property affected, 64 A. L. R. 546.
Private motor vehicles for hire, regulations affecting as taking of property without compensation, 81 A. L. R. 1415, 87 A. L. R. 735.
Private payment of compensation or cost of improvement as affecting question of whether improvement is for public or private purpose, 53 A. L. R. 33.
Property for exchange for other property required for public use, condemning, 68 A. L. R. 442.
Property in excess of need for public purpose, condemning, 14 A. L. R. 1350, 68 A. L. R. 837.
Property not taken, controlling use or improvement, 23 A. L. R. 876.
Property of United States, condemnation by state, 4 A. L. R. 548.
Property previously condemned or purchased for public use, right to condemn where not actually so used, 12 A. L. R. 1502.
Protection of right of mortgagee in eminent domain proceedings, 58 A. L. R. 1534, 110 A. L. R. 542.
Public benefit or convenience as distinguished from use by public as ground for condemnation, 54 A. L. R. 7.
Purchaser at invalid tax or assessment sale, right to reimbursement from condemnation award, 86 A. L. R. 1232.
Railroad crossings, requiring railroad to construct or maintain private crossings without compensation, 12 A. L. R. 227.
Railroad in street, abutting owner's right to compensation, 22 A. L. R. 145.
—changing location, 46 A. L. R. 1446.
Railroad overhead or underground crossing changing grade, right of property owner to compensation, 57 A. L. R. 657.
Railroad property leases or privileges, requiring grant or renewal as taking of property, 47 A. L. R. 109.
Railroad's right to condemn material or mineral in right-of-way, 21 A. L. R. 1131.
Reduction or increase of award, power of court, 61 A. L. R. 194.
School, depreciation of property due to locating, 48 A. L. R. 1031.
Second condemnation proceeding, compensation in, 18 A. L. R. 569.
Separate estates or interests, separate valuation, 69 A. L. R. 1263.
Street forming boundary of city, rural or urban character as affecting right of abutting owner to compensation for use by utilities, 30 A. L. R. 746.
Structure in street or highway interfering with access of abutting owner, 45 A. L. R. 534.
Taxes, taking of property in eminent domain as affecting, 79 A. L. R. 116.
Telegraph or telephone line along railroad right-of-way, fee owner's right to compensation for, 8 A. L. R. 1293, 19 A. L. R. 383.
Temporary conditions incident to improvement, right to compensation for, 68 A. L. R. 340, 98 A. L. R. 956.
Tenant's right to remove building or fixtures as affecting his right to compensation, 75 A. L. R. 1495.
Tribunal to fix compensation, statutes relating to, 74 A. L. R. 569.
Vacation of street or highway, nonabutter's right to compensation, 49 A. L. R. 330, 93 A. L. R. 639.
War, compensation for property confiscated or requisitioned during, 25 A. L. R. 1181.
Widening highway space for traffic, right of abutting owner to compensation, 55 A. L. R. 896.
Wife as necessary party to proceeding to condemn land of husband, 5 A. L. R. 1347.
Zoning as taking property without compensation, 33 A. L. R. 287, 38 A. L. R. 1496, 43 A. L. R. 668, 54 A. L. R. 1030.

Sec. 23. [Irrevocable franchises forbidden.]

No law shall be passed granting irrevocably any franchise, privilege or immunity.

1. Validity of particular statutes.

2. — intoxicating liquors.

Former Liquor Control Act held not unconstitutional as violative of this section. Utah Manufacturers' Ass'n v. Stewart, 82 U. 198, 23 P.2d 229.

A. L. R. notes.

Competition by grantor of nonexclu-

sive franchise, or provision therefor, as violation of constitutional rights of franchise holder, 114 A. L. R. 192; inclusion of different franchise rights or purposes in same ordinance, 127 A. L. R. 1049.

Sec. 24. [Uniform operation of laws.]

All laws of a general nature shall have uniform operation.

Cross-reference.

Prohibition on private or special laws, Const. Art. VI, § 26.

1. In general.

All laws shall operate uniformly wherever uniform laws can be enacted. State v. Holtgreve, 58 U. 563, 200 P. 894, 26 A. L. R. 696.

2. Classification.

3. — validity in general.

Objects and purposes of law present touchstone for determining proper and improper classifications. State v. Mason, 94 U. 501, 78 P.2d 920, 117 A. L. R. 330; State v. J. B. & R. E. Walker, Inc., 100 U. 523, 116 P.2d 766. (Moffat, C. J., and Pratt, J., dissenting.)

Classification is never unreasonable or arbitrary in its inclusion or exclusion features so long as there is some basis for differentiation between classes or subject matters included, as compared to those excluded, provided differentiation bears reasonable relation to purposes of act. State v. J. B. & R. E. Walker, Inc., 100 U. 523, 116 P.2d 766. (Moffat, C. J., and Pratt, J., dissenting.)

Before legislative enactment can be interfered with, court must be able to say that there is no fair reason for the law that would not require equally its extension to those which it leaves untouched. State v. J. B. & R. E. Walker, Inc., 100 U. 523, 116 P.2d 766. (Moffat, C. J., and Pratt, J., dissenting.)

It is only where some persons or transactions, excluded from operation of law are, as to the subject matter of the law, in no differentiable class from those included in its operation, that the law is discriminatory in the sense of being arbitrary and unconstitutional, and if reasonable basis to differentiate can be found, law must be held constitutional. State v. J. B. & R. E. Walker, Inc., 100 U. 523, 116 P.2d 766. (Moffat, C. J., and Pratt, J., dissenting.)

Inability of legislature to make perfect classification does not render statute unconstitutional. State v. J. B. & R. E. Walker, Inc., 100 U. 523, 116 P.2d 766. (Moffat, C. J., and Pratt, J., dissenting.)

4. — burden of proof.

One who assails legislative classification as arbitrary has burden of proving it to be such. State v. J. B. & R. E. Walker, Inc., 100 U. 523, 116 P.2d 766. (Moffat, C. J., and Pratt, J., dissenting.)

5. Particular statutes, ordinances, subjects, and instances.

6. — automobiles.

Provisions of statute, relating to registration and licensing of motor vehicles using the highways, which distinguished between pleasure cars and vehicles used to transport persons or property for hire, were constitutional as involving a reasonable classification of vehicles based upon the potential wear upon the highways, but the added provision distinguishing between gasoline and Diesel power vehicles, which was revenue producing in its nature, was invalid as not germane to the general title and the one subject therein. Carter v. State Tax Commission, 98 U. 96, 96 P.2d 727, 126 A. L. R. 1402.

7. — estates of decedents.

If amount required to be paid under 28–2–2 for filing of an inventory and appraisement of an estate does not bear some reasonable relation to extent and character of services required to be performed, then section would offend this article of Constitution, because of amount's being tax and not fee. Smith v. Carbon County, 90 U. 560, 63 P.2d 259, 108 A. L. R. 513.

8. — intoxicating liquors.

Local option statutes were held not to offend against this section. State v. Briggs, 46 U. 288, 146 P. 261.

9. — licenses.

Former statute, the effect of which was to forbid, without license, the canvassing or selling by sample of any of goods specified in statute which had been shipped into state, but to permit, without license, canvassing and selling in such manner the same kind of goods manufactured or produced within state. held invalid as an illegal discrimination as to property and persons. State v. Bayer, 34 U. 257, 97 P. 129, 19 L. R. A. (N. S.) 297.

Without deciding whether a city ordinance comes within the purview of this provision or not, a license or occupation tax imposed upon corporations engaged in generating and selling electricity and "using meters" is invalid under 15–8–80. Salt Lake City v. Utah Light & Railway Co., 45 U. 50, 142 P. 1067.

Statute, requiring license to be obtained by persons other than commission merchants, who for purpose of resale

obtain from farmers possession or control of farm products without paying cash for same, bears a distinct relationship to the general welfare even though it does not cover every person in the state. State v. Mason, 94 U. 501, 78 P.2d 920, 117 A. L. R. 330. (Moffat, J., dissenting.)

10. — officers and public employees.
74A–0–1, requiring bond by public officers to be filed within 60 days, and, if such was not done, providing that office could be declared vacant, was not unconstitutional as violative of this section. State ex rel. Stain v. Christensen, 84 U. 185, 35 P.2d 775.

11. — road poll tax.
Annual road poll tax held not to be within this section, as being form of general taxation, since it was not to be regarded as property, poll or capitation tax, as such terms are generally understood, but as imposition in nature of police regulation. Salt Lake City v. Wilson, 46 U. 60, 65, 148 P. 1104.

12. — tobacco.
The Cigarette Law does not infringe this section. State v. Packer Corp., 77 U. 500, 297 P. 1013, followed in 78 U. 177, 2 P.2d 114, aff'd 285 U. S. 105, 76 L. Ed. 643, 52 S. Ct. 273.
93–2–1, imposing penalty for advertising cigarettes and tobacco on billboards or other places of display, is not invalid for discrimination. Packer Corp. v. State, 285 U. S. 105, 76 L. Ed. 643, 52 S. Ct. 273, aff'g 78 U. 177, 2 P.2d 114. (Straup and Elias Hansen, JJ., dissenting.)

13. — trading stamps.
Trading Stamp Act which taxed stamps of merchant who obtained them from another, but did not apply to cases where merchant issued his own stamps, held invalid as unreasonably discriminatory. State v. Holtgreve, 58 U. 563, 200 P. 894, 26 A. L. R. 696.

Sec. 25. [Rights retained by people.]

This enumeration of rights shall not be construed to impair or deny others retained by the people.

Sec. 26. [Provisions mandatory and prohibitory.]

The provisions of this Constitution are mandatory and prohibitory, unless by express words they are declared to be otherwise.

1. Conclusiveness on each department of government of Constitution's mandatory provisions.
Mandatory provisions of Constitution are conclusive on each of departments of government. Ritchie v. Richards, 14 U. 345, 47 P. 670. (Per Bartch, J.; Miner, J., concurring.)

Sec. 27. [Fundamental rights.]

Frequent recurrence to fundamental principles is essential to the security of individual rights and the perpetuity of free government.

ARTICLE II

STATE BOUNDARIES

Section 1. [State boundaries.]

The boundaries of the State of Utah shall be as follows:

Beginning at a point formed by the intersection of the thirty-second degree of longitude west from Washington, with the thirty-seventh degree of north latitude; thence due west along said thirty-seventh degree of north latitude to the intersection of the same with the thirty-seventh degree of longitude west from Washington; thence due north along said thirty-seventh degree of west longitude to the intersection of the same with the forty-second degree of north latitude; thence due east along said forty-second degree of north latitude to the intersection of the

same with the thirty-fourth degree of longitude west from Washington; thence due south along said thirty-fourth degree of west longitude to the intersection of the same with the forty-first degree of north latitude; thence due east along said forty-first degree of north latitude to the intersection of the same with the thirty-second degree of longitude west from Washington; thence due south along said thirty-second degree of west longitude to the place of beginning.

ARTICLE III

ORDINANCE

Art. 3 Amendment Proposed to be Voted at General Election 1946 S.L. '45, H.J.R. 12, p. 318-320

The following ordinance shall be irrevocable without the consent of the United States and the people of this State:

[Religious toleration. Polygamy forbidden.]

First:—Perfect toleration of religious sentiment is guaranteed. No inhabitant of this State shall ever be molested in person or property on account of his or her mode of religious worship; but polygamous or plural marriages are forever prohibited.

Cross-reference.

Religious freedom, Const. Art. I, § 4.

1. Legitimization of issue of polygamous or plural marriages.

Comp. Laws 1907, § 2850 (Comp. Laws. 1917, § 6430), legitimizing certain children, held to apply only to children who were the issue of so-called Mormon polygamous or plural marriages, and not to illegitimate children who were termed "bastards" at common law. Rohwer v. District Court of First Judicial District, 41 U. 279, 125 P. 671.

[Right to public domain disclaimed. Taxation of lands. Exemption.]

Second:—The people inhabiting this State do affirm and declare that they forever disclaim all right and title to the unappropriated public lands lying within the boundaries hereof, and to all lands lying within said limits owned or held by any Indian or Indian tribes, and that until the title thereto shall have been extinguished by the United States, the same shall be and remain subject to the disposition of the United States, and said Indian lands shall remain under the absolute jurisdiction and control of the Congress of the United States. The lands belonging to citizens of the United States, residing without this State shall never be taxed at a higher rate than the lands belonging to residents of this State; nor shall taxes be imposed by this State on lands or property herein, belonging to or which may hereafter be purchased by the United States or reserved for its use; but nothing in this ordinance shall preclude this State from taxing, as other lands are taxed, any lands owned or held by any Indian who has severed his tribal relations, and has obtained from the United States or from any person, by patent or other grant, a title thereto, save and except such lands as have been or may be granted to any Indian or Indians under any act of Congress, containing a provision exempting the lands thus granted from taxation, which last mentioned lands shall be exempt from taxation so long, and to such extent, as is or may be provided in the act of Congress granting the same.

1. **Effect on state's power of eminent domain.**
Under provision of this section and section 3 of Enabling Act, by which the people forever disclaim all right and title to unappropriated public lands lying within boundaries of proposed state, public lands are not subject to state power of eminent domain, either directly or indirectly, without consent of United States. Utah Power & Light Co. v. United States, 230 F. 328, 337, 4 A. L. R. 535.

[Territorial debts assumed.]

Third:—All debts and liabilities of the Territory of Utah, incurred by authority of the Legislative Assembly thereof, are hereby assumed and shall be paid by this State.

Cross-reference.
Continuation of territorial laws, Const. Art. XXIV, § 2.

1. **Compensation of territorial statistician.**
Under this provision, unpaid compensation, owing to incumbents of office of territorial statistician during 1895, became obligation of state. State ex rel. Bache v. Richards, 15 U. 477, 49 P. 532.

[Free, non-sectarian schools.]

Fourth:—The Legislature shall make laws for the establishment and maintenance of a system of public schools, which shall be open to all the children of the State and be free from sectarian control.

Cross-reference.
Statutory provisions as to public schools, Title 75.

1. **Exclusion of unvaccinated children from city schools during smallpox epidemic in state.**
Former statute, as well as state's inherent police power, held to have justified action of city boards of health and education in excluding unvaccinated children from city schools during time of smallpox epidemic in state. State ex rel. Cox v. Board of Education of Salt Lake City, 21 U. 401, 60 P. 1013. (Baskin, J., dissenting.)

ARTICLE IV

ELECTIONS AND RIGHT OF SUFFRAGE

Cross-reference.
Statutory provisions concerning elections, Title 25.

Section 1. [Equal political rights.]

The rights of citizens of the State of Utah to vote and hold office shall not be denied or abridged on account of sex. Both male and female citizens of this State shall enjoy equally all civil, political and religious rights and privileges.

1. **Women as ineligible to vote on question of adoption of Constitution.**
Women were without right to vote on question of ratification or rejection of Constitution. Anderson v. Tyree, 12 U. 129, 42 P. 201. (King, J., dissenting.)

2. **Election law, requiring only "male" voters to be taxpayers, as void.**
Portion of Election Law of 1878, which provided that all "male" voters should be taxpayers, without imposing same condition on "female" voters, held void. Lyman v. Martin, 2 U. 136.

3. **Road poll tax, exempting women, as not prohibited.**
This section does not prohibit a road poll tax exempting women; such a classification is reasonable. Salt Lake City v. Wilson, 46 U. 60, 148 P. 1104.

A. L. R. note.
Women's suffrage amendment to Federal or State Constitution as affecting pre-existing constitutional or statutory provisions which limited rights or duties to legal or male voters, 71 A. L. R. 1332.

Sec. 2. [Qualifications to vote.]

Every citizen of the United States, of the age of twenty-one years and upwards, who shall have been a citizen for ninety days, and shall have resided in the State or Territory one year, in the county four months, and in the precinct sixty days next preceding any election, shall be entitled to vote at such election except as herein otherwise provided.

1. **Non-absolute character of right of suffrage.**
The right given by this section is not absolute. Legislature may prescribe reasonable rules and regulations which must be complied with before the right becomes absolute. Evans v. Reiser, 78 U. 253, 276, 2 P.2d 615, rehearing denied 78 U. 307, 3 P.2d 253.

2. **Registration law as not prohibited.**
Legislature may rightfully enact a registration law which merely regulates the exercise of the elective franchise and does not amount to a denial of, or abridge or impair, the right itself. Earl v. Lewis, 28 U. 116, 77 P. 235.

3. **Metropolitan Water Districts Act as not invalid.**
Metropolitan Water Districts Act held constitutional as against contention that notice of election was required by 100–10–11 to be published in each county instead of in each city included in proposed district. Lehi City v. Meiling, 87 U. 237, 48 P.2d 530; Provo City v. Evans, 87 U. 292, 48 P.2d 555.

Sec. 3. [Electors: Immunity from arrest.]

In all cases except those of treason, felony or breach of the peace, electors shall be privileged from arrest on the days of election, during their attendance at elections, and going to and returning therefrom.

Sec. 4. [Id. From militia duty.]

No elector shall be obliged to perform militia duty on the day of election except in time of war or public danger.

Sec. 5. [Electors to be citizens of United States.]

No person shall be deemed a qualified elector of this State unless such person be a citizen of the United States.

Sec. 6. [Certain criminals, etc., ineligible to vote.]

No idiot, insane person or person convicted of treason, or crime against the elective franchise, unless restored to civil rights, shall be permitted to vote at any election, or be eligible to hold office in this State.

Sec. 7. [Property qualification forbidden, when.]

Except in elections levying a special tax or creating indebtedness, no property qualification shall be required for any person to vote or hold office.

Sec. 8. [Ballot to be secret.]

All elections shall be by secret ballot. Nothing in this section shall be construed to prevent the use of any machine or mechanical contrivance for the purpose of receiving and registering the votes cast at any election: Provided, That secrecy in voting be preserved.

1. Section as not self-executing.

This section is not self-executing, and law-making power must enact such laws as will, in its opinion, effect purpose of secrecy. Evans v. Reiser, 78 U. 253, 277, 2 P.2d 615, rehearing denied 78 U. 307, 3 P.2d 253.

2. Construction, operation, and effect of section in general.

No legal voter can be compelled to disclose for whom he voted or to have his ballot so marked that it may be ascertained therefrom how he voted, and any contrivance or method, by which, for any purpose—election contest or otherwise, ballot can be identified and voter exposed, is unauthorized and no legislative enactment can give it force of law. Ritchie v. Richards, 14 U. 345, 47 P. 670. (Per Bartch, J.; Miner, J., concurring.)

The guaranty of a secret ballot was not intended to be used as a sword by those who may be defeated or disappointed at an election, by being permitted to take advantage of irregularities, and by reason thereof have the election declared invalid and the result thereby obtained held for naught. Hardy v. Beaver City, 41 U. 80, 87, 125 P. 679.

Although it be shown that ballots which were not secret were used and voted, yet unless contestant goes further and shows that result of election was in fact affected by voting such ballots, he cannot prevail in contesting an election so held. Hardy v. Beaver City, 41 U. 80, 89, 125 P. 679.

Preservation of secrecy in voting contemplates not only that no one except the voter shall actually see the voter cast his ballot, but it also contemplates that, when cast, the ballot may not, by reason of unauthorized markings, as condemned by 25–6–3, be picked out and separated from the other ballots. Secrecy prevents bribery, intimidation, fraud, and other attendant evils. Evans v. Reiser, 78 U. 253, 277, 2 P.2d 615, rehearing denied 78 U. 307, 3 P.2d 253.

3. Degree of secrecy contemplated.

Secrecy of ballot, secured to voter by this section, is secrecy of impenetrable character. Ritchie v. Richards, 14 U. 345, 47 P. 670. (Per Bartch, J.; Miner, J., concurring; per Zane, C. J.: legal secrecy is sufficient.) But see Hardy v. Beaver City, 41 U. 80, 125 P. 679.

Perfect secrecy in case printed ballots are used is neither contemplated by nor attainable under the law. Only approximate secrecy can be attained in any event. Hardy v. Beaver City, 41 U. 80, 88, 125 P. 679.

4. Numbering of ballots.

So much of legislative act as provided for identification of ballots by numbering them, held void. Ritchie v. Richards, 14 U. 345, 47 P. 670. (Per Bartch, J.; Miner, J., concurring; Zane, C. J., contra.)

Numbering of ballots may destroy their secrecy and for that reason prevent them from being ballots such as this provision contemplates. Hardy v. Beaver City, 41 U. 80, 89, 125 P. 679.

Sec. 9. [Elections, when held. Terms begin, when.]

All general elections, except for municipal and school officers, shall be held on the Tuesday next following the first Monday in November of the year in which the election is held. Special elections may be held as provided by law. The terms of all officers elected at any general election, shall commence on the first Monday in January next following the date of their election. Municipal and School officers shall be elected at such time as may be provided by law.

Cross-reference.

Statutory provision, 25–1–1.

1. Statute, relating to election and term of office of county and precinct officers, as not invalid.

19–13–6 does not contravene this section. An officer may hold over until a successor is elected and qualified, though he is not required to hold over; he may resign. Tooele County v. De La Mare, 90 U. 46, 51, 59 P.2d 1155, 106 A. L. R. 182, superseding 90 U. 23, 39 P.2d 1051, and following State ex rel. Stain v. Christensen, 84 U. 185, 35 P.2d 775.

2. Filling of city offices by appointment instead of by election.

Constitution does not require that all municipal officers be elected, but some of such officers may be elected and others thereof be appointed as provided by law. Whipple v. Henderson, 13 U. 484, 45 P. 274; State ex rel. Weber v. Beardsley, 13 U. 502, 45 P. 569.

Under Constitution, office of city attorney may be filled by appointment and is not required to be filled by election. Whipple v. Henderson, 13 U. 484, 45 P. 274.

A. L. R. notes.
"Until" as word of inclusion or exclusion where term of office runs until a specified day, 16 A. L. R. 1100; beginning or expiration of term of elective office where no time fixed by law, 80 A. L. R. 1290, 135 A. L. R. 1173.

Sec. 10. [Oath of office.]

All officers made elective or appointive by this Constitution or by the laws made in pursuance thereof, before entering upon the duties of their respective offices, shall take and subscribe the following oath or affirmation: "I do solemnly swear (or affirm) that I will support, obey and defend the Constitution of the United States and the Constitution of this State, and that I will discharge the duties of my office with fidelity. ["]

Cross-reference.
Oaths of officers, 65–0–1 et seq.

1. Statute, requiring officer to give bond, as not invalid.
87–5–9, requiring state treasurer to give bond, held not unconstitutional on ground that it was incompetent for legislature to add to requirement, contained in this section, that he take oath as condition precedent to his right to assume duties of his office. State ex rel. Stain v. Christensen, 84 U. 185, 35 P.2d 775. (Moffat, J., dissenting.)

A. L. R. note.
Member of grand or petit jury as officer within constitutional or statutory provisions in relation to oath or affirmation, 118 A. L. R. 1098.

ARTICLE V

DISTRIBUTION OF POWERS

Section 1. [Three departments of government.]

The powers of the government of the State of Utah shall be divided into three distinct departments, the Legislative, the Executive, and the Judicial; and no person charged with the exercise of powers properly belonging to one of these departments, shall exercise any functions appertaining to either of the others, except in the cases herein expressly directed or permitted.

Cross-references.
Legislative department, Const. Art. VI; executive department, Const. Art. VII; judicial department, Const. Art. VIII; nondelegability of municipal powers, Const. Art. VI, § 29.

1. In general.
For a learned historical discussion of this separation of powers from a practical standpoint, see opinion of Mr. Justice Wolfe in Tite v. State Tax Commission, 89 U. 404, 406, 57 P.2d 734.

2. Equality of departments of government within respective spheres.
Departments of government are all on same plane and each is absolute within its sphere except as limited or controlled by Constitution of state or nation. Kimball v. Grantsville City, 19 U. 368, 57 P. 1, 45 L. R. A. 628.
Apportionment of distinct power to one department of government implies inhibition against its exercise by either of other departments thereof. Kimball v. Grantsville City, 19 U. 368, 57 P. 1, 45 L. R. A. 628.

3. Delegation of legislative power.
Any law which confers, either on court or executive officer, power to legislate or make laws is unconstitutional and void. Young v. Salt Lake City, 24 U. 321, 67 P. 1066.
Legislature is not permitted to abdicate or transfer to others essential legislative function with which it is vested, and imposition of tax and designation of those who are to pay it is such an essential legislative function. Western Leather & Finding Co. v. State Tax Commission, 87 U. 227, 48 P.2d 526.

4. Delegation by legislature of administrative functions.
Although legislature cannot delegate power to make laws, it may make laws to take effect on ascertainment of cer-

tain facts and conditions and may delegate duty to determine existence of such facts and conditions to some other branch of government. Young v. Salt Lake City, 24 U. 321, 67 P. 1066.

Legislative power may not be delegated except that, under certain restrictions, administrative functions may be delegated to administrative boards and commissions. State v. Goss, 79 U. 559, 11 P.2d 340, discussing question at length.

5. "Judicial power" construed.

While term "judicial power" embraces all suits and actions whether public or private, it does not necessarily include the power to hear and determine matters not necessarily in nature of suit or action between parties and does not apply to those cases where the judgment is exercised or is to be exercised as a mere incident to execution of a ministerial power or duty. Citizens' Club v. Welling, 83 U. 81, 27 P.2d 23.

6. Judicial power of houses of legislature.

Senate, while sitting as court of impeachment, has judicial authority, so far as necessary, to try issues involved, but otherwise Constitution does not intrust any part of judicial power of state to legislature. In re Handley's Estate, 15 U. 212, 49 P. 829, 62 Am. St. Rep. 926, on motion for rehearing in 7 U. 49, 24 P. 673, appeal dismissed on jurisdictional grounds, 151 U. S. 443, 38 L. Ed. 227, 14 S. Ct. 386.

7. Judicial power of industrial commission.

Industrial commission is an administrative body and has no power to perform judicial acts or exercise judicial functions, and hence has no jurisdiction of action to recover additional compensation for employees employed on public works on ground that they were not paid prevailing wage rate. Logan City v. Industrial Commission, 85 U. 131, 38 P.2d 769.

8. Courts' power to determine political or quasi-political matters.

Equity courts have no inherent power to inquire into political or quasi-political matters unless authorized to do so by statute, and then only to extent and in manner provided in statute. Ewing v. Harries, 68 U. 452, 250 P. 1049.

9. Courts' power and duty with reference to legislative acts in general.

Courts have power to declare any act of any department of government, which violates Constitution, to be utterly void, and, in exercising this function in regard to act of legislature, they do not trench on domain of legislative department. Ritchie v. Richards, 14 U. 345, 47 P. 670. (Per Bartch, J.; Miner, J., concurring.)

Court has no right, when language employed by legislature in statute is unambiguous, to make, by construction, exceptions or qualifications to meet hardship of particular case; for court so to do would be usurpation of legislative power. Smith v. Schwartz, 21 U. 126, 60 P. 305, 81 Am. St. Rep. 670. (Bartch, C. J., dissenting.)

10. Courts' power to determine wisdom, reasonableness, propriety, etc., of statutes.

Policy of tax statute does not concern supreme court. Judge v. Spencer, 15 U. 242, 48 P. 1097.

It is not within province of supreme court to decide whether tax statute promotes best welfare of state or is disastrous to business interests. Judge v. Spencer, 15 U. 242, 48 P. 1097.

Judicial department of government cannot legitimately question policy, or refuse to sanction provisions, of any statute not in conflict with Constitution. Kimball v. Grantsville City, 19 U. 368, 57 P. 1, 45 L. R. A. 628.

Independently of any repugnance between statute and any constitutional provision, court has no power to arrest statute's execution however unwise or unjust, in opinion of court, statute may be, or whatever motives may have led to its enactment. Kimball v. Grantsville City, 19 U. 368, 57 P. 1, 45 L. R. A. 628.

Legislature is sole judge as to whether there exists such cause as requires enactment of law, and there is no authority in government which can declare void law enacted by it, when such law does not conflict with Constitution. Kimball v. Grantsville City, 19 U. 368, 57 P. 1, 45 L. R. A. 628.

Power of legislature to legislate on all subjects and for all purposes of civil government is inherent, plenary, and absolute, except as limited or controlled by Federal or State Constitution, and, unless legislature acts in violation of constitutional restraint, courts have no authority to declare void one of its enactments, however unwise or unnecessary such enactment may be. State ex rel. Breeden v. Lewis, 26 U. 120, 72 P. 388.

When legislative action is within scope of police power, fairly debatable questions as to reasonableness, wisdom, or propriety are not for courts but for legislature. Utah Manufacturers' Ass'n v. Stewart, 82 U. 198, 23 P.2d 229.

11. When courts will not determine constitutionality of legislative acts.

Unless the constitutionality of an act is necessarily involved, the court will de-

cline to pass upon it. Martineau v. Crabbe, 46 U. 327, 150 P. 301.

12. Particular statutes, ordinances, subjects, and instances.

13. — cities and towns.

Former statutory provisions (now 15–4–1 to 15–4–3), relating to disconnection of territory from cities, held not invalid as effecting prohibited delegation of legislative power to court and commissioners. Young v. Salt Lake City, 24 U. 321, 67 P. 1066.

14. — corporations.

18–6–13, conferring power on secretary of state to revoke charter of club for violating law, held constitutional as against contention that it conferred judicial power upon secretary of state. Citizens' Club v. Welling, 83 U. 81, 27 P.2d 23.

15. — crimes.

This section precludes the supreme court from declaring any conduct a crime, no matter how morally reprehensible it may be, where it is not so declared by the legislature. State v. Johnson, 44 U. 18, 137 P. 632.

16. — declaratory or explanatory statutes affecting existing judgments.

After court has interpreted or construed statute on trial of case, and rendered judgment, legislature cannot affect judgment by declaratory or explanatory statute, giving statute, under which judgment was rendered, different construction. In re Handley's Estate, 15 U. 212, 49 P. 829, 62 Am. St. Rep. 926, on motion for rehearing in 7 U. 49, 24 P. 673, appeal dismissed on jurisdictional grounds, 151 U. S. 443, 38 L. Ed. 227, 14 S. Ct. 386.

When court construes statute, involved in case, and holds that it has certain effect and renders judgment accordingly, legislature cannot thereafter declare that statute, as to case in which judgment was rendered, had effect other than that declared by court. In re Handley's Estate, 15 U. 212, 49 P. 829, 62 Am. St. Rep. 926, on motion for rehearing in 7 U. 49, 24 P. 673, appeal dismissed on jurisdictional grounds, 151 U. S. 443, 38 L. Ed. 227, 14 S. Ct. 386.

17. — elections.

Courts, where proper proceedings are instituted against proper parties, have jurisdiction to determine all matters pertaining to conduct of elections and to returns thereof, including issuance of certificate of election to every person, candidate for office of legislator as well as for any other office, who, at any election, has received majority of legal votes cast for such office and who has, through fraud or other unlawful or improper means, been deprived of certificate of election, showing his prima facie right to office. Ellison v. Barnes, 23 U. 183, 63 P. 899.

Courts have no jurisdiction to try and determine contests for seats in legislature. Ellison v. Barnes, 23 U. 183, 63 P. 899.

18. — fence laws.

Local option, provided for in Fence Law, was not invalid upon ground that it delegated legislative powers to voters. Peterson v. Peterson, 42 U. 270, 130 P. 241.

19. — indeterminate sentence laws.

The Indeterminate Sentence Law, 105–36–20, is not violative of this section as depriving the court of any power or authority guaranteed to it by the Constitution of the state. Mutart v. Pratt, 51 U. 246, 170 P. 67. (McCarty, J., dissenting.)

20. — intoxicating liquors.

Local Option Law is not invalid upon ground that it delegates legislative powers to voters. State v. Briggs, 46 U. 288, 146 P. 261.

21. — irrigation districts.

Irrigation District Act of 1909, as amended by Laws of 1911, did not violate this section on ground that judicial powers were conferred upon certain persons contrary to provisions of section. State ex rel. Lundberg v. Green River Irr. Dist., 40 U. 83, 119 P. 1039.

22. — milk control acts.

Milk Control Act, vesting state board of agriculture with authority to establish milk marketing areas and regulate price of milk therein, held unconstitutional as constituting an unlawful delegation of legislative power. Rowell v. State Board of Agriculture, 98 U. 353, 99 P.2d 1.

23. — probate practice.

Act, passed by legislature of state, which declared that, in all cases involving right of inheritance by polygamous children and determined against them in any of courts of territory, motion for rehearing or new trial should be entertained on their application at any time within one year after act took effect, and which required courts of state to hear and determine motion and, if motion was granted, to hear and determine case without prejudice from lapse of time following former hearing or any prior determination of like motion, held assumption by legislature of control over judiciary not warranted by Constitution. In re Handley's Estate, 15 U. 212, 49 P. 829, 62 Am. St. Rep. 926, on motion for

rehearing in 7 U. 49, 24 P. 673, appeal dismissed on jurisdictional grounds, 151 U. S. 443, 38 L. Ed. 227, 14 S. Ct. 386.

24. — taxation.

Sales Tax Act was not open to objection that legislature attempted to transfer its authority to levy taxes and designate persons who were required to pay the same to the state tax commission because of 80–15–20 empowering commission to make rules and regulations. Western Leather & Finding Co. v. State Tax Commission, 87 U. 227, 48 P.2d 526.

25. — uniform land registration acts.

Uniform Land Registration Act of 1917 held not invalid as attempting to confer judicial authority on county clerks of state as ex officio registrars of title in violation of this provision. Ashton-Jenkins Co. v. Bramel, 56 U. 587, 192 P. 375, 11 A. L. R. 752.

26. — workmen's compensation.

Legislature had constitutional power to delegate authority to industrial commission to control insurance rates for workmen's compensation. Scranton Leasing Co. v. Industrial Commission, 51 U. 368, 170 P. 976.

Workmen's Compensation Act is not invalid because it delegates to industrial commission the power to hear, consider, and determine controversies between litigants as to ultimate liability, or their property rights. Utah Fuel Co. v. Industrial Commission, 57 U. 246, 194 P. 122.

A. L. R. notes.

Censorship laws as delegations of power, 64 A. L. R. 505.

Delegation of power to the judiciary, 6 A. L. R. 218, 34 A. L. R. 1128, 63 A. L. R. 941, 64 A. L. R. 1373, 69 A. L. R. 266, 70 A. L. R. 1284, 87 A. L. R. 546.

Delegation of power to the people, 6 A. L. R. 218, 20 A. L. R. 1491, 64 A. L. R. 1378, 70 A. L. R. 1062, 76 A. L. R. 105.

Delegation of powers by various branches of government, 2 A. L. R. 882, 12 A. L. R. 1435, 27 A. L. R. 927, 32 A. L. R. 1406, 40 A. L. R. 347, 48 A. L. R. 454, 54 A. L. R. 1104, 70 A. L. R. 1243, 86 A. L. R. 1554, 91 A. L. R. 799.

Emergency as affecting validity of delegation of power to executive, 86 A. L. R. 1554.

Governmental powers in peace-time emergency, 86 A. L. R. 1539, 88 A. L. R. 1519, 96 A. L. R. 312, 96 A. L. R. 824.

Separation of powers of government, 12 A. L. R. 57, 19 A. L. R. 1124, 26 A. L. R. 399, 46 A. L. R. 964, 50 A. L. R. 44, 67 A. L. R. 740.

ARTICLE VI

LEGISLATIVE DEPARTMENT

Section 1. [Power vested in Senate, House and People.]

The Legislative power of the State shall be vested:

1. In a Senate and House of Representatives which shall be designated the Legislature of the State of Utah.

2. In the people of the State of Utah, as hereinafter stated:

The legal voters or such fractional part thereof, of the State of Utah as may be provided by law, under such conditions and in such manner and within such time as may be provided by law, may initiate any desired legislation and cause the same to be submitted to a vote of the people for approval or rejection, or may require any law passed by the Legislature (except those laws passed by a two-thirds vote of the members elected to each house of the Legislature) to be submitted to the voters of the State before such law shall take effect.

The legal voters or such fractional part thereof as may be provided by law, of any legal subdivision of the State, under such conditions and in such manner and within such time as may be provided by law, may initiate any desired legislation and cause the same to be submitted to a vote of the people of said legal subdivision for approval or rejection, or may require any law or ordinance passed by the law making body of

said legal subdivision to be submitted to the voters thereof before such law or ordinance shall take effect. (As amended November 6, 1900.)

Cross-references.

Enabling Act provisions, Enabling Act, § 19; statutory provisions relating to statutes, Title 88.

1. Plenary power of legislature.

In absence of any constitutional restraint, express or implied, legislature may act on any subject within sphere of government. Kimball v. Grantsville City, 19 U. 368, 57 P. 1, 45 L. R. A. 628.

Legislature may legislate on any subject as to which there is no constitutional restraint or as to which paramount law does not speak. State ex rel. Nichols v. Cherry, 22 U. 1, 60 P. 1103.

Whole law-making power is committed to legislature except such as is expressly or impliedly withheld by Federal or State Constitution. State ex rel. Stain v. Christensen, 84 U. 185, 35 P.2d 775.

The legislature has every power which has not been fully granted to the federal government or which is not prohibited by the State Constitution. State v. Mason, 94 U. 501, 78 P.2d 920, 117 A. L. R. 330.

2. Division of powers of legislature.

The field of powers exercisable by the legislature is divided into police, revenue and powers of eminent domain, and what does not fall within realm of revenue and eminent domain is usually classified as police power. State v. Mason, 94 U. 501, 78 P.2d 920, 117 A. L. R. 330.

3. Encroachment on provisions of Constitution as not permissible.

Legislature may not under this article encroach upon the provisions of the Constitution. People v. Green, 1 U. 11.

4. Increasing or diminishing of powers of federal courts as not permissible.

Legislature has no power to increase or diminish powers of federal courts in this state. People v. Green, 1 U. 11.

A. L. R. notes.

Adoption by or under authority of state statute without specific enactment or re-enactment of prospective federal legislation or federal administrative rules as unconstitutional delegation of legislative power, 133 A. L. R. 401.

Basis for computing majority essential to the adoption of a constitutional or other special proposition submitted to voters, 131 A. L. R. 1382.

Construction and application of constitutional or statutory requirement as to short title, ballot title, or explanation of nature of proposal in initiative, referendum, or recall petition, 106 A. L. R. 555.

Delegation to judiciary of power to regulate motor vehicles, 87 A. L. R. 546.

Encroachment of legislative department upon judiciary, 3 A. L. R. 450, 4 A. L. R. 1552, 5 A. L. R. 94, 1275, 9 A. L. R. 1341, 13 A. L. R. 758, 15 A. L. R. 331, 25 A. L. R. 1136, 27 A. L. R. 411, 29 A. L. R. 1287, 35 A. L. R. 460, 46 A. L. R. 1179, 65 A. L. R. 525, 66 A. L. R. 1466, 1512, 67 A. L. R. 1451, 74 A. L. R. 579, 77 A. L. R. 629, 78 A. L. R. 1323, 81 A. L. R. 1064, 86 A. L. R. 179, 912, 92 A. L. R. 1258.

Initiative statute as in effect constitutional amendment, 62 A. L. R. 1352.

Power of legislative body to amend, repeal or abrogate initiative or referred measure, or to enact measure defeated on referendum, 97 A. L. R. 1046.

Referendum of question of repeal of statute in absence of constitutional amendment, 76 A. L. R. 1062.

Time within which officer must perform duty to pass upon sufficiency of initiative, referendum, or recall petition, 102 A. L. R. 51.

Sec. 2. [Time of regular sessions.]

Regular sessions of the Legislature shall be held bi-ennially at the seat of government; and, except the first session thereof shall begin on the second Monday in January next after the election of members of the House of Representatives.

1. Validity of Emergency Revenue Act of 1933.

The Emergency Revenue Act of 1933 did not contravene this section; it will be presumed that the legislature was properly convened for its second special session, when said act was adopted, at least until something to the contrary is shown. State Tax Commission v. City of Logan, 88 U. 406, 54 P.2d 1197.

A. L. R. note.

Power of legislature or branch thereof as to time of assembling and length of session, 56 A. L. R. 721.

Sec. 3. [Members of House, how and when chosen.]

The members of the House of Representatives, after the first election, shall be chosen by the qualified electors of the respective representative districts, on the first Tuesday after the first Monday in November, 1896, and bi-ennially thereafter. Their term of office shall be two years, from the first day of January next after their election.

Cross-reference.
Statutory provision, 50–1–4.

Sec. 4. [Senators, how and when chosen.]

The senators shall be chosen by the qualified electors of the respective senatorial districts, at the same times and places as members of the House of Representatives, and their term of office shall be four years from the first day of January next after their election: Provided, That the senators elected in 1896 shall be divided by lot into two classes as nearly equal as may be; seats of senators of the first class shall be vacated at the expiration of two years, and those of the second class at the expiration of four years; so that one-half, as nearly as possible, shall be chosen bi-ennially thereafter. In case of increase in the number of senators, they shall be annexed by lot to one or the other of the two classes, so as to keep them as nearly equal as practicable.

Sec. 5. [Who eligible as legislator.]

No person shall be eligible to the office of senator or representative, who is not a citizen of the United States, twenty-five years of age, a qualified voter in the district from which he is chosen, a resident for three years of the State, and for one year of the district from which he is elected.

Sec. 6. [Who ineligible.]

No person holding any public office of profit or trust under authority of the United States, or of this State, shall be a member of the Legislature: Provided, That appointments in the State Militia, and the offices of notary public, justice of the peace, United States commissioner, and postmaster of the fourth class, shall not, within the meaning of this section, be considered offices of profit or trust.

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Sec. 7. [Ineligibility of member to office created, etc.]

No member of the Legislature, during the term for which he was elected, shall be appointed or elected to any civil office of profit under this State, which shall have been created, or the emoluments of which shall have been increased, during the term for which he was elected.

A. L. R. note.
Construction and application of constitutional or statutory provision that member of Congress or state legislature shall not, during term for which he is elected, be appointed or elected to any civil office which shall have been created or the emoluments of which shall have been increased during term for which he was elected, 118 A. L. R. 182.

Sec. 8. [Privilege from arrest.]

Members of the Legislature, in all cases except treason, felony or breach of the peace, shall be privileged from arrest during each session

of the Legislature, for fifteen days next preceding each session, and in returning therefrom; and for words used in any speech or debate in either house, they shall not be questioned in any other place.

Sec. 9. [Compensation of members.]

The members of the Legislature shall receive such *per diem* and mileage as the Legislature may provide, not exceeding four dollars per day, and ten cents per mile for the distance necessarily traveled going to and returning from the place of meeting on the most usual route, and they shall receive no other pay or perquisite.

Proposed amendment of section.

House Joint Resolution No. 2, of the 1941 regular session of the legislature, proposed to amend this section. The proposed amendment is set forth in italics immediately following this section.

Sec. 9. [Compensation of members.]

The members of the Legislature shall receive such per diem and mileage as the Legislature may provide, not exceeding ten dollars per day, and ten cents per mile for the distance necessarily traveled going to and returning from the place of meeting on the most usual route, and they shall receive no other pay or perquisite.

Submission to electorate.

Section 2 of House Joint Resolution No. 2, of the 1941 regular session of the legislature, proposing this amendment, directed that it be submitted by the secretary of state to the electors of the state at the next general election (November, 1942), in the manner as provided for by Article XXIII, section 1, of the Utah Constitution.

Effective date.

Section 3 of House Joint Resolution No. 2, of the 1941 regular session of the legislature, proposing this amendment, provided that if adopted by the electors of the state, this amendment should take effect the first day of January, 1943.

A. L. R. notes.

Per diem compensation of members and officers of legislature, 1 A. L. R. 286; illegal election or appointment of member of legislature as affecting right to salary, 7 A. L. R. 1682.

Sec. 10. [Each house to be judge of election, etc., of its members. Expulsion.]

Each house shall be the judge of the election and qualifications of its members, and may punish them for disorderly conduct, and with the concurrence of two-thirds of all the members elected, expel a member for cause.

1. Judicial power of houses of legislature.

See No. 6 of note analysis under Const. Art. V, § 1.

2. Contests for seats in legislature.

Courts' lack of jurisdiction to determine, see No. 17 of note analysis under Const. Art. V, § 1.

A. L. R. note.

Jurisdiction of courts to determine election or qualifications of member of legislative body, and conclusiveness of its decision, as affected by constitutional or statutory provision making legislative body the judge of election and qualification of its own members, 107 A. L. R. 205.

Sec. 11. [Majority is quorum. Attendance compelled.]

A majority of the members of each house shall constitute a quorum to transact business, but a smaller number may adjourn from day to day, and may compel the attendance of absent members in such manner and under such penalties as each house may prescribe.

Sec. 12. [Rules—choosing officers.]

Each house shall determine the rules of its proceedings and choose its own officers and employees.

Sec. 13. [Vacancies to be filled.]

Vacancies that may occur in either house of the legislature shall be filled in such manner as may be provided by law. (As amended November 4, 1930.)

Sec. 14. [Journals. Yeas and nays.]

Each house shall keep a journal of its proceedings, which, except in case of executive sessions, shall be published, and the yeas and nays on any question, at the request of five members of such house, shall be entered upon the journal.

1. Mandatory character of section.
This provision is mandatory. Ritchie v. Richards, 14 U. 345, 47 P. 670. (Per Bartch, J.; Miner, J., concurring.)

2. Judicial notice of journals.
Courts may take judicial notice of journals. Ritchie v. Richards, 14 U. 345, 47 P. 670. (Per Bartch, J.; Miner, J., concurring.)

3. Evidential character of journals.
Journals possess character of public records and entries therein contained constitute evidence which courts may consider in determining question of statute's constitutional enactment. Ritchie v. Richards, 14 U. 345, 47 P. 670. (Per Bartch, J.; Miner, J., concurring.)

Where it affirmatively appears on legislative journals or journal that, in passing act, legislature disregarded mandatory provision of constitution, court is justified in holding act unconstitutional and void, but, where journals are merely silent as to subject matter under investigation, court will presume that legislature acted in accordance with its delegated power, and will hold act valid, unless omission of some matter which Constitution expressly requires to be entered thereon is shown by journals or journal. Ritchie v. Richards, 14 U. 345, 47 P. 670. (Per Bartch, J.; Miner, J., concurring.)

Sec. 15. [Sessions to be public. Adjournments.]

All sessions of the Legislature, except those of the Senate while sitting in executive session, shall be public; and neither house, without the consent of the other, shall adjourn for more than three days, nor to any other place than that in which it may be holding session.

A. L. R. note.
Committee created by joint or concurrent resolution to function after adjournment of legislature, 28 A. L. R. 1158.

Sec. 16. [Duration of sessions.]

No regular session of the Legislature (except the first, which may sit ninety days) shall exceed sixty days, except in cases of impeachment. No special session shall exceed thirty days, and in such special session, or when a regular session of the Legislature trying cases of impeachment exceeds sixty days, the members shall receive for compensation only the usual *per diem* and mileage.

1. Evidence as to time of adjournment.
Certificate of secretary of state under his hand and great seal of State of Utah may be introduced to show when session of legislature adjourned sine die. Pleasant Grove City v. Lindsay, 41 U. 154, 157, 125 P. 389.

Sec. 17. [Impeachment by house.]

The House of Representatives shall have the sole power of impeachment, but in order to impeach, two-thirds of all the members elected must vote therefor.

Cross-reference.
Statutory provisions, 105–6.

A. L. R. notes.
Physical or mental disability as ground for impeachment, 28 A. L. R. 777; power of officer as affected by pendency of impeachment proceeding, 30 A. L. R. 1149.

Sec. 18. [Id. Trial by senate.]

All impeachments shall be tried by the Senate, and senators, when sitting for that purpose, shall take oath or make affirmation to do justice according to the law and the evidence. When the Governor is on trial, the Chief Justice of the Supreme Court shall preside. No person shall be convicted without the concurrence of two-thirds of the senators elected.

Cross-reference.
Statutory provisions, 105–6.

1. Judicial power of houses of legislature.
See No. 6 of note analysis under Const. Art. V, § 1.

Sec. 19. [Id. Judgment. Prosecution by law.]

The Governor and other State and Judicial officers, except justices of the peace, shall be liable to impeachment for high crimes, misdemeanors, or malfeasance in office; but judgment in such cases shall extend only to removal from office and disqualification to hold any office of honor, trust or profit in the State. The party, whether convicted or acquitted, shall, nevertheless, be liable to prosecution, trial and punishment according to law.

Sec. 20. [Id. Service of articles.]

No person shall be tried on impeachment, unless he shall have been served with a copy of the articles thereof, at least ten days before the trial, and after such service he shall not exercise the duties of his office until he shall have been acquitted.

Sec. 21. [Removal of officers.]

All officers not liable to impeachment shall be removed for any of the offenses specified in this article, in such manner as may be provided by law.

Cross-reference.
Statutory provisions, 105–7.

1. Style of process.
This section confers upon legislature power to provide by law procedure by which officials not liable to impeachment may be removed from office, and 105–7–15, which provides for removal from office by private person of public officials for receiving illegal fees, provides for civil proceeding, and is valid under this section, and Const. Art. VIII, § 18, which requires prosecutions to be in name of "the State of Utah," does not apply. Skeen v. Craig, 31 U. 20, 86 P. 487; Skeen v. Paine, 32 U. 295, 90 P. 440.

A. L. R. notes.
Constitutionality and construction of statute which fixes or specifies term of office but provides for removal without cause, 119 A. L. R. 1437.
Failure of public officer or employee to pay creditors on claims not related to his office or position as ground or justification for his removal or suspension, 127 A. L. R. 495.
Implied power of appointing authority to remove officer whose tenure is not prescribed by law, though appointed for definite term, 91 A. L. R. 1097.
Membership in or affiliation with religious, political, social or criminal society or group as ground of removal of public officer, 116 A. L. R. 358.
Physical or mental disability as ground for removal from office, 28 A. L. R. 777.
Power of courts or judges in respect of removal of officers, 118 A. L. R. 170.
Power of legislature to abolish or discontinue office, 4 A. L. R. 205, 37 A. L. R. 815.
Removal for bringing or defending action affecting personal rights or liabilities; collecting mileage after traveling without expense as ground for removal, 81 A. L. R. 493.
Removal for failure to answer frankly questions asked during investigation, 77 A. L. R. 616.
Removal for misconduct during previous term of office, 17 A. L. R. 279.
Reversal of conviction of crime as affecting status of one removed from office, or whose license has been revoked because of the conviction, or facts involved in the prosecution, 106 A. L. R. 644.

Sec. 22. [Enacting clause. Passage and amendments of law.]

The enacting clause of every law shall be, "Be it enacted by the Legislature of the State of Utah." Except such laws as may be passed by the vote of the electors as provided in subdivision 2 section 1 of this article, and such laws shall begin as follows, "Be it enacted by the people of the State of Utah." No bill or Joint Resolution shall be passed, except with the assent of the majority of all the members elected to each house of the Legislature, and after it has been read three times. The vote upon the final passage of all bills shall be by yeas and nays; and no law shall be revised or amended by reference to its title only; but the act as revised, or section as amended, shall be re-enacted and published at length. (As amended November 6, 1900.)

Cross-reference.
Engrossing bills, 50–3–1.

1. Mandatory character of section.
This section, as it read prior to its amendment, held mandatory. Ritchie v. Richards 14 U. 345, 47 P. 670. (Per Bartch, J; Miner, J., concurring.)
Provisions, relating to revision or amendment of law, held restrictive and mandatory. State v. Beddo, 22 U. 432, 63 P. 96.

2. Municipal ordinances as not within section.
This section has no application to municipal ordinances. Salt Lake City v. Howe, 37 U. 170, 106 P. 705, Ann. Cas. 1912 C 189.

3. Necessity that law have enacting clause.
In the absence of a constitutional requirement such as this, a law passed without any enacting clause is valid. Watson v. Corey, 6 U. 150, 21 P. 1089, overruled on another point in People v. Page, 6 U. 353, 23 P. 761.

4. Direct amendments as alone within contemplation of section.
This section has reference only to direct amendments, and not to conflicting provisions of separate and independent acts. State ex rel. Cluff v. Weber County Irr. Dist., 62 U. 209, 218 P. 732.

5. Revision or amendment by general appropriation acts.
While, under Constitution, general appropriation bills are exempted from general constitutional provision which requires that all bills must contain but one subject, which must be clearly expressed in title, general laws may not be amended, modified, or repealed by general appropriation act under such general title without complying with constitutional provision relative to amendments or modifications of existing laws. State ex rel. Davis v. Cutler, 34 U. 99, 95 P. 1071.

A. L. R. notes.
Applicability of constitutional provision requiring re-enactment of altered or amended statute to one which

leaves intact terms of original statute but transfers or extends its operation to another field, 67 A. L. R. 564.
Civil responsibility of member of legislative body for his vote therein, 22 A. L. R. 125.
Presumption of regular passage of statute as affected by legislative records showing that bill was defeated, 119 A. L. R. 460.
Previous statute as affected by attempted but unconstitutional amendment, 66 A. L. R. 1483.
Stage at which statute or ordinance passes beyond power of legislative body to reconsider or recall, 96 A. L. R. 1309.

Sec. 23. [Bill to contain only one subject.]

Except general appropriation bills, and bills for the codification and general revision of laws, no bill shall be passed containing more than one subject, which shall be clearly expressed in its title.

Cross-reference.
Effect of statute's only partial invalidity, see notes under 88–2.

1. In general.
It is with much reluctance that courts declare acts unconstitutional on ground that subject is not sufficiently expressed or indicated in the title. Naylor v. Crabbe, 45 U. 617, 148 P. 359.

2. Purpose, construction, and operation of section.

3. — in general.
This section requires purpose of bill to be clearly stated, but does not require mention of observances to effectuate purpose. Subject must be expressed, but analysis of subject need not be. Law may contain numerous sections, and each section may contain one or more provisions, provided they are limited to requisites constituting mode or way of effecting expressed purpose. Many details may be covered by one subject. End to be effectuated by law may be expressed in general terms. Purpose so expressed constitutes subject, and method to be provided and means to be employed in accomplishing purpose are embraced in subject, and need not be specially pointed out. In re Monk, 16 U. 100, 50 P. 810.

The purpose of this section is to prevent the legislature from intermingling in one act two or more separate and distinct propositions—things which, in a legal sense, have no connection with, or proper relation to, each other. If all of the provisions of act relate and are germane to its general purpose, there is no violation of this provision. Martineau v. Crabbe, 46 U. 327, 150 P. 301.

General rules of construction applied to this provision are: (1) the provision should be liberally construed; (2) provision should be applied so as not to hamper the law-making power in framing and adopting comprehensive measures covering the whole subject, the branches of which may be numerous, but where all have some direct connection with or relation to principal subject treated; (3) the provision should be so applied as to guard against real evil which it was intended to meet; (4) no hard and fast rule can be formulated which is applicable to all cases, but each case must to very large extent be determined in accordance with peculiar circumstances and conditions thereof. State v. McCornish, 59 U. 58, 201 P. 637.

This provision is for the practical purpose of informing the legislature and general public what is proposed under the title, and is not a technical restriction on the legislature. State v. Kallas, 97 U. 492, 94 P.2d 414.

This provision does not require that all the methods prescribed in the act for carrying out its objects be reflected in the title, nor all the classes affected by the act. Globe Grain & Milling Co. v. Industrial Commission, 98 U. 36, 91 P.2d 512. (Moffat, C. J., and Larson, J., dissenting.)

4. — mandatory character.
Section is mandatory. Edler v. Edwards, 34 U. 13, 95 P. 367; Salt Lake City v. Wilson, 46 U. 60, 148 P. 1104; Baker v. Department of Registration, 78 U. 424, 441, 3 P.2d 1082.

5. — liberal construction.
Section should be liberally construed in favor of upholding a law, and should be so applied as to effectuate its purpose in preventing the combination of incongruous subjects neither of which could be passed when standing alone. Salt Lake City v. Wilson, 46 U. 60, 148 P. 1104.

Section should be liberally construed. State v. McCornish, 59 U. 58, 201 P. 637.

6. — consolidations and codifications.
This constitutional provision was aimed at new legislation rather than at consolidations and codifications. The legislature may consolidate existing acts where the matters therein contained are related and germane. Salt Lake City v. Wilson, 46 U. 60, 148 P. 1104.

7. — amendatory acts.

As respects amendatory acts, this section should be liberally construed. Edler v. Edwards, 34 U. 13, 95 P. 367.

Any one or more sections of Code or compilation may be amended by simply stating in title of amendatory act that the act is to amend the sections designated; and all sections the subject matters of which are germane or related to one another may be included in one amendatory act specifying the sections to be amended. Edler v. Edwards, 34 U. 13, 95 P. 367.

While under Constitution general appropriation bills are exempted from general constitutional provision which requires that all bills must contain but one subject, which must be clearly expressed in title, general laws may not be amended, modified, or repealed by general appropriation act under such general title without complying with constitutional provision relative to amendments or modifications of existing laws. State ex rel. Davis v. Cutler, 34 U. 99, 95 P. 1071.

Under this section anything may be incorporated in an amendment to a statute which would have been germane or directly related to the subject matter of the original section, or which could properly have been included therein originally. Salt Lake City v. Wilson, 46 U. 60, 148 P. 1104.

If matter that is objectionable in amendatory act could have been included in original, under title of that act, then amendatory act is not vulnerable to objection that it contains dual subject. State v. McCornish, 59 U. 58, 201 P. 637.

The title of an amendatory act, asserting a purpose to amend, may refer to the section amended by number. State v. Franco, 76 U. 202, 208, 289 P. 100, following Edler v. Edwards, 34 U. 13, 95 P. 367.

Title to amendatory act is sufficient if it refers by number to section of code or law to be amended and declares purpose to amend same, and if amendatory act contains matter which might properly have been incorporated in original act under its title, and identifies original act and declares purpose to amend or supplement it, this section is sufficiently satisfied. Salt Lake Union Stock Yards v. State Tax Commission, 93 U. 166, 71 P.2d 538.

Title of an act amendatory of a law in force and effect at time of enactment of amendatory act, giving number and section of original law, is sufficient notice to the legislature and public as reasonably to lead to an inquiry into the body of the bill to ascertain what changes are proposed in the original or existing law, and anything germane to the general subject, expressed in the title of the original existing law, or that could have been included in the original and existing law under its general title, may be included in any subsequent act amendatory of the then existing law. State v. Kallas, 97 U. 492, 94 P.2d 414.

8. — municipal ordinances.

This section has no application to municipal ordinances. Salt Lake City v. Howe, 37 U. 170, 106 P. 705, Ann. Cas. 1912 C 189.

9. — effect of section's violation.

Effect of statute's only partial invalidity, see notes under 88-2.

If act violates this section, it is unconstitutional and void in its entirety. Utah State Fair Ass'n v. Green, 68 U. 251, 249 P. 1016.

It is only where a bill contains two separate subjects, both of which are expressed in its title, that the entire act must fall. Riggins v. District Court of Salt Lake County, 89 U. 183, 195, 51 P.2d 645.

10. Particular statutes, subjects, and instances.

11. — automobiles.

Former act, title of which related to identification numbers on automobiles, etc., general purpose of which was to regulate means of identifying vehicles, and to prevent obliteration or removal of evidence of identification, and to provide against theft of such vehicles or any parts thereof, did not violate this section by including provision therein making it offense to drive away automobile. State v. Olson, 59 U. 549, 205 P. 337.

Where act is original and not amendatory of a law previously enacted, and the title expresses subject of the act, to-wit, "fixing the rate of speed," it is not obnoxious to this section. State v. Brown, 75 U. 37, 282 P. 785.

Provisions of statute, relating to registration and licensing of motor vehicles using the highways, which distinguished between pleasure cars and vehicles used to transport persons or property for hire, were constitutional as involving a reasonable classification of vehicles based upon the potential wear upon the highway, but the added provision distinguishing between gasoline and Diesel power vehicles, which was revenue producing in its nature, was invalid as not germane to the general title and the one subject therein. Carter v. State Tax Commission, 98 U. 96, 96 P.2d 727, 126 A. L. R. 1402.

Motor Vehicle Registration Act of 1933, which imposed obligations upon owners of motor vehicles rented without drivers, held invalid for inclusion of more than one subject, and for inclusion

of subject matter not included in title. Pass v. Kanell, 98 U. 511, 100 P.2d 972.

12. — bastards.
"An act relating to bastardy and providing for security for the support of illegitimate children," held not to offend against this section. State v. Hammond, 46 U. 249, 148 P. 420.

13. — criminal procedure.
Laws 1925, Ch. 62, amending 20–5–4 so as to limit criminal jurisdiction of justices' courts, was not invalid hereunder as containing more than one subject where it preserved jurisdiction of city courts, in view of 20–4–14, providing that city courts shall have same criminal jurisdiction as justices' courts respecting all offenses other than ordinance violations. Dillard v. District Court of Salt Lake County, 69 U. 10, 251 P. 1070.

14. — depositories of public funds.
The former State Depositary Act was held not to be in contravention of the requirements of this section. Naylor v. Crabbe, 45 U. 617, 148 P. 359.

15. — elections.
Where language of title of act is, in terms, limited to provisions concerning elections, provisions concerning appointments to office cannot properly be included in act. Ritchie v. Richards, 14 U. 345, 47 P. 670.

Title of act, expressed as follows: "An act relating to and making sundry provisions concerning elections," limits its subject to provisions concerning elections and is sufficiently definite and certain. Ritchie v. Richards, 14 U. 345, 47 P. 670.

16. — employment.
Where title of act is to regulate working hours of employees, but body of act has to do with fixing closing hours of mercantile and commercial houses, it is obnoxious to this section of the Constitution. Saville v. Corless, 46 U. 495, 151 P. 51, Ann. Cas. 1918 D 198, L. R. A. 1918 A 651.

17. — horse racing.
Horse Racing Act (Laws 1925, Ch. 77), creating state racing commission and permitting pari-mutuel betting at track, was not violative of this section. Utah State Fair Ass'n v. Green, 68 U. 251, 249 P. 1016.

18. — indeterminate sentence laws.
The Indeterminate Sentence Law, 105–36–20, is not violative of this section because by implication it repealed or was in conflict with numerous sections of Penal Code. Mutart v. Pratt, 51 U. 246, 170 P. 67. (McCarty, J., dissenting.)

19. — interest.
44–0–7 is not obnoxious to the objection that title of the Usury Act is not sufficiently broad to authorize the recovery of the principal sum paid. Cobb v. Hartenstein, 47 U. 174, 152 P. 424.

20. — intoxicating liquors.
Liquor Control Act of 1935 (Ch. 43) does not violate this section. Riggins v. District Court of Salt Lake County, 89 U. 183, 193, 51 P.2d 645.

Act amendatory of Liquor Control Act, which contained matter which appropriately might have formed part of original act under its title, satisfies constitutional requirement that statute contain but one subject clearly expressed in its title, where amendatory act identified original act by its title and expressed intention to amend same. State v. Kallas, 97 U. 492, 94 P.2d 414.

21. — mines and mining.
Subject of act, as expressed in its title which read, "act providing for manner of locating and recording quartz and placer mining claims," held to have authorized provisions in act which required county recorders to perform duties before performed by district mining recorders and required latter to deposit books and records pertaining to their offices with county recorders. In re Monk, 16 U. 100, 50 P. 810.

22. — officers and public employees.
74A–0–1, requiring public officers to qualify within 60 days, and providing that office shall become vacant if officers do not qualify within such time, is not unconstitutional as violative of this section. State ex rel. Stain v. Christensen, 84 U. 185, 35 P.2d 775.

23. — practice of medicine and surgery.
The act for the regulation of the practice of medicine and surgery, and for the appointment of a board of medical examiners, etc., is not unconstitutional under this section. State v. Erickson, 47 U. 452, 154 P. 948.

Act creating department of registration did not violate the requirements of this section. The power to revoke licenses, conferred by 79–1–25 was regarded as germane to general purposes of act indicated by its title. Baker v. Department of Registration, 78 U. 424, 440, 3 P.2d 1082.

24. — sexual crimes.
103–51–8, relating to pandering, and 103–51–10, providing penalties for those who profit from earnings of fallen women, are cognate and related to each other and are properly included in one act and under one title, as against contention that inclusion under one title

conflicts with this provision. State v. McCornish, 59 U. 58, 201 P. 637.

Title of 105–51–22 being "An act to amend Section 8121 and repealing Section 8122, Compiled Laws of 1917, relating to crimes against nature," held sufficient as against contention that it failed to indicate that crime against nature was defined therein. State v. Peterson, 81 U. 340, 17 P.2d 925.

25. — taxation.

Where act amendatory to section of Code relating to "the state board of equalization, its duties and organization," and also dealing with their salaries, increased salaries of members of board, and also required board to inspect and examine annually all property it was required to assess, provision for inspection was merely directory, and did not render statute invalid as embracing plurality of subjects. Edler v. Edwards, 34 U. 13, 95 P. 367.

The Emergency Revenue Act of 1933 did not contravene this section; title of act need not show the particular persons or corporations who are required to pay the tax. State Tax Commission v. City of Logan, 88 U. 406, 54 P.2d 1197.

Title to act, repealing time limiting section of Sales Tax Act to effect permanency, was sufficient where it referred to repealed section by number and act, and Sales Tax Act, as amended by repeal of the section, left a result that was well within the title of the original act. Salt Lake Union Stock Yards v. State Tax Commission, 93 U. 166, 71 P.2d 538.

Title of act amending Sales Tax Act to provide that funds over a certain amount should go to state school district fund was sufficient, where it referred to amended section by number and identified act and stated avowed purpose of providing for disposition of revenue, and title of original Sales Tax Act was broad enough to include new dispensation of funds. Salt Lake Union Stock Yards v. State Tax Commission, 93 U. 166, 71 P.2d 538.

26. — unemployment compensation.

Unemployment Compensation Law held not unconstitutional as not clearly expressing its subject matter in its title. Globe Grain & Milling Co. v. Industrial Commission, 98 U. 36, 91 P.2d 512. (Moffat, C. J., and Larson, J., dissenting.)

27. — water and irrigation.

Title of Act of 1919 (100–1–1), being "An act defining general provisions concerning water and water rights, the appropriation, administration, adjudication and use of water and water rights" and repealing certain laws and all laws inconsistent with the act, held sufficient and not defective as embracing more than one subject. Eden Irr. Co. v. District Court of Weber County, 61 U. 103, 211 P. 957.

Act of 1919 (100–1–1), relating to water rights, was not unconstitutional as containing a multiplicity of subjects. Eden Irr. Co. v. District Court of Weber County, 61 U. 103, 211 P. 957.

Sec. 24. [Presiding officers to sign bills.]

The presiding officer of each house, in the presence of the house over which he presides, shall sign all bills and joint resolutions passed by the Legislature, after their titles have been publicly read immediately before signing, and the fact of such signing shall be entered upon the journal.

1. Mandatory character of section.

This provision is mandatory. Ritchie v. Richards, 14 U. 345, 47 P. 670. (Per Bartch, J.; Miner, J., concurring.)

2. Evidence of act's enactment.

When validity of statute is questioned in court of law, enrolled act, duly signed, approved, and deposited with proper custodian, is prima facie, but not conclusive, evidence of its constitutional enactment. Ritchie v. Richards, 14 U. 345, 47 P. 670. (Per Bartch, J.; Miner, J., concurring; Zane, C. J., contra in matter of inconclusiveness of act, duly signed, etc.)

Where it affirmatively appears on legislative journals or journal that, in passing act, legislature disregarded mandatory provision of Constitution, court is justified in holding act unconstitutional and void, but, where journals are merely silent as to subject matter under investigation, court will presume that legislature acted in accordance with its delegated power, and will hold act valid, unless omission of some matter which Constitution expressly requires to be entered thereon is shown by journals or journal. Ritchie v. Richards, 14 U. 345, 47 P. 670. (Per Bartch, J.; Miner, J., concurring.)

A. L. R. note.

Effect of failure of officers of legislature to sign bills as required by constitutional provisions, 95 A. L. R. 278.

Sec. 25. [When acts take effect.]

All acts shall be officially published, and no act shall take effect until so published, nor until sixty days after the adjournment of the session at which it passed, unless the Legislature by a vote of two-thirds of all the members elected to each house, shall otherwise direct.

1. Necessity of publication.
Subordinate clause, introduced by conjunction "unless," was intended to modify both of clauses preceding it, and, where it was provided that statute should take effect upon its approval, such statute became operative immediately thereupon and without its being previously published. State v. Reynolds, 24 U. 29, 66 P. 614.

2. Evidence as to date of publication.
Certificate of secretary of state under his hand and great seal of State of Utah may be introduced to show when law was officially published. Pleasant Grove City v. Lindsay, 41 U. 154, 157, 125 P. 389.

A. L. R. notes.
Date or event contemplated by term "passage," "enactment," "effective date," etc., employed by statute in fixing time of facts or conditions within its operation, 132 A. L. R. 1048; conclusiveness of legislative declaration of emergency requiring statute to take effect immediately, 7 A. L. R. 519, 110 A. L. R. 1435.

Sec. 26. [Enumeration of private laws forbidden.]

The Legislature is prohibited from enacting any private or special laws in the following cases:

1. Granting divorce.
2. Changing the names of persons or places, or constituting one person the heir-at-law of another.
3. Locating or changing county seats.
4. Regulating the jurisdiction and duties of Justices of the Peace.
5. Punishing crimes and misdemeanors.
6. Regulating the practice of courts of justice.
7. Providing for a change of venue in civil or criminal actions.
8. Assessing and collecting taxes.
9. Regulating the interest on money.
10. Changing the law of descent or succession.
11. Regulating county and township affairs.
12. Incorporating cities, towns or villages; changing or amending the charter of any city, town or village; laying out, opening, vacating or altering town plats, highways, streets, wards, alleys or public grounds.
13. Providing for sale or mortgage of real estate belonging to minors or others under disability.
14. Authorizing persons to keep ferries across streams within the State.
15. Remitting fines, penalties or forfeitures.
16. Granting to an individual, association or corporation any privilege, immunity or franchise.
17. Providing for the management of common schools.
18. Creating, increasing or decreasing fees, percentages or allowances of public officers during the term for which said officers are elected or appointed.

The Legislature may repeal any existing special law relating to the foregoing subdivisions.

In all cases where a general law can be applicable, no special law shall be enacted.

Nothing in this section shall be construed to deny or restrict the power of the Legislature to establish and regulate the compensation and fees of county and township officers; to establish and regulate the rates of freight, passage, toll and charges of railroads, toll roads, ditch, flume and tunnel companies, incorporated under the laws of the State or doing business therein.

Cross-reference.
Uniform operation of laws, Const. Art. I, § 24.

1. In general.
Laws which apply to and operate uniformly upon all members of any class of persons, places, or things, requiring legislation peculiar to themselves in the matters covered by the laws in question, are general and not special. State v. Kallas, 97 U. 492, 94 P.2d 414.

2. Subdivision 4.
Where general law, prescribing jurisdiction, powers, and duties of justices of peace was general and applied to and constituted rule of practice of each justice in state, such law could not be modified by special law, on same subjects, affecting only justices of peace within cities of first class. Love v. Liddle, 26 U. 62, 72 P. 185, 62 L. R. A. 482.

Act of 1901, "relating to justices of peace in cities of first class," held invalid under this subdivision. Love v. Liddle, 26 U. 62, 72 P. 185, 62 L. R. A. 482.

Term "duties," as here used, comprehends only judicial acts and such ministerial acts as justices of peace are required to perform in their official capacity, and does not include such acts and services as are merely clerical in character and as are usually performed by clerk or amanuensis. Martineau v. Crabbe, 46 U. 327, 150 P. 301.

3. Subdivision 5.
Section of Liquor Control Act which defines and prescribes punishment for common nuisance held a general, and not a special, law. State v. Kallas, 97 U. 492, 94 P.2d 414.

4. Subdivision 6.
Act of 1901, "relating to justices of peace in cities of first class," held invalid under this subdivision. Love v. Liddle, 26 U. 62, 72 P. 185, 62 L. R. A. 482.

Former act regulating water rights (Laws 1919, Ch. 67) held not a violation of this subdivision. Eden Irr. Co. v. District Court of Weber County, 61 U. 103, 211 P. 957.

Issuance and service of summons are within this subdivision. Blackmarr v. City Court of Salt Lake City, 86 U. 541, 38 P.2d 725.

43–9–30 and 43–9–31, providing that fraternal benefit societies appoint commissioner as attorney upon whom legal process may be served and giving such societies 30 days after service to answer, whereas ordinary defendants have different and less time to answer, held not violative of this subdivision. Blackmarr v. City Court of Salt Lake City, 86 U. 541, 38 P.2d 725. (Straup, C. J., Moffat, and Thurman, JJ., dissenting.)

To permit two or more separate and distinct charges to be joined in one complaint or information resulting in a trial of the various charges, and, if established, the imposition of a separate sentence for each charge is "regulating the practice of courts of justice" within the meaning of this subdivision. Lyte v. District Court of Salt Lake County, 90 U. 369, 375, 61 P.2d 1259, rehearing denied 90 U. 377, 62 P.2d 1117.

That part of the Liquor Control Act, 46–0–231 as it formerly read, which permitted charges of several violations of the Liquor Control Act committed by the same person to be included in one and the same complaint or information, in contravention of 105–21–31, offended against this subdivision. Holding otherwise would permit the legislature to provide a separate Code of Criminal Procedure for each class of crimes. Lyte v. District Court of Salt Lake County, 90 U. 369, 61 P.2d 1259, rehearing denied 90 U. 377, 62 P.2d 1117.

5. Subdivision 8.
This subdivision does not invalidate 14–8–1 or 14–8–7, relating to establishment of detention schools. Salt Lake County v. Salt Lake City, 42 U. 548, 134 P. 560.

Former Liquor Control Act held not unconstitutional as violative of this subdivision. Utah Manufacturers' Ass'n v. Stewart, 82 U. 198, 23 P.2d 229.

6. Subdivision 11.
Former statute, providing for appointment of county fruit tree inspectors, etc., held invalid under this subdivision. State ex rel. Wright v. Standford, 24 U. 148, 66 P. 1061.

This subdivision does not invalidate 14–8–1 and 14–8–7 of Title 14, Chapter 8, relating to detention schools. Salt Lake County v. Salt Lake City, 42 U. 548, 134 P. 560.

7. Subdivision 16.
Granting franchise to street railway company to lay its tracks in city's streets

not local or special law. Henderson Ogden City Ry. Co., 7 U. 199, 26 P. 36.

Exceptions, contained in 103–53–2, held not to render Sunday law (103–53–1) unconstitutional as to barber. State v. Topher, 25 U. 318, 71 P. 482, 60 L. R. A. 68, 95 Am. St. Rep. 845.

Act, requiring all mercantile and commercial houses in cities of 10,000 population or over to close at six p. m., but exempting drug stores, and houses dealing in perishable goods, offends this clause, because it is special legislation. Saville v. Corless, 46 U. 495, 151 P. 51, Ann. Cas. 1918 D 198, L. R. A. 1918 A 351.

The right given to board of medical examiners to regulate practice of medicine is not for benefit or protection of members of medical fraternity, but rather for creation of method of procedure to protect health of community, and hence does not violate this provision. Board of Medical Examiners v. Blair, 57 U. 516, 196 P. 221.

Horse Racing Act (Laws 1925, Ch. 77), permitting pari-mutuel betting at track, did not come within prohibition of this subdivision. Utah State Fair Ass'n v. Green, 68 U. 251, 249 P. 1016.

Former Liquor Control Act held not unconstitutional as violative of this subdivision. Utah Manufacturers' Ass'n v. Stewart, 82 U. 198, 23 P.2d 229.

Statute, permitting owners of trade marks and trade names to invoke criminal procedure of search and seizure to protect their civil rights, granted a special privilege and was unconstitutional. Allen v. Trueman, 100 U. 36, 110 P.2d 355.

8. Subdivision 18 to end of section.

Statute, which limited its award of attorney's fee, in mechanic's lien proceeding, to successful "lienholder," held special law and invalid under this provision. Brubaker v. Bennett, 19 U. 401, 57 P. 170.

Former statute, allowing attorney's fee to mortgagor in action to compel discharge or release by mortgagee of mortgage which had been fully satisfied, held invalid as special legislation. Openshaw v. Halfin, 24 U. 426, 68 P. 138, 91 Am. St. Rep. 796.

Act of 1901, "relating to justices of peace in cities of first class," held invalid under this subdivision. Love v. Liddle, 26 U. 62, 72 P. 185, 62 L. R. A. 482.

This subdivision does not invalidate 14–8–1 and 14–8–7 of Title 14, Chapter 8, relating to detention schools. Salt Lake County v. Salt Lake City, 42 U. 548, 134 P. 560.

Cities and many other subjects may be classified without contravening provision that no special law shall be enacted, where a general law can be applicable. The classification must, however, be reasonable and natural, and not artificial or arbitrary. Board of Education of Ogden City v. Hunter, 48 U. 373, 383, 159 P. 1019.

County commissioners have no right to increase salaries of county officers during their term of office. Cronquist v. Mathews, 53 U. 582, 174 P. 621.

The power of the legislature to classify cities according to population is expressly conferred by provisions of Const. Art. XI, § 5, and statute, passed to enable cities of first class to meet needs and requirements of larger municipalities, was general, in sense that it operated uniformly upon every city of first class, and hence did not violate constitutional provision, prohibiting enactment of special law where general law could be made applicable. Salt Lake City v. Salt Lake County, 60 U. 423, 209 P. 207.

The statement in Martineau v. Crabbe, 46 U. 327, 150 P. 301, that justices of the peace were county officers, was declared to be obiter dictum in Rich v. Industrial Commission, 80 U. 511, 527, 15 P.2d 641.

Metropolitan Water Districts Act (100–10–1 et seq.), held not unconstitutional as a special law. Lehi City v. Meiling, 87 U. 237, 48 P.2d 530; Provo City v. Evans, 87 U. 292, 48 P.2d 555.

The Emergency Revenue Act of 1933, which levies a tax on the sale of electrical energy without regard to whether the vendor is a public or private corporation, does not offend against this provision of the constitution. State Tax Commission v. City of Logan, 88 U. 406, 415, 54 P.2d 1197.

Since 105–21–31 of the Code of Criminal Procedure is a "general statute," within the meaning of the third sentence of this subdivision, the enactment of a special provision for complaints or informations in prosecutions under the Liquor Control Act is unconstitutional and void. Lyte v. District Court of Salt Lake County, 90 U. 369, 61 P.2d 1259, rehearing denied 90 U. 377, 62 P.2d 1117.

That part of the Liquor Control Act, 46–0–231, as it formerly read, which permitted charges of several violations of the Liquor Control Act committed by the same person to be included in one and the same complaint or information, in contravention of 105–21–31, offended against this subdivision. Holding otherwise would permit the legislature to provide a separate Code of Criminal Procedure for each class of crimes. Lyte v. District Court of Salt Lake County, 90 U. 369, 61 P.2d 1259, rehearing denied 90 U. 377, 62 P.2d 1117.

Section of Liquor Control Act, which defines and prescribes punishment for common nuisance, held a general, and

not a special, law. State v. Kallas, 97 U. 492, 94 P.2d 414.

A. L. R. notes.

Absentee Voters' Law as local or special legislation, 14 A. L. R. 1265, 19 A. L. R. 308, 35 A. L. R. 819; construction and application of constitutional provision against special or local laws regulating practice in courts of justice, 135 A. L. R. 365; moratorium statute as special legislation, 9 A. L. R. 14; statute regulating banks and trust companies as special or class legislation, or as denying the equal protection of the laws, 111 A. L. R. 140.

Sec. 27. [Legislature cannot release certain debts.]

The Legislature shall have no power to release or extinguish, in whole or in part, the indebtedness, liability or obligation of any corporation or person to the State, or to any municipal corporation therein.

1. "Indebtedness, liability or obligation" within meaning of section.

This section refers to obligations which arise out of contracts other than those pertaining to public utility service so that it does not prevent state from enforcing its governmental functions to regulate rates for such service. City of St. George v. Public Utilities Commission, 62 U. 453, 220 P. 720.

Indebtedness or obligation to state insurance fund is not indebtedness, obligation, or liability to state such as is meant by this section. Chez v. Industrial Commission, 90 U. 447, 62 P.2d 549, 108 A. L. R. 365.

A. L. R. note.

What amounts to "indebtedness" to state within constitutional or statutory provision as to release or compromise of same, 108 A. L. R. 376.

Sec. 28. [Lotteries forbidden.]

The Legislature shall not authorize any game of chance, lottery or gift enterprise under any pretense or for any purpose.

1. In general.

Under this section the legislature cannot, under any circumstances, legalize any form of gambling. Salt Lake City v. Doran, 42 U. 401, 413, 131 P. 636.

2. Games of chance.

3. — predominate element.

In game of chance, the predominating element is chance. D'Orio v. Startup Candy Co., 71 U. 410, 266 P. 1037, 60 A. L. R. 338.

4. — punch board, providing checker problem, as game of skill.

Under this section, punch board, providing checker problem, is a game of skill and not a game of chance, since checker playing is game of skill, not of chance, and fact that one of players is more skilful than another does not alter nature of game. D'Orio v. Startup Candy Co., 71 U. 410, 266 P. 1037, 60 A. L. R. 338.

5. Pari-mutuel betting system.

Proceedings of constitutional convention tend to indicate that this section was not intended to prohibit horse racing; and betting being a necessary concomitant thereof, legislature may regulate mischief relating to betting by authorizing pari-mutuel system. Utah State Fair Ass'n v. Green, 68 U. 251, 249 P. 1016.

Horse Racing Act (Laws 1925, Ch. 77), permitting pari-mutuel betting at track, does not violate this section. Utah State Fair Ass'n v. Green, 68 U. 251, 249 P. 1016.

A. L. R. notes.

Constitutionality, construction, and application of statutes exempting schemes for benefit of public, religious, or charitable purposes from statutes or constitutional provisions against lotteries or gambling, 103 A. L. R. 875; scheme for advertising or stimulating legitimate business as a lottery, 103 A. L. R. 866, 109 A. L. R. 709.

Sec. 29. [Municipal powers not to be delegated.]

The Legislature shall not delegate to any special commission, private corporation or association, any power to make, supervise or interfere with any municipal improvement, money, property or effects, whether held in trust or otherwise, to levy taxes, to select a capitol site, or to perform any municipal functions.

Cross-reference.

Notes, bearing on subject of delegation of legislative power in general, see notes under Const. Art. V, § 1.

1. Purpose of section.

The purpose of this constitutional provision is to hold inviolate the right of local self-government of cities and towns with respect to municipal improvements, money, property, effects, the levying of taxes, and the performance of municipal functions. Logan City v. Public Utilities Commission, 72 U. 536, 566, 271 P. 961.

2. Detention schools.

Chapter 8 of Title 14, providing for detention schools, does not contravene this provision. Salt Lake County v. Salt Lake City, 42 U. 548, 134 P. 560.

3. Disconnection of territory from cities.

Former statutory provisions (now 15–4–1 to 15–4–3), relating to disconnection of territory from cities, held not invalid as effecting prohibited delegation of legislative power to court and commissioners. Young v. Salt Lake City, 24 U. 321, 67 P. 1066.

4. Emergency Revenue Act of 1933.

The Emergency Revenue Act of 1933 does not offend against this provision, because it casts upon city duty of collecting the tax and remitting the same to the tax commission. The legislature has constitutional authority to do this. State Tax Commission v. City of Logan, 88 U. 406, 417, 54 P.2d 1197.

5. Intoxicating liquors.

There is nothing in this constitutional provision which inhibits the state from retaining control of the sale of light beer within a municipality. The state may confer limited authority upon municipalities and retain to itself all control not so granted. Accordingly, 46–0–131 and 46–0–132 are unobjectionable. Riggins v. District Court of Salt Lake County, 89 U. 183, 208, 51 P.2d 645.

6. Metropolitan Water Districts Act.

Metropolitan Water Districts Act (100–10–1 et seq.), held not unconstitutional as an attempt to unlawfully delegate power of taxation to a special commission and to interfere in city and town affairs in violation of this section, since board of directors in whom control of district has been intrusted is not a special commission, and power of such directors is over property of districts and not over property of towns in the district. Lehi City v. Meiling, 87 U. 237, 48 P.2d 530; Provo City v. Evans, 87 U. 292, 48 P.2d 555.

7. Public utility rates.

This section does not prevent state from enforcing its governmental functions to regulate rates for public utility service. City of St. George v. Public Utilities Commission, 62 U. 453, 220 P. 720.

This section prohibits the legislature from delegating to public utilities commission power to control rates for municipally-owned electric plant, and the use of the words "special commission" in this section does not alter the situation. Logan City v. Public Utilities Commission, 72 U. 536, 549, 561, 271 P. 961.

A. L. R. notes.

Delegation of power to local authorities, boards, or commissions, 5 A. L. R. 37, 763, 6 A. L. R. 1591, 7 A. L. R. 1636, 1656, 8 A. L. R. 836, 12 A. L. R. 1453, 13 A. L. R. 587, 15 A. L. R. 1359, 18 A. L. R. 237, 20 A. L. R. 1112, 1484, 24 A. L. R. 1260, 30 A. L. R. 1333, 34 A. L. R. 48, 832, 40 A. L. R. 343, 41 A. L. R. 891, 42 A. L. R. 556, 46 A. L. R. 609, 48 A. L. R. 454, 53 A. L. R. 1290, 55 A. L. R. 1182, 57 A. L. R. 1005, 62 A. L. R. 924, 65 A. L. R. 1523, 67 A. L. R. 742, 72 A. L. R. 499, 75 A. L. R. 45, 80 A. L. R. 1129, 82 A. L. R. 947, 86 A. L. R. 284, 675, 87 A. L. R. 247, 546, 91 A. L. R. 1511, 92 A. L. R. 400, 93 A. L. R. 1414.

Sec. 30. [Extra compensation to officers and contractors forbidden.]

The Legislature shall have no power to grant, or authorize any county or municipal authority to grant, any extra compensation, fee or allowance to any public officer, agent, servant or contractor, after service has been rendered or a contract has been entered into and performed in whole or in part, nor pay or authorize the payment of any claim hereafter created against the State, or any county or municipality of the State, under any agreement or contract made without authority of law: Provided, That this section shall not apply to claims incurred by public officers in the execution of the laws of the State.

1. Authorizing counties to refund moneys advanced to aid in enforcing laws.

Act, authorizing counties to refund moneys advanced by citizens to aid counties in enforcing laws, held not in conflict with this section. Civic Federation of Salt Lake City v. Salt Lake County, 22 U. 6, 61 P. 222.

A. L. R. note.

Extra compensation for past services, power of legislature to grant, 23 A. L. R. 612.

Sec. 31. [Lending public credit forbidden.]

Art. 6, sec. 31 rel. matter S.L. '44 (1st S. S.) C. 4, sec. 1 p. 16

The Legislature shall not authorize the State, or any county, city, town, township, district or other political subdivision of the State to lend its credit or subscribe to stock or bonds in aid of any railroad, telegraph or other private individual or corporate enterprise or undertaking.

Cross-references.

Municipal aid to railroads, 15–7–19.

1. Agricultural extension work by state college.

Agricultural extension work by state college is not a private enterprise so as to come within the prohibition of this section denying authority to use public funds in aid of private enterprise. Bailey v. Van Dyke, 66 U. 184, 240 P. 454.

2. Metropolitan Water Districts Act.

Metropolitan Water Districts Act held not unconstitutional as violating this section in that 100–10–18 empowers district to join with other corporation for purpose of carrying out its powers and to obligate itself with other corporations in financing its operations and to become surety for payment of indebtedness of corporation in which district shall have stock, since powers of district are for acquiring and using water for public benefit. Lehi City v. Meiling, 87 U. 237, 48 P.2d 530; Provo City v. Evans, 87 U. 292, 48 P.2d 555.

A. L. R. notes.

Constitutionality of appropriation of public funds for benefit of widow or other relative of deceased public officer or employee, 121 A. L. R. 1317; constitutionality of statutory plan for financing or refinancing smaller political units by larger political unit, 106 A. L. R. 608; encouragement or promotion of industry not in nature of public utility, carried on by private enterprise, as public purpose for which tax may be imposed or public money appropriated, 112 A. L. R. 571; private utility, use of municipal funds, credit or power of taxation to restore or repair, 13 A. L. R. 313.

ARTICLE VII

EXECUTIVE

Section 1. [Executive department. Terms, residence, and duties of officers.]

The Executive Department shall consist of Governor, Secretary of State, State Auditor, State Treasurer, Attorney General, and Superintendent of Public Instruction, each of whom shall hold his office for four years, beginning on the first Monday of January next after his election, except that the terms of office of those elected at the first election shall begin when the State shall be admitted into the Union, and shall end on the first Monday in January, A. D. 1901. The officers of the Executive Department, during their terms of office, shall reside at the seat of government, where they shall keep the public records, books and papers. They shall perform such duties as are prescribed by this Constitution and as may be prescribed by law.

1. Period during which state officers entitled to pay.

Under Constitution, official year begins on first Monday of January of year following general election, and, as to all state officers and district judges, ends on first Monday of January four years later, and such officers are entitled to

receive four full quarters' pay in each year during their term of office, but paying them three days beyond four full years and deducting such amount from successors' pay violates Constitution. Crockett v. Tuttle, 58 U. 213, 197 P. 900.

2. Requiring state treasurer to give bond.

Constitutionality of 87–5–9, requiring state treasurer to furnish bond, may be sustained under this section. State ex rel. Stain v. Christensen, 84 U. 185, 35 P.2d 775.

Where elected state treasurer failed to give bond required by 87–5–9 within time required by 74A–0–1, and governor appointed person state treasurer, appointee was entitled to office, and contention of treasurer holding over that he was entitled to office because successor had not been elected and qualified was without merit. State ex rel. Stain v. Christensen, 84 U. 185, 35 P.2d 775. (Moffat, J., dissenting.)

A. L. R. note.

Doctrine of estoppel as applicable against one's right to hold a public office or his status as a public officer, 125 A. L. R. 294.

Sec. 2. [Election. Tie: legislature to elect.]

The officers provided for in section one of this article shall be elected by the qualified electors of the State at the time and place of voting for members of the Legislature, and the persons respectively having the highest number of votes cast for the office voted for shall be elected; but if two or more shall have an equal and the highest number of votes for any one of said offices, the two houses of the Legislature, at its next regular session, shall elect forthwith by joint ballot one of such persons for said office.

Sec. 3. [Qualifications of governor, etc.]

No person shall be eligible to the office of Governor or Secretary of State unless he shall have attained to the age of thirty years at the time of his election, nor to the office of Attorney-General unless he shall have attained the age of twenty-five years at the time of his election, and have been admitted to practice in the Supreme Court of the Territory or of the State of Utah, nor unless he shall be in good standing at the bar at the time of his election. No person shall be eligible to any of the offices provided for in section one of this article, unless at the time of his election he shall be a qualified elector, and shall have been a resident citizen of the State or Territory for five years next preceding his election. The State Auditor and State Treasurer shall be ineligible to election as their own successors.

1. Requiring state treasurer to give bond.

87–5–9, requiring state treasurer to give bond, held not unconstitutional as against contention that it was incompetent for legislature to add to requirements contained in this section as condition precedent to treasurer's right to assume duties of his office. State ex rel. Stain v. Christensen, 84 U. 185, 35 P.2d 775. (Moffat, J., dissenting.)

Where elected state treasurer failed to give bond required by 87–5–9 within time required by 74A–0–1, and governor appointed person state treasurer, appointee was entitled to office, and contention of treasurer holding over that he was entitled to office because successor had not been elected and qualified was without merit. State ex rel. Stain v. Christensen, 84 U. 185, 35 P.2d 775. (Moffat, J., dissenting.)

Sec. 4. [Governor commander-in-chief.]

The Governor shall be Commander-in-Chief of the military forces of the State, except when they shall be called into the service of the United

States. He shall have power to call out the militia to execute the laws, to suppress insurrection, or to repel invasion.

Cross-reference.
Statutory provision, 54–1–3.

Sec. 5. [Duties of governor.]

The Governor shall see that the laws are faithfully executed; he shall transact all executive business with the officers of the government, civil and military, and may require information in writing from the officers of the Executive Department, and from the officers and managers of State Institutions upon any subject relating to the condition, management, and expenses of their respective offices and institutions, and at any time when the Legislative Assembly is not in session, may, if he deem it necessary, appoint a committee to investigate and report to him upon the condition of any executive office or State Institution. He shall communicate by message the condition of the State to the Legislature at every regular session, and recommend such measures as he may deem expedient.

Cross-reference.
Duties generally, 87–2.

A. L. R. note.
Mandamus to governor, 105 A. L. R. 1124.

Sec. 6. [Id. May convene extra session.]

On extraordinary occasions, the Governor may convene the Legislature by proclamation, in which shall be stated the purpose for which the Legislature is to be convened, and it shall transact no legislative business except that for which it was especially convened, or such other legislative business as the Governor may call to its attention while in session. The Legislature, however, may provide for the expenses of the session and other matters incidental thereto. The Governor may also by proclamation convene the Senate in extraordinary session for the transaction of executive business.

1. Proclamation of governor.
Under this section, it is not necessary for governor to include in his proclamation all matters that may be brought to the attention of the legislature. State v. Tweed, 63 U. 176, 224 P. 443.

2. Presumption as to session of legislature at which act was passed.
The Emergency Revenue Act of 1933 will be presumed to have been adopted at a properly convened extra session, until contrary is shown. State Tax Commission v. City of Logan, 88 U. 406, 414, 54 P.2d 1197.

3. Evidence as to when legislature adjourned sine die.
Certificate of secretary of state under his hand and great seal of State of Utah may be introduced to show when session of legislature adjourned sine die. Pleasant Grove City v. Lindsay, 41 U. 154, 157, 125 P. 389.

Sec. 7. [Id. May adjourn legislature, when.]

In case of a disagreement between the two houses of the Legislature at any special session, with respect to the time of adjournment, the Governor shall have power to adjourn the Legislature to such time as he may think proper: Provided, it be not beyond the time fixed for the convening of the next Legislature.

Sec. 8. [Bills presented to governor. Veto. Appropriation bills.]

Every bill passed by the Legislature, before it becomes a law, shall be presented to the Governor; if he approve, he shall sign it, and there-

upon it shall become a law; but if he do not approve, he shall return it with his objections to the house in which it originated, which house shall enter the objections at large upon its journal and proceed to reconsider the bill. If, after such reconsideration, it again passes both houses by a yea and nay vote of two-thirds of the members elected to each house, it shall become a law, notwithstanding the Governor's objections. If any bill be not returned within five days after it shall have been presented to him, (Sunday and the day on which he received it excepted,) the same shall be a law in like manner as if he had signed it, unless the Legislature by its final adjournment prevent such return, in which case it shall be filed with his objections in the office of the Secretary of State within ten days after such adjournment (Sundays excepted) or become a law. If any bill presented to the Governor contains several items of appropriations of money, he may object to one or more such items, while approving other portions of the bill; in such case he shall append to the bill at the time of signing it, a statement of the item or items which he declines to approve, together with his reasons therefor, and such item or items shall not take effect unless passed over the Governor's objection as in this section provided.

1. Mandatory character of section.
This provision is mandatory. Ritchie v. Richards, 14 U. 345, 47 P. 670. (Per Bartch, J.; Miner, J., concurring.)

2. Evidence of enactment of statutes.
When validity of statute is questioned in court of law, enrolled act, duly signed, approved, and deposited with proper custodian, is prima facie, but not conclusive, evidence of its constitutional enactment. Ritchie v. Richards, 14 U. 345, 47 P. 670. (Per Bartch, J.; Miner, J., concurring; Zane, C. J., contra in matter of inconclusiveness of act, duly signed, etc.)

Where it affirmatively appears on legislative journals or journal that, in passing act, legislature disregarded mandatory provision of Constitution, court is justified in holding act unconstitutional and void, but, where journals are merely silent as to subject matter under investigation, court will presume that legislature acted in accordance with its delegated power, and will hold act valid, unless omission of some matter which Constitution expressly requires to be entered thereon is shown by journals or journal. Ritchie v. Richards, 14 U. 345, 47 P. 670. (Per Bartch, J.; Miner, J., concurring.)

A. L. R. notes.

Adjournment of legislature before bill signed or approved, 64 A. L. R. 1446, 1468.

Devolution, in absence of governor, of veto and approval powers, upon lieutenant governor or other officer, 136 A. L. R. 1053.

Governor disapproving bill in part or with modifications, 35 A. L. R. 600.

Sunday as included in computing time for presentation of bill, 71 A. L. R. 1363.

Unconstitutional veto as protection against civil or criminal responsibility for act or omission in reliance thereon, 53 A. L. R. 268.

Validity of veto as affected by failure to give reasons for vetoing or objections to measure vetoed, 119 A. L. R. 1189.

Vote necessary to pass bill over veto, 2 A. L. R. 1593.

Sec. 9. [Governor may fill certain vacancies.]

When any State or district office shall become vacant, and no mode is provided by the Constitution and laws for filling such vacancy, the Governor shall have the power to fill the same by granting a commission, which shall expire at the next election, and upon qualification of the person elected to such office.

Cross-references.
Statutory powers, 25–1, 25–8–3, 87–2–3.

Art. 7, sec. 10 Amend. Proposed S.L. '43 S.J.R. 2 p. 188

Sec. 10. [Governor's appointive power. Vacancies.]

The Governor shall nominate, and by and with the consent of the Senate, appoint all State and district officers whose offices are established by this Constitution, or which may be created by law, and whose appointment or election is not otherwise provided for. If, during the recess of the Senate, a vacancy occur in any State or district office, the Governor shall appoint some fit person to discharge the duties thereof until the next meeting of the Senate, when he shall nominate some person to fill such office. If the office of justice of the supreme or district court, Secretary of the State, State Auditor, State Treasurer, Attorney-General or Superintendent of Public Instruction be vacated by death, resignation or otherwise, it shall be the duty of the Governor to fill the same by appointment, and the appointee shall hold his office until his successor shall be elected and qualified, as may be by law provided.

1. **"Officers" within section.**
Trustees of a public college and members of a board of construction, who were to draw and expend an appropriation for an agricultural college, are "officers" within the meaning of this section. McCornick v. Thatcher, 8 U. 294, 30 P. 1091, 17 L. R. A. 243.

2. **Requiring state treasurer to give bond.**
Where elected state treasurer failed to give bond required by 87–5–9 within time required by 74A–0–1, and governor appointed person state treasurer, appointee was entitled to office, and contention of treasurer holding over that he was entitled to office because successor had not been elected and qualified was without merit. State ex rel. Stain v. Christensen, 84 U. 185, 35 P.2d 775. (Moffat, J., dissenting.)

Sec. 11. [Vacancy in office of governor.]

In case of the death of the Governor, or his impeachment, removal from office, inability to discharge the duties of his office, resignation, or absence from the State, the powers and duties of said office shall devolve upon the Secretary of State, until the disability shall cease, or until the next general election, when the vacancy shall be filled by election. If, during a vacancy in the office of Governor, the Secretary of State resign, die or become incapable of performing the duties of the office, or be displaced, or be absent from the State, the President *pro tempore* of the Senate shall act as Governor until the vacancy be filled or the disability cease. While performing the duties of the Governor as in this section provided, the Secretary of State, or the President *pro tempore* of the Senate, as the case may be, except in cases of temporary disability, or absence from the State, shall be entitled to the salary and emoluments of the Governor.

Sec. 12. [Board of pardons. Respites and reprieves.]

Until otherwise provided by law, the Governor, Justices of the Supreme Court and Attorney-General shall constitute a Board of Pardons, a majority of whom, including the Governor, upon such conditions, and with such limitations and restrictions as they deem proper, may remit fines and forfeitures, commute punishments, and grant pardons after convictions, in all cases except treason and impeachments, subject to such regulations as may be provided by law, relative to the manner of applying for pardons; but no fine or forfeiture shall be remitted, and no commutation or pardon granted, except after a full hearing before the

Board, in open session, after previous notice of the time and place of such hearing has been given. The proceedings and decisions of the Board, with the reasons therefor in each case, together with the dissent of any member who may disagree, shall be reduced to writing, and filed with all papers used upon the hearing, in the office of the Secretary of State.

The Governor shall have power to grant respites or reprieves in all cases of convictions for offenses against the State, except treason or conviction on impeachment; but such respites or reprieves shall not extend beyond the next session of the Board of Pardons; and such Board, at such session, shall continue or determine such respite or reprieve, or they may commute the punishment, or pardon the offense as herein provided. In case of conviction for treason, the Governor shall have the power to suspend execution of the sentence, until the case shall be reported to the Legislature at its next regular session, when the Legislature shall either pardon, or commute the sentence, or direct its execution; he shall communicate to the Legislature at each regular session, each case of remission of fine or forfeiture, reprieve, commutation or pardon granted since the last previous report, stating the name of the convict, the crime for which he was convicted, the sentence and its date, the date of remission, commutation, pardon or reprieve, with the reasons for granting the same, and the objections, if any, of any member of the Board made thereto.

Cross-references.

Pardons generally, 67–0–1 et seq.

1. Exclusiveness of power and authority of board of pardons.

Under this section, it is only board of pardons which has right to commute punishments and grant pardons. State ex rel. Bishop v. State Board of Corrections, 16 U. 478, 52 P. 1090.

Statute, giving power of parole to board of corrections, held invalid as in conflict with this section. State ex rel. Bishop v. State Board of Corrections, 16 U. 478, 52 P. 1090.

State board of pardons alone is given power and authority to remit fines and forfeitures, commute punishments, and grant pardons after convictions in all cases except treason and impeachments. Cardisco v. Davis, 91 U. 323, 64 P.2d 216.

2. Court's suspension of sentence for crime, for indefinite period, as exercise of pardoning power.

District court's suspension of sentence, on conviction of crime, for indefinite period is, in effect, exercise of pardoning power and thus exercise of power which belongs exclusively to board of pardons. In re Flint, 25 U. 338, 71 P. 531, 95 Am. St. Rep. 853.

A. L. R. notes.

Conditional pardons, 60 A. L. R. 1410.

Consent of convict as essential to pardon, commutation or reprieve, 52 A. L. R. 835.

Contempt, executive power to pardon for, 23 A. L. R. 524, 26 A. L. R. 21, 38 A. L. R. 171, 63 A. L. R. 226.

Effect of pardon on previous offenses or punishment therefor, 57 A. L. R. 443.

Fine or penalty imposed in addition to imprisonment, pardon as affecting, 74 A. L. R. 1118.

Formal requisites of pardon, 34 A. L. R. 212.

Judicial investigation of pardon by governor, 65 A. L. R. 1471.

Lieutenant governor, exercise of pardon power in absence or disability of governor, 32 A. L. R. 1162.

Restoration of license, office, eligibility to office, or other special privilege by pardon, 47 A. L. R. 542, 94 A. L. R. 1011.

Right to notice and hearing before revocation of parole or conditional pardon, 54 A. L. R. 1474.

Statute authorizing court to suspend sentence as infringing executive pardoning power, 26 A. L. R. 400.

Statute permitting suspension of sentence for wife or family abandonment or nonsupport as encroachment on pardoning power of governor, 48 A. L. R. 1198.

Statute restoring competency of convicts as witnesses as infringing governor's pardoning power, 63 A. L. R. 982.

Sec. 13. [State prison commissioners. Board of examiners.]

Until otherwise provided by law, the Governor, Secretary of State and Attorney-General shall constitute a Board of State Prison Commissioners, which Board shall have such supervision of all matters connected with the State Prison as may be provided by law. They shall, also, constitute a Board of Examiners, with power to examine all claims against the State except salaries or compensation of officers fixed by law, and perform such other duties as may be prescribed by law; and no claim against the State, except for salaries and compensation of officers fixed by law, shall be passed upon by the Legislature without having been considered and acted upon by the said Board of Examiners.

Cross-reference.
Board of examiners, Title 26.

1. Claims against state.

2. — in general.

This section is an inhibition upon the maintenance of an action directly against the state, although it does not prohibit actions against state agencies, or even the board of examiners. Wilkinson v. State, 42 U. 483, 134 P. 626; Dall v. State, 42 U. 498, 134 P. 632.

The courts will not interpolate the word "unliquidated" into this section of the Constitution. That instrument has vested in the board of examiners the power to examine and pass on *all claims* except those exempted, and the legislature is without authority to delegate such power to any other board or officer. Uintah State Bank v. Ajax, 77 U. 455, 465, 297 P. 434.

Exclusive procedure for filing claims against the state is with the board of examiners as provided in the Constitution and statutes. Campbell Building Co. v. State Road Commission, 95 U. 242, 70 P.2d 857.

3. — bounties for killing predatory animals.

A claim for bounty for killing predatory animals, allowed under former Title 3, Ch. 4, since repealed, was a "claim against the state" within the meaning of this section. But such claim did not represent "salaries or compensation of officers fixed by law" within the meaning of those words as used in this section. Therefore, such claim was required to be submitted to board of examiners for its action. Uintah State Bank v. Ajax, 77 U. 455, 469, 297 P. 434.

4. — court reporters' claims for mileage.

Under former statute, it was held that stenographer's claim for mileage was claim for compensation fixed by contract, not by law within exception to this section, and therefore came within general class of claims which required submission to board of examiners and state auditor. State ex rel. Davis v. Edwards, 33 U. 243, 93 P. 720.

5. — demands payable from funds to be raised by taxation.

A demand is "a claim against the state" if the fund from which it is to be paid is to be raised by taxation, and a fund raised by taxation for a special purpose is entitled to same protection as is a general fund. Uintah State Bank v. Ajax, 77 U. 455, 463, 297 P. 434.

6. — legal obligations created out of mere moral obligations.

Section does not prohibit passage of law, creating legal obligation on part of state, out of what was mere moral obligation, without such obligation's having been first considered by and acted on by state board of examiners. Thoreson v. State Board of Examiners, 21 U. 187, 60 P. 982, on rehearing in 19 U. 18, 57 P. 175.

Sec. 14. [Insane asylum commissioners.]

Until otherwise provided by law, the Governor, State Treasurer and State Auditor shall constitute a Board of Insane Asylum Commissioners. Said Board shall have such supervision of all matters connected with the State Insane Asylum as may be provided by law.

Sec. 15. [Reform school commissioners.]

Until otherwise provided by law, the Governor, Attorney-General and Superintendent of Public Instruction shall constitute a Board of Re-

form School Commissioners. Said Board shall have such supervision of all matters connected with the State Reform School as may be provided by law.

Sec. 16. [Duties of secretary of state.]

The Secretary of State shall keep a record of the official acts of the Legislature and Executive Department of the State, and, when required, shall lay the same and all matters relative thereto before either branch of the Legislature, and shall perform such other duties as may be provided by law.

Cross-reference.
Statutory powers and duties, 87–3.

Sec. 17. [Duties of auditor and treasurer.]

The Auditor shall be Auditor of Public Accounts, and the Treasurer shall be the custodian of public moneys, and each shall perform such other duties as may be provided by law.

Cross-references.
Statutory provisions, 87–4, 87–5.

Sec. 18. [Duties of attorney-general.]

The Attorney-General shall be the legal adviser of the State officers, and shall perform such other duties as may be provided by law.

Cross-reference.
Statutory provisions, 87–6.

Sec. 19. [Superintendent of public instruction.]

The Superintendent of Public Instruction shall perform such duties as may be provided by law.

Cross-references.
Statutory duties, 75–8–2 et seq.

Sec. 20. [Compensation of state officers.]

Art. 7 sec. 20 Amend. proposed S.L. '46 (1st S.S.) S.J.R. No. 5 p. 5

The Governor, Secretary of State, Auditor, Treasurer, Attorney-General, Superintendent of Public Instruction and such other State and district officers as may be provided for by law, shall receive for their services quarterly, a compensation as fixed by law, which shall not be diminished or increased so as to affect the salary of any officer during his term, or the term next ensuing after the adoption of this Constitution, unless a vacancy occur, in which case the successor of the former incumbent shall receive only such salary as may be provided by law at the time of his election or appointment. The compensation of the officers provided for by this article, until otherwise provided by law, is fixed as follows:

Governor, Two Thousand Dollars per annum.
Secretary of State, Two Thousand Dollars per annum.
State Auditor, Fifteen Hundred Dollars per annum.
State Treasurer, One Thousand Dollars per annum.
Attorney-General, Fifteen Hundred Dollars per annum.

Superintendent of Public Instruction, Fifteen Hundred Dollars per annum.

The compensation for said officers as prescribed in this section, and in all laws enacted pursuant to this Constitution, shall be in full for all services rendered by said officers, respectively, in any official capacity or employment during their respective terms of office. No such officer shall receive for the performance of any official duty any fee for his own use, but all fees fixed by law for the performance by either of them of any official duty, shall be collected in advance and deposited with the State Treasurer quarterly to the credit of the State. The Legislature may provide for the payment of actual and necessary expenses of said officers while traveling in the State in the performance of official duty.

1. In general.

Under Constitution, official year begins on first Monday of January of year following general election, and, as to all state officers and district judges, ends on first Monday of January four years later, and such officers are entitled to receive four full quarters' pay in each year during their term of office, but paying them three days beyond four full years and deducting such amount from successors' pay violates Constitution. Crockett v. Tuttle, 58 U. 213, 197 P. 900.

2. Effect of officer's failure personally to discharge office's duties during part of term.

Public officer held entitled to salary for portion of term of office, notwithstanding he did not personally assume charge of office and discharge duties thereof and officer de facto in possession of office was paid salary. Tanner v. Edwards, 31 U. 80, 86 P. 765.

3. Increase or decrease in salaries during terms of office in general.

Governor, who was elected such in November, 1900, and whose term of office began in January, 1901, was entitled, after effective date of act, approved in March, 1901, to increase in salary of his office provided for by such act, "law" as used in this section being properly construed as referring to "statutory law" and as not including Constitution. State ex rel. Wells v. Tingey, 24 U. 225, 67 P. 33.

County commissioners have no right to increase salaries of county officers during their term of office. Cronquist v. Mathews, 53 U. 582, 174 P. 621.

4. Traveling expenses.

The last sentence in this section did not intend to make it obligatory upon legislature to provide that traveling expenses of officers should be paid out of state treasury, nor give officers the right to have such expenses paid by state. Murdock v. Mabey, 59 U. 346, 203 P. 651.

Any attempt on part of legislature to change mileage allowed public officers, or to increase or decrease other items of expense to be allowed, must of necessity result in affecting increase or decrease of their salaries or compensation, within inhibition of this section, since terms "salary" and "compensation" appear to be synonymous and used interchangeably in this provision. Higgins v. Glenn, 65 U. 406, 237 P. 513.

A. L. R. notes.

Administrative officer or board, power to change compensation of employee or subordinate, 70 A. L. R. 1055.

Constitutional inhibition of change of officer's compensation as applicable to allowance for expenses or disbursements, 106 A. L. R. 779.

Constitutional provision against increase or decrease of compensation of public officer as affecting power of legislature to effect decrease by means of administrative procedure or consent of officer, 127 A. L. R. 529.

Constitutional provision creating office and forbidding change in compensation during term as appropriation, 88 A. L. R. 1054.

New duties imposed on officer, increasing compensation for during term, 21 A. L. R. 256, 51 A. L. R. 1522.

Nonconstitutional officer, constitutional inhibition against increase or decrease of compensation during term as applicable to, 31 A. L. R. 1316, 86 A. L. R. 1263.

Per diem compensation, 1 A. L. R. 276.

Validity and effect of agreement by public officer or employee to accept less than compensation or fees fixed by law, or of acceptance of reduced amount, 118 A. L. R. 1458.

Sec. 21. [Grants and commissions.]

All grants and commissions shall be in the name and by the authority of the State of Utah, sealed with the Great Seal of the State, signed by the Governor, and countersigned by the Secretary of State.

Sec. 22. [The great seal.]

There shall be a seal of the State, which shall be kept by the Secretary of State, and used by him officially. Said seal shall be called "The Great Seal of the State of Utah." The present seal of the Territory of Utah shall be the seal of the State until otherwise provided by law.

1. Evidence as to when legislative act was published and legislature adjourned sine die.

Certificate of secretary of state under his hand and great seal of State of Utah may be introduced to show when act of legislature was officially published and when session of legislature adjourned sine die. Pleasant Grove City v. Lindsay, 41 U. 154, 125 P. 389.

Sec. 23. [United States officials ineligible. Governor not eligible for senate.]

No person, while holding any office under the United States' government, shall hold any office under the State government of Utah, and the Governor shall not be eligible for election to the Senate of the United States during the term for which he shall have been elected Governor.

A. L. R. note.

One acting under authority of emergency or relief board or administration as civil officer within contemplation of constitutional provision against holding two or more offices at same time, 105 A. L. R. 1237.

ARTICLE VIII

JUDICIAL DEPARTMENT

Section 1. [Judicial powers, how vested.]

The Judicial power of the State shall be vested in the Senate sitting as a court of impeachment, in a Supreme Court, in district courts, in justices of the peace, and such other courts inferior to the Supreme Court as may be established by law.

Cross-references.

Notes, bearing on subject of delegation of judicial power, see notes under Const. Art. V, § 1; statutory provision, 20-1-1.

1. In general.

Senate, while sitting as court of impeachment, has judicial authority, so far as necessary, to try issues involved, but otherwise Constitution does not intrust any part of judicial power of state to legislature. In re Handley's Estate, 15 U. 212, 49 P. 829, 62 Am. St. Rep. 926, on motion for rehearing in 7 U. 49, 24 P. 673, appeal dismissed on jurisdictional grounds, 151 U. S. 443, 38 L. Ed. 227, 14 S. Ct. 386.

2. "Judicial power" construed.

While term "judicial power" embraces all suits and actions whether public or private, it does not necessarily include the power to hear and determine matters not necessarily in nature of suit or action between parties and does not apply to those cases where the judgment is exercised or is to be exercised as a mere incident to execution of a ministerial power or duty. Citizens' Club v. Welling, 83 U. 81, 27 P.2d 23.

3. "Established by law" construed.

The words "established by law" mean laws passed by the law-making power of this state. If, in the judgment of the legislature, it becomes necessary to create courts in addition to those enum-

erated in this section, then the legislature may, by law duly passed, create such other courts inferior to the supreme court as, in the judgment of that body, may be necessary. But the power resides solely in the legislature, and cannot be delegated. State ex rel. Shields v. Barker, 50 U. 189, 167 P. 262.

4. Effect and operation of classification and enumeration of courts.

Since courts of state have been classified and enumerated by this section, no other classification, in absence of constitutional warrant, can be made, which will either increase or diminish legislative power in this regard. Love v. Liddle, 26 U. 62, 72 P. 185, 62 L. R. A. 482.

5. Scope and extent of powers of respective courts in general.

Such construction must be put upon the powers which are conferred, and the restrictions which are imposed upon each tribunal, as is most consonant with the general design and will be most effectual in enforcing and carrying into effect will of framers of Constitution. State v. Johnson, 100 U. 316, 114 P.2d 1034.

6. Legislative uniting or consolidating of courts.

The uniting or consolidating of city and justices' courts in different cities of state held valid. Leatham v. Reger, 54 U. 491, 182 P. 187.

7. Justices' courts.

Justices of peace courts constitute part of judicial system of Utah. In re Wiseman, 1 U. 39.

8. Municipal courts.

Act of 1901, creating municipal court in cities of certain population, held clearly within power granted legislature by this section. State ex rel. Hall v. Howell, 26 U. 53, 72 P. 187.

9. Juvenile courts.

This section authorizes the legislature to create the juvenile courts, and, although such courts are of special and limited jurisdiction, their judgments have the same effect as those of any other court, and are not subject to collateral attack. Salt Lake County v. Salt Lake City, 42 U. 548, 134 P. 560.

Sec. 2. [Supreme court, how constituted. Terms.]

Art. 8, sec. 2 Amend. Proposed S.L. '43 S.J.R. 2 p. 188

Art. 8, sec. 2 Rel. matter S.L. '45, S.C.R. 5, p. 317

The Supreme Court shall consist of three judges; but after the year A. D. 1905, the Legislature may increase the number thereof to five. A majority of the judges constituting the court shall be necessary to form a quorum or render a decision. If a justice of the Supreme Court shall be disqualified from sitting in a cause before said court, the remaining judges shall call a district judge to sit with them on the hearing of such cause. The Judges of the Supreme Court shall be elected by the electors of the State at large. The term of office of the Judges of the Supreme Court, excepting as in this article otherwise provided, shall be six years. The Judges of the Supreme Court, immediately after the first election under this Constitution, shall be selected by lot, so that one shall hold office for the term of three years, one for the term of five years, and one for the term of seven years. The lots shall be drawn by the Judges of the Supreme Court, who, for that purpose, shall assemble at the seat of government; and they shall cause the result thereof to be certified by the Secretary of State, and filed in his office. The judge having the shortest term to serve, not holding his office by appointment or election to fill a vacancy, shall be the Chief Justice, and shall preside at all terms of the Supreme Court, and in case of his absence, the judge, having in like manner, the next shortest term, shall preside in his stead.

Cross-references.

Statutory provisions, 20–2.

1. "Disqualification" construed.

Section 13 of this article was not intended to define or prescribe the term "disqualification" as used in this article of the Constitution. Nor is the term otherwise defined or prescribed by the Constitution. The term is used in its natural and ordinary sense, and thus includes illness or a physical disability

or other condition incapacitating a member of the court, and may even include the death of such member. In re Thompson's Estate, 72 U. 17, 86, 269 P. 103.

2. Powers of district judge sitting in place of deceased justice.

Under this section, where a justice dies, a vacancy in his office occurs, and the remaining justices have authority to call in or permit a district judge to sit with them in a particular case which is argued before the vacancy is filled by appointment of the governor and the appointee qualifies. Such district judge is at least a judge de facto, and he may participate in the case and in the court's decision and the rehearing therein even after vacancy has been filled by appointment. In re Thompson's Estate, 72 U. 17, 86, 269 P. 103.

3. Number of justices necessary to render decision.

4. — effect of syllabus of case.

Where it is not clear from separate opinions of the court exactly what the holding is, the decision of the court should be ascertainable by reading the syllabus. Shields v. Utah Light & Traction Co., 99 U. 307, 105 P.2d 347. (Wolfe, J., dissenting.)

Sec. 3. [Id. Qualifications of judges.]

Art. 8, sec. 3 Amend. Proposed S.L. '43 S.J.R. 2 p. 189

Every Judge of the Supreme Court shall be at least thirty years of age, and, before his election, shall be a member of the bar, learned in the law, and a resident of the Territory or State of Utah for five years next preceding his election.

Sec. 4. [Id. Jurisdiction. Terms.]

Art. 8, sec. 3 Ref. to S.L. '43 S.J.R. 2 Sec. 2 (6) p. 189

The Supreme Court shall have original jurisdiction to issue writs of *mandamus, certiorari,* prohibition, *quo warranto* and *habeas corpus.* Each of the justices shall have power to issue writs of habeas corpus, to any part of the State, upon petition by or on behalf of any person held in actual custody, and may make such writs returnable before himself or the Supreme Court or before any district court or judge thereof in the State. In other cases the Supreme Court shall have appellate jurisdiction only, and power to issue writs necessary and proper for the exercise of that jurisdiction. The Supreme Court shall hold at least three terms every year and shall sit at the capital of the State.

Cross-references.

Statutory provisions, 20–2–2, 20–2–5.

1. Legislative enlargement or abridgment of powers conferred by this section.

The powers given court by this provision cannot be enlarged or abridged by the legislature. State ex rel. Robinson v. Durand, 36 U. 93, 104 P. 760.

A. L. R. notes.

Mandamus to governor, 105 A. L. R. 1124; superintending control over inferior tribunals, 112 A. L. R. 1351; power of court to prescribe rules of pleadings, practice, or procedure, 110 A. L. R. 22; injunction by appellate court to protect subject matter of appeal or preserve status quo as between the parties, 133 A. L. R. 1105.

Sec. 5. [District courts, how constituted. Terms. Jurisdiction. Judge pro tempore.]

Art. 8, sec. 5 Amend. Proposed S.L. '43 S.J.R. 2 p. 189

Art. 8, sec. 5 Rel. matter S.L. '45 S.C.R. 5 p. 317

The State shall be divided into seven judicial districts, for each of which, at least one, and not exceeding three judges, shall be chosen by the qualified electors thereof. The term of office of the district judges shall be four years. Except that the District Judges elected at the first election shall serve until the first Monday in January, A. D. 1901, and until their successors shall have qualified. Until otherwise provided by law, a district court at the county seat of each county shall be held at least four times a year. All civil and criminal business arising in any county, must be tried in such county, unless a change of venue

be taken, in such cases as may be provided by law. Each judge of a District Court shall be at least twenty-five years of age, a member of the bar, learned in the law, a resident of the Territory or State of Utah three years next preceding his election, and shall reside in the district for which he shall be elected. Any District Judge may hold a District Court in any county at the request of the judge of the district, and upon a request of the Governor, it shall be his duty to do so. Any cause in the District Court may be tried by a judge *pro tempore,* who must be a member of the bar, sworn to try the cause, and agreed upon by the parties, or their attorneys of record.

Cross-references.

Statutory provisions, 20–3, 104–4–1 et seq.

1. Period for which judges entitled to pay.

Under Constitution, official year begins on first Monday of January of year following general election, and, as to all state officers and district judges, ends on first Monday of January four years later, and such officers are entitled to receive four full quarters' pay in each year during their term of office, but paying them three days beyond four full years and deducting such amount from successors' pay violated Constitution. Crockett v. Tuttle, 58 U. 213, 197 P. 900.

2. Legislative increase in number of judges.

Act of 1903, which increased number of judges in third judicial district from three to four, empowered governor to appoint one judge in and for such district, etc., held valid exercise of legislative power. State ex rel. Breeden v. Lewis, 26 U. 120, 72 P. 388.

3. Venue.

4. — in general.

In Sanipoli v. Pleasant Valley Coal Co., 31 U. 114 at p. 117, 86 P. 865, 10 Ann. Cas. 1142, at p. 865 (Bartch, C. J., dissenting), court said: "In the case of Konold v. Rio Grande Western Ry. Co., 16 U. 151, 51 P. 256, where the acts of negligence occasioning personal injury occurred in Emery county, and suit was brought in Weber county, it was held that the district court of Weber county had no jurisdiction of the subject matter, because the cause of action arose in Emery county, and, under the constitutional provision, the district court of that county had exclusive original jurisdiction of the action. The doctrine announced in the Konold Case was followed and applied in Mosby v. Gisborn, 17 U. 257, 54 P. 121; Bach v. Brown, 17 U. 435, 53 P. 991; Condon v. Leipsiger, 17 U. 498, 55 P. 82; Overland Gold Min. Co. v. McMaster, 19 U. 177, 56 P. 977, and in Woodward v. Edmunds, 20 U. 118, 57 P. 848. Later by a number of decisions of this court, that doctrine was overruled, and a construction placed upon the constitutional provision entirely different from the one announced in the Konold Case. (White v. Rio Grande Western Ry. Co., 25 U. 346, 71 P. 593; Fields v. Daisy Gold Min. Co., 26 U. 373, 73 P. 521; Gibbs v. Gibbs, 26 U. 382, 73 P. 641; Sherman v. Droubay, 27 U. 47, 74 P. 348; Snyder v. Pike, 30 U. 102, 83 P. 692.) In these cases the constitutional provision has been given an interpretation, to the effect, that it does not grant nor limit jurisdiction, and that it 'Does not change the common-law practice in respect to venue either in civil or criminal actions, but is simply an announcement of the common law upon that subject.' And that transitory actions 'Could be instituted in any jurisdiction in which the defendant was served with process, on the principle that as soon as a person becomes liable in such action to another, either by reason of a tort or contract, the liability attaches to the person and follows him wherever he goes.' The holding of these cases is that the constitutional provision does not confer nor restrict jurisdiction, but that the jurisdiction of the district court is as prescribed and defined by section 7, art. 8, of the Constitution, which provides that: 'The district court shall have original jurisdiction in all matters civil and criminal not excepted in this Constitution, and not prohibited by law.' * * * To re-establish the rule announced in the Konold Case, requires the overruling of all the later cases. We have no disposition to depart from the conclusions reached in these cases. The question has been before this court, and engaged its attention during the last ten years, in a dozen or more cases, in which diverse learned opinions have been expressed upon it. The necessity for stability and uniformity in the construction and interpretation of the law requires that the doctrine of stare decisis be applied. * * * We * * * adhere to and reaffirm the rule announced."

Action to foreclose chattel mortgage given as security for payment of promissory notes made payable in Salt Lake County could be properly maintained in

Salt Lake County, although mortgaged property was not situated in such county and defendant resided in another county. Emerson-Brantingham Implement Co. v. Giles, 53 U. 539, 174 P. 181.

5. —"business" as used erroneously for "causes of action."

In construing clause of this section, providing that all civil and criminal "business" arising in any county must be tried in such county, etc., held that word "business" was used erroneously, that words "causes of action" should be deemed substituted for such word, and that, even after such substitution, clause is still so indefinite and general as to render it necessary, in each case in which venue is made issue, to resort to common law to determine whether venue has been laid properly. White v. Rio Grande Western Ry. Co., 25 U. 346, 71 P. 593.

6. —waiver.

Right, conferred by this section to have action tried in county where it arose, is personal privilege only, and defendant, by failing to object to jurisdiction of court at former trial and by demurring to amended complaint on other grounds on subsequent trial, waived such right. White v. Rio Grande Western Ry. Co., 25 U. 346, 71 P. 593.

Sec. 6. [Id. Legislature may change districts.]

The Legislature may change the limits of any judicial district, or increase or decrease the number of districts, or the judges thereof. No alteration or increase shall have the effect of removing a judge from office. In every additional district established, a judge shall be elected by the electors thereof, and his term of office shall continue as provided in section five of this article.

Art. 8, sec. 6 Amend. Proposed S.L. '43 S.J.R. 2 p. 189

1. Legislative increase in number of judges.

Act of 1903, which increased number of judges in third judicial district from three to four, empowered governor to appoint one judge in and for such district, etc., held valid exercise of legislative power. State ex rel. Breeden v. Lewis, 26 U. 120, 72 P. 388.

Sec. 7. [Jurisdiction of district courts.]

The District Court shall have original jurisdiction in all matters civil and criminal, not excepted in this Constitution, and not prohibited by law; appellate jurisdiction from all inferior courts and tribunals, and a supervisory control of the same. The District Courts or any judge thereof, shall have power to issue writs of *habeas corpus, mandamus,* injunction, *quo warranto, certiorari,* prohibition and other writs necessary to carry into effect their orders, judgments and decrees, and to give them a general control over inferior courts and tribunals within their respective jurisdictions.

Cross-references.

Statutory provision, 20–3–4.

1. In general.

This section does not mean that regardless of statutory rules, practice and procedure, any civil or criminal matter not expressly prohibited by law may be commenced in the district court, as legislature, in absence of constitutional limitation, may prescribe and define forum in which actions may or must be commenced, and the procedure necessary to pass from one court to another. State v. Johnson, 100 U. 316, 114 P.2d 1034.

2. Legislative enlargement or abridgment of powers conferred by this section.

The powers given court by this provision cannot be enlarged or abridged by the legislature. State ex rel. Robinson v. Durand, 36 U. 93, 104 P. 760.

3. Mode of invoking district court's jurisdiction.

Procedure laid down by legislature for invoking jurisdiction of district courts must be followed. State v. Johnson, 100 U. 316, 114 P.2d 1034.

A. L. R. notes.

Mandamus to governor, 105 A. L. R. 1124; power of court to prescribe rules of pleadings, practice or procedure, 110 A. L. R. 22.

Sec. 8. [Justices of the peace. Jurisdiction, etc.]

The Legislature shall determine the number of justices of the peace to be elected, and shall fix by law their powers, duties and compensation. The jurisdiction of justices of the peace shall be as now provided by law, but the Legislature may restrict the same.

Cross-references.
Statutory provisions, 20–5.

1. Justices' courts as part of state's judicial system.
Justices of peace courts constitute part of judicial system of Utah. In re Wiseman, 1 U. 39.

2. Legislative control over justices' courts in general.
When last sentence in this section was inserted in Constitution, it had reference to law then in force, and construction of existing statutes by supreme court was part thereof. Briscoe v. Rich, 20 U. 349, 58 P. 837.

Former statute, analogous to 20–5–1, held not enlargement of jurisdiction of justice of peace as it stood at time Constitution was adopted, and not invalid under last sentence in this section. Briscoe v. Rich, 20 U. 349, 58 P. 837.

This section confers on legislature power to restrict jurisdiction of justices of peace by general law, but not to prescribe jurisdiction for justices in particular localities of state different from that possessed by justices in state at large. Love v. Liddle, 26 U. 62, 72 P. 185, 62 L. R. A. 482.

Under this provision, legislature may determine of what matters, and when and how justices' courts shall acquire and exercise jurisdiction. State ex rel. Gallagher v. Third Judicial District Court for Salt Lake County, 36 U. 68, 104 P. 750.

3. Legislative uniting or consolidating of city and justices' courts.
The uniting or consolidating of city and justices' courts in different cities of state held valid. Leatham v. Reger, 54 U. 491, 182 P. 187.

Sec. 9. [Appeals from district court; record, etc. From justices' courts.]

From all final judgments of the district courts, there shall be a right of appeal to the Supreme Court. The appeal shall be upon the record made in the court below and under such regulations as may be provided by law. In equity cases the appeal may be on questions of both law and fact; in cases at law the appeal shall be on questions of law alone. Appeals shall also lie from the final orders and decrees of the Court in the administration of decedent estates, and in cases of guardianship, as shall be provided by law. Appeals shall also lie from the final judgment of justices of the peace in civil and criminal cases to the District Courts on both questions of law and fact, with such limitations and restrictions as shall be provided by law; and the decision of the District Courts on such appeals shall be final, except in cases involving the validity or constitutionality of a statute.

Cross-references.
Statutory provision, 104–41–1.

1. Appeal to supreme court where case originated in justice or city court.

2. — in general.
Laws of territory controlled right of appeal to supreme court from judgment of territorial district court on appeal from judgment of justice of peace, even though appeal to supreme court was not perfected until after statehood. Hodson v. Union Pac. Ry. Co., 14 U. 381, 46 P. 270.

3. — right, and scope of review.
Appeal lies to supreme court in every case which originates in justice's court and in which validity or constitutionality of statute or city ordinance is drawn in question in, and is decided by, or ought to be decided by, district court on appeal to it. Eureka City v. Wilson, 15 U. 53, 48 P. 41, aff'd 173 U. S. 32, 43 L. Ed. 603, 19 S. Ct. 317.

Construing exception in last clause of this section, held that it is essential to jurisdiction of supreme court over judgments of district courts, in cases

which originated in and were appealed from justices of peace, that it shall appear that statutory question was raised and presented to district court; that such question was decided by district court, or that its decision was necessary to judgment rendered in case; that, if these things appear, then supreme court has jurisdiction, and must examine judgment so far as to enable it to determine whether statutory question and claim of right were correctly adjudged, and, if they were, judgment must be affirmed; that, if statutory question was erroneously decided, supreme court must further inquire whether, notwithstanding error in deciding that question, there was decided any other matter or issue, not affected by statutory question, which in itself is sufficient to sustain judgment, and, if such is case, judgment must be affirmed, without determining whether adjudication on such other matter or issue is correct, and that if it is found that statutory question is of such force as to render correct decision thereof necessary to final adjudication, or that there has been no decision of any other matter or issue, not affected by statutory question, sufficient to sustain judgment of district court, supreme court will reverse judgment and direct proper judgment to be entered, or remand cause, as may be required by circumstances of each particular case. Eureka City v. Wilson, 15 U. 53, 48 P. 41, aff'd 173 U. S. 32, 43 L. Ed. 603, 19 S. Ct. 317.

Exception, in last clause of this section, applies when validity or constitutionality of city ordinance, as well as when validity or constitutionality of statute, is involved in case originating in justice's court. Eureka City v. Wilson, 15 U. 53, 48 P. 41, aff'd 173 U. S. 32, 43 L. Ed. 603, 19 S. Ct. 317.

Supreme court has power, on appeal, to consider question of validity or constitutionality of statute or city ordinance, where such question was raised in district court, and was decided or ought to have been decided by that court, on appeal to it of case which originated in justice's court, but supreme court has no jurisdiction to determine any other question which does not affect validity or constitutionality of statute or ordinance. Eureka City v. Wilson, 15 U. 67, 48 P. 150, 62 Am. St. Rep. 904.

Under this section, appeal may be taken to supreme court in all cases originating in justices' courts in which validity or constitutionality of statute or ordinance is drawn in question, made issue, and decided by district court on appeal; in all other cases transferred to district court from justices' courts, final judgment of district court is conclusive. Ogden City v. Crossman, 17 U. 66, 53 P. 985, following Eureka City v. Wilson, 15 U. 53, 48 P. 41, aff'd 173 U. S. 32, 43 L. Ed. 603, 19 S. Ct. 317. In Ogden City case, district court held unconstitutional city ordinance which, in justice's court, defendants had been found guilty of violating. However, in Town of Ophir v. Jorgensen, 63 U. 288, 225 P. 342, in which, seemingly, there was raised no question of constitutionality of town ordinance involved and only question at issue was as to town's right to appeal from district court's judgment in action, originating in justice's court, for violation of ordinance, court said at p. 290 of 63 Utah: "This court, in the case of Ogden City v. Crossman, 17 U. 66, 53 P. 985, did entertain an appeal from the district court in a criminal case brought under a city ordinance * * *. But * * * that case is not reasoned upon this question; the statutes and constitutional provisions and general legal propositions involved are not discussed. The case ought to be deemed overruled, by implication, by the doctrine of Castle Dale City v. Woolley [61 U. 291, 212 P. 1111] and the holding in Salina City v. Freece," 61 U. 574, 216 P. 1078.

Supreme court has no jurisdiction of appeal from order of district court vacating and setting aside sale made on execution issued by such latter court on judgment rendered by it on appeal from judgment of justice of peace, unless case involves validity or constitutionality of statute. Post v. Foote, 18 U. 235, 54 P. 975.

Supreme court has no power, on appeal in case originating in justice's court, to determine whether district court's construction of particular statute was erroneous. State v. Olsen, 18 U. 484, 56 P. 22.

Where case, originating in justice's court, did not involve validity or constitutionality of statute, and unsuccessful plaintiffs had right of appeal to district court but, instead of appealing, petitioned district court for writ of prohibition and by petition raised same questions that had been raised in justice's court, appeal to supreme court could no more be taken from judgment of district court dismissing petition for writ than it could have been taken from adverse judgment of district court on appeal, if case had been appealed to it. Overland Gold Min. Co. v. McMaster, 19 U. 177, 56 P. 977.

Where, on appeal from justice of peace in case which did not involve either validity or constitutionality of statute, district court had jurisdiction both of parties and subject matter, its decision,

whether it was on motion to dismiss or on merits, was final, and supreme court had no power to review such decision either on appeal or on certiorari. Crooks v. Fourth Judicial District Court 21 U. 98, 59 P. 529 (Baskin, J., dissenting), distinguished in Hansen v. Anderson, 21 U. 286, 61 P. 219 (Bartch, C. J., dissenting), which was overruled in Smith v. District Ct. of Second Judicial Dist., 24 U. 164, 66 P. 1065 (Baskin, J., dissenting). (In Oregon Short Line R. Co. v. District Court of Third Judicial Dist., 30 U. 371, 85 P. 360, court "adhered" to Crooks and Smith cases, and did not mention Hansen case, but did, in effect, return to doctrine of latter case.)

Under this section, where case originated in the justice's court, supreme court is prohibited from inquiring into any question, except validity of the law upon which the conviction and judgment are based. State v. Briggs, 46 U. 288, 146 P. 261.

Cases originating in a justice's court may be appealed to the supreme court when the validity or constitutionality of a statute is questioned. Park City v. Daniels, 46 U. 554, 149 P. 1094, Ann. Cas. 1918 E 107.

The word "statute" in last clause of this section includes municipal ordinances. Park City v. Daniels, 46 U. 554, 149 P. 1094, Ann. Cas. 1918 E 107.

Under this section, a judgment in a criminal case, rendered in the district court upon appeal from a city court, is final and nonappealable, unless the validity or constitutionality of a statute or an ordinance is involved. Salt Lake City v. Lee, 49 U. 197, 161 P. 926; Logan City v. Blotter, 75 U. 272, 284 P. 333; State v. Lyte, 75 U. 283, 284 P. 1006.

Judgment of district court of conviction for violation of former Prohibition Act on appeal from city court was final, unless constitutionality or validity of some statute which was material to conviction was drawn in question. State v. Roberts, 56 U. 136, 190 P. 351.

In criminal case originating in justice's court and appealed to district court, supreme court, under provisions of Constitution, could not review errors except those which related to or assailed validity of act under which defendant was convicted. State v. Holtgreve, 58 U. 563, 200 P. 894, 26 A. L. R. 696.

A city cannot appeal from the judgment of the district court in criminal action for violation of ordinance where the action originates in the court of a city justice. Salina City v. Freece, 61 U. 574, 216 P. 1078.

This section does not authorize a city to appeal from judgment on appeal from city court to district court, dismissing defendant from custody, even though constitutionality of ordinance under which defendant was prosecuted was involved. Town of Scipio v. Olsen, 71 U. 328, 265 P. 1117, following Castle Dale City v. Woolley, 61 U. 291, 212 P. 1111.

This section applies to and limits appeals to supreme court from the district court in criminal cases, where case originated in city court, and was first appealed to district court. State v. Brown, 75 U. 37, 282 P. 785.

A district court judgment is final and unappealable, where appealed from justice of the peace, unless validity or constitutionality of statute or ordinance is involved. On such appeal, the supreme court will consider only the question of the validity or constitutionality of the statute or ordinance in question. Bountiful City v. Granato, 77 U. 133, 292 P. 205; American Fork City v. Robinson, 77 U. 168, 292 P. 249.

4. Certiorari from supreme court to review district court's judgment in case originating in justice or city court.

Supreme court may, by certiorari, review decision or judgment of district court in case appealed from justice of peace, even though validity or constitutionality of statute is not involved, where district court exceeded its jurisdiction or failed to acquire jurisdiction. Hansen v. Anderson, 21 U. 286, 61 P. 219 (Bartch, C. J., dissenting), distinguishing Crooks v. Fourth Judicial District Court, 21 U. 98, 59 P. 529 (Baskin, J., dissenting), and overruled in Smith v. District Court of Second Judicial Dist., 24 U. 164, 66 P. 1065 (Baskin, J., dissenting). (In Oregon Short Line R. Co. v. District Court of Third Judicial Dist., 30 U. 371, 85 P. 360, court "adhered" to Crooks and Smith cases, and did not mention Hansen case, but did, in effect, return to doctrine of latter case.)

Action of district court in dismissing, for want of prosecution, case appealed from justice court but not involving validity or constitutionality of statute, held final and not subject to review by supreme court on certiorari. Smith v. District Court of Second Judicial District, 24 U. 164, 66 P. 1065 (Baskin, J., dissenting), construed and adhered to in Oregon Short Line R. Co. v. District Court of Third Judicial District, 30 U. 371, 85 P. 360, and overruling, so far as in conflict, Hansen v. Anderson, 21 U. 286, 61 P. 219.

Where judgment was rendered in district court in favor of plaintiff in action before justice of peace and taken to district court by appeal, and it was shown that district court had exceeded its jurisdiction, supreme court had power by certiorari to review such jurisdic-

tional question, such judgment not being reviewable by further appeal. Oregon Short Line R. Co. v. District Court of Third Judicial Dist., 30 U. 371, 85 P. 360.

The mere fact that court misconceives the law and acts contrary thereto in matter where it has jurisdiction of subject matter does not carry such act beyond jurisdiction of court, and its action is not reversible on certiorari. Hoffman v. Lewis, 31 U. 179, 87 P. 167.

Dismissal of appeal from justice's court by district court on theory that undertaking, as required by law, had not been filed in justice's court, held not to exceed jurisdiction of district court, and such dismissal was not reviewable on certiorari. Hoffman v. Lewis, 31 U. 179, 87 P. 167.

5. Mandamus from supreme court to compel district court to act in case appealed from justice or city court.

Where district court dismisses appeal from justice's court wrongfully or without cause, remedy is by writ of mandate under section 104–68–2, to require district court to vacate order of dismissal, reinstate appeal, and proceed to hear cause on its merits. Hoffman v. Lewis, 31 U. 179, 87 P. 167.

While if district court passes upon merits of case appealed to it from justice court, its errors, however gross, cannot be reviewed by supreme court, because district court is the court of last resort on such appeals, still if district court, without sufficient or any legal reason, refuses to dispose of the appeal upon the merits, supreme court must require that court to hear and determine the same upon its merits, and make findings and conclusions of law in accordance with the evidence as it finds it to be, and enter judgment accordingly. Salt Lake Coffee & Spice Co. v. District Court of Salt Lake County, 44 U. 411, 140 P. 666.

Sec. 10. [County attorneys. Election, terms, etc.]

Art. 8, sec. 10 Amendment Proposed to be Voted at General Election 1946. S.L.'45, H.J.R. 4, p. 321

A County Attorney shall be elected by the qualified voters of each county who shall hold his office for a term of two years. The powers and duties of County Attorneys, and such other attorneys for the State as the Legislature may provide, shall be prescribed by law. In all cases where the attorney for any county, or for the State, fails or refuses to attend and prosecute according to law, the court shall have power to appoint an attorney *pro tempore.*

Art. 8, sec. 10 ref. to S.L. '47 c. 27 Tit. p. 45

Cross-references.

Statutory provisions, 19–15.

1. Court as not authorized to impose liability on county for defendant's attorney's fees.

This section does not authorize court to impose liability on county for attorney's fees in defending one charged with crime. Pardee v. Salt Lake County, 39 U. 482, 118 P. 122, 36 L. R. A. (N. S.) 377, Ann. Cas. 1913 E 200.

Sec. 11. [Removal of judges from office.]

Judges may be removed from office by the concurrent vote of both houses of the Legislature, each voting separately; but two-thirds of the members to which each house may be entitled must concur in such vote. The vote shall be determined by yeas and nays, and the names of the members voting for or against a judge, together with the cause or causes of removal, shall be entered on the journal of each house. The judge against whom the house may be about to proceed shall receive notice thereof, accompanied with a copy of the cause alleged for his removal, at least ten days before the day on which either house of the Legislature shall act thereon.

1. Supreme court as without power to remove attorney from judicial office.

In view of this provision and Const. Art. VI, § 19, while supreme court, under 6–0–12 to 6–0–18, and 6–0–36, may disbar or censure attorney holding judicial office, it cannot remove him from office. In re Burton, 67 U. 118, 246 P. 188.

Art. 8, sec. 12 Amend. proposed S.L. '46 (1st S.S.) S.J.R. No. 6 p. 4

Art. 8, sec. 12 Amend. Proposed S.L. '43 S.J.R. 2 p. 189

Art. 8, sec. 12 Note Salary Provisions S.L. '45, c. 39 Sec. 1, p. 86

Sec. 12. [Judges' salaries to remain fixed.]

The Judges of the Supreme and District Courts shall receive at stated times compensation for their services, which shall not be increased or diminished during the time for which they are elected.

Cross-references.
Statutory provisions, 87–1–3, 87–1–4.

Sec. 13. [Disqualification of judges.]

Except by consent of all the parties, no judge of the supreme or inferior courts shall preside in the trial of any cause where either of the parties shall be connected with him by affinity or consanguinity within the degree of first cousin, or in which he may have been of counsel, or in the trial of which he may have presided in any inferior court.

Cross-references.
Statutory provision, 20–61.

1. **Section as not defining "disqualification" as used in Const. Art. VIII, § 2.**

This section was not intended to define or prescribe the term "disqualification" as used in section 2 of this article. In re Thompson's Estate, 72 U. 17, 86, 269 P. 103.

Sec. 14. [Clerks of courts. Reporter.]

The Supreme Court shall appoint a clerk, and a reporter of its decisions, who shall hold their offices during the pleasure of the Court. Until otherwise provided, County Clerks shall be *ex officio* clerks of the District Courts in and for their respective counties, and shall perform such other duties as may be provided by law.

Cross-references.
Statutory provisions, 20–2–7 et seq., 20–2–14.

Sec. 15. [Judges shall not appoint relatives to office.]

No person related to any judge of any court by affinity or consanguinity within the degree of first cousin, shall be appointed by such court or judge to, or employed by such court or judge in any office or duty in any court of which such judge may be a member.

Cross-references.
Statutory provisions, 49–12.

Sec. 16. [Judicial districts, how constituted.]

Until otherwise provided by law, the Judicial Districts of the State shall be constituted as follows:

First District:—The Counties of Cache, Box Elder and Rich.

Second District:—The Counties of Weber, Morgan and Davis.

Third District:—The Counties of Summit, Salt Lake and Tooele, in which there shall be elected three district judges.

Fourth District:—The Counties of Utah, Wasatch and Uintah.

Fifth District:—The Counties of Juab, Millard, Beaver, Iron and Washington.

Sixth District:—The Counties of Sevier, Piute, Wayne, Garfield and Kane.

Seventh District:—The Counties of San Pete, Carbon, Emery, Grand and San Juan.

1. Legislative increase in number of judges.

Act of 1903, which increased number of judges in third judicial district from three to four, empowered governor to appoint one judge in and for such district, etc., held valid exercise of legislative power. State ex rel. Breeden v. Lewis, 26 U. 120, 72 P. 388.

Sec. 17. [Courts of record.]

The Supreme and District Courts shall be courts of record, and each shall have a seal.

Cross-references.

Statutory provision, 20–1–2.

Sec. 18. [Style of process: "The State of Utah."]

The style of all process shall be, "The State of Utah," and all prosecutions shall be conducted in the name and by the authority of the same.

1. Construction and operation of section.

2. —liquor nuisance sections of Liquor Control Act.

The liquor nuisance sections of Liquor Control Act (46–0–237 and 46–0–238) do not contravene this section. Riggins v. District Court of Salt Lake County, 89 U. 183, 213, 51 P.2d 645.

3. —offenses against municipal ordinances.

This section is not violated by 15–7–64, which provides that all offenses against municipal ordinances shall be prosecuted in corporate name of city or town enacting ordinance. Salt Lake City v. Bernhagen, 56 U. 159, 189 P. 583.

4. —proceeding to remove public official from office.

Proceeding to remove public official from office under 105–7–15 is of civil, and not criminal, nature, and hence is not within this section. Skeen v. Craig, 31 U. 20, 86 P. 487; Skeen v. Paine, 32 U. 295, 90 P. 440.

Sec. 19. [But one form of civil action.]

There shall be but one form of civil action, and law and equity may be administered in the same action.

Cross-references.

Statutory provisions, 88–2–2, 104–1–2.

1. Construction and operation of section in general.

This section abolishes formal distinction between actions at law and suits in equity, and court may administer relief according to the nature of the cause set out, whether it is such as will be granted in equity or as will be given at law, and court may not dismiss an action at law on ground that plaintiff should have sought relief in equity. Morgan v. Child, Cole & Co., 41 U. 562, 128 P. 521.

This section does not authorize a disregard of the functions of law and equity; equity may only intercede where the law is inadequate or is impotent to prevent gross injustice or irreparable injury. Hoffman v. Tooele City, 42 U. 353, 130 P. 61, 45 L. R. A. (N. S.) 992.

While purely equitable rights may not be enforceable in a law action, yet where under our statute a legal right, or even an equitable right is clearly given, such a right may be enforced in a civil action whether the action be denominated an action at law or one in equity. Therefore, an equitable right of an assignee of a part of a claim may be enforced in a civil action. National Union Fire Ins. Co. v. Denver & R. G. R. Co., 44 U. 26, 137 P. 653.

Under this section, court may administer relief according to nature of cause set out, whether it is such as would be granted in equity or such as would be given at law. Morgan v. Child, Cole & Co., 47 U. 417, 155 P. 451; s. c., 41 U. 562, 128 P. 521.

Under this section, when it is necessary to settle equitable issues before legal rights are to be determined and adjusted, a separate action is not necessary, but all issues, whether legal or equitable, may be heard and determined in same action or proceeding. In such event, however, the court must

first determine the equitable issues. Ketchum Coal Co. v. District Court of Carbon County, 48 U. 342, 353, 159 P. 737, 4 A. L. R. 619, following Morgan v. Child, Cole & Co., 41 U. 562, 128 P. 521.

Under this section the court, in a condemnation proceeding, may determine the question of title; an independent action for that purpose is not necessary. Indeed, the question of title should be tried and determined in the condemnation action. Ketchum Coal Co. v. District Court of Carbon County, 48 U. 342, 159 P. 737, 4 A. L. R. 619.

While legal relief must be distinguished from equitable relief, no particular form of action is either necessary or required to obtain relief from courts having jurisdiction of the subject matter. That is, the substance and not the form of things controls. Utah Ass'n of Credit Men v. Jones, 49 U. 519, 164 P. 1029.

Courts can administer both law and equity in one action. Jenkins v. Nicolas, 63 U. 329, 226 P. 177.

If trial of a cause calls for application of equitable principles rather than legal principles, case is one for court of equity rather than a court of law, and question as to nature of action is not jurisdictional, as both law and equity may be administered in same action. Norback v. Board of Directors of Church Extension Society, 84 U. 506, 37 P.2d 339.

Matters purely legal and purely equitable may not only be determined in the same forum, but they may be tried and determined in the same proceeding or action, since the formal distinctions between law and equity have been abolished although the substantive distinctions remain. Wasatch Oil Refining Co. v. Wade, 92 U. 50, 63 P.2d 1070.

Provision that there shall be but one form of action and that law and equity shall be administered in same action means that when jurisdiction of district court is invoked by filing of civil action, court will grant relief whether facts afford adequate basis for relief according to common law or equitable system of jurisprudence. Spanish Fork West Field Irr. Co. v. District Court of Salt Lake County, 99 U. 527, 104 P. 2d 353, rehearing denied 99 U. 558, 110 P. 2d 344. (Trueman, D. J., and Wolfe, J., dissenting in part.)

2. Equitable defenses in actions at law.

In view of this section, equitable estoppel may be interposed as defense in action at law for dower. Hilton v. Sloan, 37 U. 359, 108 P. 689.

Defendant in action of replevin may interpose equitable defense, and may, if new matter pleaded and facts proved warrant it, obtain equitable relief. Westminster Inv. Co. v. McCurtain, 39 U. 544, 118 P. 564.

Equitable defenses to legal claims are authorized. Columbia Trust Co. v. Anglum, 63 U. 353, 225 P. 1089.

3. Confession of judgment as civil action.

A confession of judgment under this section may constitute a civil action in substance though not in form conforming to the ordinary action in equity to foreclose a mortgage. Utah Ass'n of Credit Men v. Jones, 49 U. 519, 164 P. 1029.

Sec. 20. [Salary of judges.]

Art. 8, sec. 20
Rel. matter
S.L. '45, c. 39
Sec. 1, p. 86

Until otherwise provided by law, the salaries of supreme and district judges, shall be three thousand dollars per annum, and mileage, payable quarterly out of the State treasury.

Cross-references.

Statutory provisions, 20–2–1, 87–1–3, 87–1–4.

Sec. 21. [Judges to be conservators of peace.]

Judges of the Supreme Court, District Courts, and justices of the peace, shall be conservators of the peace, and may hold preliminary examinations in cases of felony.

1. Construction and operation of section in general.

The first part of this section is imperative; the latter part merely imports an authority, and does not impose a positive duty. State v. Shockley, 29 U. 25, 80 P. 865, 110 Am. St. Rep. 639.

"May" constitutes grant of power rather than a limitation thereof. State v. McIntyre, 92 U. 177, 66 P.2d 879.

2. District judge's right to hold preliminary hearing in case of misdemeanor.

This section held not to preclude district judge from holding preliminary

hearing in case of misdemeanor of conspiracy to extort money. State v. McIntyre, 92 U. 177, 66 P.2d 879.

3. Validity of city courts' statute.
Statute, providing that city courts should have original jurisdiction of cases arising under any city ordinances, and should have the same powers as justices of the peace in all other criminal actions, and that the judges of said courts should be magistrates with all powers and jurisdiction of the justices of the peace as magistrates, was not in conflict with this section. State v. Shockley, 29 U. 25, 80 P. 865, 110 Am. St. Rep. 639.

Sec. 22. [Judges to report defects in law.]

District Judges may, at any time, report defects and omissions in the law to the Supreme Court, and the Supreme Court, on or before the first day of December of each year, shall report in writing to the Governor any seeming defect or omission in the law.

Sec. 23. [Publication of decisions.]

The Legislature may provide for the publication of decisions and opinions of the Supreme Court, but all decisions shall be free to publishers.

Sec. 24. [Effect of extending judges' terms.]

The terms of office of Supreme and District Judges may be extended by law, but such extension shall not affect the term for which any judge was elected.

Sec. 25. [Decisions of supreme court to be in writing.]

When a judgment or decree is reversed, modified or affirmed by the Supreme Court, the reasons therefor shall be stated concisely in writing, signed by the judges concurring filed in the office of the Clerk of the Supreme Court, and preserved with a record of the case. Any judge dissenting therefrom, may give the reasons of his dissent in writing over his signature.

Cross-references.
Statutory provision, 104–41–23.

Sec. 26. [Id. Court to prepare syllabus.]

It shall be the duty of the court to prepare a syllabus of all the points adjudicated in each case, which shall be concurred in by a majority of the judges thereof, and it shall be prefixed to the published reports of the case.

Cross-references.
Reporter, Const. Art. VIII, § 14; 20–2–14.

1. Recourse to syllabus.
Where it is not clear from separate opinions of the court exactly what the holding is, the decision of the court should be ascertainable by reading the syllabus. Shields v. Utah Light & Traction Co., 99 U. 307, 105 P.2d 347. (Wolfe, J., dissenting.)

Sec. 27. [Judge forfeits office by absence.]

Any judicial officer who shall absent himself from the State or district for more than ninety consecutive days, shall be deemed to have forfeited his office: Provided, That in case of extreme necessity, the Governor may extend the leave of absence to such time as the necessity therefor shall exist.

ARTICLE IX

CONGRESSIONAL AND LEGISLATIVE APPORTIONMENT

Section 1. [Election of congressman.]

One Representative in the Congress of the United States shall be elected from the State at large on the Tuesday next after the first Monday in November, A. D. 1895, and thereafter at such times and places, and in such manner as may be prescribed by law. When a new apportionment shall be made by Congress, the Legislature shall divide the State into congressional districts accordingly.

Cross-references.
Enabling Act provisions, Enabling Act, § 5; statutory provisions, 25–9; nomination by direct primary, 25–3–49.

Sec. 2. [Decennial census to be taken.]

The Legislature shall provide by law for an enumeration of the inhabitants of the State, A. D. 1905, and every tenth year thereafter, and at the session next following such enumeration, and also at the session next following an enumeration made by the authority of the United States, shall revise and adjust the apportionment for senators and representatives on the basis of such enumeration according to ratios to be fixed by law.

Sec. 3. [Number of members of legislature.]

The Senate shall consist of eighteen members, and the House of Representatives of forty-five members. The Legislature may increase the number of senators and representatives, but the senators shall never exceed thirty in number, and the number of representatives shall never be less than twice nor greater than three times the number of senators.

Cross-references.
Statutory provisions, 50–1.

Sec. 4. [Senatorial districts, how formed.]

When more than one county shall constitute a senatorial district, such counties shall be contiguous, and no county shall be divided in the formation of such districts unless such county contains sufficient population within itself to form two or more districts, nor shall a part of any county be united with any other county in forming any district.

REPRESENTATIVE DISTRICTS

Until otherwise provided by law, representatives shall be apportioned among the several counties of the State as follows: Provided, That in any future apportionment made by the Legislature, each county shall be entitled to at least one representative.

The County of Box Elder shall constitute the First Representative District, and be entitled to one representative.

The County of Cache shall constitute the Second Representative District, and be entitled to three representatives.

The County of Rich shall constitute the Third Representative District, and be entitled to one representative.

The County of Weber shall constitute the Fourth Representative District, and be entitled to four representatives.

The County of Morgan shall constitute the Fifth Representative District, and be entitled to one representative.

The County of Davis shall constitute the Sixth Representative District, and be entitled to one representative.

The County of Tooele shall constitute the Seventh Representative District, and be entitled to one representative.

The County of Salt Lake shall constitute the Eighth Representative District, and be entitled to ten representatives.

The County of Summit shall constitute the Ninth Representative District, and be entitled to one representative.

The County of Wasatch shall constitute the Tenth Representative District, and be entitled to one representative.

The County of Utah shall constitute the Eleventh Representative District, and be entitled to four representatives.

The County of Uintah shall constitute the Twelfth Representative District, and be entitled to one representative.

The County of Juab shall constitute the Thirteenth Representative District, and be entitled to one representative.

The County of San Pete shall constitute the Fourteenth Representative District, and be entitled to two representatives.

The County of Carbon shall constitute the Fifteenth Representative District, and be entitled to one representative.

The County of Emery shall constitute the Sixteenth Representative District, and be entitled to one representative.

The County of Grand shall constitute the Seventeenth Representative District, and be entitled to one representative.

The County of Sevier shall constitute the Eighteenth Representative District, and be entitled to one representative.

The County of Millard shall constitute the Nineteenth Representative District, and be entitled to one representative.

The County of Beaver shall constitute the Twentieth Representative District, and be entitled to one representative.

The County of Piute shall constitute the Twenty-first Representative District, and be entitled to one representative.

The County of Wayne shall constitute the Twenty-second Representative District, and be entitled to one representative.

The County of Garfield shall constitute the Twenty-third Representative District, and be entitled to one representative.

The County of Iron shall constitute the Twenty-fourth Representative District, and be entitled to one representative.

The County of Washington shall constitute the Twenty-fifth Representative District, and be entitled to one representative.

The County of Kane shall constitute the Twenty-sixth Representative District, and be entitled to one representative.

The County of San Juan shall constitute the Twenty-seventh Representative District, and be entitled to one representative.

SENATORIAL DISTRICTS

Until otherwise provided by law, the Senatorial Districts shall be constituted and numbered as follows:

The Counties of Box Elder and Tooele shall constitute the First District, and be entitled to one senator.

The County of Cache shall constitute the Second District, and be entitled to one senator.

The Counties of Rich, Morgan, and Davis shall constitute the Third District, and be entitled to one senator.

The County of Weber shall constitute the Fourth District, and be entitled to two senators.

The Counties of Summit and Wasatch shall constitute the Fifth District, and be entitled to one senator.

The County of Salt Lake shall constitute the Sixth District, and be entitled to five senators.

The County of Utah shall constitute the Seventh District, and be entitled to two senators.

The Counties of Juab and Millard shall constitute the Eighth District, and be entitled to one senator.

The County of San Pete shall constitute the Ninth District, and be entitled to one senator.

The Counties of Sevier, Wayne, Piute, and Garfield shall constitute the Tenth District, and be entitled to one senator.

The Counties of Beaver, Iron, Washington, and Kane shall constitute the Eleventh District, and be entitled to one senator.

The Counties of Emery, Carbon, Uintah, Grand, and San Juan shall constitute the Twelfth District, and be entitled to one senator.

Cross-references.
Statutory provisions, 50–1.

ARTICLE X

EDUCATION

Section 1. [Free non-sectarian schools.]

The Legislature shall provide for the establishment and maintenance of a uniform system of public schools, which shall be open to all children of the State, and be free from sectarian control.

Cross-references.
Statutory provision, 75–1–4.

1. Construction and operation of section.

2. — in general.

This section does not apply to matters financial and does not mean that schools must be free, but simply means that all children must have equal rights and opportunity to attend the grade or class of school for which such child is suited by previous training or development. Logan City School Dist. v. Kowallis, 94 U. 342, 77 P.2d 348.

Where a junior and senior high school were established and maintained in county school district, reasonably convenient, of proper grade and class, and of equal standing to schools in city, that was all parents of children in county district could demand under provision of this section that public schools shall be open to all children of state. Logan City School Dist. v. Kowallis, 94 U. 342, 77 P.2d 348.

3. — exclusion of unvaccinated children from schools.

Former statute, as well as state's inherent police power, held to have justi-

fied action of city boards of health and education in excluding unvaccinated children from city schools during time of smallpox epidemic in state. State ex rel. Cox v. Board of Education of Salt Lake City, 21 U. 401, 60 P. 1013. (Baskin, J., dissenting.)

4. Boards of education.

5. — powers and authority in general.
Powers of board of education are statutory and legislature may authorize governing authorities of school districts to do anything not prohibited by Constitution, but such board has only such powers as are expressly conferred upon it and such implied powers as are necessary to execute and carry into effect its express powers. Beard v. Board of Education of North Summit School Dist., 81 U. 51, 16 P.2d 900.

6. — actions by and against.
If action of board of education is within powers conferred upon it by legislature, and pertains to matter in which board is vested with authority to act, courts will not review action of such board to substitute its judgment for that of board as to matters within its discretion, but action may be maintained by taxpayer to enjoin and restrain school authorities from acting beyond scope of their powers or in violation of law where remedy by law is inadequate. Beard v. Board of Education of North Summit School Dist., 81 U. 51, 16 P.2d 900.

7. School buildings.

8. — imposition by cities of restrictions and regulations.
Cities have no power to impose building restrictions or regulations upon board of education in erection of school buildings, such control being in boards of education. Salt Lake City v. Board of Education of Salt Lake City, 52 U. 540, 175 P. 654.

Sec. 2. [Defining what shall constitute the public school system.]

Art. 10, sec. 2 ref. to S.L. '46 (1st S.S.) H.J.R. 1, sec. 1 p.5; H.J.R. 2, p. 7

The public school system shall include kindergarten schools; common schools, consisting of primary and grammar grades; high schools, an agricultural college; a university; and such other schools as the Legislature may establish. The common schools shall be free. The other departments of the system shall be supported as provided by law. (As amended November 8, 1910.)

1. Nonresident fees.

2. — when payment required.
Children, resident in county school district, could not attend city high school and junior high school without payment of nonresident fees under provision of this section that the common schools shall be free, since "common schools" means only first to eighth grades, inclusive. Logan City School Dist. v. Kowallis, 94 U. 342, 77 P.2d 348.

Where county school district provided adequate schools and facilities, equal to those of city, which were open and free and reasonably convenient for attendance to all children within district, no child in such district had legal right to insist upon attendance at high school or junior high school in city without payment of nonresident fees. Logan City School Dist. v. Kowallis, 94 U. 342, 77 P.2d 348.

Sec. 3. [Proceeds of lands and other property—per cent of proceeds—perpetual fund.]

Art. 10 sec. 3 ref. to S.L. '47 c. 80 sec. 2, p. 355

The proceeds of the sales of all lands that have been or may hereafter be granted by the United States to this state, for the support of the common schools, and five per centum of the net proceeds of the sales of United States public lands lying within the states and sold by the United States subsequent to the admission of this state into the Union, shall be and remain a permanent fund, to be called the State School Fund, the interest of which only, shall be expended for the support of the common schools. The interest on the State School Fund, the proceeds of all property that may accrue to the state by the escheat or forfeiture, all unclaimed shares and dividends of any corporation incorporated under the laws of this state, the proceeds of the sales of timber,

and the proceeds of the sale or other disposition of minerals or other property from school and state lands, other than those granted for specific purposes, shall, with such other revenues as the Legislature may from time to time allot thereto, constitute a fund to be known as the Uniform School Fund, which Uniform School Fund shall be maintained and used for the support of the common and public schools of the state and apportioned in such manner as the Legislature shall provide. The provisions of Section 7, Article XIII of this Constitution shall be construed as a limitation in the rate of taxation on tangible property for district school purposes and not on the amount of funds available therefor and, further, no moneys allocated to the Uniform School Fund shall be considered in fixing the rates of taxation specified in Section 7 of Article XIII. (As amended November 4, 1930; November 8, 1938, effective January 1, 1939.)

Cross-references.
Land grants to schools, Enabling Act, § 6 et seq.

1. Adverse possession of school lands.
Land granted to State of Utah by Act of Congress, commonly known as the Enabling Act, for support of common schools could not be acquired by defendants by adverse possession although state had sold land in controversy to plaintiff. Van Wagoner v. Whitmore, 58 U. 418, 199 P. 670.

2. Escheat.
Under 102–12–28, property may escheat for benefit of school fund notwithstanding existence of heirs, where no claim is made within five years of intestate's death, as therein provided. In re Apostolopoulos' Estate, 68 U. 344, 250 P. 469, 253 P. 1117, 48 A. L. R. 1322.

Statutes relating to the subject of escheats, roughly speaking, are divided into three classes: (1) Those that provide for the disposition of decedents' estates who die without heirs; (2) those that provide for the disposition of bank deposits or other property where the owners have departed from the town, city, or state wherein the property is located or the deposits were made, and where the whereabouts of such owners is unknown and it is not known or cannot be ascertained whether they are living or dead; and (3) those where the death of the owner is known and his death has been judicially established and the estate has in due course been administered upon, but no claimant has appeared to claim succession within the period of time fixed by statute. In re Apostolopoulos' Estate, 68 U. 344, 250 P. 469, 253 P. 1117, 48 A. L. R. 1322; In re Montello Salt Co., 88 U. 283, 287, 53 P.2d 727.

This is not a self-executing provision. In re Montello Salt Co., 88 U. 283, 289, 53 P.2d 727.

Unclaimed funds ordered to be distributed to persons named as stockholders of a dissolved private corporation, but who had not appeared to receive or claim the said funds, are neither a share nor a dividend of a corporation in the sense used in this section of the Constitution, and therefore not subject to escheat. In re Montello Salt Co., 88 U. 283, 53 P.2d 727.

A. L. R. notes.
Disposition of interest or rights in corporation represented by stock the owners of which cannot be found, 101 A. L. R. 670.

Sec. 4. [University and agricultural college located. Rights, etc.]

The location and establishment by existing laws of the University of Utah, and the Agricultural College are hereby confirmed, and all the rights, immunities, franchises and endowments heretofore granted or conferred, are hereby perpetuated unto said University and Agricultural College respectively.

Cross-references.
Statutory provisions, 75–4, 75–5.

Sec. 5. [Proceeds of land grants to constitute permanent funds.]

The proceeds of the sale of lands reserved by an Act of Congress, approved February 21st, 1855, for the establishment of the University of

Utah, and of all the lands granted by an Act of Congress, approved July 16th, 1894, shall constitute permanent funds, to be safely invested and held by the State; and the income thereof shall be used exclusively for the support and maintenance of the different institutions and colleges, respectively, in accordance with the requirements and conditions of said Acts of Congress.

Sec. 6. [Separate control of city schools.]

In cities of the first and second class the public school system shall be controlled by the Board of Education of such cities, separate and apart from the counties in which said cities are located. (As amended November 6, 1900.)

Cross-references.
Statutory provision, 75–9–5.

1. In general.
Intention of framers of this section, as it read prior to its amendment, held to have been to locate and fix geographical divisions in counties containing cities of first and second class and to make it duty of board of education of such cities to support, bear necessary expense of, maintain, and control public school system therein separate and apart from control of counties, and from control and supervision of board of commissioners of counties, in which such cities were located. Merrill v. Spencer, 14 U. 273, 46 P. 1096.

2. Taxation.
This section and 75–9–5 established the supremacy of the board of education over the county in the government and control of the public school system so that, when it certified amount of levy necessary after estimating revenue expected from other sources under former statute (75–12–10), it was ministerial duty of county officers to levy tax necessary to raise amount required by board of education, and county officers were not authorized to make their own estimate of revenue expected from other sources. Board of Education of Salt Lake City v. Burgon, 62 U. 162, 217 P. 1112.

Sec. 7. [School funds guaranteed by state.]

All public School Funds shall be guaranteed by the State against loss or diversion.

1. Construction and operation of section.
This section would not apply to suit for writ of mandamus to compel state officers to reallocate delinquent tax redemption funds collected during certain years to funds for previous years because amount raised during such previous years did not equal $25 per person of school age. Board of Education of Ogden City v. Anderson, 93 U. 522, 74 P.2d 681.

Sec. 8. [State board of education.]

The general control and supervision of the Public School System shall be vested in a State Board of Education, consisting of the Superintendent of Public Instruction, and such other persons as the Legislature may provide.

Cross-references.
Statutory provisions, 75–7.

Sec. 9. [Text books.]

Neither the Legislature nor the State Board of Education shall have power to prescribe text books to be used in the common schools.

Cross-references.
Statutory provisions, 75–15.

Sec. 10. [Institutions for deaf, dumb and blind. Property. Fund.]

Institutions for the Deaf and Dumb, and for the Blind, are hereby established. All property belonging to the School for the Deaf and

Dumb, heretofore connected with the University of Utah, shall be transferred to said Institution for the Deaf and Dumb. All the proceeds of the lands granted by the United States, for the support of a Deaf and Dumb Asylum, and for an Institution for the Blind, shall be a perpetual fund for the maintenance of said Institutions. It shall be a trust fund, the principal of which shall remain inviolate, guaranteed by the State against loss or diversion.

Cross-references.
Statutory provisions, 85–3.

Sec. 11. [Metric system.]

The Metric System shall be taught in the public schools of the State.

Sec. 12. [No religious or partisan tests in schools.]

Neither religious nor partisan test or qualification shall be required of any person, as a condition of admission, as teacher or student, into any public educational institution of the State.

Cross-references.
Statutory provision, 75–1–4.

Sec. 13. [Public aid to church schools forbidden.]

Neither the Legislature nor any county, city, town, school district or other public corporation, shall make any appropriation to aid in the support of any school, seminary, academy, college, university or other institution, controlled in whole, or in part, by any church, sect or denomination whatever.

ARTICLE XI

COUNTIES, CITIES AND TOWNS

Section 1. [Existing counties, precincts, etc., recognized.]

The several counties of the Territory of Utah, existing at the time of the adoption of this Constitution, are hereby recognized as legal subdivisions of this State, and the precincts, and school districts, now existing in said counties, as legal subdivisions thereof, and they shall so continue until changed by law in pursuance of this article.

1. Precincts as legal subdivisions of county.
This section recognizes precincts as legal subdivisions of the county. Rich v. Industrial Commission, 80 U. 511, 527, 15 P.2d 641.

Sec. 2. [Removal of county seats.]

No County Seat shall be removed unless two-thirds of the qualified electors of the county, voting on the proposition at a general election, shall vote in favor of such removal, and two-thirds of the votes cast on the proposition shall be required to re-locate a county seat. A proposition of removal shall not be submitted in the same county more than once in four years.

Cross-references.
Statutory provisions, 19–9.

Sec. 3. [Changing county lines.]

No territory shall be stricken from any county unless a majority of the voters living in such territory, as well as of the county to which it is to be annexed, shall vote therefor, and then only under such conditions as may be prescribed by general law.

Cross-references.
Statutory provisions, 19–2, 19–3.

1. When territory not "stricken."
Within the meaning of this section, nothing is "stricken" when the legislature definitely establishes an indefinite and uncertain line between counties. Barton v. Sanpete County, 49 U. 188, 162 P. 611, upholding Laws 1913, Ch. 71.

2. New line.
It was duty of legislature in attempting to establish boundary line to follow statutory description as nearly as practicable, and, if it found it impracticable to follow it at some particular point, then to establish new line. In doing so, however, it was still its duty to be guided by what it conceived to be intention of legislature which attempted to establish original line. Summit County v. Rich County, 57 U. 553, 195 P. 639.

Legislature, by reason of this section, is without authority by legislative act or otherwise to establish or locate a new or any boundary line between counties where a boundary line exists, unless the description of the boundary line is so indefinite, uncertain, or ambiguous that the line cannot be definitely determined from the description of it given, or for any other reason the line cannot be located on the ground, and must, in attempting to establish the correct line, determine line as it was intended to be established prior to the enactment of the correcting legislative act; any act of legislature attempting to establish new or different line without regard to original intention is unconstitutional. Summit County v. Rich County, 63 U. 194, 224 P. 653.

Sec. 4. [Uniform county government.]

The Legislature shall establish a system of County government, which shall be uniform throughout the State, and by general laws shall provide for precinct and township organizations.

1. "Uniform system of county government" construed.
Uniform system of county government is system or plan of government of state's several counties which is uniform, so that its several parts shall be applicable to each county. State ex rel. Wright v. Standford, 24 U. 148, 66 P. 1061.

2. "Precincts" as "townships."
This section enjoins on the legislature the duty of providing for precinct and township organizations, but state has no legal divisions called "townships." Precincts are "townships"; that is, they are the geographical and legal subdivisions of the counties. Rich v. Industrial Commission, 80 U. 511, 527, 15 P.2d 641, in which it was pointed out that the word "township" was eastern terminology, and that to avoid confusion the term "precinct" was probably used by early government officials. This case contains an interesting history of these terms.

3. Validity of particular statutes.

4. — detention schools.
This section does not render unconstitutional Chapter 8 of Title 14, relating to detention schools. Salt Lake County v. Salt Lake City, 42 U. 548, 134 P. 560.

5. — fruit tree inspectors.
Former statute, providing for appointment of county fruit tree inspectors, etc., held invalid under this section. State ex rel. Wright v. Standford, 24 U. 148, 66 P. 1061.

Sec. 5. [Municipal corporations—to be created by general law—right and manner of adopting charter for own government—powers included.]

Corporations for municipal purposes shall not be created by special laws. The legislature by general laws shall provide for the incorporation, organization and classification of cities and towns in proportion to population, which laws may be altered, amended or repealed.

Any incorporated city or town may frame and adopt a charter for its own government in the following manner:

The legislative authority of the city may, by two-thirds vote of its members, and upon petition of qualified electors to the number of fifteen per cent of all votes cast at the next preceding election for the office of the mayor, shall forthwith provide by ordinance for the submission to the electors of the question: "Shall a commission be chosen to frame a charter?" The ordinance shall require that the question be submitted to the electors at the next regular municipal election. The ballot containing such question shall also contain the names of candidates for members of the proposed commission, but without party designation. Such candidates shall be nominated in the same manner as required by law for nomination of city officers. If a majority of the electors voting on the question of choosing a commission shall vote in the affirmative, then the fifteen candidates receiving a majority of the votes cast at such election, shall constitute the charter commission, and shall proceed to frame a charter.

Any charter so framed shall be submitted to the qualified electors of the city at an election to be held at a time to be determined by the charter commission, which shall be not less than sixty days subsequent to its completion and distribution among the electors and not more than one year from such date. Alternative provisions may also be submitted to be voted upon separately. The commission shall make provisions for the distribution of copies of the proposed charter and of any alternative provisions to the qualified electors of the city, not less than sixty days before the election at which it is voted upon. Such proposed charter and such alternative provisions as are approved by a majority of the electors voting thereon, shall become an organic law of such city at such time as may be fixed therein, and shall supersede any existing charter and all laws affecting the organization and government of such city which are now in conflict therewith. Within thirty days after its approval a copy of such charter as adopted, certified by the mayor and city recorder and authenticated by the seal of such city, shall be made in duplicate and deposited, one in the office of the secretary of State and the other in the office of the city recorder, and thereafter all courts shall take judicial notice of such charter.

Amendments to any such charter may be framed and submitted by a charter commission in the same manner as provided for making of charters, or may be proposed by the legislative authority of the city upon a two-thirds vote thereof, or by petition of qualified electors to a number equal to fifteen per cent of the total votes cast for mayor on the next preceding election, and any such amendment may be submitted at the next regular municipal election, and having been approved by the majority of the electors voting thereon, shall become part of the charter at the time fixed in such amendment and shall be certified and filed as provided in case of charters.

Each city forming its charter under this section shall have, and is hereby granted, the authority to exercise all powers relating to municipal affairs, and to adopt and enforce within its limits, local police, sanitary and similar regulations not in conflict with the general law,

and no enumeration of powers in this constitution or any law shall be deemed to limit or restrict the general grant of authority hereby conferred; but this grant of authority shall not include the power to regulate public utilities, not municipally owned, if any such regulation of public utilities is provided for by general law, nor be deemed to limit or restrict the power of the legislature in matters relating to State affairs, to enact general laws applicable alike to all cities of the State.

The power to be conferred upon the cities by this section shall include the following:

(a) To levy, assess and collect taxes and borrow money, within the limits prescribed by general law, and to levy and collect special assessments for benefits conferred.

(b) To furnish all local public services, to purchase, hire, construct, own, maintain or operate, or lease, public utilities local in extent and use; to acquire by condemnation, or otherwise, within or without the corporate limits, property necessary for any such purposes, subject to restrictions imposed by general law for the protection of other communities; and to grant local public utility franchises and within its powers regulate the exercise thereof.

(c) To make local public improvements and to acquire by condemnation, or otherwise, property within its corporate limits necessary for such improvements; and also to acquire an excess over than [that] needed for any such improvement and to sell or lease such excess property with restrictions, in order to protect and preserve the improvement.

(d) To issue and sell bonds on the security of any such excess property, or of any public utility owned by the city, or of the revenues thereof, or both, including, in the case of public utility, a franchise stating the terms upon which, in case of foreclosure, the purchaser may operate such utility. (As amended November 8, 1932.)

Cross-references.

Incorporation of cities and towns, 15–2; powers, 15–7 et seq., 15–8 et seq.; local improvements, 15–7–20 et seq.

1. In general.

All powers of municipalities are derived from legislature. Salt Lake City v. Sutter, 61 U. 533, 216 P. 234.

The creation of a city and the fixing of its territorial limits is essentially a legislative and not a judicial function. Plutus Min. Co. v. Orme, 76 U. 286, 294, 289 P. 132; Application of Peterson, 92 U. 212, 66 P.2d 1195.

The legislature may delegate to the judiciary its authority to restrict corporate limits of a city, but it is for legislature and not for the courts to say when decree of segregation shall take effect. Plutus Min. Co. v. Orme, 76 U. 286, 294, 289 P. 132, citing Young v. Salt Lake City, 24 U. 321, 67 P. 1066.

In absence of constitutional limitation or restriction, legislature of state has plenary power to create municipal corporations and confer on them large or restricted powers according to its will. Wadsworth v. Santaquin City, 83 U. 321, 28 P.2d 161.

2. Construction, scope, and operation of section in general.

Commission plan of municipal government does not infringe on constitutional form of government. Larsen v. Salt Lake City, 44 U. 437, 141 P. 98.

The power granted by constitutional provision to chartered cities is no greater than that possessed by legislature and which it may confer on unchartered municipalities by general law, the difference being that, when a city adopts its charter pursuant to this section as amended, then the powers it may exercise are directly conferred by the Constitution, and may not be controlled by legislature except as to those matters and things reserved to legislature by the Constitution. Wadsworth v. Santaquin City, 83 U. 321, 28 P.2d 161.

Power conferred upon cities by this section as amended is equally available to cities operating under legislative enactment. Wadsworth v. Santaquin City, 83 U. 321, 28 P.2d 161.

By subdivision (d) of this section as amended, limit of indebtedness as provided in Const. Art. XIV, § 4, has been extended. Wadsworth v. Santaquin City, 83 U. 321, 28 P.2d 161.

Proposed bond issue of city to improve and repair waterworks system in an amount in excess of taxes for current year and payable out of waterworks revenue, although valid with respect to limitation of indebtedness by reason of subdivision (d) of this section as amended, was debt, and hence invalid where issuance was not authorized by taxpaying electors as required by Const. Art. XIV, § 3. Wadsworth v. Santaquin City, 83 U. 321, 28 P.2d 161. (Straup, C. J., and Hanson, J., dissenting.)

Under subdivision (b) of this section, as amended in 1932, the power "to furnish all local public services," etc., may be vested in the city by an act of the legislature or by the adoption of a charter, and not otherwise. Utah Rapid Transit Co. v. Ogden City, 89 U. 546, 550, 58 P.2d 1.

Under this section, as amended in 1932, cities and towns may, by complying with the procedure therein outlined, adopt charters for their own government, and when a charter is so adopted by a city or town, as by the amendment provided, such city or town may look to its charter for its power and authority, but in the absence of an adopted charter, as by the amendment provided, the cities and towns of this state must look to legislative enactment for their authority. This provision is not self-executing. Utah Rapid Transit Co. v. Ogden City, 89 U. 546, 548, 58 P.2d 1.

3. Classification of cities.

15–1–2, providing for methods by which city of inferior class may be declared of superior class, fails to provide method by which city of superior class may be reduced to city of inferior class. Towler v. Warenski, 59 U. 171, 202 P. 374.

The power of the legislature to classify cities according to population is expressly conferred by provisions of this section, and statute passed to enable cities of first class to meet needs and requirements of larger municipalities, was general, in sense that it operated uniformly upon every city of first class, and hence did not violate Const. Art. VI, § 26, subd. 18, prohibiting enactment of special law where general law could be made applicable. Salt Lake City v. Salt Lake County, 60 U. 423, 209 P. 207.

A. L. R. notes.

Authorization, prohibition, or regulation by municipality of the sale of merchandise on streets or highways, or their use for such purpose, 105 A. L. R. 1051.

City manager or commission form of government as interference with local self-government, 67 A. L. R. 748.

Constitutionality, validity, construction, and application of statutes or ordinances relating to sale of newspapers on the street, 107 A. L. R. 1275.

Disposition of revenues from operation of revenue-producing enterprise owned by municipal corporation, 103 A. L. R. 579.

Extension of municipal boundaries as violation of right of self-government, 64 A. L. R. 1366.

Interference with local self-government by statute relating to municipal fire departments, 100 A. L. R. 1078.

Ownership or operation of public utility by municipality or by private corporation (or individuals) as basis of classification for legislative purposes, 109 A. L. R. 369.

Pledge or appropriation of revenue from utility or other property in payment therefor as debt within constitutional or statutory limitation, 96 A. L. R. 1385.

Power of exclusion or regulation of vehicles in parks or park boulevards, 121 A. L. R. 566.

Power of municipality to agree to abide by conditions or regulations imposed by federal authority in respect of construction, maintenance, or operation of a municipal public utility plant or enterprise, 128 A. L. R. 620.

Right of municipality or other governmental body seeking to acquire public utility to proceed in the manner prescribed generally for exercise of eminent domain, 109 A. L. R. 384.

Right of municipality to invoke constitutional provisions against acts of state legislature, 116 A. L. R. 1037.

Statute relating to establishment or administration of parks as encroaching on right of local self-government, 88 A. L. R. 228.

Validity, construction, and application of ordinances prohibiting or regulating "curb service," 111 A. L. R. 131.

Validity and effect of municipal ordinance or resolution that purports to create an indefinite number of offices or positions and to authorize appointment of as many persons as shall from time to time be deemed necessary, 110 A. L. R. 241.

Validity of regulations excluding or restricting automobile traffic in certain streets, 121 A. L. R. 573.

Sec. 6. [Municipalities forbidden to sell waterworks or rights.]

No municipal corporation, shall directly or indirectly, lease, sell, alien or dispose of any waterworks, water rights, or sources of water supply now, or hereafter to be owned or controlled by it; but all such waterworks, water rights and sources of water supply now owned or hereafter to be acquired by any municipal corporation, shall be preserved, maintained and operated by it for supplying its inhabitants with water at reasonable charges: Provided, That nothing herein contained shall be construed to prevent any such municipal corporation from exchanging water-rights, or sources of water supply, for other water-rights or sources of water supply of equal value, and to be devoted in like manner to the public supply of its inhabitants.

1. Construction, scope, and operation of section in general.

Section does not prohibit acquisition of secondary water right against municipality, section's interdiction being only against legislature's authorizing municipality to dispose of its water property. Salt Lake City v. Salt Lake City Water & Electrical Power Co., 24 U. 249, 67 P. 672, 61 L. R. A. 648 (Baskin, J., dissenting), on rehearing, 25 U. 456, 71 P. 1069 (Baskin C. J., dissenting).

Section does not forbid acquisition by power company of right to connect its flume with water canal of city for purpose of discharging water therein. Salt Lake City Water & Electrical Power Co. v. Salt Lake City, 25 U. 441, 71 P. 1067. (Baskin, C. J., dissenting.)

Where contract, between city and certain farmers entitled to water for irrigation for an exchange of water, provided that, in case the city made default in furnishing the farmers the exchange water from its canal, they reserved the right to use the water they agreed to exchange only during the time the city's default continued, unless the failure of the city continued for a period of six months, when it should be optional with the farmers to terminate the contract, and the city's ability to perpetually furnish the farmers the required amount of water in exchange was conceded, such contract provision was a condition subsequent, and did not prevent the city from acquiring an absolute right to the farmers' water, within provision of Constitution authorizing a city to incur indebtedness for waterworks owned and controlled by the municipality, and under the provisions of this section. State ex rel. Ellerbeck v. Salt Lake City, 29 U. 361, 81 P. 273.

City ordinance, which fixed relations between city and water company and granted rights to water company for 50 years, in consideration for which company furnished water for public purposes free, did not violate this section. Brummitt v. Ogden Waterworks Co., 33 U. 285, 93 P. 828.

Municipal corporation may exchange some of its water rights or water supply, even in constant flow, for other water or water rights, suitable for culinary and municipal purposes, even though the same may be received in intermittent flow, if the same may be devoted to culinary and municipal uses, when its value for such uses is equal to the value for such uses of the water with which the city parted, that is, if the water received will effectively serve such uses when devoted to the public supply of the inhabitants. Genola Town v. Santaquin City, 96 U. 88, 80 P.2d 930, rehearing denied 96 U. 104, 85 P.2d 790.

Specific performance of contract for exchange of water rights between city and town granted where it appeared that petitioner had made substantial expenditures in keeping with the contract. Genola Town v. Santaquin City, 96 U. 88, 80 P.2d 930, rehearing denied 96 U. 104, 85 P.2d 790.

Contract, whereby town acquired right-of-way for water conduit in consideration of granting owner right to tap line for his own use, held invalid and void under this section. Hyde Park Town v. Chambers, 99 U. 118, 104 P.2d 220. (Larson, J., dissenting.)

Agreement whereby city agreed to furnish town with certain amount of culinary water in exchange for irrigation water derived from transfer of stock in irrigation company by town to city did not violate this section, although contract was construed as requiring city to furnish water regardless of its own needs. Genola Town v. Santaquin City, 100 U. 62, 110 P.2d 372.

2. Water rates.

Board of commissioners may not by contract restrict or curtail powers of future boards to determine and fix reasonable rates. 'Fjeldsted v. Ogden City, 83 U. 278, 28 P.2d 144.

3. City's liability for negligence.

This section does not relieve a city from liability on account of its negli-

gence in operating its own water system, merely because it may not lease or sell the same. Egelhoff v. Ogden City, 71 U. 511, 267 P. 1011.

ARTICLE XII

CORPORATIONS

Section 1. [Corporations. Formation. Control.]

Corporations may be formed under general laws, but shall not be created by special acts. All laws relating to corporations may be altered, amended or repealed by the Legislature, and all corporations doing business in this State, may, as to such business, be regulated, limited or restrained by law.

Cross-references.
Statutory provisions, 18–2–1 et seq.

1. In general.
Provisions contained in Constitution and statutes are as much part of articles of incorporation as though they were expressly copied therein, Constitution and statutes controlling in case of conflict. Weede v. Emma Copper Co., 58 U. 524, 200 P. 517.

2. Amendment of articles of incorporation.
Where articles of incorporation declared stock assessable to some extent and for certain purposes, and then expressly conferred upon majority of stockholders the authority to amend articles in any respect, held that majority of outstanding capital stock had right to amend articles, so as to authorize assessment on full-paid capital stock. Nelson v. Keith-O'Brien Co., 32 U. 396, 91 P. 30.

Majority stockholders of corporation cannot amend articles of incorporation so as to make fully paid stock assessable, when original articles provided that such stock be nonassessable. Garey v. St. Joe Min. Co., 32 U. 497, 91 P. 369, 12 L. R. A. (N. S.) 554.

Under this section, the articles of incorporation may be amended under 18–2–44 so as to give subsequently issued preferred stock rights over previously issued preferred stock. No fundamental or vested right is thereby invaded. Salt Lake Automobile Co. v. Keith-O'Brien Co., 45 U. 218, 143 P. 1015.

This section does not prevent a corporation from amending its articles of incorporation, extending the period of its corporate existence, as authorized by statute. This is not the creation of a corporation by special act. Keetch v. Cordner, 90 U. 423, 62 P.2d 273, 108 A. L. R. 52.

3. Disposition of corporation's property.
Under this section, board of directors of mining company had authority to dispose of entire property of corporation, with consent of its stockholders, although 18–2–16, authorizing sale of entire property was enacted after corporation was formed. Geddes v. Anaconda Copper Min. Co., 245 Fed. 225.

Sec. 2. [Existing corporations to accept constitution.]

All existing charters, franchises, special or exclusive privileges, under which an actual and bona fide organization shall not have taken place, and business been commenced in good faith, at the time of the adoption of this Constitution, shall thereafter have no validity; and no corporation in existence at the time of the adoption of this Constitution shall have the benefit of future legislation without first filing in the office of the Secretary of State, an acceptance of the provisions of this Constitution.

Cross-references.
Statutory provisions, 18–1–1.

1. Amendment of articles of incorporation.
A statute authorizing a corporation to amend its articles of incorporation, by extending period of its corporate existence, does not contravene this section. Keetch v. Cordner, 90 U. 423, 62 P.2d 273, 108 A. L. R. 52.

Sec. 3. [Legislature not to extend or validate franchises.]

The Legislature shall not extend any franchise or charter, nor remit the forfeiture of any franchise or charter of any corporation now existing, or which shall hereafter exist under the laws of this State.

1. Amendment of articles of incorporation.

This section does not invalidate a statute permitting a corporation to amend its articles of incorporation by extending period of its corporate existence. This is not extending life of corporation by act of the legislature; an act authorizing stockholders to accomplish that end does not infringe the constitutional prohibition. Keetch v. Cordner, 90 U. 423, 62 P.2d 273, 108 A. L. R. 52.

Sec. 4. ["Corporation" defined. Suits.]

The term "Corporation," as used in this article, shall be construed to include all associations and joint-stock companies having any powers or privileges of corporations not possessed by individuals or partnerships, and all corporations shall have the right to sue, and shall be subject to be sued, in all courts, in like cases as natural persons.

Sec. 5. [Corporate stock. Issuance, increase, etc.]

Corporations shall not issue stock, except to bona fide subscribers thereof or their assignee, nor shall any corporation issue any bond, or other obligation, for the payment of money, except for money or property received, or labor done. The stock of corporations shall not be increased, except in pursuance of general law, nor shall any law authorize the increase of stock without the consent of the person or persons holding the larger amount in value of the stock, or without due notice of the proposed increase having previously been given in such manner as may be prescribed by law. All fictitious increase of stock or indebtedness shall be void.

Cross-references.

Statutory provisions, 18–2–4 et seq.; railroad stock, 77–0–5.

1. Construction, scope, and operation of section in general.

Capital stock of corporations, excepting those created for mining and irrigation, must represent full actual value, either in money or property, and subscribers for stock must pay one hundred cents on dollar, or its equivalent, for stock subscribed for by them, and until so paid they are liable to creditors of corporation in proper proceeding for any balance remaining unpaid on their subscriptions. Rolapp v. Ogden & N. W. R. Co., 37 U. 540, 110 P. 364.

Placing a practical construction upon 18–2–7, allowing payments of stock subscriptions in property, does not in any way conflict with this section. Union Pac. R. Co. v. Blair, 48 U. 38, 156 P. 948.

This section does not prohibit corporations from issuing stock for either property or labor, or both. Union Pac. R. Co. v. Blair, 48 U. 38, 156 P. 948, followed in Tintic Indian Chief Mining & Milling Co. v. Clyde, 79 U. 337, 347, 10 P.2d 932.

Transactions whereby corporation pledged bonds secured by trust deed for loans was not inhibited by this section, since money was received for bonds. First Security Trust Co. v. John H. Seely & Sons Co., 87 U. 525, 51 P.2d 1060.

It is not a violation of this provision for owners of mining property to provide in articles of company formed by them that some of stock shall be held by company and given away as directed by incorporators, instead of having issued to themselves shares of stock of company in payment of mining claims conveyed to company. Andrews v. Chase, 89 U. 51, 49 P.2d 938, rehearing denied 89 U. 73, 57 P.2d 702.

2. "Bona fide subscribers" construed.

Under this section, one signing a subscription binding him to take stock in a corporation to be organized is a "bona fide subscriber." Utah Hotel Co. v. Madsen, 43 U. 285, 134 P. 577.

This prohibition against issuance of stock to others than "bona fide sub-

scribers" deals with a fictitious issue of stock, and not with the question of when a subscriber may be held to a compliance with his agreement to take stock. Utah Hotel Co. v. Madsen, 43 U. 285, 134 P. 577.

3. Fictitious increase of stock or indebtedness.

Indebtedness of corporation which is incurred for less than full consideration is fictitious, as against contention that, if indebtedness was based upon any consideration whatever passing to corporation, it was sufficient. Rolapp v. Ogden & N. W. R. Co., 37 U. 540, 110 P. 364.

Corporation could not issue bonds as bonus to subscribers to capital stock of corporation, and as against creditors of corporation such bonds, while in hands of stockholders who were not purchasers for value and without notice, were of no force or effect, since issuance of such bonds was fictitious increase of indebtedness. Rolapp v. Ogden & N. W. R. Co., 37 U. 540, 110 P. 364.

A. L. R. notes.

Change in or renewal of corporation's obligation as affecting liability of stockholder of bank or other corporation, 97 A. L. R. 630.

Death of stockholder as affecting liability, 79 A. L. R. 1537, 96 A. L. R. 1466.

Liability on stock held as trustee or in other fiduciary capacity, 91 A. L. R. 257, 97 A. L. R. 1250.

Life interest and remainder in corporate stock as affecting stockholder's statutory liability, 99 A. L. R. 505.

Note as consideration for issuance of corporate stock under statute forbidding issuance of stock except for money paid, property received, etc., 58 A. L. R. 708.

Power of corporation to change obligations to stockholders, 105 A. L. R. 1452.

Right of corporation to deny validity of stock issued by it in violation of statutory or constitutional provisions respecting receipt of consideration, as against subsequent bona fide purchasers or pledgees for value, 73 A. L. R. 1435.

Right to set off liability as stockholder against debt due from corporation, 98 A. L. R. 647.

Sec. 6. [Privileges of foreign corporations.]

No corporations organized outside of this State, shall be allowed to transact business within the State, on conditions more favorable than those prescribed by law to similar corporations, organized under the laws of this State.

Cross-references.

Statutory provisions as to foreign corporations, 18–8.

1. License taxes.

A corporation license tax law, which fixes amount of the tax upon the basis of the amount of authorized capital stock without regard to whether it is a foreign or a domestic corporation, is not violative of this constitutional provision. North Tintic Min. Co. v. Crockett, 75 U. 259, 263, 284 P. 328.

Sec. 7. [Limitation on alienation of franchise.]

No corporation shall lease or alienate any franchise, so as to relieve the franchise or property held thereunder from the liabilities of the lessor, or grantor, lessee, or grantee, contracted or incurred in operation, use or enjoyment of such franchise or any of its privileges.

Cross-references.

Railroad franchises, 77–0–5.

1. Construction, scope, and operation of section in general.

Section, even if applicable to corporation organized before Constitution went into effect, did not affect power of such corporation, on its insolvency, to make preferences among its creditors. Weyeth Hardware & Manufacturing Co. v. James-Spencer-Bateman Co., 15 U. 110, 47 P. 604.

The term "franchise," as applied to corporations, has various significations, both in legal and popular sense, and has especially two well-defined meanings: one pertaining to what is sometimes called the "primary franchise," the right to exist as corporation, and the other to the different rights, privileges, and powers which are obtained and exercised by corporation, and which are not prerequisite to corporate existence, such as the right or privilege to occupy and use streets and public places for

operation of system of water or gasworks, electrical lighting plants, railroads, etc. Cooper v. Utah Light & Railway Co., 35 U. 570, 102 P. 202, 136 Am. St. Rep. 1075.

Words "or property held thereunder," as used in this provision, mean such property as is necessarily held and used in operation, use, or enjoyment of privileges and rights conferred by franchise, and without possession of which property the rights and privileges conferred or granted by franchise could not successfully be exercised, operated or enjoyed. Cooper v. Utah Light & Railway Co., 35 U. 570, 102 P. 202, 136 Am. St. Rep. 1075.

Unless right is given corporation by power creating it, corporation may not sell primary franchise; but in absence of constitutional or legislative restrictions, it may sell what has been denominated "secondary franchises." Cooper v. Utah Light & Railway Co., 35 U. 570, 102 P. 202, 136 Am. St. Rep. 1075.

This provision restricts alienation of secondary franchises as well as franchise to be corporation, and hence light and power corporation exercising right to occupy and use streets under franchise from municipality could not convey such franchise so as to relieve property from liability from judgment. Cooper v. Utah Light & Railway Co., 35 U. 570, 102 P. 202, 136 Am. St. Rep. 1075.

Under this section, a railroad company is nevertheless liable for depreciation of abutting property values by reason of cinders and smoke cast thereon, although it has leased the road and is not itself operating it, but it is being operated by its lessee. Jordan v. Utah R. Co., 47 U. 519, 156 P. 939.

Sec. 8. [Consent of local authorities necessary to use of streets.]

No law shall be passed granting the right to construct and operate a street railroad, telegraph, telephone or electric light plant within any city or incorporated town, without the consent of the local authorities who have control of the street or highway proposed to be occupied for such purposes.

Cross-references.

Municipal franchises, 15–8–14, 15–8–20, 15–8–33; public utilities commission, 76–4; railroad franchises, 77–0–8.

1. Construction, scope, and operation of section in general.

While the passing of franchise ordinances fixing fares by municipal corporation and their acceptance by street railway constitute contract between city and street railway, such contract does not prevent public utilities commission from changing the rates of fare agreed upon in franchise ordinances. Salt Lake City v. Utah Light & Traction Co., 52 U. 210, 173 P. 556, 3 A. L. R. 715.

Even though this section does not apply to interurban railroad, yet authorities of town had right to grant or withhold right to use of streets in town, and to impose conditions respecting use thereof. Shortino v. Salt Lake & U. R. Co., 52 U. 476, 174 P. 860.

The power to fix fare to be received by street or interurban railway was retained by state by Laws 1917, Ch. 47 (see 76–4) and could be exercised by it whenever the necessity required action upon its part. Murray City v. Utah Light & Traction Co., 56 U. 437, 191 P. 421.

A. L. R. notes.

Right and duty of city and public utility upon expiration by limitation of street franchise, 112 A. L. R. 625; constitutional power to compel railroad company to relocate or reconstruct highway crossing or to pay or contribute to expense thereof, 109 A. L. R. 768.

Sec. 9. [Places of business, process agent, etc.]

No corporation shall do business in this State, without having one or more places of business, with an authorized agent or agents, upon whom process may be served; nor without first filing a certified copy of its articles of incorporation with the Secretary of State.

Cross-references.

Statutory provision as to filing of articles, 18–2–11; statutory provisions as to foreign corporations, 18–8–1, 82–1–12.

Sec. 10. [Corporations limited to authorized objects.]

No corporation shall engage in any business other than that expressly authorized in its charter, or articles of incorporation.

Cross-references.
Statutory provision as to powers of corporations for pecuniary profit, 18–2–16.

1. Construction, scope, and operation of section in general.
Under this section, a bank, whose articles of incorporation merely empowered it to pursue the banking business in all its branches, had neither express nor implied power to guarantee payment of a customer's rent, and, of course, could not delegate such power to its president. Tracy Loan & Trust Co. v. Merchants' Bank, 50 U. 196, 167 P. 353.

Sec. 11. [Franchises may be taken for public use.]

The exercise of the right of eminent domain shall never be so abridged or construed, as to prevent the Legislature from taking the property and franchises of incorporated companies, and subjecting them to public use the same as the property of individuals.

Cross-references.
Statutory provisions as to eminent domain, 104–61.

A. L. R. notes.
Private corporation, statute permitting condemnation of property for educational, religious, or recreational purposes, 50 A. L. R. 1530; capital stock of public utility, condemnation of, 81 A. L. R. 1071; railroad property leases or privileges, requiring grant or renewal as taking of property, 47 A. L. R. 109; railroad crossings, requiring railroad to construct or maintain private crossings without compensation, 12 A. L. R. 227.

Sec. 12. [Common carriers.]

All railroad and other transportation companies are declared to be common carriers, and subject to legislative control; and such companies shall receive and transport each other's passengers and freight, without discrimination or unnecessary delay.

Cross-references.
Statutory provisions as to public utilities, Title 76.

1. Depot grounds.
Common carrier held entitled to exclude all drivers of cabs, hacks, and express wagons from entering on its depot grounds to solicit business, and to grant exclusive privilege to one company. Oregon Short Line R. Co. v. Davidson, 33 U. 370, 94 P. 10, 16 L. R. A. (N. S.) 777, 14 Ann. Cas. 489.

Sec. 13. [Competing railroads not to consolidate.]

No railroad corporation shall consolidate its stock, property or franchises with any other railroad corporation owning a competing line.

Cross-references.
Statutory provisions as to railroads, Title 77.

Sec. 14. [Rolling stock considered personal property.]

The rolling stock, and other movable property, belonging to any railroad company or corporation in this State, shall be considered personal property, and shall be liable to taxation and to execution and sale, in the same manner as the personal property of individuals, and such property shall not be exempted from execution and sale.

Cross-references.
Statutory provisions relating to taxation, 80–3–1, 80–5–3; statutory provisions as to railroads generally, Title 77.

1. Interstate commerce.
As against contention of foreign corporation that taxation of its refrigerator cars in Utah was forbidden by Federal Constitution because such cars had no situs in that state for purpose of taxation and tax on them would impose burden on interstate commerce, held that cars were taxable in Utah on basis of average number thereof used and employed by their owner in that state dur-

ing year for which assessment was made. Union Refrigerator Transit Co. v. Lynch, 17 U. S. 149, 44 L. Ed. 708, 20 S. Ct. 631 (White, J., not participating), aff'g 18 U. 378, 55 P. 639.

Sec. 15. [Legislature to prescribe maximum rates. Discriminations.]

The Legislature shall pass laws establishing reasonable maximum rates of charges, for the transportation of passengers and freight, for correcting abuses, and preventing discrimination and extortion in rates of freight and passenger tariffs by the different railroads, and other common carriers in the State, and shall enforce such laws by adequate penalties.

Cross-references.
Statutory provisions as to public utilities, Title 76.

Sec. 16. [Armed bodies not to enter State, when.]

No corporation or association shall bring any armed person or bodies of men into this State for the preservation of the peace, or the suppression of domestic troubles without authority of law.

Sec. 17. [Employee of corporation ineligible to municipal office, when.]

No officer, employee, attorney or agent of any corporation, company or association doing business under, or by virtue of any municipal charter or franchise, shall be eligible to or permitted to hold any municipal office, in the municipality granting such charter or franchise.

Sec. 18. [Liability of stockholders of banks.]

The legislature may provide by law that the stockholders in every corporation and joint stock association organized for banking purposes, or the holders of any one or more of the classes of stock issued by any such corporation in addition to the amount of capital stock subscribed and fully paid by them shall be individually responsible for an additional amount equal to [sic] not exceeding the amount of their stock in such corporation, or the amount of their stock of any particular class in such corporation, for all its debts and liabilities of every kind. (As amended November 5, 1940, effective January 1, 1941.)

Cross-references.
Statutory provisions as to banks and banking, Title 7.

1. Corporations to which section applies.

Original section held to apply, not to corporations generally, but only to banking corporations. Richardson v. Treasure Hill Min. Co., 23 U. 366, 65 P. 74.

2. Self-executing character of provision.

Provision, prior to its amendment, was self-executing. Lynch v. Jacobsen, 55 U. 129, 184 P. 929.

3. Construction, scope, and operation of section in general.

Original section, even if applicable to corporation organized before Constitution went into effect, did not affect power of such corporation, on its insolvency, to make preferences among its creditors. Weyeth Hardware & Manufacturing Co. v. James-Spencer-Bateman Co., 15 U. 110, 47 P. 604.

Under this provision, prior to its amendment, it was not essential that all of bank's assets be first exhausted before proceeding to enforce stockholders' additional liability, where it was apparent that bank was insolvent. Lynch v. Jacobsen, 55 U. 129, 184 P. 929.

Under original section, order or judgment of court declaring bank insolvent and adjudging that it was necessary to enforce stockholders' additional liability to pay bank's debts, in absence of fraud or collusion, was conclusive upon stockholders, and they could not assail same

except in direct proceeding. Lynch v. Jacobsen, 55 U. 129, 184 P. 929.

4. Enforcement of liability.

Under section, prior to its amendment, held that, in imposing stockholders' additional liability, framers of Constitution did not limit right of legislature to provide remedy for its enforcement. Lynch v. Jacobsen, 55 U. 129, 184 P. 929.

Under this provision, as it originally read, method of procedure to enforce double liability could be changed by legislature if such change did not enlarge or affect stockholder's liability. Lynch v. Jacobsen, 55 U. 129, 184 P. 929.

Under this provision, as it originally read, right to sue stockholders to recover additional liability was not exclusively vested in creditors of bank, and receiver who was appointed to take charge of insolvent bank's assets and wind up its affairs was proper person to bring action to enforce such liability. Lynch v. Jacobsen, 55 U. 129, 184 P. 929.

A. L. R. notes.

Applicability of constitutional or statutory provisions relating to added liability of stockholders to holders of stock issued, or stockholders of corporations organized, before their enactment, 72 A. L. R. 1252.

Change in or renewal of corporation's obligation as affecting liability of stockholder of bank or other corporation, 97 A. L. R. 630.

Character of banks or banking companies within constitutional or statutory provision imposing additional liability on stockholders, 82 A. L. R. 1356.

Constitutional provision fixing liability of stockholders as limitation of power of legislature, 63 A. L. R. 870.

Death of stockholder as affecting liability, 79 A. L. R. 1537, 96 A. L. R. 1466.

Fraud inducing subscription or purchase of stock as defense against statutory superadded liability, 51 A. L. R. 1203.

Infant, his estate or property held in trust for him, as subject to statutory added liability of stockholder, 78 A. L. R. 431.

Liability on stock held as trustee or in other fiduciary capacity, 91 A. L. R. 257, 97 A. L. R. 1250.

Liability on stock standing in name of one as trustee or in other fiduciary capacity, 57 A. L. R. 772.

Life interest and remainder in corporate stock as affecting stockholder's statutory liability, 99 A. L. R. 505.

Payments by stockholders applicable upon double liability, 23 A. L. R. 1367, 45 A. L. R. 1215, 56 A. L. R. 527, 83 A. L. R. 147.

Right of a third person who has paid corporation's indebtedness to be subrogated to creditors' right to enforce stockholders' statutory liability, 78 A. L. R. 611.

Right of trustee in bankruptcy of corporation to enforce added statutory liability of its stockholders, directors, or officers, 72 A. L. R. 829.

Sale or other transaction in relation to assets as affecting statutory added liability of stockholders of bank or other corporation, 89 A. L. R. 790, 100 A. L. R. 1276.

Sale, or surrender of stock for sale, to pay assessment as relieving stockholder from further liability, 66 A. L. R. 436.

Set-off between dividends from assets of insolvent bank or other corporation and liability of creditors as stockholders, 91 A. L. R. 326.

Statutory added liability of holders of bank stock or other corporate stock the issue of which was ultra vires, invalid, or irregular, 86 A. L. R. 816.

Stockholders' liability as covering interest on claims of corporate creditors after bankruptcy, declared insolvency, or appointment of a receiver, 41 A. L. R. 564.

Stockholders' statutory liability as assignable or subject to sale, 82 A. L. R. 1285.

Transfer of bank or other corporate stock to corporation issuing it as releasing transferor from stockholders' statutory added liability, 86 A. L. R. 72.

Validity of provision in contract with corporation waiving liability of stockholders, 40 A. L. R. 371.

When limitation begins to run against action to enforce stockholder's superadded liability, 55 A. L. R. 1068.

Who are "depositors" or what constitutes "deposit" within provisions imposing upon stockholders of a banking institution additional liability for the payment of depositors, 58 A. L. R. 1389.

Sec. 19. [Blacklisting forbidden.]

Every person in this State shall be free to obtain employment whenever possible, and any person, corporation, or agent, servant or employee thereof, maliciously interfering or hindering in any way, any person from obtaining or enjoying employment already obtained, from any other corporation or person, shall be deemed guilty of a crime. The Legislature shall provide by law for the enforcement of this section.

Cross-references.
Statutory provisions, 49–5.

1. Construction, scope, and operation of section in general.
Former statute which permitted court to enjoin practice of medicine contrary to law, held not in violation of provision of Constitution guaranteeing everyone right to obtain employment, since purpose of legislation was to protect public from treatment for physical ailments by those without experience. Board of Medical Examiners v. Blair, 57 U. 516, 196 P. 221.

Sec. 20. [Trusts and combinations prohibited.]

Any combination by individuals, corporations, or associations, having for its object or effect the controlling of the price of any products of the soil, or of any article of manufacture or commerce, or the cost of exchange or transportation, is prohibited, and hereby declared unlawful, and against public policy. The Legislature shall pass laws for the enforcement of this section by adequate penalties, and in case of incorporated companies, if necessary for that purpose, it may declare a forfeiture of their franchise.

Cross-references.
Statutory provisions, Title 73.

1. Construction, scope, and operation of section in general.
This section does not declare void a contract entered into by a third person with a member of an illegal trust or combination. Fox Film Corp. v. Ogden Theatre Co., Inc., 82 U. 279, 17 P.2d 294, 90 A. L. R. 1299. (Straup, J., dissenting.)
This section does not apply to the state, and does not prevent the state from going into the liquor business under the Liquor Control Act of 1935. Riggins v. District Court of Salt Lake County, 89 U. 183, 201, 51 P.2d 645.

ARTICLE XIII

REVENUE AND TAXATION

Section 1. [Fiscal year.]

The fiscal year shall begin on the first day of January, unless changed by the Legislature.

Sec. 2. [Tangible property to be taxed, how—value ascertained—properties exempt—legislature to provide annual tax for state.]

Art. 13, sec. 2 Amendment Proposed to be Voted at General Election 1946 S.L. '45, H.J.R. 3, p. 320

All tangible property in the State, not exempt under the laws of the United States, or under this constitution, shall be taxed in proportion to its value, to be ascertained as provided by law. The property of the United States, of the State, counties, cities, towns, school districts, municipal corporations and public libraries, lots with the buildings thereon used exclusively for either religious worship or charitable purposes, and places of burial not held or used for private or corporate benefit, shall be exempt from taxation. Water rights, ditches, canals, reservoirs, power plants, pumping plants, transmission lines, pipes and flumes owned and used by individuals or corporations for irrigating lands within the state owned by such individuals or corporations, or the individual members thereof, shall not be separately taxed as long as they shall be owned and used exclusively for such purposes. Power plants, power transmission lines and other property used for generating and delivering electrical power, a portion of which is used for furnishing power for pumping water for irrigation purposes on lands in the State of Utah, may be exempted from taxation to the extent

that such property is used for such purposes. These exemptions shall accrue to the benefit of the users of water so pumped under such regulations as the legislature may prescribe. The taxes of the indigent poor may be remitted or abated at such times and in such manner as may be provided by law. The legislature may provide for the exemption from taxation of homes, homesteads, and personal property, not to exceed $2,000 in value for homes and homesteads, and $300 for personal property. Property not to exceed $3,000 in value, owned by disabled persons who served in any war in the military service of the United States or of the State of Utah and by the unmarried widows and minor orphans of such persons may be exempted as the legislature may provide.

The legislature shall provide by law for an annual tax sufficient, with other sources of revenue, to defray the estimated ordinary expenses of the state for each fiscal year. For the purpose of paying the state debt, if any there be, the legislature shall provide for levying a tax annually, sufficient to pay the annual interest and to pay the principal of such debt, within twenty years from the final passage of the law creating the debt. (As amended November 4, 1930; November 3, 1936, effective January 1, 1937.)

Cross-references.

Taxable property, 80–3; exemptions, 80–2; when homesteads not exempt, 38–0–1; taxes generally, 80–1 et seq.; school property exempt, 75–9–12; university, 75–4–4; armories, 54–2–1; Agricultural College, 75–5–5; fraternal societies, 43–9–73; School for Deaf, 85–3–2; School for Blind, 85–3–14; state fair, 85–4–1.

1. In general.

State's power of taxation is not within application of, and is not limited by, Art. I, § 22. Kimball v. Grantsville City, 19 U. 368, 57 P. 1, 45 L. R. A. 628, overruling Kaysville City v. Ellison, 18 U. 163, 55 P. 386, 43 L. R. A. 81, 72 Am. St. Rep. 772.

Unless tax laws conflict with some constitutional provision, either expressly or by implication, courts have no authority to prevent their execution. Kimball v. Grantsville City, 19 U. 368, 57 P. 1, 45 L. R. A. 628.

2. Fixing of boundaries of taxing districts.

Fixing of boundaries of taxing district and its area is wholly matter of legislative discretion, and exercise of such discretion is not subject of judicial investigation or revision. Kimball v. Grantsville City, 19 U. 368, 57 P. 1, 45 L. R. A. 628.

3. Scope and construction of section.

4. — in general.

Provision of this section that all property not exempt under laws of United States or under State Constitution shall be taxed, refers to general taxes, and not to special assessments, and hence does not invalidate 75–9–12, which provides that property held by board of education shall be exempt from local assessments. Wey v. Salt Lake City, 35 U. 504, 101 P. 381.

Under this section as it formerly read, title retaining notes were "property" within purview of constitutional definition of property. Stillman v. Lynch, 56 U. 540, 192 P. 272, 12 A. L. R. 552.

5. — corporations in general.

Franchise which relates merely to right or privilege to be or exist as corporation was not "franchise" as used in this section as it formerly read, and hence was not subject to taxation. Blackrock Copper Mining & Milling Co. v. Tingey, 34 U. 369, 98 P. 180, 28 L. R. A. (N. S.) 255, 131 Am. St. Rep. 850.

The mere right or power of eminent domain, to be used by smelting company in connection with its right to operate its smelter, is not such franchise as is subject to taxation. International Smelting Co. v. Tooele County, 54 U. 591, 182 P. 841.

When property of corporation has been taxed, its stock is nontaxable. Stillman v. Lynch, 56 U. 540, 192 P. 272, 12 A. L. R. 552.

Under section as it formerly read, good will, earning capacity, productiveness of property and actual earnings, together with all matters that might enhance or influence value of tangible property could be considered by assessing authorities in arriving at actual value of property for taxation, but could

not be taxed or assessed separately under designation of "intangible," or "other personal property." Utah-Idaho Sugar Co. v. Salt Lake County, 60 U. 491, 210 P. 106, 27 A. L. R. 874.

So-called intangible property of corporation should be considered and taxed only so far as it enhances value of tangible property. Utah-Idaho Sugar Co. v. Salt Lake County, 60 U. 491, 210 P. 106, 27 A. L. R. 874.

Capital stock is not taxable as such, but property it represents is taxable. Utah-Idaho Sugar Co. v. Salt Lake County, 60 U. 491, 210 P. 106, 27 A. L. R. 874.

Under section as it formerly read, franchise to be corporation was not subject to taxation, but could only be reached by license tax. Utah-Idaho Sugar Co. v. Salt Lake County, 60 U. 491, 210 P. 106, 27 A. L. R. 874.

6. —banks in general.

Under this section, and prior to 1930 amendment, where a subsidiary corporation of a bank holds title to its banking house, and the bank holds title to all of stock of subsidiary, it is "double taxation" to tax both the real estate and the stock. McCornick & Co. v. Bassett, 49 U. 444, 164 P. 852.

Former statute providing for additional deductions in assessment of bank stock was held invalid under this provision. Stillman v. Lynch, 56 U. 540, 192 P. 272, 12 A. L. R. 552.

7. —national banks.

All of nonexempt local property of national bank, located in state, is, under U. S. Rev. Stats. § 5219, within state's power of taxation. Commercial Nat. Bank v. Chambers, 21 U. 324, 61 P. 560, 56 L. R. A. 346, aff'd 182 U. S. 556, 45 L. Ed. 1227, 21 S. Ct. 863.

8. —exemptions in general.

Statutory provision, 80–2–1.

9. —remission of taxes of indigent, etc., persons.

Provision of former statute, whereby county board of equalization was authorized to "remit or abate taxes of any insane, idiotic, infirm, or indigent person to amount not exceeding ten dollars for current year," held void as in conflict with this section as it read at time statute was enacted. State ex rel. Richards v. Armstrong, 17 U. 166, 53 P. 981, 41 L. R. A. 407.

A. L. R. notes.

What is a property tax as distinguished from excise, license and other taxes, 103 A. L. R. 18.

Sec. 3. [Assessment and taxation of tangible property—exemptions—personal income tax—disposition of revenues.]

Art. 13, sec. 3 Amend. proposed S.L. '46 (1st S.S.) H.J.R. No. 2 p. 6

Art. 13 sec. 3 ref. to S.L. '47 c. 80 sec. 2 p. 356; c. 114 sec. 1 p. 405; c. 116 sec. 2 p. 410

The Legislature shall provide by law a uniform and equal rate of assessment and taxation on all tangible property in the State, according to its value in money, and shall prescribe by law such regulations as shall secure a just valuation for taxation of such property, so that every person and corporation shall pay a tax in proportion to the value of his, her, or its tangible property, provided that the Legislature may determine the manner and extent of taxing transient live stock and live stock being fed for slaughter to be used for human consumption. Intangible property may be exempted from taxation as property or it may be taxed in such manner and to such extent as the Legislature may provide. Provided that if intangible property be taxed as property the rate thereof shall not exceed five mills on each dollar of valuation. When exempted from taxation as property, the taxable income therefrom shall be taxed under any tax based on incomes, but when taxed by the State of Utah as property, the income therefrom shall not also be taxed. The Legislature may provide for deductions, exemptions, and/or offsets on any tax based upon income. The personal income tax rates shall be graduated but the maximum rate shall not exceed six per cent of net income. No excise tax rate based upon income shall exceed four per cent of net income. The rate limitations herein contained for taxes based on income and for taxes on intangible property shall be effective until January 1, 1937, and thereafter until changed by law

by a vote of the majority of the members elected to each house of the Legislature. All revenue received from taxes on income or from taxes on intangible property shall be allocated as follows: 75 per cent thereof to the State District School Fund and 25 per cent thereof to the State General Fund and the State levies for such purposes shall be reduced annually in proportion to the revenus so allocated; provided that any surplus above the revenue required for the State District School Fund as provided in Section 7 of this Article shall be paid into the State General Fund. (As amended November 4, 1930.)

Cross-references.

Assessments, 80–4 et seq.; intangibles exempt, 80–1–1; income tax, 80–14; disposition of income tax funds, 80–14–63.

1. In general.

A tax law which fails to secure equality and impartiality of the tax authorized, and which fails to provide for an adjustment and equalization of assessments, or guaranties for the economical, faithful and impartial administration of the law, is void. Kerr v. Woolley, 3 U. 456, 24 P. 831.

Taxation should be uniform upon all property within jurisdiction of authority levying tax. Continental Nat. Bank of Salt Lake City v. Naylor, 54 U. 49, 179 P. 67.

2. "According to value in money" construed.

In respect to taxation, money is constitutional standard of all values. State ex rel. Cunningham v. Thomas, 16 U. 86, 50 P. 615.

Supreme court will take notice, as matter of law, that money cannot be assessed for more than its legal value. State ex rel. Cunningham v. Thomas, 16 U. 86, 50 P. 615.

"According to its value in money," as used in first part of this section as it read originally, held to mean that all property should be valued, for purposes of assessment, as near as reasonably practicable, at its full cash value; in other words, that valuation for assessment and taxation should be, as near as reasonably practicable, equal to cash price for which property valued would sell in open market. State ex rel. Cunningham v. Thomas, 16 U. 86, 50 P. 615.

3. Validity of statutes in general.

Former statute providing for additional deductions in the assessment of bank stock was held invalid under this provision. Stillman v. Lynch, 56 U. 540, 192 P. 272, 12 A. L. R. 552.

Former Liquor Control Act held not unconstitutional as violative of this section. Utah Manufacturers' Ass'n v. Stewart, 82 U. 198, 23 P.2d 229.

The Sales Tax Act does not violate this section. W. F. Jensen Candy Co. v. State Tax Commission, 90 U. 359, 61 P.2d 629.

4. Uniformity and equality.

5. — in general.

Where taxing officers of county assess real estate, livestock, merchandise and chattels at 50 to 70 per cent of their actual or cash value, and moneys or shares of stock in manufacturing or industrial enterprises, or investments, at their actual or cash value, assessment would not be equal or uniform and would be invalid. First Nat. Bank of Nephi v. Christensen, 39 U. 568, 118 P. 778.

Those whose property is intentionally assessed at higher percentage or valuation than was placed on general mass of taxable property in county may invoke aid of courts to compel taxing officers to reduce excessive assessment, so made, to same proportion of value as was placed upon general mass of other taxable property in county. First Nat. Bank of Nephi v. Christensen, 39 U. 568, 118 P. 778.

6. — drainage assessments.

As a drainage act is not a tax law but a special assessment, it is not governed by this section, and cannot be declared unconstitutional as in contravention thereof. State ex rel. Ferry v. Corinne Drainage District of Box Elder County, 48 U. 1, 156 P. 921; State ex rel. Moody v. Millard County Drainage District No. 1, 48 U. 11, 156 P. 924.

7. — inheritance tax laws.

Inheritance Tax Law of 1901 held not in conflict with constitutional requirement of uniformity and equality of taxation. Dixon v. Ricketts, 26 U. 215, 72 P. 947.

8. — mortgages.

Prior to amendment of this section in 1906, held that, as to real estate mortgagees, taxing of mortgages to them, and taxing of mortgaged properties to mortgagors, did not constitute double taxation nor violate principle of equality and uniformity. Judge v. Spencer, 15 U. 242, 48 P. 1097.

9. — occupation and license taxes.
Constitutional provision which imposes equality and uniformity of taxation has no application to an occupation or license tax, but is limited to direct property tax which is assessed and collected in usual way. Salt Lake City v. Christensen Co., 34 U. 38, 95 P. 523, 17 L. R. A. (N. S.) 898.

10. — remission of taxes of indigent, etc., persons.
Provision of former statute, whereby county board of equalization was authorized to "remit or abate taxes of any insane, idiotic, infirm, or indigent person to amount not exceeding ten dollars for current year," held void as in conflict with this section as it read at time statute was enacted. State ex rel. Richards v. Armstrong, 17 U. 166, 53 P. 981, 41 L. R. A. 407.

11. — road poll taxes.
A road poll tax does not come within the uniformity clause, since it is not a property tax or capitation tax. Salt Lake City v. Wilson, 46 U. 60, 148 P. 1104.

12. Double taxation.
Under this section, and prior to 1930 amendment, taxation of a bank's capital stock without deducting therefrom the assessed value of its realty is double taxation, to the extent of the assessed value of the real estate. McCornick & Co. v. Bassett, 49 U. 444, 164 P. 852.

The taxation of title retaining notes and conditional sales agreements does not amount to double taxation. Stillman v. Lynch, 56 U. 540, 192 P. 272, 12 A. L. R. 552.

A. L. R. notes.
Additional tax levy necessitated by failure of some to pay taxes, 79 A. L. R. 1157.
Business or profession as "property" for purposes of uniformity in taxation, 34 A. L. R. 719.
Constitutionality of discrimination between deposits in local banks and those in foreign banks as respects their subjection to, or the rate of, tax, 107 A. L. R. 1385.
Corporate property, assessment at full value when valuations generally are illegally fixed lower, 3 A. L. R. 1370, 28 A. L. R. 893.
Corporate stock, classification for tax purposes, 73 A. L. R. 682.
Corporations, disallowance of deductions allowed individual taxpayer, 42 A. L. R. 1049.
— discrimination between par value and non-par value corporations, 36 A. L. R. 795, 45 A. L. R. 1505, 65 A. L. R. 1349.
— discrimination by state against foreign, in imposition of taxes and license fees, 49 A. L. R. 726, 77 A. L. R. 1490.
— retaliatory tax statutes against foreign, 91 A. L. R. 798.
Discrimination for purposes of property taxation between agricultural lands and other real property, 111 A. L. R. 1486.
Gasoline tax, uniformity requirement as applicable to, 47 A. L. R. 985.
Highways, classification by counties or political divisions permissible in statute imposing cost of construction or maintenance upon property specially benefited, 77 A. L. R. 1285.
Insane person, imposing liability for support in asylum as violating uniformity in taxation, 48 A. L. R. 736.
Intangible property of nonresidents, taxation of, 76 A. L. R. 822.
Method or rule for valuing leasehold interest, 84 A. L. R. 1310.
Municipal boundaries, extension as violating uniformity requirement as to taxation, 64 A. L. R. 1367.
Newspapers and magazines, uniformity in taxation of, 35 A. L. R. 11.
Recovery of tax paid under unconstitutional ordinance or statute, 48 A. L. R. 1381.
Redemption from tax sale, statute extending time to redeem as violating uniformity requirement, 89 A. L. R. 966.
Remission, release or compromise of tax claim as violating equality clause, 99 A. L. R. 1062.
Tax anticipation warrants, relation of uniformity clause to, 99 A. L. R. 1039.
Taxation in same state of real property and debt secured by mortgage or other lien thereon as double taxation, 122 A. L. R. 742.

Sec. 4. [Mines and claims to be assessed—basis and multiple—what to be assessed as tangible property.]

All metalliferous mines or mining claims, both placer and rock in place, shall be assessed as the Legislature shall provide; provided, the basis and multiple now used in determining the value of metalliferous mines for taxation purposes and the additional assessed value of $5.00

per acre thereof shall not be changed before January 1, 1935, nor thereafter until otherwise provided by law. All other mines or mining claims and other valuable mineral deposits, including lands containing coal or hydrocarbons and all machinery used in mining and all property or surface improvements upon or appurtenant to mines or mining claims, and the value of any surface use made of mining claims, or mining property for other than mining purposes, shall be assessed as other tangible property. (As amended November 4, 1930.)

Cross-references.

Statutory provisions, 80–5–56 et seq.

1. In general.

Formerly mining claims and the products of mines and the ore in the mines were exempt. Mammoth Min. Co. v. Juab County, 10 U. 232, 37 P. 348, citing 1 Comp. Laws 1888, § 2009.

This section no longer provides for assessment of metalliferous mines or mining claims at a value based on some multiple or sub-multiple of the "net annual proceeds" thereof. The words in quotation marks were omitted by the 1930 amendment, as limited by the present proviso. Tintic Standard Min. Co. v. Utah County, 80 U. 491, 496, 15 P.2d 633.

2. Construction and operation of section in general.

Provision in this section, as it read originally, for taxation of net annual proceeds of mines as provided by law was not self-executing. Mercur Gold Mining & Milling Co. v. Spry, 16 U. 222, 52 P. 382; Tintic Standard Min. Co. v. Utah County, 80 U. 491, 497, 15 P.2d 633.

By phrase "net annual proceeds" of mine, as used in this section as it read originally, was meant what was annually realized from product of mine, over and above all costs and expenses of obtaining such product and converting same into money. Mercur Gold Mining & Milling Co. v. Spry, 16 U. 222, 52 P. 382; Salt Lake County v. Utah Copper Co., 294 F. 199.

Classification, under this section as it formerly read, was not intended to limit phrase "or other valuable mineral deposits," but embraced all mineral deposits including gypsum, and net annual profits from products manufactured therefrom were taxable. Nephi Plaster & Manufacturing Co. v. Juab County, 33 U. 114, 93 P. 53, 14 L. R. A. (N. S.) 1043.

Under this amended section as it one-time read, a blanket assessment of all coal lands in county could not be made at a flat or uniform rate. Ririe v. Randolph, County Assessor, 51 U. 274, 169 P. 941.

Under this section as it formerly read, it was held that for purpose of taxing net proceeds of mines, the cost of mining, incurred in any one year must be considered independently from the cost incurred in any other year, and only such costs as were incurred during year in which net proceeds were obtained could be considered. Mammoth Min. Co. v. Juab County, 51 U. 316, 170 P. 78.

In determining basis of taxation of metalliferous mine, phrase "gross proceeds realized during preceding calendar year from sale or conversion into money or its equivalent, of all ores from such mine," as used in 80–5–57, embraces amount received from such sales in such year of blister copper, gold and silver bullion produced in such year, and the amount of blister copper, gold and silver bullion produced in such year but remaining unsold at end of year, the latter amount to be arrived at by appraisal. Salt Lake County v. Utah Copper Co., 93 F.2d 127.

3. Water rights.

Water rights are taxable whether considered appurtenant to mine or independent property. Utah Metal & Tunnel Co. v. Groesbeck, 62 U. 251, 219 P. 248.

4. Drain tunnels.

Under this section, drain tunnels, used to drain a mine, may not be separately taxed, where it appears that they have no separate and independent value, but are inseparably connected with the operation of the mine. Ontario Silver Min. Co. v. Hixon, 49 U. 359, 164 P. 498.

5. Tailings, and tailings dumps.

Proceeds of tailings severed and removed from mining claims, changed in character, placed in other and separate lands and having an ascertained and adjudicated value of their own, constituted unit of property entirely apart from mine from which they had been taken, and were not within provision of this section, as it formerly read, that metalliferous mines should be assessed at multiple of net annual proceeds. South Utah Mines & Smelters v. Beaver County, 262 U. S. 325, 67 L. Ed. 1004, 43 S. Ct. 577.

Under section as it formerly read, tailings extracted from copper ore were taxable by state board of equalization on basis of net annual proceeds and could

not be taxed by county taxing officers. Salt Lake County v. Utah Copper Co., 294 Fed. 199.

Under section as it formerly read, tailings dump was taxable by state board of equalization on basis of net annual proceeds and could not be taxed by county taxing officers. Salt Lake County v. Utah Copper Co., 294 Fed. 199.

Under section as it formerly read, as respects taxability of tailings dump of abandoned mine, it was held that state board of equalization properly taxed tailings dump as product of mine in all years in which it produced net proceeds and such tailings dump was not subject to taxation during those years by county authorities as omitted personal property. Beaver County v. South Utah Mines & Smelters, 17 F.2d 577.

A. L. R. notes.

Coal, classification for purposes of taxation, 24 A. L. R. 1225.

Sec. 5. [Local authorities to levy local taxes.]

The Legislature shall not impose taxes for the purpose of any county, city, town or other municipal corporation, but may, by law, vest in the corporate authorities thereof, respectively, the power to assess and collect taxes for all purposes of such corporation.

Cross-references.

General power of cities, 15–8–87.

1. In general.

This section not only limits county taxation to county purposes, but was intended as limitation on power of legislature to grant right to create debt or levy tax to any person or body other than county's corporate authorities. State ex rel. Wright v. Standford, 24 U. 148, 66 P. 1061.

State cannot compel county to incur debt or levy tax for purpose named in legislative act without its consent. State ex rel. Wright v. Standford, 24 U. 148, 66 P. 1061.

State has no power to require that county funds be appropriated to purposes other than, and different from, those for which, by authority of county, funds were collected. State ex rel. Wright v. Standford, 24 U. 148, 66 P. 1061.

2. "Corporate authorities" construed.

"Corporate authorities," as used in this section, are those municipal officers who either are directly elected by municipality's inhabitants or are appointed in some mode to which such inhabitants have given their assent. State ex rel. Wright v. Standford, 24 U. 148, 66 P. 1061.

3. "For all purposes of such corporation" construed.

The phrase, "for all purposes of such corporation," is synonymous with the phrase "public purposes." Denver & R. G. R. Co. v. Grand County, 51 U. 294, 170 P. 74, 3 A. L. R. 1224.

4. Particular statutes, subjects, and instances.

5. — agricultural extension work.

Statute (Comp. Laws 1917, § 5292—now 75–5–31) authorizing contracts between trustees of state agricultural college and county commissioners with respect to agricultural extension work, and authorizing commissioners to provide funds necessary for the work in their respective counties, is not invalid as imposing a tax for county purposes by the legislature. Bailey v. Van Dyke, 66 U. 184, 240 P. 454.

6. — dependent mothers' tax acts.

The phrase "for all purposes of such corporation," is synonymous with the phrase, "public purposes," and Dependent Mothers' Tax Act, 14–5–1, would be upheld as "public purpose." Denver & R. G. R. Co. v. Grand County, 51 U. 294, 170 P. 74, 3 A. L. R. 1224.

7. — detention schools.

Chapter 8 of Title 14, providing for establishment of detention homes, etc., does not contravene this provision. Salt Lake County v. Salt Lake City, 42 U. 548, 134 P. 560, upholding 14–8–1 and 14–8–7.

8. — fruit tree inspectors.

Former statute, providing for appointment of county fruit tree inspectors, etc., held invalid under this section. State ex rel. Wright v. Standford, 24 U. 148, 66 P. 1061.

9. — license fees.

Under Constitution, as it read originally, and former statutes, held that city had power to levy and collect, for revenue purposes, reasonable license fee for each telephone instrument, operated and maintained by any person or corporation and used exclusively within city limits for local business, for which rental or charge was made. Ogden City v. Crossman, 17 U. 66, 53 P. 985.

This section precludes the legislature from imposing a license tax upon the inhabitants of a city, town, or county for the sole purpose of raising revenue for

such city, town, or county. On the other hand, a law enacted to protect a public interest or defend a public wrong is not a "tax," although it requires the payment of a license fee to bear expense of carrying out its provisions. The Best Foods, Inc. v. Christensen, 75 U. 392, 399, 285 P. 1001.

Law requiring payment of annual fee into general fund of county, city, or town for permit to sell oleomargarine does not violate this section, because such fee is compensation for services rendered to state by city issuing permit and assisting state in enforcing act. The Best Foods, Inc. v. Christensen, 75 U. 392, 285 P. 1001, applying repealed Laws 1929, Ch. 91.

A. L. R. notes.

State taxation for armories as within constitutional prohibition against imposition of taxes for local purposes, 46 A. L. R. 723; "city and corporate purposes," what are within constitutional provisions prohibiting legislature from imposing taxes for, or providing that legislature may invest power to levy such taxes in local authorities, 46 A. L. R. 609.

Sec. 6. [Annual statement to be published.]

An accurate statement of the receipts and expenditures of the public monies, shall be published annually in such manner as the Legislature may provide.

Cross-references.

Public audits, 74–2, 74–3.

Sec. 7. [Rate of taxation—not to exceed—purpose—distribution.]

Art. 13, sec. 7 Ref. to S.L. '45, c. 91 Sec. 1 pp. 181, 182, 183

Art. 13, sec. 7 Amend. proposed S.L. '46 (1st S.S.) H.J.R. No. 1 p. 4

Art. 13, sec. 7 ref. to S.L. '47 c. 80 sec. 2 pp. 356, 358; c. 114 sec. 1 p. 406

The rate of taxation on tangible property shall not exceed on each dollar of valuation, two and four-tenths mills for general State purposes, two-tenths of one mill for high school purposes, which shall constitute the high school fund; said fund shall be apportioned in the manner the legislature shall provide, to the school districts maintaining high schools, and such levy for district school purposes which together with the interest on the permanent school fund and such other funds as may be available for district school purposes, will raise annually an amount which equals $25.00 for each person of school age in the state as shown by the last preceding school census; the same to be distributed among the school districts according to the last preceding school census; and in addition an equalization fund which when added to other revenues provided for this purpose by the legislature shall be $5.00 for each person of school age as shown by the last preceding school census; said equalization fund shall be apportioned to the school districts in such manner as the legislature shall provide. Said rates shall not be increased unless a proposition to increase the same specifying the rate or rates proposed and the time during which the same shall be levied, be first submitted to a vote of such of the qualified electors of the state, as in the year next preceding such election, shall have paid a property tax assessed to them within the state, and the majority of those voting thereon shall vote in favor thereof, in such manner as may be provided by law. (As amended November 4, 1930.)

Cross-references.

Provisions of this section to be construed as limitation in rate of taxation on tangible property for school purposes and not on amount of funds available therefor; and no moneys allocated to Uniform School Fund to be considered in fixing rates of taxation specified hereunder, Const. Art. X, § 3.

1. Construction, scope, and operation of section in general.

Levy and collection of tax was properly refused by county commissioners where it would have rendered rate of taxation on property for state purposes in excess of that permitted by this section as it formerly read. Bennion v. Burgon, 65 U. 433, 238 P. 236.

The amount specified by this section to be levied per person must be regarded as the maximum to be attained as nearly as practicable, and there is no provision requiring collecting officers to attach such sums to any specific fund. Board of Education of Ogden City v. Anderson, 93 U. 522, 74 P.2d 681.

Mandamus would not lie to compel state fiscal officers to reallocate funds from delinquent taxes levied for school purposes to the year of the levies because the amount received in such years was less than $25 per person of school age. Board of Education of Ogden City v. Anderson, 93 U. 522, 74 P.2d 681.

A. L. R. notes.
Limitation of power to tax as limitation on power to incur indebtedness, 97 A. L. R. 1103.

Sec. 8. [Officer not to make profit out of public monies.]

The making of profit out of public monies, or using the same for any purpose not authorized by law, by any public officer, shall be deemed a felony, and shall be punished as provided by law, but part of such punishment shall be disqualification to hold public office.

Cross-references.
Statutory prohibition, 103–26–61.

Sec. 9. [State expenditure to be kept within revenues.]

No appropriation shall be made, or any expenditure authorized by the Legislature, whereby the expenditure of the State, during any fiscal year, shall exceed the total tax then provided for by law, and applicable for such appropriation or expenditure, unless the Legislature making such appropriation, shall provide for levying a sufficient tax, not exceeding the rates allowed in section seven of this article, to pay such appropriation or expenditure within such fiscal year. This provision shall not apply to appropriations or expenditures to suppress insurrections, defend the State, or assist in defending the United States in time of war.

Sec. 10. [All property taxable where situated.]

All corporations or persons in this State, or doing business herein, shall be subject to taxation for State, County, School, Municipal or other purposes, on the real and personal property owned or used by them within the Territorial limits of the authority levying the tax.

Cross-references.
Statutory provisions, 80–4.

1. In general.
Under this section, a city cannot claim taxes on property, situated in area segregated under 15–4–1, during interim between the entry of district court's decree of segregation and the reversal of such decree by the supreme court. Plutus Min. Co. v. Orme, 76 U. 286, 293, 289 P. 132, citing Gillmore v. Dale, 27 U. 372, 75 P. 932.

2. "Owned" construed.
Term "owned," as used in this section, has reference to place where property is, and not to where owner may reside, and sheep were not assessable in certain city where none of them had been within territorial limits of city at any time during period for which taxes were assessed. Murdock v. Murdock, 38 U. 373, 113 P. 330.

3. "Used" construed.
Under this section, equipment of foreign corporation, such as a railroad contractor, brought into this state temporarily for "use" on a job undertaken by such company in this state is subject to taxation where located or used. Hamilton & Gleason Co. v. Emery County, 75 U. 406, 285 P. 1006.

4. "Authority" construed.
When city has been incorporated and local government has been established, such government is "authority" to levy tax. Kimball v. Grantsville City, 19 U. 368, 57 P. 1, 45 L. R. A. 628.

5. "Tax" construed.

6. — in general.

15–8–9, authorizing city council acting as distributing agent of water outside or within corporate limits to levy tax for control and distribution of such water, does not violate this provision, since word "tax" as used in statute is not tax within meaning and intent of this provision. Pleasant Grove City v. Holman, 59 U. 242, 202 P. 1096.

7. — special assessments for local improvements as not within section.

This section does not govern special assessments levied by drainage districts, for "there is a well-recognized distinction between a tax imposed for state, county and municipal purposes and a special assessment levied for local improvements." State ex rel. Ferry v. Corinne Drainage District of Box Elder County, 48 U. 1, 156 P. 921; State ex rel. Moody v. Millard County Drainage District No. 1, 48 U. 11, 156 P. 924.

8. Non-extraterritorial validity of tax.

Under this section, no taxing unit can legally levy any tax which has any extraterritorial validity, and the same rule is applied to assessments as distinguished from general taxes, such as assessments levied by irrigation district. Parry v. Bonneville Irr. Dist., 71 U. 202, 209, 263 P. 751, citing prior cases.

Sec. 11. [Creation of state tax commission—membership—governor to appoint—terms—duties—county boards—duties.]

There shall be a State Tax Commission consisting of four members, not more than two of whom shall belong to the same political party. The members of the Commission shall be appointed by the Governor, by and with the consent of the Senate, for such terms of office as may be provided by law. The State Tax Commission shall administer and supervise the tax laws of the State. It shall assess mines and public utilities and adjust and equalize the valuation and assessment of property among the several counties. It shall have such other powers of original assessment as the Legislature may provide. Under such regulations in such cases and within such limitations as the Legislature may prescribe, it shall establish systems of public accounting, review proposed bond issues, revise the tax levies and budgets of local governmental units, and equalize the assessment and valuation of property within the counties. The duties imposed upon the State Board of Equalization by the Constitution and Laws of this State shall be performed by the State Tax Commission.

In each county of this State there shall be a County Board of Equalization consisting of the Board of County Commissioners of said county. The County Boards of Equalization shall adjust and equalize the valuation and assessment of the real and personal property within their respective counties, subject to such regulation and control by the State Tax Commission as may be prescribed by law. The State Tax Commission and the County Boards of Equalization shall each have such other powers as may be prescribed by the Legislature. (As amended November 4, 1930.)

Cross-references.

Statutory provisions, 80–5 to 80–7.

1. Construction, scope, and operation of section in general.

Statute which conferred power on state board of equalization to assess property, the situs and operation of which were wholly within one county, was violative of this section. State ex rel. Salt Lake City v. Eldredge, 27 U. 477, 76 P. 337.

Under this section and 80–5–46, the state tax commission may sue in its own name for collection of the sales tax. State Tax Commission v. City of Logan, 88 U. 406, 417, 54 P.2d 1197.

Constitution has conferred on the state tax commission the power of assessment of utilities, which includes fixing of valuations on utility property, and this duty and power cannot be directly exercised by the legislature or by it be conferred on any other officer or board, such as

the public service commission. State ex rel. Public Service Commission v. Southern Pac. Co., 95 U. 84, 79 P.2d 25. (Larson, J., dissenting.)

As contributions to unemployment compensation fund are "taxes," and, as Constitution vests power to collect taxes in state tax commission, industrial commission lacks authority to compel contributions by employer. National Tunnel & Mines Co. v. Industrial Commission, 99 U. 39, 102 P.2d 508. (Pratt, J., dissenting.)

A. L. R. notes.

Subjecting municipal tax levy to review or modification by state authorities, 70 A. L. R. 1243.

Sec. 12. [Stamp, income, license or franchise tax permissible.]

Nothing in this Constitution shall be construed to prevent the Legislature from providing a stamp tax, or a tax based on income, occupation, licenses or franchises. (As amended November 6, 1906.)

Cross-references.

Statutory provisions as to franchise and privilege taxes, 80–13; income tax, 80–14.

1. In general.

Prior to amendment of this section in 1906, held that mortgages on real estate were not exempt from taxation, and could not be exempted therefrom by legislature. Judge v. Spencer, 5 U. 242, 48 P. 1097.

This section does not limit power of legislature to impose the several kinds of taxes specified in section. Salt Lake City v. Christensen Co., 34 U. 38, 95 P. 523, 17 L. R. A. (N. S.) 898.

2. Franchise taxes.

Corporate franchises partake of dual character: one, which relates merely to right or privilege to be or exist as corporation, is not asset of corporation and is not subject to franchise tax; other is property subject to alienation and transfer, and taxable as other property. Blackrock Copper Mining & Milling Co. v. Tingey, 34 U. 369, 98 P. 180, 28 L. R. A. (N. S.) 255, 131 Am. St. Rep. 850.

3. License or occupation taxes.

Mere tax imposed on business is not "license," unless levy confers, as to business, right or privilege which would not exist otherwise. Cache County v. Jensen, 21 U. 207, 61 P. 303. (Baskin, J., dissenting.)

Ordinance imposing graduated license tax was valid. Salt Lake City v. Christensen Co., 34 U. 38, 95 P. 523, 17 L. R. A. (N. S.) 898.

Under the authority of this section, a city may impose a license tax upon a public utility holding a franchise from the city, in absence of anything in franchise or city ordinance precluding city from so doing. Salt Lake City v. Utah Light & Railway Co., 45 U. 50, 142 P. 1067.

Under this section, there is a distinction between an occupation tax and a license tax, the former being designed to raise revenue, and the latter to regulate or to prohibit a particular business. Provo City v. Provo Meat & Packing Co., 49 U. 528, 165 P. 477, Ann. Cas. 1918 D 530.

4. Sales taxes.

Sales tax would seem to be authorized by this section. State Tax Commission v. City of Logan, 88 U. 406, 415, 54 P.2d 1197.

A. L. R. notes.

Automobile license tax, uniformity of, 5 A. L. R. 761.

Automobile licenses, requiring payment of property taxes as condition to issuance, 62 A. L. R. 304.

Cigarettes or tobacco, taxing dealers therein, 62 A. L. R. 107.

Constitutionality and construction of gasoline inspection and tax statutes, 111 A. L. R. 185.

Corporation excise tax based on income or receipts, 73 A. L. R. 737.

Discrimination as regards license or occupation tax between persons or concerns engaged in same line of business, based on maintenance or non-maintenance of plants or places of business within city limits, 109 A. L. R. 903.

Dog taxes, uniformity requirement as applicable to, 49 A. L. R. 850.

Money lenders, classification for purposes of taxation, 93 A. L. R. 209.

Partnership as permissible basis of classification for purposes of license or privilege tax, 106 A. L. R. 662.

Real estate brokers' license tax, uniformity requirements as applicable to, 8 A. L. R. 425.

Reasonableness of classifications, based on character of use by consumer, in statutes imposing tax or license fee on public utilities or persons furnishing same, 109 A. L. R. 1516.

What is a property tax as distinguished from excise, license, and other taxes, 103 A. L. R. 18.

ARTICLE XIV

PUBLIC DEBT

Sec. 1. [Fixing the limit of the state indebtedness.]

To meet casual deficits or failures in revenue, and for necessary expenditures for public purposes, including the erection of public buildings, and for the payment of all Territorial indebtedness assumed by the State, the State may contract debts, not exceeding in the aggregate at any one time, an amount equal to one and one-half per centum of the value of the taxable property of the State, as shown by the last assessment for State purposes, previous to the incurring of such indebtedness. But the State shall never contract any indebtedness, except as in the next Section provided, in excess of such amount, and all monies arising from loans herein authorized, shall be applied solely to the purposes for which they were obtained. (As amended November 8, 1910.)

1. Construction, scope, and operation of section in general.

In order to constitute indebtedness within provisions of constitutional limitation, it is not necessary that debt be evidenced by bonds, notes, or other usual evidences of indebtedness, but it is sufficient if, in order to discharge debt, state is obligated to pay it at some future time, and that it casts future burden upon taxpayer to extent of debt or obligation which must be paid by state with funds derived from general taxation. State ex rel. University of Utah v. Candland, 36 U. 406, 104 P. 285, 24 L. R. A. (N. S.) 1260, 140 Am. St. Rep. 834.

Under Laws 1909, which provided for construction of central building of state university from University of Utah permanent land fund and directed state land board to convert fund into cash, it was held such fund was indebtedness of state and in excess of indebtedness allowed under this section as it one time read. State ex rel. University of Utah v. Candland, 36 U. 406, 104 P. 285, 24 L. R. A. (N. S.) 1260, 140 Am. St. Rep. 834.

A. L. R. notes.

Power of legislature to add to or make more onerous the conditions or limitations prescribed by Constitution upon incurring public debts, 106 A. L. R. 231; constitutional or statutory provision limiting state or municipal indebtedness or taxation or regulating issuance of bonds as affecting bonds or other obligations authorized but not delivered prior to adoption or effective date of the provision, 109 A. L. R. 961.

See also list of notes appended to § 4, this article.

Sec. 2. [Debts for public defense.]

The State may contract debts to repel invasion, suppress insurrection, or to defend the State in war, but the money arising from the contracting of such debts shall be applied solely to the purpose for which it was obtained.

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Sec. 3. [Debts of counties, cities, etc., not to exceed revenue. Exception.]

No debt in excess of the taxes for the current year shall be created by any county or subdivision thereof, or by any school district therein, or by any city, town or village, or any subdivision thereof in this State; unless the proposition to create such debt, shall have been submitted to a vote of such qualified electors as shall have paid a property tax therein, in the year preceding such election, and a majority of those voting thereon shall have voted in favor of incurring such debt.

Cross-references.
Statutory provisions, 15–7–7, 15–8–6.

1. Construction, scope, and operation of section in general.

Under laws in force in 1896 and facts of case, held that county appropriations and expenditures of 1896 did not exceed authorized limit of county indebtedness and that county commissioners' refusal to act on plaintiff's claim for coal furnished county during such year, on ground that such limit had been exceeded, was wrongful. Pleasant Valley Coal Co. v. County Com'rs, Salt Lake County, 15 U. 97, 48 P. 1032 (Zane, C. J., dissenting), overruling, so far as in conflict, Fritsch v. Board of Com'rs, Salt Lake County, 15 U. 83, 47 P. 1026.

The inhibition of this section only goes to question of excess amount and not to time of payment, and if amount of indebtedness is limited to revenue of current year, there is no objection to providing for payment after year expires. Muir v. Murray City, 55 U. 368, 186 P. 433; Dickinson v. Salt Lake City, 57 U. 530, 195 P. 1110; Scott v. Salt Lake County, 58 U. 25, 196 P. 1022.

This provision is not violated, in absence of proof that debt was in excess of potential revenues for current year from whatever source revenue was legitimately obtainable. Muir v. Murray City, 55 U. 368, 186 P. 433.

The purpose of this section and section 4 is to serve as a limit to taxation and as a protection to taxpayers. It does not, however, apply to a case where public property is purchased or constructed, and payment therefor is to be made exclusively from the revenue derived from the property. Barnes v. Lehi City, 74 U. 321, 340, 279 P. 878.

Where public property is purchased or constructed and payment therefor is to be made exclusively from revenues derived from the property, which is the special fund doctrine, this section does not apply. Utah Power & Light Co. v. Provo City, 94 U. 203, 74 P.2d 1191. (Moffat, J., and Folland, C. J., dissenting.)

2. "Taxes" construed.

The word "taxes" in this provision means all revenue, including that which is uncollected. Scott v. Salt Lake County, 58 U. 25, 196 P. 1022.

"Taxes of the current year" as used in this section means revenues of the current year, and includes all revenues of the city, including taxes, license fees, waterworks income, and department fees. Fjeldsted v. Ogden City, 83 U. 278, 28 P.2d 144.

3. Particular statutes, ordinances, subjects, and instances.

Under this section, and immediately succeeding section prior to its amendment in 1910, held that legislature was vested with power to authorize cities to create additional indebtedness for light, water or sewer purposes, not exceeding four per cent of value of taxable property within their boundaries. State ex rel. Riter v. Quayle, 26 U. 26, 71 P. 1060.

Under this section, and immediately succeeding section prior to its amendment in 1910, bonded indebtedness of four per cent might be incurred for general city purposes, including supplying of city with water, lights, or sewers, and in addition city might also incur indebtedness of same amount for purpose of supplying city with water, lights, or sewers alone. State ex rel. Willis v. Heber City, 36 U. 1, 102 P. 309.

In proceeding for disincorporation of city, wherein certain claims were allowed against city, defense that claim irregularly allowed was based on debt incurred in violation of this section, held meritorious. Nielson v. Utah Nat. Bank of Ogden, 40 U. 95, 120 P. 211.

It was duty of school district to apply funds raised through tax levy to purposes for which they were authorized to make such levy, and application of such funds to other purposes could not defeat claims of parties who had contracted with board in belief that funds raised by tax levy would be applied to purposes for which they had been collected and would not be applied to other purposes of school district. Utah Ass'n of Credit Men v. Board of Education of Millard County School Dist., 54 U. 135, 179 P. 975.

Both express and implied contracts in violation of this provision are null and void. Moe v. Millard County School Dist., 54 U. 144, 179 P. 980.

Seller of fixtures to school district which was beyond its debt limit at time of making contract, held entitled to remove so much of property which could be removed without substantial injury to building as to compensate seller for unpaid purchase price with interest; and seller would not be required to refund money paid. Moe v. Millard County School Dist., 54 U. 144, 179 P. 980.

Consolidated school district did not have power to issue and sell bonds of consolidated district to pay indebtedness created before consolidation in violation of this provision. Kelly v. Board of Education of Millard County, 56 U. 582, 191 P. 1070.

Sinking fund and special levy for sinking fund purposes may be regarded as legal offset in arriving at amount of constitutional debt limit of school dis-

trict; but levy for general school purposes cannot be deducted. Cutler v. Board of Education of Beaver County School Dist., 57 U. 73, 192 P. 621.

Commissioners had power to borrow money and issue bonds for payment of which the full faith and credit and taxing power of city was pledged in anticipation of taxes for current year. Dickinson v. Salt Lake City, 57 U. 530, 195 P. 1110.

19–4–4, giving county right to appropriate money and incur indebtedness, is not in violation of this provision. Scott v. Salt Lake County, 58 U. 25, 196 P. 1022.

15–7–50, providing for special improvement guaranty fund, is for public purposes and is not in violation of this provision. Wicks v. Salt Lake City, 60 U. 265, 208 P. 538.

A city by entering into contract to purchase a power plant, cost thereof to be paid out of revenues of plant, does not thereby create such an "indebtedness" as is contemplated by this and section 4 of this article; accordingly, proposition does not have to be submitted to the voters. Nor does provision requiring city to credit special fund derived from revenues of plant at present cost thereof, for all product or service of said plant used by city for public purposes, create "indebtedness" within constitutional prohibition. Barnes v. Lehi City, 74 U. 321, 336, 279 P. 878.

Necessary improvements must be paid for either out of revenues within treasury or such as may be lawfully anticipated as revenues of current year, or debt incurred for such improvements must be authorized by majority vote of qualified electors as provided by this section, and be within constitutional limitation as required by Const. Art. XIV, § 4, or be paid exclusively out of net earnings or incomes of property or improvements purchased. Fjeldsted v. Ogden City, 83 U. 278, 28 P.2d 144.

Proposed bond issue of city to improve its waterworks system held debt and incapable of being assumed unless approved as required by this section, and within limitations of Const. Art. XIV, § 4, as against contention that income from waterworks system was pledged to pay interest and principal on bonds which constituted special fund, where income from improvements and from existing waterworks system could not be segregated and income from latter was used to pay other bonds and surplus applied to general obligations of city. Fjeldsted v. Ogden City, 83 U. 278, 28 P.2d 144. (Straup, C. J., and Hanson, J., dissenting.)

Proposed bond issue of city to improve and repair waterworks system in an amount in excess of taxes for current year and payable out of waterworks revenue, although valid with respect to limitation of indebtedness by reason of Const. Art. XI, § 5, subd. (d) as amended, was debt, and hence invalid where issuance was not authorized by taxpaying electors as required by this section. Wadsworth v. Santaquin City, 83 U. 321, 28 P.2d 161. (Straup, C. J., and Hanson, J., dissenting.)

Power to incur indebtedness not to exceed ten per cent of assessed valuation given district by 100–10–18 did not render Metropolitan Water Districts Act unconstitutional as violation of this section, since district was not subdivision of county. Lehi City v. Meiling, 87 U. 237, 48 P.2d 530; Provo City v. Evans, 87 U. 292, 48 P.2d 555. (Moffat and Hanson, JJ., dissenting.)

Proposed issuance of bonds for construction of electric plant by a municipality, which were payable solely from system's revenues, held authorized under the "special fund doctrine," and the city could not be restrained in such proceeding notwithstanding its failure to adhere to the procedure prescribed by the Granger Act. Utah Power & Light Co. v. Ogden City, 95 U. 161, 79 P.2d 61.

A. L. R. notes.

See list of notes appended to § 4, this article.

Sec. 4. [Limit of indebtedness of counties, cities, towns and school districts.]

When authorized to create indebtedness as provided in Section 3 of this Article, no county shall become indebted to an amount, including existing indebtedness exceeding two per centum. No city, town, school district or other municipal corporation, shall become indebted to an amount, including existing indebtedness, exceeding four per centum of the value of the taxable property therein, the value to be ascertained by the last assessment for State and County purposes, previous to the incurring of such indebtedness; except that in incorporated cities the assessment shall be taken from the last assessment for city purposes; provided, that no part of the indebtedness allowed in this

section shall be incurred for other than strictly county, city, town or school district purposes; provided further, that any city of the first and second class when authorized as provided in Section three of this article, may be allowed to incur a larger indebtedness, not to exceed four per centum and any city of the third class, or town, not to exceed eight per centum additional, for supplying such city or town with water, artificial lights or sewers, when the works for supplying such water, light and sewers, shall be owned and controlled by the municipality. (As amended November 8, 1910.)

Cross-references.

Statutory provisions, 15–7–7, 15–8–6; debt limit for drainage districts, 24A–0–28.

1. In general.

Legislature has inherent power to authorize municipality to issue bonds for its indebtedness. People ex rel. O'Meara v. City Council of Salt Lake City, 23 U. 13, 64 P. 460.

Framers of Constitution must be presumed to have had knowledge of fact that many municipalities of proposed state were already indebted in excess of four per cent limit, originally fixed by this section, and yet were without adequate water, light, and sewer facilities. People ex rel. O'Meara v. City Council of Salt Lake City, 23 U. 13, 64 P. 460.

Limit of indebtedness as provided by this section has been extended by Const. Art. XI, § 5, subd. (d) as amended. Wadsworth v. Santaquin City, 83 U. 321, 28 P.2d 161.

2. Construction, scope, and operation of section in general.

Section, as it read originally, limited legislature's power to authorize municipality to issue bonds for its indebtedness. People ex rel. O'Meara v. City Council of Salt Lake City, 23 U. 13, 64 P. 460.

This section contemplates that municipally owned and controlled utilities shall not be subject to the jurisdiction of the public utilities commission, but shall be wholly controlled by the city. Logan City v. Public Utilities Commission, 72 U. 536, 570, 271 P. 961.

Where public property is purchased or constructed and payment therefor is to be made exclusively from revenues derived from the property, which is the special fund doctrine, this section does not apply. Utah Power & Light Co. v. Provo City, 94 U. 203, 74 P.2d 1191. (Moffat, J., and Folland, C. J., dissenting.)

3. Particular statutes, ordinances, subjects, and instances.

Under this section, prior to its amendment in 1910, and section immediately preceding, held that legislature was vested with power to authorize cities to create additional indebtedness for light, water or sewer purposes, not exceeding four per cent of value of taxable property within their boundaries. State ex rel. Riter v. Quayle, 26 U. 26, 71 P. 1060.

Under this section, prior to its amendment in 1910, and section immediately preceding, bonded indebtedness of four per cent might be incurred for general city purposes, including supplying of city with water, lights, or sewers, and in addition city might also incur indebtedness of same amount for purpose of supplying city with water, lights, or sewers alone. State ex rel. Willis v. Heber City, 36 U. 1, 102 P. 309.

Construction, maintenance, and repair of county roads is county purpose. Moyle v. Board of Com'rs of Salt Lake County, 53 U. 352, 178 P. 918.

Sinking fund and special levy for sinking fund purposes may be regarded as legal offset in arriving at amount of constitutional debt limit of school district; but levy for general school purposes cannot be deducted. Cutler v. Board of Education of Beaver County School Dist., 57 U. 73, 192 P. 621.

15–7–50, providing for special improvement guaranty fund, is for public purposes and is not in violation of this provision. Wicks v. Salt Lake City, 60 U. 265, 208 P. 538.

City by entering into contract to purchase a power plant for its inhabitants, cost of plant to be paid out of revenues of plant, does not thereby create such an "indebtedness" as is contemplated by this section; accordingly, proposition does not have to be submitted to the voters. Nor does provision requiring city to credit special fund derived from revenues of plant at present cost thereof, for all product or service of said plant used by city for public purposes, create "indebtedness" within prohibition. Barnes v. Lehi City, 74 U. 321, 336, 279 P. 878.

Necessary improvements must be paid for either out of revenues within treasury or such as may be lawfully anticipated as revenues of current year, or debt incurred for such improvements must be authorized by majority vote of qualified electors as provided by Const.

Art. XIV, § 3, and be within constitutional limitation as required by this section, or be paid exclusively out of net earnings or incomes of property or improvements purchased. Fjeldsted v. Ogden City, 83 U. 278, 28 P.2d 144.

Proposed bond issue of city to improve its waterworks system held debt and incapable of being assumed unless approved as required by Const. Art. XIV, § 3, and within limitations of this section as against contention that income from waterworks system was pledged to pay interest and principal on bonds which constituted special fund, where income from improvements and from existing waterworks system could not be segregated and income from latter was used to pay other bonds and surplus applied to general obligations of city. Fjeldsted v. Ogden City, 83 U. 278, 28 P.2d 144. (Straup, C. J., and Hanson, J., dissenting.)

Proposed bond issue of city to improve and repair waterworks system in an amount in excess of taxes for current year and payable out of waterworks revenue, although valid with respect to limitation of indebtedness by reason of Const. Art. XI, § 5, subd. (d), as amended, was debt, and hence invalid where issuance was not authorized by tax-paying electors as required by Const. Art. XIV, § 3. Wadsworth v. Santaquin City, 83 U. 321, 28 P.2d 161. (Straup, C. J., and Hanson, J., dissenting.)

Metropolitan water district is not a municipal corporation, and hence not subject to the four per cent debt limitation imposed by this section. Lehi City v. Meiling, 87 U. 237, 48 P.2d 530; Provo City v. Evans, 87 U. 292, 48 P.2d 555. (Moffat and Hanson, JJ., dissenting.)

Proposed issuance of bonds for construction of electric plant by a municipality, which were payable solely from system's revenues, held authorized under the "special fund doctrine," and the city could not be restrained in such proceeding notwithstanding its failure to adhere to the procedure prescribed by the Granger Act. Utah Power & Light Co. v. Ogden City, 95 U. 161, 79 P.2d 61.

A. L. R. notes.

Actual levy or permissible maximum levy of taxes as determining limit of indebtedness of municipality, county or other political unit, under statute or constitutional provision limiting indebtedness with reference to income or revenue, 122 A. L. R. 330.

Aggregate of rent for entire period of lease of property to municipality as present indebtedness for purposes of condition of incurring, or limitation of amount of, municipal debt, 112 A. L. R. 278.

Allowance to contractor for extras in accordance with provisions of contract made before debt limit was reached as creation of indebtedness within meaning of debt limit provisions, 96 A. L. R. 397.

Constitutional or statutory debt limit as affected by existence of separate political units with identical or overlapping boundaries, 94 A. L. R. 818.

Constitutional or statutory provision limiting state or municipal indebtedness or taxation or regulating issuance of bonds as affecting bonds or other obligations authorized but not delivered prior to adoption or effective date of the provision, 109 A. L. R. 961.

Debts incurred for school purposes as part of municipal indebtedness, for purposes of debt limitation, 111 A. L. R. 544.

Exception regarding "emergency," "urgency," etc., within statute or charter forbidding municipal corporation to expend money or incur indebtedness in absence, or in excess of, appropriation, 111 A. L. R. 703.

Existing sinking fund as a factor in determining whether indebtedness or proposed indebtedness of municipality or other political subdivision exceeds constitutional or statutory limit, 125 A. L. R. 1393.

Funding or refunding obligations as subject to conditions respecting limitation of indebtedness or approval of voters, 97 A. L. R. 442.

Instalments payable under continuing service contract as present indebtedness within organic limitation of municipal indebtedness, 103 A. L. R. 1160.

Interest on indebtedness as part of debt within constitutional or statutory debt limitation, 100 A. L. R. 610.

Lease of property by municipality or other political subdivision, with option to purchase same, as evasion of constitutional or statutory limitation of indebtedness, 71 A. L. R. 1318.

Liability for tort or judgment based on tort as within constitutional or statutory limitation on municipal indebtedness or tax rate for municipal purposes, 94 A. L. R. 937.

Liability imposed by reason of benefits from improvement made by independent public unit as debt within meaning of debt limitation, 98 A. L. R. 749.

Limitation of municipal indebtedness as affected by combination or merger

of two or more municipalities, 103 A. L. R. 154.
Limitation on power to tax as limitation on power to incur indebtedness, 97 A. L. R. 1103.
Municipal debt limit as affected by obligations to municipality, 105 A. L. R. 687.
Obligation payable from special fund created by fees, penalties or excise taxes as within debt limit, 100 A. L. R. 900.
Obligation to meet which money is appropriated at time of its creation as indebtedness within limitation, 92 A. L. R. 1299, 134 A. L. R. 1399.
Pledge or appropriation of revenue from utility or other property in payment therefor as indebtedness within constitutional or statutory indebtedness of municipality or other political subdivision, 72 A. L. R. 687, 96 A. L. R. 1385.
Power of legislature to add to or make more onerous the conditions or limitations prescribed by Constitution upon incurring public debts, 106 A. L. R. 231.
Revenue from utility or other property, pledging in payment as within debt limitation, 72 A. L. R. 687, 96 A. L. R. 1385.
Right of municipality to invoke constitutional provisions against acts of state legislature, 116 A. L. R. 1037.
Separate political units with identical or overlapping boundaries, effect on debt limit, 94 A. L. R. 818.
Tort liability or judgment as within debt limitation, 94 A. L. R. 937.
What are "necessary expenses" within exception in constitutional or statutory provision requiring vote of people to authorize contracting of debt by municipality, county, or other political body, or limiting amount of such indebtedness, 113 A. L. R. 1202.

Sec. 5. [Borrowed money to be applied to authorized use.]

All monies borrowed by, or on behalf of the State or any legal subdivision thereof, shall be used solely for the purpose specified in the law authorizing the loan.

1. Notice of creation of indebtedness and issuance of bonds.

Whenever bonded indebtedness is to be incurred or created, city council is required, by order or resolution, and in published notice to electors, to specify purpose for which indebtedness is to be created or incurred, and for which proposed bonds are to be issued, and notice that merely states indebtedness is to be created, and bonds issued "for general corporate purposes" is entirely too general. State ex rel. Willis v. Heber City, 36 U. 1, 102 P. 309.

2. Diversion of funds.

Insertion of provisions in municipal contract to relieve unemployment, which, however, unnecessarily increased the cost of the work to the city, amounted to a diversion of funds to the extent thereof. Bohn v. Salt Lake City, 79 U. 121, 129, 8 P.2d 591, 81 A. L. R. 215.

Ordinance which authorized issuance of bonds for improvement of waterworks and for construction of such extensions or enlargements and making such other improvements and repairs to such system as might appear necessary or advisable was not objectionable as permitting diversion of funds to another purpose, contrary to this section. Fjeldsted v. Ogden City, 84 U. 302, 35 P.2d 825.

Sec. 6. [State not to assume county, etc., debts.]

The State shall not assume the debt, or any part thereof, of any county, city, town or school district.

Sec. 7. [Existing indebtedness not impaired.]

Nothing in this article shall be so construed as to impair or add to the obligation of any debt heretofore contracted, in accordance with the laws of Utah Territory, by any county, city, town or school district, or to prevent the contracting of any debt, or the issuing of bonds therefor, in accordance with said laws, upon any proposition for that purpose, which, according to said laws, may have been submitted to a vote of the qualified electors of any county, city, town or school district before the day on which this Constitution takes effect.

ARTICLE XV

MILITIA

Section 1. [How constituted.]

The militia shall consist of all able-bodied male inhabitants of the State, between the ages of eighteen and forty-five years, except such as are exempted by law.

Cross-references.
Statutory provisions, 54–1.

A. L. R. notes.
Constitutionality of statutes providing for bounties or pensions for soldiers, 7 A. L. R. 1636, 13 A. L. R. 587, 15 A. L. R. 1359, 35 A. L. R. 792.

Sec. 2. [Organization and equipment.]

The Legislature shall provide by law for the organization, equipment and discipline of the militia, which shall conform as nearly as practicable to the regulations for the government of the armies of the United States.

Cross-references.
Statutory provisions, 54–1

A. L. R. notes.
Taxation for militia purposes as within constitutional prohibitions, 46 A. L. R. 723; incompatibility of offices of judge and National Guard officer, 26 A. L. R. 143.

ARTICLE XVI

LABOR

Cross-references.
Statutory provisions, Title 49.

Section 1. [Rights of labor to be protected.]

The rights of labor shall have just protection through laws calculated to promote the industrial welfare of the State.

1. Validity of statutes in general.
Legislature in 1933 had constitutional power to enact legislation to provide maximum hours, minimum wages, and regulate general conditions of labor, at least as to women and minors in any or all industry in the state. McGrew v. Industrial Commission, 96 U. 203, 85 P.2d 608.

A. L. R. notes.
Statutes regulating time for payment of wages, 12 A. L. R. 635, 26 A. L. R. 1396.

Sec. 2. [Board of labor.]

The Legislature shall provide by law, for a Board of Labor, Conciliation and Arbitration, which shall fairly represent the interests of both capital and labor. The Board shall perform duties, and receive compensation as prescribed by law.

Cross-references.
Statutory provisions, 49–1.

Sec. 3. [Certain employments, etc., to be prohibited.]

The Legislature shall prohibit:

(1) The employment of women, or of children under the age of fourteen years, in underground mines.

(2) The contracting of convict labor.

(3) The labor of convicts outside prison grounds, except in public works under the direct control of the State.

(4) The political and commercial control of employees.

Cross-references.

Statutory provisions, 19–5–31, 49–4–1, 85–9–31; regulation of employment of women and children by industrial commission, 49–4–5 et seq.

1. Subdivision (2).

Purpose of this section was to prevent competition of convict and free labor. Price v. Mabey, 62 U. 196, 218 P. 724.

This section does not prohibit the legislature from providing means by which prisoners can and should be employed at some labor but commands it to prohibit "contracting convict labor," which phrase has reference to the old practice of states to lease or hire prisoners to private individuals or corporations. Utah Manufacturers' Ass'n v. Mabey, 63 U. 374, 226 P. 189.

A. L. R. notes.

Child labor laws as impairing obligation of contracts, 2 A. L. R. 1221.

Sec. 4. [Exchange of blacklists prohibited.]

The exchange of black lists by railroad companies, or other corporations, associations or persons is prohibited.

Cross-references.

Statutory provisions, 49–5.

Sec. 5. [Injuries resulting in death. Damages.]

The right of action to recover damages for injuries resulting in death, shall never be abrogated, and the amount recoverable shall not be subject to any statutory limitation, except in cases where compensation for injuries resulting in death is provided for by law. (As amended November 2, 1920.)

Cross-references.

Statutory provisions: limitation of actions, 104–2–25; who may bring action, 104–3–10, 104–3–11; substitution of parties, 104–3–19; workmen's compensation, 42–1–64.

1. Construction, scope, and operation of section in general.

Prior to the amendment of this provision, in all cases of death by wrongful act or neglect, widow could not waive rights of minor children to action for damages and accept compensation provided for under Workmen's Compensation Act. Garfield Smelting Co. v. Industrial Commission, 53 U. 133, 178 P. 57.

In application by widow, in her own right and as guardian of her minor children, held minor heirs, including unborn child of deceased employee, were bound by proceedings before industrial commission, notwithstanding that if award was permitted to stand it might expose defendant company to double liability, and would result in taking property without due process of law, and deny to employer equal protection of law, in violation of both Federal and State Constitutions. Utah Copper Co. v. Industrial Commission, 57 U. 118, 193 P. 24, 13 A. L. R. 1367.

Former 42–1–58 enacted after adoption of amendment to this section and providing that if employee was injured by another not in same employment, he, or his dependents, if employee was killed, should not be granted compensation unless cause of action was assigned to state insurance fund or to person or corporation paying compensation, held not to have intended to make compensation under the Industrial Act an exclusive remedy except where employee, or dependents, in case of his death, assigned his or their cause of action as therein provided. Robinson v. Union Pac. R. Co., 70 U. 441, 261 P. 9.

The proposed amendment to this section was adopted by the electors of Utah at the general election held in November, 1920, and, therefore, went into effect on January 1, 1921. That brought forth various amendments to the Workmen's Compensation Act. Halling v. Industrial Commission, 71 U. 112, 263 P. 78, giving history of section.

Under this section, it is beyond the power of the legislature to take from dependents of an employee their claim against the employer, where such em-

ployee dies as the result of a wrongful injury by the employer. Halling v. Industrial Commission, 71 U. 112, 121, 263 P. 78.

By virtue of this section, Death Act created a new cause of action; it did not merely revive or continue the action belonging to deceased prior to his death. Halling v. Industrial Commission, 71 U. 112, 263 P. 78.

Under this section, dependents may be heard on their application for compensation after employee's death, even though industrial commission denied compensation to employee during his lifetime. Halling v. Industrial Commission, 71 U. 112, 263 P. 78.

Sec. 6. [Eight hours a day's labor on public works.]

Eight hours shall constitute a day's work on all works or undertakings carried on or aided by the State, County or Municipal governments; and the Legislature shall pass laws to provide for the health and safety of employees in factories, smelters and mines.

Cross-references.
Statutory provision, 49–3–1.

1. Construction, scope, and operation of section in general.
This section does not authorize city to enter into contract containing unreasonable restrictions as to labor for purpose of relieving unemployment. Bohn v. Salt Lake City, 79 U. 121, 152, 8 P.2d 591, 81 A. L. R. 215.

Sec. 7. [Legislature to enforce this article.]

The Legislature, by appropriate legislation, shall provide for the enforcement of the provisions of this article.

1. Validity of statutes in general.
Former statute, analogous to 49–3–2, held valid exercise of state's police power. Holden v. Hardy, 169 U. S. 366, 42 L. Ed. 780, 18 S. Ct. 383 (Brewer and Peckham, JJ., dissenting), aff'g 14 U. 71, 46 P. 756, 37 L. R. A. 103 (Bartch and Miner, JJ., concurring specially); State v. Holden, 14 U. 96, 46 P. 1105, 37 L. R. A. 108; Short v. Bullion-Beck & Champion Min. Co., 20 U. 20, 57 P. 720, 45 L. R. A. 603.

Sec. 8. [Minimum wage for women and minors.]

The legislature may, by appropriate legislation provide for the establishment of a minimum wage for women and minors and may provide for the comfort, safety and general welfare of any and all employees. No provision of this constitution shall be construed as a limitation upon the authority of the legislature to confer upon any commission now or hereafter created such power and authority as the legislature may deem requisite to carry out the provisions of this section. (Added November 7, 1933.)

1. Validity of statutes in general.
Legislature in 1933 had constitutional power to enact legislation to provide maximum hours, minimum wages, and regulate general conditions of labor, at least as to women and minors, in any or all industry in the state. McGrew v. Industrial Commission, 96 U. 203, 85 P.2d 608.

ARTICLE XVII

WATER RIGHTS

Section 1. [Existing rights confirmed.]

All existing rights to the use of any of the waters in this State for any useful or beneficial purpose, are hereby recognized and confirmed.

Cross-references.
Statutory provisions, see Title 100.

1. Construction, scope, and operation of section in general.

Common-law rule that underground waters, where not moving in known and defined channel, are part of land in which they are found and belong absolutely to its owner is not applicable to conditions in Utah, which has always regarded waters percolating underground, where within public lands, as open to appropriation for irrigation or other beneficial uses, subject only to reasonable use. Snake Creek Mining & Tunnel Co. v. Midway Irr. Co., 260 U. S. 596, 67 L. Ed. 423, 43 S. Ct. 215.

Under findings of trial court, held that prior appropriators had vested rights, in use of water appropriated by them, with which no court was warranted to interfere, or to permit subsequent appropriators to do so. Salt Lake City v. Salt Lake City Water & Electrical Power Co., 24 U. 249, 67 P. 672, 61 L. R. A. 648, on rehearing, 25 U. 456, 71 P. 1069.

This section makes it unlawful for one to go upon a stream of water, in which he has acquired no right, and interfere with existing rights, or to destroy or cut off the source of supply of such stream because it happens to be a pond or lake. Cole v. Richards Irr. Co., 27 U. 205, 75 P. 376, 101 Am. St. Rep. 962.

Under this section, when the waters of a natural stream have been appropriated according to law and the waters put to a beneficial use, the appropriator acquires a vested right in the stream to extent of his appropriation, and such right carries with it an interest in the stream to the source from which the supply is obtained. Chandler v. Utah Copper Co., 43 U. 479, 135 P. 106.

Continuous and practically uninterrupted use of stream of water for culinary, domestic and livestock for more than 40 years confers a vested right under this section. Big Cottonwood Tanner Ditch Co. v. Shurtliff, 49 U. 569, 593, 164 P. 856.

Under this section, water flowing in natural streams in this state may be appropriated for power purposes, notwithstanding the point of diversion is upon privately owned land. Whitmore v. Salt Lake City, 89 U. 387, 397, 57 P.2d 726.

"While water is still in the public," everyone may drink or dip therefrom or water his animals therein, subject to the rights of the appropriator. Adams v. Portage Irrigation, Reservoir & Power Co., 95 U. 1, 72 P.2d 648.

The right of grazers of sheep to take water for camp and grazing purposes is a lawful right recognized by the Constitution and statute, unless in so doing the quality or quantity of the waters due to others is appreciably diminished. Adams v. Portage Irrigation, Reservoir & Power Co., 95 U. 1, 72 P.2d 648.

ARTICLE XVIII

FORESTRY

Section 1. [Forests to be preserved.]

The Legislature shall enact laws to prevent the destruction of and to preserve the Forests on the lands of the State, and upon any part of the public domain, the control of which may be conferred by Congress upon the State.

Cross-references.
Grazing in forest preserves, 3–5–97; forest reserve fund, 31–0.

ARTICLE XIX

PUBLIC BUILDINGS AND STATE INSTITUTIONS

Section 1. [Property of territory becomes property of state.]

All Institutions and other property of the Territory, upon the adoption of this Constitution, shall become the Institutions and property of the State of Utah.

Sec. 2. [Charitable and penal institutions, how maintained.]

Reformatory and Penal Institutions, and those for the benefit of the Insane, Blind, Deaf and Dumb, and such other institutions as the public good may require, shall be established and supported by the State in such manner, and under such boards of control as may be prescribed by law.

Cross-references.
State prison, 85–9; school for deaf and dumb, 85–3–1 et seq.; school for blind, 85–3–13 et seq.

Sec. 3. [Location of public institutions and disposition of lands.]

The public Institutions of the State are hereby permanently located at the places hereinafter named, each to have the lands specifically granted to it by the United States, in the Act of Congress, approved July 16, 1894, to be disposed of and used in such manner as the legislature may provide:

First: The Seat of Government and the State Fair at Salt Lake City.

Second: The Institutions for the Deaf and Dumb, and the Blind, and the State Reform School at Ogden City, in the County of Weber.

Third: The Utah State Hospital at Provo City, in the County of Utah. (As amended November 4, 1930.)

Cross-references.
Statutory provisions as to school for deaf and dumb, 85–3–1; school for blind, 85–3–13; industrial school, 85–6–1; Utah State Hospital, 85–7–1.

ARTICLE XX

PUBLIC LANDS

Section 1. [Land grants accepted on terms of trust.]

All lands of the State that have been, or may hereafter be granted to the State by Congress, and all lands acquired by gift, grant or devise, from any person or corporation, or that may otherwise be acquired, are hereby accepted, and declared to be the public lands of the State; and shall be held in trust for the people, to be disposed of as may be provided by law, for the respective purposes for which they have been or may be granted, donated, devised or otherwise acquired.

Cross-references.
Land grants in Enabling Act, Enabling Act, § 6 et seq.

1. In general.
Under this section, when read in connection with the Enabling Act, beds of navigable waters are included as "public lands of the state," as "otherwise acquired." State v. Rolio, 71 U. 91, 106, 262 P. 987.

2. Eminent domain.
Under Const. Art. III, § 2, and § 3, subd. "Second" of Enabling Act, by which people forever disclaim all right and title to unappropriated public lands lying within boundaries of proposed state, public lands are not subject to state's power of eminent domain either directly or indirectly, without consent of United States. Utah Power & Light Co. v. United States, 230 F. 328, 337, 4 A. L. R. 535.

3. Adverse possession.
Land granted to State of Utah by Act of Congress, commonly known as the Enabling Act, for support of common schools could not be acquired by defendant by adverse possession, although state had sold land in controversy to plaintiff. Van Wagoner v. Whitmore, 58 U. 418, 199 P. 670.

ARTICLE XXI

SALARIES

Section 1. [Public officers to be paid salaries. Exceptions.]

All State, district, city, county, town and school officers, excepting notaries public, boards of arbitration, court commissioners, justices of the peace and constables, shall be paid fixed and definite salaries: Provided, That city justices may be paid by salary when so determined by the mayor and council of such cities.

1. Construction, scope, and operation of section in general.

This section, and section immediately following, limit compensation to be paid county clerks to such sums as legislature shall provide by law. State ex rel. Richards v. Stanton, 14 U. 180, 46 P. 1109.

Section recognizes office of city justice of peace. Hulaniski v. Ogden City, 20 U. 233, 57 P. 876.

Under former statutes, held that salary of city justice of peace could not be reduced during his term of office. Hulaniski v. Ogden City, 20 U. 233, 57 P. 876.

Public officer held entitled to salary for portion of term of office, notwithstanding he did not personally assume charge of office and discharge duties thereof, and officer de facto in possession of office was paid salary. Tanner v. Edwards, 31 U. 80, 86 P. 765.

District court clerk is entitled to fees collected by him in naturalization proceedings provided by Act of Congress, and he need not account to county, since neither duties which are imposed nor services rendered are part of county office. Eldredge v. Salt Lake County, 37 U. 188, 106 P. 939.

This section should be read and construed in connection with Const. Art. VI, § 26; and when so read and construed, it does not prohibit the legislature from establishing and regulating the compensation and fees of justices of the peace and other county officers. Martineau v. Crabbe, 46 U. 327, 150 P. 301.

County commissioners have no right to increase salaries of county officers during their term of office. Cronquist v. Mathews, 53 U. 582, 174 P. 621.

A. L. R. notes.

See notes appended to Art. VII, § 20, relative to increase or decrease of compensation of public officer during term.

Per diem compensation, 1 A. L. R. 276.

Sec. 2. [Legislature to provide fees. Accounting.]

The Legislature shall provide by law, the fees which shall be collected by all officers within the State. Notaries public, boards of arbitration, court commissioners, justices of the peace, and constables paid by fees, shall accept said fees as their full compensation. But all other State, district, county, city, town and school officers, shall be required by law to keep a true and correct account of all fees collected by them, and to pay the same into the proper treasury, and the officer whose duty it is to collect such fees shall be held responsible under his bond for the same.

Cross-references.

Statutory provision as to accounting for fees, 28–7–1.

1. Construction, scope, and operation of section in general.

This section, and section immediately preceding, limit compensation to be paid county clerks to such sums as legislature shall provide by law. State ex rel. Richards v. Stanton, 14 U. 180, 46 P. 1109.

This section should be construed in connection with Const. Art. VI, § 2, in determining right of legislature to regulate compensation of justices of the peace. Martineau v. Crabbe, 46 U. 327, 150 P. 301.

ARTICLE XXII

MISCELLANEOUS

Section 1. [Homestead exemption.]

The Legislature shall provide by law, for the selection by each head of a family, an exemption of a homestead, which may consist of one or more parcels of lands, together with the appurtenances and improvements thereon of the value of at least fifteen hundred dollars, from sale on execution.

Cross-references.
Statutory provisions, 38–0.

1. In general.

Former statute, which provided that homestead was subject to execution on debts secured by mechanics' liens, etc., was invalid, in view of this section. Volker-Scowcroft Lumber Co. v. Vance, 32 U. 74, 88 P. 896, 125 Am. St. Rep. 828.

Under and in pursuance of this section, Title 38 was passed. Giesy-Walker Co. v. Briggs, 49 U. 205, 216, 162 P. 876.

When Constitution has exempted homestead from execution sales without exceptions of any kind, neither legislature nor courts have power to subject it to any such sale. Utah Builders' Supply Co. v. Gardner, 86 U. 257, 42 P.2d 989, 103 A. L. R. 932, denying rehearing 86 U. 250, 39 P.2d 327, 103 A. L. R. 928.

At common law, there was no homestead right. Zuniga v. Evans, 87 U. 198, 48 P.2d 513, 101 A. L. R. 532.

This section is mandatory. McMurdie v. Chugg, 99 U. 403, 107 P.2d 163, 132 A. L. R. 435. (Larson, J., dissenting.)

A. L. R. notes.

Action for breach of contract to convey homestead signed by only one spouse, 4 A. L. R. 1272, 16 A. L. R. 1036.

Alienation or encumbrance of homestead without joinder or consent of wife, validity, 45 A. L. R. 395.

Attachment lien, creation of homestead right in real estate as affecting, 110 A. L. R. 904.

Different tracts or parcels, inclusion in homestead, 73 A. L. R. 116.

Divorce as affecting homestead, 97 A. L. R. 1095.

Estate or interest to which homestead right may attach, 89 A. L. R. 511.

Exchange of property for homestead, exemption rights, 83 A. L. R. 54.

Fraudulent use of another's money in purchase or improvement of homestead, 43 A. L. R. 1446, 47 A. L. R. 371, 48 A. L. R. 1269.

Head of family failing to claim homestead exemption, rights of other members of family, 33 A. L. R. 611.

Imprisonment as affecting abandonment of homestead, 5 A. L. R. 259.

Insurance on homestead, exemption of proceeds, 63 A. L. R. 1296, 65 A. L. R. 1209.

Judgment lien, creation of homestead right in real estate as affecting, 110 A. L. R. 883.

Mechanics' liens, homestead as subject to, 65 A. L. R. 1192.

Necessity of privy examination of wife acknowledging homestead conveyance, 1 A. L. R. 1089.

Obligation of existing contracts as impaired by debtor's exemption statutes, 93 A. L. R. 177.

Previous mortgage, trust deed, or purchase money or vendor's lien, creation of homestead right in real estate as affecting, 123 A. L. R. 427.

Proceeds of voluntary sale of homestead, exemption of, 1 A. L. R. 483, 46 A. L. R. 814.

Reconveyance or encumbrance of homestead by husband without joinder of wife to settle purchase money debt, validity, 45 A. L. R. 413, 422.

Statutes abolishing homestead exemption as against particular classes of claims, validity, 6 A. L. R. 1143.

Wife living out of state, homestead rights, 92 A. L. R. 1054.

Wife's absence enforced by act of husband as causing loss of homestead rights, 42 A. L. R. 1162.

Sec. 2. [Property rights of married women.]

Real and personal estate of every female, acquired before marriage, and all property to which she may afterwards become entitled by purchase, gift, grant, inheritance or devise, shall be and remain the estate

and property of such female, and shall not be liable for the debts, obligations or engagements of her husband, and may be conveyed, devised or bequeathed by her as if she were unmarried.

Cross-references.
Statutory provisions, 40–2.

1. In general.
By constitutional provisions and statutory enactments, common-law disabilities of married women have been abrogated, and married women are in all respects, with reference to their separate property and power to contract, on same footing as other persons. Williams v. Peterson, 86 U. 526, 46 P.2d 674.

This provision, eliminating common-law incapacity, does not confer rights upon wife different from those of husband, and does not invalidate statute giving husband homestead in property of deceased wife. In re Petersen's Estate, 97 U. 324, 93 P.2d 445.

Sec. 3. (Repealed November 7, 1933, effective January 1, 1934.)

ARTICLE XXIII

[AMENDMENT AND REVISION]

Section 1. [Amendments: proposal, election.]

Art. 23, sec. 1 Ref. to S.L. '43 S.J.R. 2 Sec. 3, p. 190

Art. 23, sec. 1 ref. to S.L. '46 (1st S.S.) c. 1 sec. 3 p. 2; H.J.R. 1 sec. 2 p. 5; H.J.R. 2 sec. 2 p. 7; S.J.R. 4 sec. 2 p. 8

Art. 23, sec. 1 ref. to S.L. '47 S.J.R. 5 sec. 2 p. 484

Any amendment or amendments to this Constitution may be proposed in either house of the Legislature, and if two-thirds of all the members elected to each of the two houses, shall vote in favor thereof, such proposed amendment or amendments shall be entered on their respective journals with the yeas and nays taken thereon; and the Legislature shall cause the same to be published in at least one newspaper in every county of the State, where a newspaper is published, for two months immediately preceding the next general election, at which time the said amendment or amendments shall be submitted to the electors of the State, for their approval or rejection, and if a majority of the electors voting thereon shall approve the same, such amendment or amendments shall become part of this Constitution. If two or more amendments are proposed, they shall be so submitted as to enable the electors to vote on each of them separately.

1. Construction, scope, and operation of section in general.
It is not necessary to enter in full proposed constitutional amendment upon journals, and the requirement of this provision is sufficiently complied with by an entry on journals of an identifying reference. Lee v. Price, 54 U. 474, 181 P. 948.

Constitution can be amended only in manner provided herein; not through initiative and referendum laws or by initiative method. White v. Welling, 89 U. 335, 345, 57 P.2d 703.

2. Construction of amendments.
Clause in an amendment will prevail over provision of original instrument inconsistent with it, but the amendment should not be construed as affecting any greater innovation of the existing Constitution than is reasonably necessary to accomplish the purposes of its adoption. Wadsworth v. Santaquin City, 83 U. 321, 28 P.2d 161.

A. L. R. notes.
Implied repeal of existing law by constitutional amendment, 36 A. L. R. 1456; construction of requirement that proposed constitutional amendment be entered in journal, 6 A. L. R. 1227, 41 A. L. R. 640; right to enjoin submission of constitutional amendment or statute to voters on ground that proposed amendment or statute would be unconstitutional, 94 A. L. R. 811; proposition submitted as covering more than one amendment, 94 A. L. R. 1510.

Sec. 2. [Revision of the constitution.]

Whenever two-thirds of the members, elected to each branch of the Legislature, shall deem it necessary to call a convention to revise or amend this Constitution, they shall recommend to the electors to vote, at the next general election, for or against a convention, and, if a majority of all the electors, voting at such election, shall vote for a convention, the Legislature, at its next session, shall provide by law for calling the same. The convention shall consist of not less than the number of members in both branches of the Legislature.

Sec. 3. [Id. Submission to electors.]

No Constitution, or amendments adopted by such convention, shall have validity until submitted to, and adopted by, a majority of the electors of the State voting at the next general election.

Cross-references.

Statutory provision relating to mode of submission, 25–3–54.

A. L. R. notes.

Basis for computing majority essential to the adoption of a constitutional or other special proposition submitted to voters, 131 A. L. R. 1382; right to enjoin submission of constitutional amendment or statute to voters on ground that proposed amendment or statute would be unconstitutional, 94 A. L. R. 811.

ARTICLE XXIV

SCHEDULE

Section 1. [Actions, contracts, etc., to continue.]

In order that no inconvenience may arise, by reason of the change from a Territorial to a State Government, it is hereby declared that all writs, actions, prosecutions, judgments, claims and contracts, as well of individuals as of bodies corporate, both public and private, shall continue as if no change had taken place; and all process which may issue, under the authority of the Territory of Utah, previous to its admission into the Union, shall be as valid as if issued in the name of the State of Utah.

Sec. 2. [Territorial laws continued.]

All laws of the Territory of Utah now in force, not repugnant to this Constitution, shall remain in force until they expire by their own limitations, or are altered or repealed by the Legislature. The act of the Governor and Legislative Assembly of the Territory of Utah, entitled, "An Act to punish polygamy and other kindred offenses," approved February 4th, A. D. 1892, in so far as the same defines and imposes penalties for polygamy, is hereby declared to be in force in the State of Utah.

1. Construction, scope, and operation of section in general.

First sentence of section was, in effect, permissible adoption by state of laws of territory. State ex rel. Bishop v. McNally, 13 U. 25, 43 P. 920.

This section continued in force under state such territorial laws as were not repugnant to Constitution, and thereby made them state laws and gave them same effect they would have had if they had been enacted by legislature of state. Whipple v. Henderson, 13 U. 484, 45 P. 274; State ex rel. Weber v. Beardsley, 13 U. 502, 45 P. 569; Jungk v. Holbrook, 15 U. 198, 49 P. 305, 62 Am. St. Rep. 921.

Laws of territory controlled right of appeal to supreme court from judgment of territorial district court on appeal

from judgment of justice of peace, even though appeal to supreme court was not perfected until after statehood. Hodson v. Union Pac. Ry. Co., 14 U. 381, 46 P. 270.

Where action for personal injuries was tried, judgment for plaintiff was entered, notice of defendant's intention to move for new trial was served, statement on defendant's motion for new trial and appeal was settled, and motion was overruled before territory became state, held that territorial statutes applicable to case continued in force on defendant's appeal, decision in which was rendered after statehood, and hence that supreme court of state, on such appeal, might examine evidence to ascertain whether verdict and judgment, which was for amount less than that of verdict, were in excess of what, in justice, plaintiff was entitled to recover, and then reverse, affirm, or modify judgment, or direct proper judgment to be entered. Wright v. Southern Pac. Co., 14 U. 383, 46 P. 374.

This section continued in force territorial act entitled "act to establish uniform system of county government." Pleasant Valley Coal Co. v. Board of Com'rs of Salt Lake County, 15 U. 97, 48 P. 1032. (Zane, C. J., dissenting.)

So much of territorial law of 1892 as made adultery criminal offense continued in force after statehood. State v. Norman, 16 U. 457, 52 P. 986. (Zane, C. J., dissenting.)

So much of territorial law of 1892 as made fornication criminal offense continued in force after statehood. State v. Pierpont, 16 U. 476, 52 P. 992. (Zane, C. J., dissenting, per notation under syllabus in official report.)

Territorial statute, creating office of city justice of peace, was continued in force by this section. Hulaniski v. Ogden City, 20 U. 233, 57 P. 876.

Territorial statute, giving defendant in criminal case right to appeal from after-judgment order, affecting his substantial rights, continued in force after statehood. State v. Morgan, 23 U. 212, 64 P. 356.

Right of dower created by Act of Congress in 1887, re-affirmed by state legislature in 1896, continued until it was abolished by Revised Statutes of 1898. Hilton v. Thatcher, 31 U. 360, 88 P. 20.

This has been applied to laws providing for the period of a corporation's existence, and for the amendment of its articles of incorporation. Keetch v. Cordner, 90 U. 423, 427, 62 P.2d 273, 108 A. L. R. 52.

Sec. 3. [Prisoners to be held.]

Any person, who, at the time of the admission of the State into the Union, may be confined under lawful commitment, or otherwise lawfully held to answer for alleged violation of any of the criminal laws of the Territory of Utah, shall continue to be so held or confined, until discharged therefrom by the proper courts of the State.

Sec. 4. [Fines, etc., due the territory. Debts of the territory.]

All fines, penalties and forfeitures accruing to the Territory of Utah, or to the people of the United States in the Territory of Utah, shall inure to this State, and all debts, liabilities and obligations of said Territory shall be valid against the State, and enforced as may be provided by law.

Sec. 5. [Recognizances. Judgments. Records. Fines due counties, etc.]

All recognizances heretofore taken, or which may be taken before the change from a Territorial to a State Government, shall remain valid, and shall pass to and be prosecuted in the name of the State; and all bonds executed to the Governor of the Territory, or to any other officer or court in his or their official capacity, or to any official board for the benefit of the Territory of Utah, or the people thereof, shall pass to the Governor or other officer, court or board, and his or their successors in office, for the uses therein, respectively expressed, and may be sued on, and recovery had accordingly. Assessed taxes, and all revenue, prop-

erty, real, personal or mixed, and all judgments, bonds, specialties, choses in action, claims and debts, of whatsoever description; and all records and public archives of the Territory of Utah, shall issue and vest in the State of Utah, and may be sued for and recovered, in the same manner, and to the same extent by the State of Utah, as the same could have been by the Territory of Utah; and all fines, taxes, penalties and forfeitures, due or owing to any county, municipality or school district therein, at the time the State shall be admitted into the Union, are hereby respectively assigned and transferred, and the same shall be payable to the county, municipality or school district, as the case may be, and payment thereof be enforced under the laws of the State.

Sec. 6. [Criminal prosecutions begun and crimes committed before statehood.]

All criminal prosecutions, and penal actions, which may have arisen, or which may arise before the change from a Territorial to a State Government, and which shall then be pending, shall be prosecuted to judgment and execution in the name of the State, and in the court having jurisdiction thereof. All offenses committed against the laws of the Territory of Utah, before the change from a Territorial to a State Government, and which shall not have been prosecuted before such change, may be prosecuted in the name, and by authority of the State of Utah, with like effect as though such change had not taken place, and all penalties incurred shall remain the same, as if this Constitution had not been adopted.

Sec. 7. [Transfer of causes, records, etc.]

All actions, cases, proceedings and matters, pending in the Supreme and District Courts of the Territory of Utah, at the time the State shall be admitted into the Union, and all files, records and indictments relating thereto, except as otherwise provided herein, shall be appropriately transferred to the Supreme and District Courts of the State respectively; and thereafter all such actions, matters and cases, shall be proceeded with in the proper State courts. All actions, cases, proceedings and matters which shall be pending in the District Courts of the Territory of Utah, at the time of the admission of the State into the Union, whereof the United States Circuit or District Courts might have had jurisdiction had there been a State Government at the time of the commencement thereof respectively, shall be transferred to the proper United States Circuit and District Courts respectively; and all files, records, indictments and proceedings relating thereto, shall be transferred to said United States Courts: Provided, That no civil actions, other than causes and proceedings of which the said United States' Courts shall have exclusive jurisdiction, shall be transferred to either of said United States' Courts except upon motion or petition by one of the parties thereto, made under and in accordance with the act or acts of Congress of the United States, and such motion and petition not being made, all such cases shall be proceeded with in the proper State Courts.

Cross-references.
Enabling Act provision, Enabling Act, § 17.

1. Construction, scope, and operation of section in general.
First sentence in this section contemplated transfer of cases, proceedings, and matters pending, and not transfer of cases closed, records of which remained in counties in which they had been made up. Benson v. Anderson, 14 U. 334, 47 P. 142.

Appeals could be taken from district courts of Territory of Utah, when decisions of such courts were rendered in cases appealed from justices' courts, even when such appeals were perfected after statehood; in such cases, laws of territory regulating appeals controlled, and not Article VIII of section 9 of Constitution. Hodson v. Union Pac. R. Co., 14 U. 381, 46 P. 270.

Case in which judgment was rendered in first district court of Territory of Utah, in and for County of Utah, was removed to "fourth judicial district for County of Utah"; and order of fourth district court made March 3, 1896, transferring cause to seventh judicial district court for Sanpete County, was unauthorized, and did not deprive fourth district court of its jurisdiction over case, and action to revive judgment was properly brought in fourth district court for Utah County. Davidson v. Hunter, 22 U. 117, 61 P. 556.

Sec. 8. [Seals of courts.]

Upon a change from Territorial to State Government, the seal in use by the Supreme Court of the Territory of Utah, until otherwise provided by law, shall pass to and become the Seal of the Supreme Court of the State, and the several District Courts of the State may adopt seals for their respective courts, until otherwise provided by law.

Sec. 9. [Transfer of probate causes to district courts.]

When the State is admitted into the Union, and the District Courts in the respective districts are organized, the books, records, papers and proceedings of the probate court in each county, and all causes and matters of administration pending therein, upon the expiration of the term of office of the Probate Judge, on the second Monday in January, 1896, shall pass into the jurisdiction and possession of the District Court, which shall proceed to final judgment or decree, order or other determination in the several matters and causes, as the Territorial Probate Court might have done, if this Constitution had not been adopted. And until the expiration of the term of office of the Probate Judges, such Probate Judges shall perform the duties now imposed upon them by the laws of the Territory. The District Courts shall have appellate and revisory jurisdiction over the decisions of the Probate Courts as now provided by law, until such latter courts expire by limitation.

1. Abolition of probate courts.
Provision of this section, "And until expiration of term of office of probate judges, such probate judges shall perform duties now imposed upon them by laws of territory," must be interpreted by other provisions of section, and by those of sections 1 and 7 of Article VIII of Constitution in which intent to abolish probate courts is clearly shown. State ex rel. Bishop v. McNally, 13 U. 25, 43 P. 920.

Sec. 10. [Officers to hold office until superseded.]

All officers, civil and military, now holding their offices and appointments in this Territory by authority of law, shall continue to hold and exercise their respective offices and appointments, until superseded under this Constitution: Provided, That the provisions of this section shall be subject to the provisions of the Act of Congress, providing for the

admission of the State of Utah, approved by the President of the United States on July 16th, 1894.

1. Construction, scope, and operation of section in general.

Term of office of territorial probate judges continued under state government only until second Monday in January, 1896, and no longer. State ex rel. Bishop v. McNally, 13 U. 25, 43 P. 920.

This section filled, for purposes of government of state, such offices, defined by such laws of territory as were adopted by Constitution (Const. Art. XXIV, § 2), with persons who had been offices' incumbents under government of territory. State ex rel. Bishop v. McNally, 13 U. 25, 43 P. 920; State ex rel. Weber v. Beardsley, 13 U. 502, 45 P. 569.

Framers of Constitution, in adopting territorial laws (Const. Art. XXIV, § 2), intended to continue offices described in them with limitations fixed therein on terms of offices' incumbents. State ex rel. Weber v. Beardsley, 13 U. 502, 45 P. 569.

Sec. 11. [Election for adoption or rejection of constitution and for state officers. Voters.]

The election for the adoption or rejection of this Constitution, and for State Officers herein provided for, shall be held on the Tuesday next after the first Monday in November, 1895, and shall be conducted according to the laws of the Territory, and the provisions of the Enabling Act; the votes cast at said election shall be canvassed, and returns made, in the same manner as was provided for in the election for delegates to the Constitutional Convention.

Provided, That all male citizens of the United States, over the age of twenty-one years, who have resided in this Territory for one year next prior to such election, are hereby authorized to vote for or against the adoption of this Constitution, and for the State Officers herein provided for. The returns of said election shall be made to the Utah Commission, who shall cause the same to be canvassed, and shall certify the result of the vote for or against the Constitution, to the President of the United States, in the manner required by the Enabling Act; and said Commission shall issue certificates of election to the persons elected to said offices severally, and shall make and file with the Secretary of the Territory, an abstract, certified to by them, of the number of votes cast for each person for each of said offices, and of the total number of votes cast in each county.

Cross-references.

Provisions for election and convention in Enabling Act, Enabling Act, § 2 et seq.

1. Women's ineligibility to vote on adoption of Constitution, and for original state officers.

Women were without right to vote either on question of ratification or rejection of Constitution, or for original state officers. Anderson v. Tyree, 12 U. 129, 42 P. 201. (King, J., dissenting.)

Sec. 12. [Id. Officers to be elected.]

The State Officers to be voted for at the time of the adoption of this Constitution, shall be a Governor, Secretary of State, State Auditor, State Treasurer, Attorney-General, Superintendent of Public Instruction, Members of the Senate and House of Representatives, three Supreme Judges, nine District Judges, and a Representative to Congress.

1. **Women's ineligibility to vote.**
Women were without right to vote for original state officers. Anderson v. Tyree, 12 U. 129, 42 P. 201. (King, J., dissenting.)

Sec. 13. [Contest for district judgeship, how determined.]

In case of a contest of election between candidates, at the first general election under this Constitution, for Judges of the District Courts, the evidence shall be taken in the manner prescribed by the Territorial laws, and the testimony so taken shall be certified to the Secretary of State, and said officer, together with the Governor and the Treasurer of the State, shall review the evidence, and determine who is entitled to the certificate of election.

Sec. 14. [Constitution to be submitted to voters. Ballot.]

This Constitution shall be submitted for adoption or rejection, to a vote of the qualified electors of the proposed State, at the general election to be held on the Tuesday next after the first Monday in November, A. D. 1895. At the said election the ballot shall be in the following form:

For the Constitution. Yes. No.

As a heading to each of said ballots there shall be printed on each ballot the following Instructions to Voters:

All persons desiring to vote for the Constitution must erase the word "No."

All persons desiring to vote against the Constitution must erase the word "Yes."

1. **Women's ineligibility to vote.**
Women were without right to vote on question of ratification or rejection of Constitution. Anderson v. Tyree, 12 U. 129, 42 P. 201. (King, J., dissenting.)

Sec. 15. [Election of officers not provided for herein.]

The Legislature, at its first session, shall provide for the election of all officers, whose election is not provided for elsewhere in this Constitution, and fix the time for the commencement and duration of their terms.

Sec. 16. [When constitution in force.]

The provisions of this Constitution shall be in force from the day on which the President of the United States shall issue his proclamation, declaring the State of Utah admitted into the Union; and the terms of all officers elected at the first election under the provisions of this Constitution, shall commence on the first Monday, next succeeding the issue of said proclamation. Their terms of office shall expire when their successors are elected and qualified under this Constitution.

Done in Convention at Salt Lake City, in the Territory of Utah, this eighth day of May, in the year of our Lord one thousand eight hundred

and ninety-five, and of the Independence of the United States the one hundred and nineteenth.

Attest:

JOHN HENRY SMITH, *President.*

PARLEY P. CHRISTENSEN, *Secretary.*
LOUIS BERNHARDT ADAMS.
RUFUS ALBERN ALLEN.
ANDREW SMITH ANDERSON.
JOHN RICHARD BARNES.
JOHN RUTLEDGE BOWDLE.
JOHN SELL BOYER.
THEODORE BRANDLEY.
HERBERT GUION BUTTON.
WILLIAM BUYS.
CHESTER CALL.
GEORGE MOUSLEY CANNON.
JOHN FOY CHIDESTER.
PARLEY CHRISTIANSEN.
THOMAS H. CLARK, JR.
LOUIS LAVILLE CORAY.
ELMER ELLSWORTH CORFMAN.
CHARLES CRANE.
WILLIAM CREER.
GEORGE CUNNINGHAM.
ARTHUR JOHN CUSHING.
WILLIAM DRIVER.
DENNIS CLAY EICHNOR.
ALMA ELDREDGE.
GEORGE RHODES EMERY.
ANDREAS ENGBERG.
DAVID EVANS.
ABEL JOHN EVANS.
LORIN FARR.
SAMUEL FRANCIS.
WILLIAM HENRY GIBBS.
CHARLES CARROLL GOODWIN.
JAMES FREDERIC GREEN.
FRANCIS ASBURY HAMMOND.
CHARLES HENRY HART.
HARRY HAYNES.
JOHN DANIEL HOLLADAY.
SAMUEL HOOD HILL.
WILLIAM HOWARD.
HENRY HUGHES.
JOSEPH ALONZO HYDE.
ANTHONY WOODWARD IVINS.
WM. F. JAMES.
LYCURGUS JOHNSON.
JOSEPH LOFTUS JOLEY.
FREDERICK JOHN KEISEL.
DAVID KEITH.
THOMAS KEARNS.
WILLIAM JASPER KERR.
ANDREW KIMBALL.
JAMES NATHANIEL KIMBALL.
RICHARD G. LAMBERT.
LAURITZ LARSEN.
CHRISTEN PETER LARSEN.
HYRUM LEMMON.
THEODORE BELDEN LEWIS.
WILLIAM LOWE.
PETER LOWE.
JAMES PATON LOW.
ANTHONY CANUTE LUND.
KARL G. MAESER.
RICHARD MACKINTOSH.
THOMAS MALONEY.
WILLIAM H. MAUGHAN.
ROBERT McFARLAND.
GEORGE PARCUST MILLER.
ELIAS MORRIS.
JACOB MORITZ.
JOHN RIGGS MURDOCK.
JOSEPH ROYAL MURDOCK.
JAMES DAVID MURDOCK.
AQUILA NEBEKER.
JEREMIAH DAY PAGE.
EDWARD PARTRIDGE.
MONS PETERSON.
JAMES CHRISTIAN PETERSON.
FRANK PIERCE.
JOHN DAVID PETERS.
WM. B. PRESTON.
ALONZO HAZELTON RALEIGH.
FRANKLYN SNYDER RICHARDS.
JOEL RICKS.

BRIGHAM HENRY ROBERTS.
JASPER ROBERTSON.
JOSEPH ELDREDGE ROBINSON.
WILLIS EUGENE ROBISON.
GEORGE RYAN.
JOHN HENRY SMITH.
GEORGE B. SQUIRES.
HARRISON TUTTLE SHURTLIFF.
EDWARD HUNTER SNOW.
HIRAM HUPP SPENCER.
DAVID BRAINERD STOVER.
CHARLES NETTLETON STREVELL.
CHARLES WILLIAM SYMONS.
MOSES THATCHER.
DANIEL THOMPSON.
INGWALD CONRAD THORESEN.
JOSEPH EPHRAIM THORNE.
SAMUEL R. THURMAN.
WILLIAM GRANT VAN HORNE.
CHARLES STETSON VARIAN.
HEBER M. WELLS.
NOBLE WARRUM, JR.
ORSON FERGUSON WHITNEY.
JOSEPH JOHN WILLIAMS.

By order of the Convention, May 8th, 1895.
JOHN HENRY SMITH,* *President.*

*The Constitution was adopted Nov. 5, 1895, by a vote of 31,305 to 7,607. The proclamation of the President of the United States announcing the result of such election and admitting the State to the Union was issued Jan. 4, 1896. The inauguration of State officers took place Jan. 6, 1896.

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