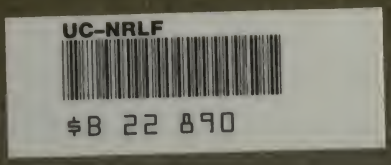

Constitutional Limitations

UPON

SPECIAL Legislation

Concerning Municipalities

William Backus Guitteau

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WILLIAM BACKUS GUITTEAU

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CHAPTER I.

Special Legislation—Its Origin, Growth and Evils.

I.—ORIGIN OF SPECIAL LEGISLATION.

Special legislation for our cities is in part an inheritance from England, where for many years legislative authority has been highly centralized.[1] This centralization results in part from the fact that the British Parliament has usually been very tenacious of its authority, and has consequently circumscribed local divisions within narrow limits, to be exceeded only by its own permission, granted in special acts. From early times the theory has prevailed that, so far as public powers are concerned, municipal corporations are merely the delegates of Parliament, which is the ultimate source of all governmental power.

Hence it has naturally followed that the powers granted by Parliament to municipalities have been carefully limited and minutely specified. English legislation has never attempted merely to announce principles, leaving their application to some administrative official or local body; on the contrary it endeavors to foresee all possible contingencies, and, by leaving little room for the exercise of discretion on the part of governmental officers or agencies, seeks to remove all excuse for arbitrary action.[2] The English Municipal Code contains no such broad grant of power as is conferred by section 61 of the French Code of 1884, which declares: "The municipal council regulates by its deliberations the affairs of the commune." Thus the English cities, unlike those of continental Europe, are and have always been authorities of enumerated, rather than of general, powers, and special legislation has consequently been necessary in order to meet new municipal needs.[3]

Thus America received from England the conception of the city as a corporate entity, created by the state for the better government of certain

1. Freund, American Administrative Law, Pol. Sci. Quar. IX, 403, 409.
2. Arminjon, L'Administration Locale de L'Angleterre, 253.
3. De Franqueville, Le Parlement et le Gouvernement Brittaniques, III, 206-7. Concerning this point the author says: "Thus local authorities are obliged to have recourse to the legislature just as soon as they wish to act outside of the comparatively narrow sphere of their ordinary powers. . . . Much is said, and with reason, of the system of decentralization which leaves to local authority so much freedom of action; but it is too often forgotten that there is a central control, that is, the power which is reserved to the Legislature. A mayor is independent of the executive power to a very large degree, but neither he nor his municipal council can authorize a company to open a street of the city to put their gas or water pipes there. The Metropolitan Board of Public Works of London could not place upon a pedestal an Egyptian obelisk which was offered to it, nor bind itself to maintain this monument without obtaining a private bill; and when it asked for authorization to accept in the future gifts of this character, and the power to maintain them, Parliament absolutely refused its permission."

localities, and possessing no inherent legislative power. Furthermore, in passing upon the question of municipal powers, American courts have accepted the rule of the English common law that grants of municipal power (like all grants of corporate powers), are to be construed strictly, doubtful questions of authority being resolved against the municipality. According to the highest authority[1] on this subject, "a municipal corporation possesses and can exercise the following powers, and no others: First, those granted in express words; second, those necessarily or fairly implied in or incident to the powers expressly granted; third, those essential to the declared objects and purposes of the corporation—not simply convenient, but indispensable. Any fair, reasonable doubt concerning the existence of power is resolved by the courts against the corporation, and the power is denied."[2]

Hence as a result of the legislative unwillingness to grant large powers to cities, and of the legal doctrine of strict construction of municipal powers, it has been necessary for cities, in order to meet new municipal needs caused by municipal growth and development, to apply to the legislature at nearly every session for special acts, granting additional powers.

Especially have the cities been obliged to make frequent application for additional financial powers. Taxation and loans are the two chief sources of municipal revenue; and, as to the first of these, it is the settled rule of the common law that without special authorization, no municipal corporation may levy any tax.[3] As to the second source, while it is conceded that municipal corporations may, without special authorization, incur indebtedness to be paid out of current revenues, it is held by the weight of authority that without legislative warrant they do not possess the power to borrow money or issue bonds as evidences of indebtedness, since such a loan is in reality a tax, and therefore requires prior legislative authorization.[4]

Thus in order to enlarge either of these two chief sources of income, cities must, as a rule, apply to the legislature for authority. While the legislatures have been unwilling to grant large discretionary powers to the cities in this respect, they have usually been prodigal in passing special acts granting cities the desired financial powers.[5] Ohio furnishes a good illustration of this legislative policy. The "Act to provide for the organization of Cities and Incorporated Villages," passed May 3rd, 1852,[6] was a general act for the government of Ohio cities, passed in pursuance of constitutional provisions prohibiting special legislation for municipalities.[7] Twenty-two sections of this act were

1. Dillon, Municipal Corporations, 3d ed., I, 115.
2. Smith *v.* Newbern, 70 North Car. 14; s. c., 16 Am. R. 766; Cook County *v.* McCrea, 93 Ill. 236. *Contra,* City of Crawfordsville *v.* Braden, 130 Ind. 149, s. c., 30 Am. R. 214: a recent case which is a departure from the rule of enumerated powers and strict construction.
3. Cooley, Taxation, 2nd ed., 329, and cases cited.
4. Nashville *v.* Ray, 19 Wallace 468; City of Brenham *v.* German American Bank, 144 U. S. 173.
5. So prodigal, indeed, that many state constitutions now contain important limitations upon the power of the legislature in this respect. The legislative policy has scarcely justified the view that central legislative control of the financial powers of cities is necessary in the interests of the state as a whole, as a bulwark against municipal extravagance. See the act of the Ohio legislature of May 4, 1869 (66 Ohio laws 80), authorizing the city council of Cincinnati to borrow twenty million dollars to establish and maintain a railroad.
6. 50 Ohio Laws, 223-259.
7. Constitution of Ohio, Art. II, Sec. 26; Art. XIII, Sec. 1, 6.

devoted to a minute specification of the powers of cities. The power of taxation and local assessment was narrowly limited, while the power to borrow money was not granted at all (except in anticipation of the revenue of the current fiscal year). Having been disinclined to grant adequate financial powers to all cities by the act of 1852, the legislature, during the years that followed, found itself obliged to pass many special acts conferring additional financial powers, the constitutional prohibition of special legislation to the contrary notwithstanding. Thus from 1876 to 1892, both inclusive, the Ohio legislature passed a total of 1202 special and local acts affecting municipal corporations,[1] and of these, 1124, or 93½% conferred financial powers. Ohio's experience seems to show clearly that special legislation for cities is unavoidable so long as the legislature is unwilling to entrust the cities with large powers, especially with adequate financial powers.

It is true that in the earlier history of American municipalities, comparatively large powers were granted by the state to city councils, but an increasing distrust of the latter bodies led to a gradual withdrawal of the powers which they formerly possessed. At the present time not only have most councils lost their former power of organizing and appointing the official service of the city—a change which could be accounted for, at least in part, by the democratic movement which characterized the second quarter of the nineteenth century—but many of their earlier legislative and financial powers have likewise disappeared. The powers thus forfeited by council have inured to the benefit of the state legislature; for in the absence of a system of central administrative control, when council control was discredited, central legislative control became inevitable.

II.—EVILS OF SPECIAL LEGISLATION.

The evils of special legislation are numerous, and have been repeatedly and forcibly presented.[2] One of the chief objections to such legislation is the lack of adequate knowledge on the part of members of the state legislature of the needs of the particular locality for which the special law is designed. The result of this ignorance is that the great majority of legislators manifest little legitimate interest in municipal legislation, and such legislation is often passed perfunctorily upon the recommendation of the members from the particular locality. Thus legislative duty is delegated to local representatives who frequently act in combination with the sinister elements in their constituencies. But this power for evil carries with it no corresponding degree of responsibility, since the local members are usually able to shift upon the legislature responsibility for improper measures. From this condition of affairs log-rolling naturally results—the delegation from one city supporting legislation brought forward by another local delegation, in return for similar support to be given in time of need.

Moreover, even the most formal consideration of innumerable local bills will of necessity detract greatly from the time and attention needed for

1. Wilcox, Municipal Government in Michigan and Ohio, 79; *infra*, p. 30.
2. Dillon, Municipal Corporations, 3rd ed., I, 59; Bryce, American Commonwealth. I, 641; 40 N. J. L., 1; 18 Albany Law J., 407; Debates and Proceedings of the Ohio State Convention (1850), I, 306, 309; Proceedings and Debates of the Third Constitutional Convention of Ohio (1873-74), I, 581, 594; II, part II, 1818; Debates Pennsylvania Constitutional Convention (1873), II, 589-622; V, 248-267; VII, 332-436.

general legislation. Where special municipal legislation is not prohibited, the legislature is usually obliged to pass upon a multitude of special measures relating to local affairs. Thus in Wisconsin at the session of 1885, there were passed 500 acts relating to municipal affairs, filling 1342 pages of print, while all other acts of that year fill but 600 pages. Kentucky in 1890 passed 176 public and 1752 private acts. New York in 1870 passed 808 acts, 212 of which relate to cities and villages, and occupy over three-fourths of the 2,000 pages of the laws of that year. In the six years from 1884 to 1889, inclusive, New York passed 1284 acts relating to the thirty cities of that state. In one year, 1886, of the 681 acts on all subjects passed by the legislature, 280, or about forty per cent of the total number, were special acts concerning a particular city or village.

Furthermore, this multiplicity of special laws is itself an evil of serious magnitude, since it greatly impairs the value of judicial construction.[1] A decision in case of a special act affecting one city affords no safe precedent in the case of a different act affecting another city. The result is that even the most skilled lawyers are sometimes unable to declare what the law is on important municipal subjects.[2] On this point Chief Justice Church says: "It is scarcely safe for any one to speak confidently on the exact condition of the law in respect to public improvements in the cities of New York and Brooklyn. The enactments referring thereto have been modified, superseded and repealed so often and to such an extent that it is difficult to ascertain just what statutes are in force at any particular time. The uncertainties arising from such multiplied and conflicting legislation lead to incessant litigation with its expensive burdens, public and private."

Another of the serious evils of special legislation is the opportunity thereby afforded for ripper legislation.[3] On this point the New York commissioners of 1876 declared: "It may be true that the first attempts to secure legislative intervention in the local affairs of our principal cities were made by good citizens in the supposed interest of reform and good government, and to counteract the schemes of corrupt officials. The notion that legislative control was the proper remedy was a serious mistake. The corrupt cliques and rings thus sought to be baffled were quick to perceive that in the business of procuring special laws concerning local affairs they could easily outmatch the fitful and clumsy labors of disinterested citizens. The transfer of the control of the municipal resources from the localities to the (State) capitol had no other effect than to cause a like transfer of the methods and arts of corruption, and to make the fortunes of our principal cities the traffic of the lobbies. Municipal corruption, previously confined within territorial limits, thenceforth escaped all bounds and spread to every quarter of the State. Cities were compelled by legislation to buy lands for parks and places because the owners wished to sell them; compelled to grade, pave and sewer streets without inhabitants, and for no other purpose than to award corrupt contracts for the work. Cities were compelled to purchase, at the public expense, and at extravagant prices, the property necessary for streets and avenues, useless for any other purpose than to make a market for

1. Debates Ohio Convention (1850-51), I, 309.
2. Debates Ohio Convention (1873-74), I, 594.
3. Goodnow, Municipal Home Rule, 26-28.

the adjoining property thus improved. Laws were enacted abolishing one office and creating another with the same duties in order to transfer official emoluments from one man to another, and laws to change the functions of officers with a view only to a new distribution of patronage, and to lengthen the terms of offices for no other purpose than to retain in place officers who could not otherwise be elected or appointed."

Another evil resulting from the constant amendment of city charters has been to induce an undue reliance upon legislative mechanism as a remedy for political ills.[1] It has been suggested that the frequent changes in state constitutions constitute one reason why these instruments have not been as successful as the national constitution; and this reasoning applies with even greater force to city charters, amended as they frequently are at every legislative session. Thus it becomes impossible for any framework of municipal government to be fairly tested upon its merits; and furthermore, citizens become too prone to rely upon legislative enactment to remedy their own political heedlessness.

The last, and perhaps the most serious objection to special municipal legislation is, that it almost inevitably involves destruction of home rule and local autonomy. In controlling the affairs of cities, state legislatures have usually failed to distinguish between the public and private character of the municipal corporation. In its public or governmental character the municipal corporation represents the state, by which it is entrusted with the performance in a particular locality of certain public or governmental functions—such as certain police and taxing powers, the administration of justice and of the schools, control of elections and of the public health and the support of the poor. On the other hand, in its private or proprietary character the municipality is an organ for the satisfaction of local needs—such as the construction of sewers, paving, cleaning and lighting of streets, furnishing adequate water supply, administration of parks, regulation of municipal transportation—matters which interest the state only indirectly, but which are of vital local concern and should be left to local regulation. But the state legislatures, accustomed habitually to regulate municipal corporations upon their public side, have formed the habit of interfering upon their private side as well. Upon this point Professor Goodnow says: "Our legislatures have made use of their large powers over cities to regulate in detail all the actions of cities, thus reducing them to the position of mere agents of general state administration."[2]

Such interference in affairs purely local is legally, if not morally, permissable; for while from the standpoint of their contractual obligations and property rights, municipal corporations are in a quasi-private position, they are not free from legislative interference and control within this sphere.[3] That is to say, in their private character, municipalities are subject to the liabilities of individuals, but they do not enjoy the benefit of the constitutional protection afforded private rights.

As a result of this failure of the legislatures to grant municipalities a sphere of independent action in local matters, central control has largely

1. Debates Ohio Convention, 1873-74, I, 590-592; *idem*, II, part II, 1319.
2. Goodnow, Municipal Problems, 31.
3. Except by specific constitutional provision.

destroyed local autonomy. Thus state legislatures habitually interfere to control municipal parks, to regulate transportation within cities, to grant valuable municipal franchises, regulate the salaries of municipal officers, and to provide for the paving of certain streets and the construction of specific sewers. Laws have even been sustained compelling municipalities to pay debts which had been declared not legally binding,[1] as well as measures obliging them to incur debts against their will, and that too, for non-municipal purposes, such as the aiding of railroads.[2] Against this last evil the cities of some states are protected by constitutional provisions forbidding them to incur debts for any purpose beyond a certain amount, usually a percentage of the assessed value of the property within their limits, and prohibiting them from incurring any debts at all in aid of any private corporation.[3]

The result of this condition of affairs is well described in the report of the Fassett Committee:[4] "The situation then is as follows: That it is frequently impossible for the legislature, the municipal officers, or even for the courts, to tell what the laws mean; that it is usually impossible for the legislature to tell what the probable effect of any alleged reform in the laws is likely to be; that it is impossible for any one, either in private life or in public office, to tell what the exact business condition of any city is, and that municipal government is a mystery even to the experienced; that municipal officers have no certainty as to their tenure of office; that municipal officers can escape responsibility for their acts or failures by securing amendments to the law; that municipal officers can escape responsibility to the public on account of the unintelligibility of the laws, and the insufficient publicity of the facts relating to municipal government; that local authorities receive permission to increase the municipal debt for the performance of public work which should be paid for out of taxes; that the conflict of authority is sometimes so great as to result in a complete or partial paralysis of the service; that our cities have no real local autonomy; that local self-government is a misnomer; and that consequently so little interest is felt in matters of local business that in almost every city in the state it has fallen into the hands of professional politicians."

1. Lycoming *v.* Union, 15 Pa. St. 166; Hasbrouck *v.* Milwaukee, 21 Wis. 217; New Orleans *v.* Clark, 95 U. S. 644; People *v.* Lynch, 51 Cal. 15; People *v.* Supervisors, 70 N. Y. 228; Nevada *v.* Hampton, 13 Nev. 441.
2. See Perkins *v.* Slack, 86 Pa. St. 283; People *v.* Batchellor, 53 N. Y. 128; Duanesburgh *v.* Jenkins, 57 N. Y. 177; Cooley, Taxation, 699.
3. Const. of New York, Art. VIII, Sec. 10.
4. Report made in 1891 on the government of cities in New York: Senate Committee's Report, V, 13.

CHAPTER II.

Constitutional Limitations upon Legislative Control of Municipalities.

Recognizing the evils of excessive legislative intervention in local affairs, and the desirability of safe-guarding certain rights of local self-government, most of the states have placed in their constitutions provisions designed to accomplish these ends. The most important of these constitutional limitations may be classified under the following heads. (1) Those forbidding the incorporation of cities (and frequently also of towns) by special act. (2) Requiring the legislature specifically to pass general acts of incorporation for municipalities (a provision frequently found in conjunction with the foregoing). (3) Forbidding the legislature to enact certain measures concerning municipalities, or prohibiting them from acting, in specified cases, by local or special law. (4) Forbidding the delegation to special commissions of power to control municipal affairs, and ensuring the local election of local officers. (5) Limiting the number of classes of cities which may be created. (6) Preventing frequent changes in the structure of city government by enacting, in the state constitution, a frame-work of municipal government. (7) Granting cities of a certain population the right to frame and amend their own charters.

(1) Twenty-three states have adopted the first type of the above enumerated constitutional provisions, and have forbidden their legislatures to pass special acts for the incorporation of cities, (and frequently, of towns also). These states are Alabama,[1] Arkansas,[2] California,[3] Illinois,[4] Indiana,[5] Iowa,[6] Kansas,[7] Kentucky,[8] Louisiana,[9] Mississippi,[10] Missouri,[11] Nebraska,[12] New Jersey,[13] North Dakota,[14] Ohio,[15] Pennsylvania,[16] South Carolina,[17]

1. Constitution, IV, Sec. 104, par. 5, also XII, Sec. 229.
2. Constitution, XII, Sec. 2.
3. Constitution, XI, Sec. 6.
4. Constitution, IV, Sec. 22.
5. Constitution, XI, Sec. 13.
6. Constitution, III, Sec. 30.
7. Constitution, XII, Sec. 1.
8. Constitution, Sec. 59, par. 17.
9. Constitution, Sec. 48. This excepts municipal corporations of less than 2,500 inhabitants, and levee districts and parishes.
10. Constitution, VII, Sec. 178.
11. Constitution, IV, Sec. 53.
12. Constitution, III, Sec. 15.
13. Constitution, Amend. of 1875, IV, Sec. 7, par. 9 and 11.
14. Constitution, II, Sec. 69, par. 33.
15. Constitution, XIII, Sec. 1.
16. Constitution, III, Sec. 7.
17. Constitution, III, Sec. 34, par. 3.

South Dakota,[1] Tennessee,[2] Washington,[3] West Virginia,[4] Wisconsin,[5] Wyoming.[6]

This inhibition of local or special legislation is frequently expressed in the following terms: "The general assembly shall not pass local or special laws in the following cases: * * * For the incorporation of cities and towns."[7]

Of the twenty-three states which forbid the incorporation of cities by special act, the constitutions of fifteen[8] specifically extended the prohibition to include changes or amendments in city charters. Of these the provision contained in the constitution of Nebraska is typical: "The legislature shall not pass local or special laws in any of the following cases, that is to say: Incorporating Cities, Towns and Villages, or changing or amending the charter of any Town, City or Village."[9]

As a rule, however, even when not specially prohibited, acts amending municipal charters are held by the courts to be within the scope of the prohibition of special acts of incorporation.

In the constitutions of seven states,[10] instead of the prohibition of special acts incorporating cities, there is a general limitation forbidding the conferring of corporate power by special act. Thus the constitution of Kansas provides: "The legislature shall pass no special act conferring corporate powers."[11] Generally the courts have held that the term "corporation" as here used includes municipal as well as private corporations; and hence this provision has the same effect as the more common one which specifically forbids the incorporating of cities by special act.[12]

(2) Twenty-three states, including many of those which have prohibited special acts incorporating municipalities, have adopted the second type of limitation, requiring the legislature to pass general acts of incorporation for municipalities. A typical provision is that in the constitution of South Carolina: "The General Assembly shall provide by general laws for the organization and classification of municipal corporations."[13] The states whose constitutions contain this provision are: Alabama,[14] Arkansas,[15] California,[16]

1. Constitution, III, Sec. 23.
2. Constitution, XI, Sec. 8.
3. Constitution, II, Sec. 28, par. 8, also XI, Sec. 10.
4. Constitution, VI, Sec. 39, par. 8.
5. Constitution, Amend. IV, Sec. 31.
6. Constitution, III, Sec. 27.
7. Constitution of Iowa, III, Sec. 30.
8. Illinois, Kentucky, Louisiana, Missouri, Nebraska, North Dakota, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Washington, West Virginia, Wisconsin, Wyoming.
9. Constitution, III, Sec. 15.
10. These are: Arkansas, Indiana, Kansas, Louisiana, New Jersey, Ohio, Tennessee.
11. Constitution, XII, Sec. 1.
12. Atchison *v.* Bartholow, 4 Kansas 124; Wyandotte City *v.* Wood, 5 Kansas 603; Topeka v. Gillett, 32 Kansas 431; The State *ex rel. v.* the City of Cincinnati, 20 Ohio State 18; The State *ex rel. v.* Mitchell, 31 Ohio State, 592; see also State *v.* Newark, 40 N. J. Law, 550.
13. Constitution, VIII, Sec. 1.
14. Constitution, IX, Sec. 104, par. 5, also XII, Sec. 229.
15. Constitution, XII, Sec. 3.
16. Constitution, XI, Sec. 6.

Colorado,[1] Idaho,[2] Iowa,[3] Kansas,[4] Kentucky,[5] Mississippi,[6] Missouri,[7] Nebraska,[8] Nevada,[9] New Jersey,[10] North Dakota,[11] Ohio,[12] South Carolina,[13] South Dakota,[14] Texas,[15] Virginia,[16] Washington,[17] West Virginia,[18] Wisconsin,[19] Wyoming.[20]

(3) The constitutions of certain states either absolutely forbid the legislature from enacting certain measures concerning municipalities, or prohibit them from acting, in certain specified cases, by local or special law. Thus the constitutions of California,[21] Illinois,[22] and Washington,[23] deny the legislature the power to tax municipal corporations, or the inhabitants or property thereof, for municipal purposes.

Another frequent limitation provides that the legislature may not, by special acts, divide counties or change county seats; and frequently such action is entirely forbidden without the consent of the electors of the county.[24] Another inhibition frequently found is, that the legislature shall not, by special act, open or vacate streets, or highways. Again, the abuse by state legislatures of the franchise-granting power has led to the insertion in many constitutions of a provision forbidding the granting of street railway franchises by special act; or, frequently, forbidding such grant without the consent of the local authorities.[25]

(4) A fourth form of constitutional limitation seeks to secure for the municipalities certain rights of local self-government either by forbidding the legislature to delegate control over municipal affairs to special com-

1. Constitution, XIV, Sec. 13.
2. Constitution, XII, Sec. 1.
3. Constitution, VIII, Sec. 1.
4. Constitution, XII, Sec. 5.
5. Constitution, Sec. 156.
6. Constitution, IV, Sec. 88, also VII, Sec. 178.
7. Constitution, IX, Sec. 7.
8. Constitution, XI, (ω), Sec. 1.
9. Constitution, VIII, Sec. 8.
10. Constitution, Article of Amend. IV, Sec. 7, par. 11.
11. Constitution VI, Sec. 130.
12. Constitution XIII, Sec. 6.
13. Constitution, VIII, Sec. 1.
14. Constitution, X, Sec. 1.
15. Constitution, XI, Sec. 4, 5.
16. Constitution, VIII, Sec. 117.
17. Constitution, XI, Sec. 10.
18. Constitution, XI, Sec. 1.
19. Constitution, Amend, IV, Sec. 32.
20. Constitution, XIII, Sec. 1. In Wyoming, as in Massachusetts and South Carolina, the consent of a majority of the electors of the district is required for its incorporation as a municipality.
21. XI, Sec. 12.
22. XIX, Sec. 10.
23. XI, Sec. 12.
24. Arkansas, XIII, Sec. 3, 4; California, XI, Sec. 2; Colorado, XIV, Sec. 3; Georgia, XI, Sec. 1, par. 3, 4; Idaho, XVIII, Sec. 3; Illinois, X, Sec. 2; Iowa, III, Sec. 30; Kansas, XIX, Sec. 1; Kentucky, Sec. 64.
25. These states are: Alabama, XII, Sec. 220; Colorado, V. Sec. 25, and XV, Sec. 11; Georgia, III, Sec. 7, par. 20; Idaho, XI, Sec. 11; Illinois, IV, Sec. 22, and XI, Sec. 4; Kentucky, Sec. 59, par. 19; Louisiana, Art. 48; Mississippi, Sec. 90(r); Missouri, IV, Sec. 53; Montana, VI, Sec. 26; Nebraska, III, Sec. 15, and XI(b), Sec. 2; New Jersey, IV, Sec. 7, par. 11; North Dakota, II, Sec. 69, par. 20; Pennsylvania, III, Sec. 7; South Carolina, VIII, Sec. 4; South Dakota, X, Sec. 3; Virginia, VIII, Sec. 124; West Virginia, XI, Sec. 5; Wyoming, XIII, Sec. 4, and III, Sec. 27.

missions or boards, or by providing for the election of all or certain local officers by the people of the localities.[1] Thus Philadelphia's interesting experience with the City Hall Building[2] led to the insertion in Pennsylvania's present constitution of a provision typical of that found in many other state constitutions: "The General Assembly 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, or to levy taxes or perform any municipal function whatever."[3]

One of the most interesting decisions upon the right of local self-government, in which it was held to be beyond the power of the state legislature to create a special municipal commission with plenary power to compel a city to issue its bonds for park purposes, is the leading case of People *ex rel.* Park Commrs. *v.* Common Council of Detroit.[4] The statute whose constitutionality was involved in this case created a Board of Park Commissioners for the city of Detroit, and also named the commissioners, invested them with power to purchase the necessary lands, at a cost not exceeding three hundred thousand dollars, and imperatively required the city council to provide money therefor by the issue and sale of city bonds. The Supreme Court held that the city could not be compelled, against the will of its council, to issue the bonds; and the decision was based upon the ground that a park was purely a matter of local, as distinguished from state, concern; and that it was beyond the power of the legislature to compel a municipality to contract a debt for local purposes.

In the opinion rendered by Cooley, J., the court declared: "It is a fundamental principle in this state, recognized and perpetuated by express provision of the constitution, that the people of every hamlet, town and city of the state are entitled to the benefits of local self-government. But authority in the legislature to determine what shall be the extent of the capacity in a city to acquire and hold property is not equivalent to, and does not contain within itself, authority to deprive the city of property actually acquired by legislative permission. As to property it thus holds for its own private purposes, a city is to be regarded as a constituent in state government, and is entitled to the like protection in its property rights

1. Limitations of this type are found in the following constitutions: Arkansas, VII, Sec. 17, 19, 24, 29, 38, 46, 47; California, IV, Sec. 25, par. 9, XI, Sec. 13; Colorado, V, Sec. 35, XIV, Sec. 6, 8, 11; Connecticut, Amendments X, XXI, XXVIII; Florida, V, Sec. 15, 16, VIII, Sec. 6; Georgia, XI, Sec. 2, par. 1; Idaho, III, Sec. 19, VII, Sec. 6, XVIII, Sec. 6; Illinois, IV, Sec. 22, X, Sec. 6, 8; Indiana, IV, Sec. 22, VI, Sec. 2, 3, 4; Kansas, III, Sec. 5, 7, 8, 9; Kentucky, Sec. 97 to 100, and 160; Maryland, IV, Sec. 44, VII, Sec. 1; Massachusetts, Articles of Amendment, XIX; Michigan, X, Sec. 3, XI, XV, Sec. 14; Minnesota, XI, Sec. 4; Mississippi, VI, Sec. 170, 171, Missouri, IX, Sec. 10; Montana, V, Sec. 26, 36, XVI, Sec. 2-5; Nebraska, III, Sec. 15, X, Sec. 4; Nevada, IV, Sec. 20, 26, 32; New Hampshire, Art. 71; New Jersey, IV, Sec. 7, par. 11; New York, X, Sec. 1, 2; North Carolina, IV, Sec. 24, VII, Sec. 1 to 7; North Dakota, II, Sec. 69, par. 32, 34; Ohio, X; Oregon, VI, Sec. 6, VII, Sec. 15, 16, 17; Pennsylvania, III, Sec. 7, 20, V, Sec. 11; XIV, XV, Sec. 2; South Carolina, V, Sec. 27, 29, 30; South Dakota, IX; Tennessee, VIII, Sec. 1, 2; Texas, III, Sec. 56, V, Sec. 20, 21, 23, VIII, Sec. 14, XVI, Sec. 44; Vermont, Articles of Amendment, 14-18; Virginia, VII, Sec. 110, 111, VIII, Sec. 118-121; Washington, XI, Sec. 5, 12; West Virginia, IX, Sec. 1, 2; Wisconsin, VI, Sec. 4, VII, Sec. 12, 14, 15, XIII, Sec. 9; Wyoming, III, Sec. 27, XII, Sec. 5.

2. On the subject of this commission, see Dillon, Municipal Corporations, 4th ed., I, p. 128; also the ruling of the Supreme Court in Perkins *v.* Slack, 86 Pa. St., 283.

3. Pennsylvania Constitution, III, Sec. 20.

4. 28 Mich, 228; s. c., 15 Am. Rep. 202.

as any natural person who is also a constituent. The right of the state is a right of regulation, not of appropriation. It cannot be deprived of such property without due process of law. And when a local convenience or need is to be supplied, in which the people of the state at large, or any portion thereof outside the city limits, are not concerned, the state can no more by process of taxation take from the individual citizens the money to purchase it, than they could, if it had been procured, appropriate it to state use. * * * From the very dawn of our liberties the principle most unquestionable of all has been this: "That the people shall vote the taxes they are to pay, or be permittted to choose representatives for the purpose."

As to the local election of certain officers, most state constitutions provide that there shall be elected in each county, by the qualified voters thereof, certain local officers—those most commonly named being the county sheriff, constable, prosecuting attorney, justice of the peace, coroner, probate judge, clerk of court, treasurer, auditor, etc.[1]

(5) The failure of the first type of constitutional provision described above to prevent legislative interference with cities, partly owing to the narrow interpretation given by the courts to the term "special act,"[2] has led several states to insert in their constitutions a provision limiting the number of classes which the legislature may create. To this limitation is added the restriction that "the powers of each class shall be defined by general laws, so that all municipal corporations of the same class shall possess the same powers, and be subject to the same restrictions."[3] Thus the constitutions of Colorado,[4] Missouri,[5] South Dakota,[6] and Wyoming,[7] limit the maximum number of classes to four. Kentucky[8] places the limit at six, New York[9] at three; and the constitutions of both these states also fix the population included within the various classes.

(6) In two states frequent changes in the structure of municipal government have been avoided to a certain extent by inserting in the state constitution a framework of municipal organization. Thus Virginia devotes nearly six pages of her state constitution[10] to a detailed plan for the structure of municipal government, providing for the election and term of municipal officers, the powers and duties of the mayor, the election and term of members of council, the mode of enacting ordinances and granting franchises, etc. Similarly the constitution of Maryland contains several provisions re-

1. Under a constitutional provision that "judicial officers of cities and villages shall be elected and all other officers shall be elected or appointed at such time and in such manner as the legislature may direct" (Const. of Mich., XV, Sec. 14), the Supreme Court held that the legislature was restrained from itself directly appointing municipal officers whose duties and authority were plainly and exclusively local, such as the board of water commissioners for a particular city. People *v.* Hurlbut, 24 Mich. 44; s. c., 9 Am. Rep. 48. Similar decisions are: Chicago *v.* Wright, 69 Ill. 326; People *v.* Draper, 15 N. Y. 543; Speed *v.* Crawford, 3 Met. (Ky.) 207.

2. The courts have held that an act is not special which at the time of its passage includes but one city, providing others may eventually be included within its scope. See *infra*, p. 39.

3. Constitution of Colorado, XIV, Sec. 13.
4. Constitution, XIV, Sec. 13.
5. Constitution, IX, Sec. 7.
6. Constitution, X, Sec. 1.
7. Constitution, XIII, Sec. 1.
8. Constitution, Sec. 156.
9. Constitution, XII, Sec. 2.
10. Constitution, VIII, Sec. 116-128.

lative to the mayor and council of the city of Baltimore.[1]

(7) Certain states, realizing that the supposed necessity for special municipal legislation results from imperfections in the legislative grant of power to cities, have concluded that the remedy for this condition is in granting larger powers to the municipalities. Accordingly five states—California, Colorado, Minnesota, Missouri and Washington—have inserted in their constitutions provisions allowing cities of a certain size to frame and amend their own charters, provided such charters and amendments are consistent with the constitution and general laws of the state.[2]

Thus the constitution of California, whose provisions are typical in this respect, provides that any city containing a population of over 3,500 inhabitants[3] may frame a charter for its own government consistent with and subject to the constitution and laws of the state. At any general or special election, the qualified voters of such city may elect a board of fifteen freeholders, who must have been for at least five years qualified electors of the city. It is the duty of this board within ninety days after its election to prepare and propose a charter for the city. Such proposed charter is then to be published, for at least twenty days, in two daily newspapers of general circulation in the city; and within not less than thirty days after such publication, it must be submitted to the electors of the city at a general or special election. If ratified by a majority of the electors, it is then submitted to the legislature[4] for approval or rejection as a whole, power of alteration or amendment being denied that body. If approved by the legislature it then becomes the charter of the city, and the courts are required to take judicial notice thereof.

Provision is made for the amendment of the charter thus adopted at intervals of not less than once in two years. Upon petition of fifteen per cent. of the qualified voters, it is the duty of the legislative authority of the city to submit to the voters the amendments petitioned for. Such amendments are then published and voted upon, and if accepted by the electors of the city, and subsequently ratified by the legislature, they become an integral part of the charter.

In none of these five states, so far as can be ascertained, have state interests in any way suffered through the large degree of self-government granted to the cities. In Minnesota ten cities have formed charters under this constitutional provision—these cities being Ely, Willmar, Fairmont, Fergus Falls, Austin, Duluth, St. Paul, Blue Earth, Moorhead and Barnesville. In Oregon a proposed constitutional amendment permitting cities and towns to frame charters for their own government was adopted by the legislative assemblies of 1901 and 1903, but no provision has been made for its submission to the voters for final adoption or rejection.[5]

1 Constitution, XI, Sec. 1-9.

2. California, XI, Sec. 8-8½; Colorado, XX, Sec. 4-6; Minnesota, IV, Sec. 36; Missouri, IX, Sec. 16-17; Washington, XI, Sec. 10.

3. In Colorado this privilege is granted to first and second class cities; in Missouri to cities with over 100,000 inhabitants; in Washington to cities with over 20,000 inhabitants.

4. Colorado, Minnesota, Missouri and Washington do not require legislative acceptance of the charter adopted.

5. For a further discussion of this topic, see *infra*, p. 62.

CHAPTER III.

History of Ohio's Attempt to Prevent Special Municipal Legislation.

I.—CONSTITUTIONAL CONVENTION OF 1851.

Ohio's first constitution, adopted in 1802, placed no restrictions upon legislation for municipalities, except that a certain measure of home rule was assured by Sections 1 and 3 of Article 6, guaranteeing the inhabitants of counties, towns and townships the right to elect their own officers. In the early part of the century the population of the state was so largely rural that municipalities and their governing was a comparatively unimportant matter. But by the middle of the century conditions were changing. Ohio's population of 50,000 at the beginning of the century had increased to almost 2,000,000. With the development of industry, new towns were coming into existence. By 1850 there were eleven towns of over 5,000 inhabitants, and their aggregate population was 205,354. Each town was incorporated by a special act or charter, and from time to time supplementary special acts would be passed, designed to advance its interests. By the middle of the century the attention of the legislature was being largely occupied with municipal affairs—thus at the session of 1849-50, 73 acts were passed relating to towns and cities.

Corporate enterprises were likewise developing with great rapidity. Railway companies, canal companies, turnpike companies—companies of every description were being promoted, each of which sought to obtain advantageous charter privileges from the state legislature. At the session of 1849-50, a total of 545 local and special acts were passed, 78 of which related to turnpike roads, 75 to plank roads, and 67 to railway companies. Such a development of corporate enterprises was of course excessive, and since it involved the commmunity at large in serious financial loss, the people all over the state conceived a most profound distrust of corporations and of corporate undertakings.

Moreover, in addition to the power to create corporations by special act, the state legislature possessed the power to construct works of internal improvement through the agency of private corporations. Counties, cities and towns could also be authorized to construct internal improvements of a local character, by subscribing to the stock of private corporations, for which purpose debts might be contracted and taxes levied to pay them. The

legislation authorizing local governmental agencies to subscribe to the stock of private corporations was usually passed without investigation or reflection, whenever desired by the representatives of the localities affected. As a result, private property was in effect placed at the mercy of irresponsible local majorities, and the municipal divisions of the state became involved in all the frauds and disasters of the private companies to whose stock they had subscribed. Wasteful expenditure, impaired public credit, a large debt, and a heavy burden of taxation were the results of this unrestricted legislative power. A strong sentiment was created in all parts of the state in favor of summoning a constitutional convention which should check these growing evils by an effectual reduction of the powers of government and unequivocal limitations upon its future capacity for action.

The second Ohio Constitutional Convention assembled at Columbus, May 6, 1850. The first session lasted from May 6 to July 9, 1850, when the convention adjourned to reassemble at Cincinnati, where the final session lasted from December 2, 1850, to March 10, 1851.

Of the 108 members composing the convention, 30 were born in Ohio, 25 in Pennsylvania, 20 in New England, 9 in New York, 8 in Virginia, while 4 were of foreign birth. Forty-two of the members gave their occupation as that of lawyer, 34 that of farmer. In their political affiliations a majority of the members were Democrats, the vote for President of the Convention standing: William Medill, Democrat, 60; Joseph Vance, Whig, 38; other candidates, 5.

Standing committees were appointed May 14, 1850, the subject of corporations being assigned to two committees, one on banking corporations, the other "on Corporations other than Corporations for Banking." The latter committee presented its first report June 1, 1850, two important sections of which were as follows:

"SECTION 1. The legislature shall pass no special act conferring corporate powers.

"SECTION 6. It shall be the duty of the legislature to provide for the organization of cities and incorporated villages by general laws," etc.

This report was read, ordered printed, and on June 8, was taken up for discussion. In explaining the reason for adopting section 1, Mr. Norris, chairman of the committee, said: "Some of the state constitutions contained an exception, so far as municipal corporations were concerned. There was no very definite conclusion come to on the part of the committee, whether this exception should be named or not; but they concluded, however, unanimously to make this report, without a section of that nature. They believed that all the corporations of the state could be as well regulated by general as by special acts of incorporation—by some classification in cities —by the number of inhabitants, or by some other means which might be thought prudent by the legislature."[1]

Mr. Stanton, another member of the committee, said in support of the report: "The consideration of a general law always induced caution and care with respect to every provision, because it was to operate all over the state. But now, when an application is made to the legislature for

1. Debates Ohio Convention, 1850-51, Vol. I, 304.

an act of incorporation for a town or city, it was a purely local matter—interesting, perhaps, to none but the corporators themselves, and the member for a single county, and nobody else caring anything about it—it passes without examination, because it does not operate over the whole state."[1]

Another member of the convention, Mr. Taylor, dwelt upon the importance of judicial construction in the case of every law. The value of judicial construction was impaired when the laws lacked uniformity, since the decision in the case of an act affecting one city could afford no safe precedent in the case of a different act affecting another city. On the other hand, "if corporations, municipal and private, were framed and regulated by general laws, then a mooted point in any locality, instead of being a special and temporary case, would immediately become practical and useful matter of reference in all quarters of the state."[2]

Opposing the report, Mr. Hitchcock argued that special legislation could not be dispensed with. "He doubted very much whether there could be a general law devised which would apply to all the diversified requirements of our municipal corporations. It seemed to his mind that the same charter which would apply to the city of Cincinnati would not be a suitable measure for a village that did not contain more than 500, or perhaps not more than half that number of inhabitants."[3]

Mr. Hawkins and Mr. Reemelin both replied to this argument, declaring that there was no necessary difficulty about legislating by general law upon the subject of municipal corporations.

Mr. Stanbery then proposed to amend Section 1 to read: "Provided that the legislature shall pass no special act conferring corporate privileges except for municipal purposes, and where, in their judgment, the objects can be better attained than under a general law." This amendment was rejected by a vote of 50 to 30.

No other amendments were offered, and the report, practically in the form first presented by the committee, was adopted by the convention. Thus the three sections of the constitution of 1851 (which is still the fundamental law of the state) referring to municipal corporations read as follows:

(1) "All laws of a general nature shall have a uniform operation throughout the state."[4]

(2) "The General Assembly shall pass no special act conferring corporate powers."[5]

(3) "The General Assembly shall provide for the organization of cities and incorporated villages by general laws; and restrict their power of taxation, assessment, borrowing money, contracting debts and loaning their credit, so as to prevent the abuse of such power."[6]

The convention having completed its labors, adjourned March 10, 1851. The new constitution was adopted by a majority of 16,288, and William Medill, president of the convention, was chosen governor.

1. Debates Ohio Convention, 1850-51, Vol. I, 306.
2. Debates Ohio Convention, 1850-51, Vol. I, 309.
3. Debates Ohio Convention, 1850-51, Vol. I, 310.
4. Constitution, Art. II, Sec. 26.
5. *Ibid,* Art. XIII, Sec. 1.
6. *Ibid,* Art. XIII, Sec. 6.

II.—CONSTITUTIONAL CONVENTION OF 1873–4.

The constitutional convention of 1873-4 assembled at Columbus, May 13, 1873, and after an adjournment completed its labors at Cincinnati in 1874. The 105 members included 62 lawyers, 16 farmers, 7 merchants, 6 physicians, and 14 others of miscellaneous occupations. The convention chose for its President a Republican, Morrison R. Waite, subsequently Chief Justice of the United States. Although the constitution then drawn up was rejected by the people, the study of the convention debates throws much light upon the history of special legislation in Ohio.

On June 25, 1873, the committee on municipal corporations submitted a report in five sections which it recommended for insertion in the new constitution. Section one of this report reads as follows:

"The General Assembly shall, by general laws, provide for the organization and classification of municipal corporations; the number of such classes shall not exceed six, and the powers of each class shall be defined by general laws, so that no such corporation shall have any other powers, or be subject to any other restrictions, than other corporations of the same class. The General Assembly shall restrict the power of such corporations to levy taxes and assessments, borrow money and contract debts, so as to prevent the abuse of such power."[1]

Mr. Hoadly of Cincinnati, as chairman of the committee, opened the debate, and in a speech of marked ability explained the motives which had governed the committee's action. The object of this section, Mr. Hoadly declared, was to fortify and throw additional bulwarks around the present constitution, so that its provisions denying the power of special legislation with regard to municipal corporations could not thereafter be evaded. After giving an interesting account of special legislation in Ohio up to date, Mr. Hoadly said: "That nearly all of these statutes are unconstitutional and void, as being special legislation, I imagine all lawyers would admit. It is not classification to single out a city having a particular population, or a village of 5,641, and say that any village having that population, as published in that book, and no more, shall have authority to build head of division and car shops."[2]

The chief objections to such special legislation, according to Mr. Hoadly, were two: First, that a law for the benefit of a particular city has the attention only of the representatives from that city, receiving no adequate consideration from the legislature as a whole; and second, that special legislation is peculiarly productive of omnibus and log-rolling legislation.[3]

Mr. Hoadly next pointed out that in the committee's opinion, it was impossible to govern all cities and villages on the same stereotyped system, on account of differences in population ranging from 200 to 200,000. In suggesting six classes he was aware that they were trespassing upon the province of legislation, but they must either do this or give up the matter altogether.

1. Debates Ohio Convention, 1873-74, Vol. I, 578.
2. Debates Ohio Convention, 1873-74, Vol. I, 581.
3. *Ibid*, Vol. I, 581.

"Six classes would be sufficient to allow the real divisions of corporations to be recognized by law, and yet the number would be so small that fictitious and unnecessary provisions would not prevail."[1]

The first important speech against the committee's report was made by Mr. John W. Herron, of Cincinnati, on July 9, 1873. The chief points made by Mr. Herron were as follows:

(1) The cities of Ohio were as carefully and as prudently managed prior to 1851 under special laws as they have been since that date.

(2) If cities are to borrow money, they should be compelled to apply to the legislature for that power. It is unsafe to entrust the power to borrow money under general laws to the city councils, where the rings have most power.

(3) Special legislation is often necessary to protect the people of cities from rings which have gained control of the city's government. "Look at the acts which have been passed since 1851 and you will find that a large number of them have been for the special purpose of protecting the people from the persons in whose power they had placed the control of the municipal corporation; and if you take from the legislature this power, then you leave the people completely helpless. There will arise under general laws, circumstances which will require the legislature to step in and protect the people by some kind of special legislation, from the corporate authorities that have obtained control of the cities."[2]

(4) With a single exception,[3] the many instances of special legislation since 1851 have never been questioned in a judicial proceeding. This shows that the people have been thoroughly satisfied with special legislation and that they acquiesce in its necessity.

(5) This necessity is so real that whatever prohibitions or restrictions are adopted will be evaded.

(6) The growth and prosperity of cities will be checked by the rigid features of the proposed classification.[4]

In his speech against the report, Mr. Alexander of Van Wert made the following objections to the adoption of the proposed plan: (1) Contingencies now unforeseen may arise which will make special legislation an absolute necessity. (2) A comparison of the laws of 1850 and 1870 shows that the operation of the present constitution has been valuable, and that special legislation, so far as it is an evil, has been remedied. (3) The division of cities into six classes would increase the evil of negligence on the part of the legislators as to all matters which do not pertain to the class to which their constituency belongs. (4) The proposed plan usurps legislative functions, and is based upon an unwarrantable distrust of the legislature.[5]

Supporting the committee's report, Mr. Scribner of Toledo pointed out that from 1851 to 1868, over 200 statutes had been passed, special in their nature but general in form, and as a result the laws concerning municipal

1. Debates Ohio Convention, 1873-74, Vol. I, 582.
2. Debates Ohio Convention, 1873-74, Vol. I, 590.
3. State *v.* Cincinnati, 20 Ohio St., 18.
4. Speech of Mr Herron, Debates Ohio Convention, 1873-74, Vol. I, 590-92.
5. Debates Ohio Convention, 1873-74, Vol. I, 593-94.

corporations were in almost inextricable confusion.[1]

The most effective speech against the committee's report was probably that of Mr. Rufus King, a delegate from Cincinnati, and president of the convention after the resignation of Mr. Morrison Waite. Mr. King said: "The convention of 1851 attempted an impossibility. It sought to force uniformity upon the cities and villages of Ohio, by the passage of this Thirteenth Article on corporations. * * * What I object to in the existing constitution and in the proposition now before us, is this idea of governing cities and villages upon the same principle that you regulate banks, railroads, cotton factories and private corporations of every sort; thus assuming to place the people of our cities or towns upon the same footing in respect to the great functions of municipal government upon which you administer the dollar and cent operations of private corporations, created for mere trade and commerce. * * * * * *

"The Convention of 1851 found the state enjoying, in a high degree, the privileges and benefits of municipal independence. * * * I mean, independence of the various cities from any control or interference of each other. * * * Of all this independence, which the people of Ohio were thus enjoying, the Constitution of 1851 deprived us. It repealed at one stroke, and so far as I can discover, without debate or murmur, the independent charters under which all our cities and towns were enjoying, each their own little system of organization and management. * * * * It undertook to amend every charter of every city and town in Ohio and to compel the legislature to put them all under general and uniform laws.

"But, sir, it has proved a total failure. The Chairman of the Committee admits that it is a failure. The people of the State, the Legislature and the courts, have virtually repealed it, long since, by evasions directly in violation of its letter and spirit. It could not be kept. It was an impracticability —a mere abstraction. The only object which it was to subserve was to get rid of special legislation; but it has rather served to multiply such legislation, and has introduced confusion far worse than any that can be found under the legislation prior to 1851. Legislation has become so special and intricate, under these 'general laws,' that it is now almost impossible for any man, except he be a lawyer, and it is difficult, even, for many of them, to tell what the law is with regard to many points in municipal government. * * * *

"It is said there was once a monarch named Procrustes, who by a general law decreed every man in his kingdom to be of the same size, and he put them in a uniform machine which cut off their heads or their feet, just as the circumstances required. It seems very much like the same thing when we require municipal governments in Ohio to be all of one and the same organization. It has proved a failure. The Legislature and the Supreme Court have disregarded it, and the people of Ohio are living in plain violation of their Constitution. They cannot live under it; and the proposition now brought forward by the Committee as a substitute is, in my judgment, calculated to make the evil worse than it already is. For, sir, while the Legislature and the courts have driven a coach and four through this uniformity

1. Debates Ohio Convention, 1873-74, Vol. I, 594.

clause in the present constitution, by a system of classification and circumlocution which has become the laughing stock of the people of the state, it is now proposed to amend by dividing all the cities, towns and villages in Ohio into six classes, and to hedge in each of these classes by a cast-iron provision of the Procrustean sort, so terrible as to defy opposition."[1]

In the latter part of his speech Mr. King laid much emphasis upon the strife between various cities which, he declared, would result from the proposed plan. "The objection to the whole system is this, that it compels the different cities which must thus be grouped together into one class, to be perpetually interfering with each other, engaging in a constant internecine war with each other, with regard to all of the small details of their home government. It necessarily puts them at war with each other upon every diversity which either or any of the class may seek from the Legislature in organization, power or liabilities."[2]

The argument that the proposed plan would destroy local autonomy was answered by several delegates, who pointed out that general laws could be passed establishing the outlines of municipal organization, leaving details to be regulated by each city in accordance with its own needs. "We should give them," declared Mr. Powell, "the utmost liberties to have their own institutions managed in their own way, as they deem right and proper; and yet have general laws, applicable to the several cities of the same class, that would be all alike, giving sufficient liberty within that for any special by-laws to regulate their own municipal corporations."[3]

Mr. Griswold and Mr. Townsend likewise argued that the Legislature, after classifying cities, might grant large powers by general laws, leaving the cities to avail themselves of these powers or not as they saw fit.[4] To this Mr. Neal replied that in many cases it would not be prudent to leave such a decision to the voters of a city. "A law is passed," said he, "authorizing cities of a certain class to borrow money to the amount of fifty thousand dollars for the purpose of improving the streets. Very well; take the town of Ironton still as an illustration. A large number of men there support their families by laboring on the streets at this present time; and though the town may be badly in debt, they can go to the polls and compel the taxpayers to borrow the money."[5]

In his remarks closing the debate, Mr. Hoadly clearly re-stated the object of the new plan as follows: "If we can only reduce the classes to a number so small as to require, substantially, a rule of classification for the state, you break up the mischief practised under special legislation of governing cities from without; and by requiring that all cities, towns and villages of the same class shall have the same powers, you compel the Legislature to establish a general system, under the organic law, for all corporations of the same class; and then the people under that Constitution, within that organic law, may govern themselves, and there will be no possibility of the Legislature taking away those powers which those people ought to exercise, unless

1. Debates Ohio Convention, 1873-74, Vol. II, part II, 1300-01.
2. Debates Ohio Convention, 1873-74, Vol. II, part II, 1301.
3. Debates Ohio Convention, 1873-74, Vol. II, part II, 1303.
4. *Ibid,* pp. 1306-7; 1309.
5. Debates Ohio Convention, 1873-74, Vol. II, part II, 1309.

they take them also from the other cities of the same class at the same time."[1]

To Mr. Herron's argument that it was frequently necessary for the state legislature to intervene in the affairs of a particular city to remedy its bad government, Mr. Hoadly replied: "I do not believe you can cure intestine disorder by outside application. You must begin where the disease is. If the people are able to govern themselves, they ought to be allowed—through their own agencies—to correct their follies and mistakes, and return to the better way. You cannot cure them by external application."[2]

The contest in the convention resulted in a victory for the opponents of special legislation, a test vote showing 52 delegates in favor of the committee's report, and 27 opposed to it. Accordingly, the committee's report,[3] substantially as made, was incorporated in the proposed constitution. While this constitution failed of ratification at the polls (leaving that of 1851 still in force), the convention's discussions constitute an important contribution to the study of special legislation, as well as to the general subject of municipal government.[4]

III.—LEGISLATION IN OHIO UNDER CONSTITUTIONAL LIMITATIONS.

By the constitution adopted in 1851, special acts conferring corporate power were forbidden, and it was made the duty of the legislature to provide for the organization of cities and incorporated villages by general laws. Accordingly, on May 3rd, 1852, the Ohio legislature passed a general municipal corporations act,[5] one of the first of its kind passed in the United States.[6]

The first section of this measure repealed all special acts for the government of municipal corporations, and extended its provisions to existing corporations as well as to those which should thereafter be created. The powers and privileges of municipal corporations were then specified with great minuteness, twenty sections of the act being devoted to this purpose (Sec. 18-39).

The next division of the act (Sec. 40-43), established the classes into which municipal corporations were divided. Cities with more than 20,000 inhabitants were to constitute the first class, and cities with from 5,000 to 20,000 inhabitants the second class. Municipal corporations with less than 5,000 inhabitants were divided into incorporated villages, and incorporated villages for special purposes (i. e., special road districts).

In the year following each federal census, it was to be the duty of the Governor, Auditor and Secretary of State to ascertain what cities and vil-

1. Debates Ohio Convention, 1873-74, Vol. II, part 11, 1318.
2. Debates Ohio Convention, 1873-74, Vol. II, part II, 1319.
3. For section I of this report, see *supra*, p. 20.
4. See Debates Ohio Convention, 1873-74, Vol. I, 578-95; Vol. II, part II, 1288-1441; Vol. II, part III, 2861-67; 3433-34.
5. 50 Ohio Laws, 223-259.
6. Missouri passed a general act for the incorporation of towns in 1845; Pennsylvania in 1851, for the regulation of boroughs thereafter incorporated; Indiana on June 18, 1852, a general municipal corporation act, which did not apply to existing corporations unless they chose to come under its provisions; Iowa adopted the Ohio act, with modifications, in 1860; North Carolina in 1854, a general act applying to all incorporated towns when not inconsistent with special charters or acts referring thereto.

lages were entitled to be advanced to a higher class. A statement to that effect was then to be published at Columbus and also in the municipality affected, and at its next annual election such municipality was to organize according to its new grade.

Incorporated villages were to be governed by one mayor, one recorder, and five trustees, elected annually; the mayor, recorder and trustees constituting the village council, any five of whom formed a quorum. The corporate authority of cities was vested in the mayor, the board of trustees (two from each ward, who, with the mayor, composed the city council); and also in such other officers as were mentioned in the act or created by its authority.

Sections 89 to 98 of this act relate to the revenues and debts of municipal corporations. Narrow limitations were placed on the taxing and borrowing powers. Loans could only be made in anticipation of the revenues of the current fiscal year, and then only in the following amounts: for cities of the first class, $100,000; second class, $50,000; villages, $5,000; special road districts, $1,000. The tax limits for general and incidental expenses were fixed for the four classes of municipalities at five, three, three, and two and a half mills on the dollar, respectively. In addition to the amount thus authorized for general purposes, there could be levied to create a special fund for the purpose designated, and to be applied to no other: for police department, first class cities, two mills; second class, one mill; fire department, both classes, one mill; for creation of sinking fund, both classes, one-half mill; payment of interest on debt, both classes, not over two mills; and in first class cities only, for workhouse, one and one-half mills; for water-works, one-half mill; for school purposes, two mills, and for city infirmary, two mills.

Such, in outline, was Ohio's first general law for municipalities. In the following year, 1853, a supplementary and amendatory act[1] was passed, consisting of thirty-four sections. The most important of these related to the advancement of municipalities, delimited their financial powers, and gave city councils full power to fix or alter ward boundaries. It was now provided that no city or incorporated village should be advanced to a higher grade, until its trustees, by resolution addressed to the secretary of state, should signify the municipality's acceptance of such advanced grade. Additional financial powers were granted by the act, but these were as strictly limited as in the act of 1852.

These acts of 1852 and 1853 form the framework for the municipal legislation passed in subsequent years. It is noteworthy that the plan of classification was introduced by the first law passed, and that the second made advancement optional with each city—thereby making it possible for the legislature, by creating additional classes for new corporations, to allow each important municipality to remain a class by itself.[2] Thus classification became isolation; and the Supreme Court of Ohio sanctioned the plan by declaring constitutional a law which applied to all members of a class, even though but one city was included in the class at the time of its enactment, providing other cities might eventually, by increase in population and advancement in grade, come within its terms.[3]

1. 51 Ohio Laws, 360-374 (March 11, 1853).
2. For illustration of the working of this policy, see *infra*, p. 29.
3. *Infra*, p. 39.

Moreover, unlike the Pennsylvania court, the Ohio court left the creation of additional classes wholly to legislative discretion—and the result was a confusing mass of special legislation, made general in form by means of the most elaborate plan of municipal classification—more properly, municipal isolation—ever devised.

One of the earliest examples of special acts put in the form of a general law was the law of April 5, 1856,[1] which applied to cities of the first class with a population of less than 80,000 at the last, or any succeeding, census. This measure, which effected radical changes in the municipal machinery of Cleveland, was put in this form so that it would not apply to Cincinnati, also a city of the first class. Another special act[2] of the same year authorized a higher limit of taxation in cities of the first class which at the last federal census had a population exceeding 100,000. In the following year, 1857, the act establishing the rate of taxation for city and village purposes excepts Cincinnati by name from its operation[3]. A law of 1859[4] conferred certain powers upon city councils in cities of the first class *then having* a population of less than 80,000 and more than 35,000, Cleveland being the city affected. In 1861 several important changes in the city government of Cleveland were made by two acts,[5] each of which applied "only to such cities of the first class having a population less than 80,000 inhabitants as are of that class at the time it takes effect." By another law[6] of the same year, cities of the second class with a population of not less than 12,000 were authorized to fund their debts and issue bonds to the amount of $25,000.

By the year 1863 the full tide of special legislation had set in. During the nine years from 1853-1862, a total of 29 special acts affecting municipalities had been passed; in the seven years following, or from 1863 to 1869, 99 such acts were passed. Many special and temporary classifications were now used. Thus the act of March 25, 1863,[7] authorized the erection of a work-house in second class cities whose population exceeded 13,000. Three cities, Columbus, Dayton and Toledo, came within this category. By an act passed in 1864,[8] any second class city having over 13,000 and less than 20,000 inhabitants at the last federal census (Columbus and Toledo), was authorized to borrow not over $30,000 for cemetery purposes. From time to time the population limit in laws intended for Cincinnati was increased so as to shut out Cleveland; thus in 1864 and following years Cincinnati was referred to as "any city of the first class whose population exceeded 100,000 at the last federal census." Toledo was singled out in several palpably special acts—one of which was the act of April 5, 1866,[9] which applied to "any second class city having a population under 14,000 at the last federal census and having within its limits a canal," etc. Dayton was carefully identified by the law of February 27, 1867,[10] as "any city with a population of 20,081 at the last federal census;" again as "all cities of the second class having over

1. 53 Ohio Laws, 57.
2. 53 Ohio Laws 214 (April 11, 1856).
3. 54 Ohio Laws 234 (April 17, 1857).
4. 56 Ohio Laws 127 (April 4, 1859).
5. 58 Ohio Laws 25 (March 1, 1861); and 58 Ohio Laws 39 (March 21, 1861).
6. 58 Ohio Laws 103 (April 23, 1861).
7. 60 Ohio Laws 45.
8. 61 Ohio Laws 72 (March 28, 1864).
9. 63 Ohio Laws 120.
10. 64 Ohio Laws 26 (Feb. 27, 1867).

20,000 population;"[1] and still again as "any city having a population of less than 25,000 and more than 20,000 at the last federal census."[2] Equally special were many of the laws affecting Cincinnati. Thus the first section of the act of April 13, 1868,[3] declared: 'The city council of any city of the first class having a population exceeding 150,000, shall have the power to issue the bonds of such city, in any sum not exceeding $150,000 to be used for the purpose of completing the Eggleston avenue sewer." Section 3 continued: "Whenever any of the bonds herein provided for shall be for sale, not less than ten days' previous notice of said sale shall be advertised in Cincinnati." In the following year, 1869, another act[4] was passed referring to Cincinnati, likewise palpably special: "The city council of any city of the first class having a population of 150,000 inhabitants, wherein a public avenue of not less than one hundred feet in width is now projected, to be known as 'Gilbert Avenue', is hereby authorized to issue the bonds of said city in any sums not exceeding $150,000. for improving such avenue," etc.

A general view of the special municipal legislation passed by the legislature during the seventeen years from 1853-1869, both inclusive, may be obtained from the accompanying table. Of the 128 special acts passed during this period, 71, or 55.47 per cent. gave to the municipalities special financial powers, either to borrow money or levy taxes. The history of this legislation would seem to warrant the conclusion that special legislation is inevitable so long as the state insists upon a strict control of the financial powers of the municipalities.[5]

Local and Special Acts of the Ohio Legislature Concerning Municipalities 1853-1869.

Year	Total Number Acts	Conferring Financial Power	To Borrow Money	To Levy Tax	Conferring Power (other than Financial)	Defining Duties of Officers	Changing Framework of Government
1853	1	....	....	....	....	....	1
1854	1	....	....	....	....	....	1
1855	....	....	....	....	....	....	....
1856	4	2	....	2	....	....	3
1857	2	2	1	1	1	....	....
1858	2	....	....	....	....	1	1
1859	5	1	....	1	2	....	2
1860	3	2	1	1	1	1	....
1861	7	6	3	3	....	1	2
1862	4	2	....	2	....	2	....
1863	10	7	4	3	2	....	1
1864	13	6	4	2	7	....	....
1865	7	4	2	2	1	2	....
1866	13	7	2	5	5	....	1
1867	25	14	8	6	9	....	2
1868	21	9	8	1	8	4	....
1869	10	9	9	....	....	1	....
1853–69	128	71	42	29	36	13	14

1. 64 Ohio Laws 122 (April 10, 1867).
2. 64 Ohio Laws 123 (April 10, 1867.)
3. 65 Ohio Laws 86.
4. 66 Ohio Laws 130 (May 6, 1869).
5. For a table of special acts affecting cities passed by the legislature from 1876 to 1892, see *infra*, p. 30.

On May 7, 1869, the municipal code of 1869 was passed, consisting of 61 chapters and 732 sections.[1] The object was to codify the general laws, with no pretense of putting an end to special legislation—in fact, the code itself excepts Cleveland and Toledo from the operation of the provisions of its police act; and on the very day of its enactment, special acts were passed referring to Cincinnati[2] and Toledo.[3]

The legislation in the years following 1869 shows a constant increase in the number of special acts. Notwithstanding the decision in the case of The State *v.* The City of Cincinnati,[4] where a special act enlarging the boundaries of Cincinnati was declared unconstitutional and void, the legislature continued to enact special laws. Thus in three acts[5] in the year 1872, Cleveland, whose population was 92,829, was the only city included within the different limits 50,000 to 100,000, 80,000 to 100,000 and 90,000 to 150,000. In the same year, by a law[6] which authorized the erection of car shops, Delaware was identified by the circumlocution "villages or cities containing a population of 5,641, and no more, by the federal census of 1870, published in the last volume of the Ohio Statistical Report." Xenia was described as "any city of the second class having a population at the last federal census not exceeding 6,400, nor less than 6,300.[7] Another law affected all cities through which the National Road passed.[8]

In 1876, Cincinnati was given a new police board by an act[9] which provided that "in all cities of the first class, having at the last federal census a population of 200,000 and over, the police powers and duties shall be invested in and exercised by a board of five members to be appointed by the governor." In the case of The State *v.* Covington,[10] the Supreme Court upheld this act on the ground that the powers conferred by the legislature upon the board of police commissioners were not "corporate" powers within the meaning of Art. XIII, Sec. 1 of the constitution. Local laws, the court asserted, were not prohibited by the constitution unless they confer corporate powers or unless they are of general nature.

On May 14, 1878, a new municipal code[11] was enacted, in which new refinements were introduced in the classification of municipalities. Cities were divided into two classes, as before, but each class was subdivided into four grades in accordance with the following plan:

1. 66 Ohio Laws 145-286.
2. 66 Ohio Laws 337.
3. 66 Ohio Laws 346.
4. 20 Ohio Laws 18.
5. 69 Ohio Laws 13, 128, 138.
6. 69 Ohio Laws 70.
7. 70 Ohio Laws 116.
8. 70 Ohio Laws 153.
9. 73 Ohio Laws 70.
10. 29 Ohio State 102.
11. 75 Ohio Laws 161-419.

Classification of Ohio Cities by the Municipal Code of 1878.

Grade		Population Basis of Classification	Name of City	Population in 1870
1st Class	1	200,000+	Cincinnati	216,239
	2	90,000–200,000	Cleveland	92,829
	3	31,500–90,000	Toledo	31,584
	4	To be composed	of cities advanced from	second class
2nd Class	1	30,500–31,500	Columbus	31,274
	2	20,000–30,500	Dayton	30,473
	3	10,000–20,000	Hamilton	11,081
			Springfield	12,652
			Zanesville	10,001
			Portsmouth	10,592
			Akron	10,006
	4	5,000–10,000	Delaware	5,641
			Xenia	6,377
			Steubenville	8,107
			Ironton	5,686
			Newark	6,698
			Youngstown	8,075
			Piqua	5,967
			Mansfield	8,029
			Chillicothe	8,920
			Fremont	5,455
			Tiffin	5,648
			Canton	8,660
			Massillon	5,185
			Marietta	5,218
			Wooster	5,419
			Springfield (Hamilton Co.)	6,548

This classification put each of the five chief cities of the state in a grade (practically a class) by itself, so that any one of them could be easily identified without being named. Thus Columbus would be described in legislative acts as "all cities of the first grade of the second class." Five cities were included in the third grade of the second class; hence special acts referring to one of these cities would have to make use of other means of identification, such as "cities of the third grade, second class, with a population of 10,592 at the last federal census."[1]

The following table gives a general view of the special acts affecting municipalities passed during the seventeen years from 1876 to 1892, both inclusive. Comparing this table with the one on page 27, also covering a seventeen year period (1853-1869), it will be noted that the number of special laws during the second period is nearly ten times as great as in the earlier period: while the percentage of laws conferring financial powers has also increased—since of the 1202 acts passed during this second period, 1124, or 93.5 per cent, conferred financial powers, as compared with 55.47 per cent during the earlier period.

1. 75 Ohio Laws 541.

Local and Special Acts of the Ohio Legislature Conferring Powers Upon Municipal Corporations, 1876-1892.[1]

Year	Total Number Acts	Conferring Financial Powers	To Borrow Money	To Transfer Funds	To Levy Tax
1876	11	7	3	1	3
1877	54	49	25	15	9
1878	41	35	22	9	4
1879	43	37	17	15	5
1880	24	20	6	10	4
1881	31	24	15	8	1
1882	24	24	9	4	11
1883	54	53	38	15	....
1884	56	52	26	24	2
1885	62	59	38	18	3
1886	66	61	31	27	3
1887	80	75	46	26	3
1888	117	109	51	56	2
1889	176	168	105	58	5
1890	126	121	56	62	3
1891	156	151	72	77	2
1892	81	79	34	45	....
1876-92	1,202	1,124	594	470	60

The following classification[2] of cities was in force at the time when the system was finally declared unconstitutional (June 26, 1902):

Grade		Population Basis of Classification	City
1st Class	1	200,000+	Cincinnati
	2	90,000–200,000	Cleveland
	3	31,500–90,000	Toledo
2nd Class	1	30,500–31,500	Columbus
	2	20,000–30,500	Dayton
	3	10,000–20,000	Sandusky, Akron, Portsmouth, Zanesville
	3-a	28,000–33,000	Springfield
	3-b	16,000–18,000	Hamilton
	4	5,000–10,000 (except those with from 8,330–9,050)	About thirty municipalities
	4-a	8,330–9,050	Ashtabula

In the decisions[3] which overthrew the system of classification, the court granted stay of execution until October 2, 1902, to enable the legislature to provide a new frame-work of municipal government. Accordingly

1. This table is taken from Wilcox, Municipal Government in Michigan and Ohio, p. 79.
2. Revised Statutes of Ohio (1898) Sec. 1546-1551.
3. The State of Ohio *ex rel.* Knisely *et al. v.* Jones *et al*, 66 Ohio State, 453. The State of Ohio *ex rel.* the Attorney General *v.* Beacom *et al.*, 66 Ohio State, 491.

the legislature assembled in extraordinary session on August 25, 1902, and proceeded to adopt a new municipal code[1] of 231 sections. This code was declared by the Supreme Court to be a general and constitutional law.[2] Municipalities were classified into cities and villages,[3] the line being drawn at five thousand population, and no other classification was attempted. The aggregate of taxes allowable in municipalities was ten mills on each dollar of valuation;[4] but an additional levy might be made if the proposition was submitted to the electors of the corporation and approved by two-thirds of those voting upon the same.[5] Council was to have power to borrow money in anticipation of the general revenue fund, but not exceeding the amount estimated to be received at the next semi-annual settlement of tax collections.[6] Deficiency bonds could be issued by council to an amount not exceeding one per cent of the total assessed value of the property in the corporation, provided the issuance of such bonds was approved by two-thirds of all members elected to council, and also by a vote of two-thirds of all the electors voting upon the proposition at a regular or special election to be provided by council.[7]

IV.—DECISIONS OF THE SUPREME COURT.

Appropriate Local Legislation Not Prohibited.

Section 26 of Article II of the Constitution of 1851 provides that "All laws of a general nature shall have a uniform operation throughout the state." It will be noted that this provision does not prohibit appropriate local legislation. It does not require that all enactments of the legislature shall be of a general nature, and it is therefore entirely competent for the legislature to pass local acts on subjects of a local nature.[8] On subjects of a general nature, however, all laws must operate uniformly throughout the state.

This Provision Mandatory, Not Merely Directory.

The whole matter, then, hinges on the question whether the particular act is local or general in its nature. This is eventually a question for the court to decide: in other words, the character of the subject matter of a law, whether general or special, is independent of legislative declaration.[9] The reason why the decision on this point should ultimately be left for the court is well stated by Judge Minshall in the case of Silberman *et al. v.* Hay:[10] "As to the nature of the subject-matter, the legislature is not the exclusive judge. If it were otherwise, then this important provision of the

1. 96 Ohio Laws 20-106; passed Oct. 22, 1902, became effective November 15, 1902.
2. Zumstein *v.* Mullen *et al.*, 67 Ohio State, 382.
3. Section 1.
4. This is exclusive of the levy for county and state purposes, for schools and school-house purposes, for free public libraries and library buildings, for university and observatory purposes, for hospitals and for sinking fund and interest.
5. Sec. 33-34.
6. Sec. 95.
7. Sec. 99.
8. Cricket *et al. v.* the State of Ohio, 18 Ohio State, 9; Ohio *ex rel. v.* Covington *et al.*, 29 Ohio State, 102; Hart *v.* Murray, 48 Ohio State, 605; Metcalf, Auditor, *v.* the State *ex rel.*, 49 Ohio State 586.
9. Falk, *Exp.*, 42 Ohio State, 638; Costello *v.* Wyoming, 49 Ohio State, 202; Gaylord *et al. v.* Hubbard, Treasurer, 56 Ohio State, 25.
10. 59 Ohio State, 582.

constitution would be little more than directory, instead of mandatory as it undoubtedly is. The greatest respect will always be given the determination of the legislature in enacting the law, but where its validity is properly challenged on this ground, it is the duty of the court to pass on it, and if clearly satisfied that the provision has been violated in making that a local, which should have been, if enacted at all, a general law, it is within the power of the court, and its duty, to declare it invalid."

Special Act Cannot be Made General by Any Form it May be Made to Assume.

In deciding whether a certain act is general or special, the court will consider the substance of the act, and not the mere form it may be made to assume. Thus in an early case[1] the court declared: "The constitutionality of an act is to be determined by its operation, and not by the mere form it may be made to assume." This principle the court has repeatedly affirmed.[2]

Subject Matter as Determining Character of a Law.

According to the principle laid down by Judge Scott in Kelly *v.* The State of Ohio,[3] and repeatedly affirmed in later decisions, the character of a law, whether general or special, depends largely upon the character of its subject matter. "If that be of a general nature, existing throughout the state, in every county, a subject-matter in which all the citizens have a common interest—if it be a court organized under the constitution and laws, within and for every county of the state, and possessing a legitimate jurisdiction over every citizen, then the laws which relate to and regulate it are laws of a general nature, and by virtue of the prohibition referred to must have a uniform operation throughout the state."

Definition and Illustration of General Law.

In Heck *v.* The State,[4] the following definition of general law is given: "A law is general and uniform that applies to all persons and things coming within its provisions throughout the state. Its uniformity consists in the fact that no person or thing, of the description of any person or thing affected by it, is exempt from its operation."

The following are illustrations of acts which the Ohio Supreme Court has declared to be of general nature, requiring, therefore, uniformity of operation throughout the state: an act relating to the jurisdiction of the Court of Common Pleas;[5] affecting the right of trial by jury;[6] regulating the organization and management of common schools;[7] punishing by fine and im-

1. The State *ex rel. v.* the Judges of the Court of Common Pleas of the First Judicial District, 21 Ohio State, 1.
2. Ohio *ex rel. v.* Covington *et al.*, 29 Ohio State, 102; The State *ex rel. v.* Mitchell, 31 Ohio State, 592; The State *v.* Powers, 38 Ohio State, 54; The State *v.* Pugh, 43 Ohio State, 98.
3. 6 Ohio State, 269.
4. 44 Ohio State, 536.
5. Kelley *v.* The State of Ohio, 6 Ohio State, 269.
6. Silberman *et al. v.* Hay, 59 Ohio State, 582.
7. The State *v.* Powers, 38 Ohio State, 54. (Overruled in State *ex rel. v.* Shearer *et al.*, 46 Ohio State, 275).

prisonment any person found with burglar tools in his possession;[1] requiring fire-escapes on buildings over three stories in height;[2] authorizing the construction and improvement of streets and sidewalks;[3] providing for the support of the poor;[4] providing for the appointment of a board of equalization and assessment.[5]

As will be seen later[6] in discussing the question of classification, the court has uniformly held that a law relating to certain municipal corporations as a class, and having a like effect upon all within that class, is general.[7]

Illustrations of Local Acts.

The following are instances of acts which the court has held to be local in their nature and which therefore need not be uniform in operation throughout the state: regulating the compensation of local officers;[8] detaching territory from a municipal corporation;[9] regulating the mode of selecting jurors;[10] dividing territory into school districts.[11]

Object of Article XIII, Section I.

The motives which led the constitutional convention of 1851 to adopt Section 1 of Article XIII have been indicated in discussing the history of that convention.[12] In a case[13] decided in 1864 the Supreme Court of Ohio declared that the object of this provision of the constitution was "to correct an existing evil, and to inaugurate the policy of placing all corporations of the same kind upon a perfect equality as to all future grants of power." Again in 1870 in interpreting the same section, the court declared it to have been the aim of the convention "to cut up by the roots, at once and forever, all capacity of the general assembly to confer by special act any powers whatsoever upon any corporate body whatsoever."[14]

This Provision is Restrictive and Mandatory.

In the same case the court declared Section 1 of Article XIII to be, not directory, but restrictive and mandatory. In other words, this provision does not depend for its observance solely upon the good faith and conscience of the legislature; it constitutes a direct limitation upon the legislative power, and subjects the action of the legislature upon this subject to

1. Falk, *Exp.*, 42 Ohio State, 638.
2. City of Cincinnati *v.* Steinkamp, Trustee, 54 Ohio State, 285.
3. Costello *v.* Wyoming, 49 Ohio State, 202; Hixson *v.* Burson *et al.*, 54 Ohio State, 470; Mott *et al. v.* Hubbard, Treas., *et al.*, 59 Ohio State, 199.
4. The State *ex rel. v.* Bargus *et al.*, 53 Ohio State, 94.
5. Gaylord *et al. v.* Hubbard, Treas., 56 Ohio State, 25.
6. *Infra*, pp. 36-37.
7. McGill *v.* The State, 34 Ohio State, 228; The State *v.* Powers, 38 Ohio State, 54; Bronson *v.* Oberlin, 41 Ohio State, 476; The State *ex rel. v.* Hawkins, 44 Ohio State, 98; The State *ex rel. v.* Hudson, 44 Ohio State, 137; Marmet *v.* The State, 45 Ohio State, 63; State *ex rel. v.* City of Toledo, 48 Ohio State, 112; The State *ex rel. v.* Smith *et al.*, 48 Ohio State, 221.
8. Cricket *et al. v.* The State of Ohio, 18 Ohio State, 9; The State *ex rel. v.* The Judges, 21 Ohio State, 1; Hart *v.* Murray, 48 Ohio State, 605.
9. Metcalf, Auditor, *v.* The State *ex rel.*, 49 Ohio State, 586.
10. McGill *v.* The State, 34 Ohio State, 228.
11. State *ex rel. v.* Shearer, 46 Ohio State, 275 (Overrules The State *v.* Powers 38 Ohio State, 54).
12. *Supra*, pp. 17-19.
13. Atkinson *v.* The Marietta and Cincinnati Railroad Co., 15 Ohio State, 21.
14. The State *ex rel. v.* The City of Cincinnati, 20 Ohio State, 18.

judicial review.[1] To this doctrine the court has uniformly adhered in a long line of decisions. In reviewing enactments on this subject, the court has, however, invariably shown the greatest deference toward the legislature. It has repeatedly declared that acts will not be set aside as special unless they clearly contravene the provisions of the constitution;[2] and further, that constitutional objections are not to be raised officiously, and will not ordinarily be considered by the court unless they are presented in the petition.[3]

Applies to Municipal as Well as Private Corporations.

In the case of The State *ex rel. v.* The City of Cincinnati[4] the court laid down two principles of great importance in defining the scope of Section 1, Article XIII. The first of these was, that the term "corporation" as used in this section includes municipal as well as private corporations. Counsel for the city had argued that this section did not apply to municipal corporations, a contention which was clearly untenable in view of the wording of the section and the circumstances attending its adoption. The decision on this point was subsequently affirmed in the case of The State *v.* The City of Cincinnati,[5] The State *ex rel. v.* Mitchell,[6] and has since been accepted as conclusive.

Applies to Amendments of Charter as Well as to Original Act of Incorporation.

A second principle laid down in The State *ex rel. v.* The City of Cincinnati,[7] further defined the scope of Section 1, Article XIII. The court declared that this section not only forbade the creation by special act of a new corporation, but also precluded the conferring of additional powers upon a corporation already existing. The point of the decision was subsequently affirmed in The State *v.* The City of Cincinnati,[8] reaffirmed in The State *ex rel. v.* Mitchell,[9] and has been followed in all subsequent cases.

What Are Corporate Powers?

No formal definition of corporate power has ever been given by the Supreme Court, but the numerous decisions on this subject show with fair precision the sort of powers included within this class. Until the recent decision in the case of The State *ex rel.* Knisely *et al v.* Jones *et al.* [10] the court has usually made the decision as to what are corporate powers depend largely upon the character of the body upon which they are conferred. This distinction is well illustrated in the leading case of The State *v.* Pugh.[11] This was a case brought to test the constitutionality of an act reorganizing the city government of Columbus. The act authorized the

1. The same principle is asserted by the Supreme Court of Pennsylvania in Ayar's Appeal, 122 Pa. State, 266. See *infra,* page 53.
2. The State *ex rel. v.* Hawkins, 44 Ohio State, 98; The State *ex rel. v.* Wall *et al.,* 47 Ohio State, 499; The State *ex rel. v.* Baker *et al.,* 55 Ohio State, 1.
3. The State *ex rel. v.* Mitchell, 31 Ohio State, 592; The State *v.* Pugh, 43 Ohio State, 98.
4. 20 Ohio State, 18.
5. 23 Ohio State, 445.
6. 31 Ohio State, 592.
7. 20 Ohio State, 18.
8. 23 Ohio State, 445.
9. 31 Ohio State, 592.
10. 66 Ohio State, 453; *infra,* p. 42.
11. 43 Ohio State, 98.

trustees of the city's sinking fund to redistrict the city into wards, and also authorized the city council to appoint three members of a board of control. The court held that the powers conferred upon the sinking fund trustees were not corporate powers; while on the other hand, the authority conferred upon council to appoint three members of a board of control was a grant of corporate power, and the act being special, it was consequently unconstitutional. "What constitutes corporate powers" said the court "depends largely upon whom the powers in question are conferred. The conferring of certain powers upon an existing corporation may bring them within the designation of 'corporate powers,' while conferring the same duties or functions upon individuals, fails to impart to them the attributes of corporate powers."[1]

When powers are conferred upon a corporate body, the presumption is that these are corporate powers. "The fact alone that the General Assembly has undertaken to confer power on a corporate body raises a strong presumption that the power thus sought to be conferred is intended to be corporate power, and in the absence of a clear showing to the contrary, the presumption stands."[2] By the act involved in this case, the village councils of Norwood and Pleasant Ridge were authorized to nominate two freeholders to act as trustees in making certain improvements, and the measure was held unconstitutional as an attempt to confer corporate power by special act. It was contended by counsel that if corporate power was conferred upon any one by this act, it was upon council alone, and not upon the municipality. The court quickly disposed of this contention by declaring that inasmuch as council is the governing body of the corporation, power given in terms to council is in effect given to the municipality.

The annexation of territory to a city has likewise been held to be an exercise of corporate power, inasmuch as such annexation gives the municipality additional powers of municipal government, police regulation, judicial jurisdiction and assessment and taxation. Hence a special act which annexes territory is void.[3] On the other hand, detaching territory from a municipality does not confer corporate power and may be accomplished by special act.[4]

The following are other instances of powers which the Supreme Court has held to be corporate powers, and the acts granting them, being special, were therefore unconstitutional: giving the city council of Cincinnati power to approve the regulations adopted by the trustees of the Cincinnati Commercial Hospital;[5] authorizing the city council of Columbus to direct street improvements and issue bonds for same;[6] authorizing the city of Akron through its electors to choose a police judge, and through its mayor and council to appoint a prosecuting attorney and clerk of court;[7] and empowering certain villages to dedicate their property to the county for road purposes.[8]

1. The State *v.* Pugh, 43 Ohio State, 98 (110).
2. Commissioners *v.* The State *ex rel.*, 50 Ohio State, 653 (657).
3. The State *ex rel. v.* Commissioners, 54 Ohio State, 333.
4. Metcalf, Auditor, *v.* The State *ex rel.*, 49 Ohio State, 586.
5. The State *v.* The City of Cincinnati, 23 Ohio State, 445.
6. The State *ex rel. v.* Mitchell, 31 Ohio State, 592.
7. The State *ex rel. v.* Anderson, 44 Ohio State, 247.
8. The State *ex rel. v.* Commissioners, 54 Ohio State, 333

Classification of Cities Held Proper.

The manner in which the plan of classification inaugurated in the act[1] of May 3, 1852, was subsequently developed into the most elaborate of municipal classification systems has been discussed.[2] The judicial attitude toward classification was first shown in the case of Welker *v.* Potter and Wife.[3] In this case the court based its conclusions upon two assumptions: (1) that it is proper for the legislature to classify the cities of the state; and (2) that a law relating to all members of a class is general and not special. The particular act upheld by this decision operated upon "all cities of the first class having a population less than 100,000 at the last federal census."[4] When originally passed, this act applied only to Cleveland, but at the time of this decision Toledo was also included within the class thus defined.

In The State *v.* Powers[5] while it was held that laws regulating the common schools were of a general nature and must have a uniform operation throughout the state, the power of classification was distinctly recognized. The court declared: "On subjects concerning which uniformity is required * * * judicious classification and discrimination between classes will not destroy the required uniformity."

In The State *v.* Brewster,[6] the court held that the classification provided for in sections 1546-1550, Revised Statutes of Ohio, was authorized by the constitution. The court said: "The validity of that classification has been repeatedly recognized in this court, and the reasons for adhering to that construction of the constitution are cogent and satisfactory. Hence we hold that statutory provisions with respect to any such class are for governmental purposes, general legislation, and not in conflict with Article 2, Section 26, nor with Article 13, Section 6 of the constitution."

The Doctrine of Stare Decisis.

From this decision on the court based its conclusions in regard to the power of classification upon the doctrine of *stare decisis*. Thus in the case of The State *ex rel. v.* Hudson,[7] the court declared: "The peace and prosperity of these cities, and the best interests of the state, require that this system of classification be regarded as *stare decisis* and settled." Again in the case of The State *ex rel. v.* Cincinnati,[8] it was stated that classification "has become so firmly established that it is no longer open to controversy."

Classification Upheld on Ground of Necessity.

In explaining the reasons which led the court to sanction the legislature's power to classify, Judge Minshall said in The State *ex rel. v.* Baker

1. An act to provide for the organization of Cities and Incorporated Villages: 50 Ohio Laws, 223.
2. *Supra*, pp 24-31.
3. 18 Ohio State, 85; *idem*, State *v.* Graham, 16 Neb. 74; Pritchett *v.* Stanislaus Co., 73 Cal. 310. For other leading cases on classification, see 70 N. Y. 327; 77 Pa. State, 338; 40 N. Y. Law, 1, 123; 70 Ill. 388; 94 U. S. 155.
4. Act of Apr. 5, 1866 (63 Ohio Laws 133).
5. 38 Ohio State, 54.
6. 39 Ohio State, 653.
7. 44 Ohio State, 137.
8. 52 Ohio State, 419.

et al.[1] "It is not to be supposed that * * * it was intended that the cities and villages of the state were to be governed by one uniform system of laws, applicable alike to each and every city and village in the state. It would be impossible to do so, and adequately provide for all the necessities of the various cities of the state, differing as they do in population, pursuits and locality; and it is fair to presume that this was as well understood by those who made and adopted the constitution as by those of the present time. * * The power of the General Assembly to classify cities and enact laws applicable to particular classes so formed, cannot now be successfully questioned. It should be regarded as *stare decisis.*"

Classification Must be Based Upon Reasonable Grounds.

Where classification legislation has been upheld under constitutional restrictions similar to those found in the Ohio constitution, the courts have generally insisted that the classification adopted by the legislature must be based upon reasonable grounds. Thus in the case of The State *v.* Hammer,[2] the court says: "The mark of distinction on which the classification is founded must be such, in the nature of things as will, in some reasonable way at least, account for or justify the restriction of the legislature."

The same rule is laid down by the Minnesota court in the case of Nichols *v.* Walter,[3] which declares that "the true practical limitation of the legislative power to classify is that the classification shall be upon some apparent natural reason—some reason suggested by necessity, by such a difference in the situation and circumstances of the subjects placed in different classes as suggests the necessity or propriety of different legislation with respect to them."

What are Proper Bases for Classification?

In Ohio a similar rule obtains and it will be noted that under this rule, population is not the only proper basis for classification.[4] Thus in the case of Bronson *v.* Oberlin[5] the court held it competent for the legislature to pass an act affecting "incorporated villages having within their limits a college or university," and authorizing such villages "to provide against the evils resulting from the sale of intoxicating liquors therein." The court said: "The classification must be just and reasonable, and not arbitrary. In the act under consideration the classification is just and reasonable. It groups in a class all incorporated villages in the state having within them a college or university. There are many of these and they are located in all sections. * * The value of their property and their greater value as suitable resorts for the education of youth, depend upon such villages being kept free from the unrestrained traffic in intoxicating liquors. These considerations and many others which could be enumerated show the just and substantial character of the classification made in this law, and the wisdom of the General Assembly in making it."

1. 55 Ohio State, 1.
2. 42 N. J. Law, 485.
3. 37 Minn. 264
4. *Contra,* Commonwealth *v.* Patton, 88 Pa. State, 258. *Infra,* p. 53.
5. 41 Ohio State, 476.

The doctrine of Bronson *v.* Oberlin was affirmed in State *ex rel. v.* Cincinnati[1] where the court declared: "Nor is the power of classification confined to that based upon population * * * It is settled that proper classification may be based upon the peculiar situation of municipalities, their conditions, internal and surrounding, which render different legislation with respect to them necessary, or especially appropriate."

An illustration of what the court deemed an improper basis of classification was an act[2] applying only to those cities "in any county containing cities of the first grade of the first class" (Hamilton County) which had failed to construct sidewalks under a previous act. In the case[3] holding this measure unconstitutional, the court declared: "The requirements for village classification * * * will not be satisfied by adopting any common mark or feature that will serve to classify * * * The objects grouped for classification should be distinguished by characteristics sufficiently marked and important to make them a class by themselves. * * * The case at bar presents to us a new and unique classification of villages founded on an incident or characteristic, arbitrary and restrictive, unreasonable and illusory."

Classification Must be Operative From Time to Time, So As to Permit Other Cities to Enter Classes Established.

Population has invariably been considered a proper basis of classification by the Ohio court, provided the plan of classification is so arranged that, without additional legislation, other cities may enter the classes established. The theory is that under a classification " a law applying to a certain class of cities, fixed by previous legislation, into which other municipal corporations may enter, and from which they may pass into other clasess by increase of population, is not special but general, since the grade of any particular city is not designated by the act, but depends upon its growth in population, as it may, by such growth, pass from one grade or class to another."[4] If, however the act is so worded that it could never apply to more than one city, it is special and unconstitutional. On this ground the act reorganizing the city government of Columbus was held unconstitutional in State *v.* Pugh,[5] as the court upon examining the terms of the act, declared it to be "logically and physically impossible that any of the foregoing provisions can ever, in the history of the state, apply to any other city than Columbus."

For the same reason, the act creating a board of city affairs in cities of the first grade, first class (Cincinnati) was held unconstitutional in The State *v.* Smith.[6] The act in question required the bond of each member of this board to be approved by the judges of the Superior Court. The Supreme Court held that under existing legislation this measure could not possibly apply to any other city than Cincinnati, since no other city had

1. 52 Ohio State, 419.
2. Act of April 16, 1891 (88 Ohio Laws 311).
3. Costello *v.* Wyoming, 49 Ohio State, 202.
4. The State *ex rel. v.* Hawkins, 44 Ohio State, 98; see also State *ex rel. v.* Cincinnati, 52 Ohio State, 419.
5. 43 Ohio State, 98.
6. 48 Ohio State, 211.

a Superior Court. The act was therefore adjudged special and unconstitutional.

Other cases which lay down this same principle are: State *ex rel. v.* Schwab,[1] City of Kenton *v.* State,[2] and The Pittsburg, Fort Wayne and Chicago Railway Co. *v.* Martin.[3]

Classification May be Valid Though Only One City is Included in a Given Class.

It is not fatal to an act general in its terms that at the time of its passage it affects but one city, provided it is so framed that other cities may in the future enter the class designated, and so come within its operation.[4] This point is clearly brought out in the leading case of The State *v.* Pugh,[5] in which the doctrine of classification is thus stated: "It is not to be urged against legislation, general in form, concerning cities of a designated class and grade, that but one city in the state is within the particular classification at the time of its enactment.

"Nor is it fatal to the act in question that the belief or intent of the individual members of the General Assembly who voted for the act was that it should apply only to a particular city. * * * Although it is admitted that no other city than Columbus is within, or can before July next, come within the class and grade contemplated by the act, yet, if any other city may, in the future, by virtue of its increase in population and the action of municipal authorities, ripen into a city of the same class and grade, and come within the operation of the act, it is still a law of a general nature and is not invalid, even if it confer corporate powers.

"On the other hand, if it is clear that no other city in the state can in the future come within its operation without doing violence to the manifest object and purpose of its enactment, and to the clear legislative intent, it is a local and special act, however strongly the form it is made to assume may suggest a general character."

The same rule is clearly stated both in The State *ex rel. v.* Smith,[6] and the State *ex rel. v.* Baker,[7] in the following language: "It is the possibility that other cities may enter a certain grade of a class, and not the certainty that they will, that gives to a law creating the grade a general character."

Advancement of Cities Not Compulsory.

Mere increase of population is not alone sufficient to raise a city from one grade or class to another without some affirmative action on the part of the city in question.[8] Unless this action is taken by the municipal authorities, the city continues in its old grade and class—the advancement to a higher grade or class not operating of itself.[9] In the case of Hays

1. 49 Ohio State, 229.
2. 52 Ohio State, 59.
3. 53 Ohio State, 386.
4. The same rule is laid down in Wheeler *v.* Philadelphia, 77 Pa. State, 338.
5. 43 Ohio State, 98.
6. 48 Ohio State, 211 (218).
7. 55 Ohio State, 1 (11).
8. On the subject of advancement, see *supra,* p. 25, *infra,* p. 41, 50.
9. The State *ex rel. v.* Wall *et al.,* 47 Ohio State, 499.

and Son *v.* The City of Cleveland, the court declared that "the advancement of a city from the second grade to the first grade of its class could be prevented by the action of the city council declaring it inexpedient to do so."

Finally the matter of advancement was placed absolutely under municipal discretion by a statute passed April 15, 1892,[2] which forbade advancement "unless the council should first by a two-thirds vote of all members declare a change of grade or class to be expedient." This act was sustained in the case of Brady *v.* The State,[3] when the court declared: "This amendment worked a complete change in the policy of the law in relation to changing the grades and classes of municipal corporations. Before, the general policy was to have a municipal corporation advance or change its grade, etc., by operation of law alone, unless its council should declare it inexpedient to do so, but by the amendment before noted the policy was changed so that municipalities would remain in their existing grades and classes, notwithstanding a change of population, unless the council by a two-thirds vote of all its members should decide to have it changed."

Classification Overthrown in Recent Decisions.

Several years prior to 1902, when the entire system of classification was overthrown, the Supreme Court had indicated its distrust of classification. Thus in the case of The State *ex rel. v.* Wall *et al.*,[4] (decided in 1890), the court said: "Grave doubts may well be entertained as to the constitutionality of this method of classifying cities for the purpose of general legislation." Again in the following years, in the case of The State *ex rel. v.* Smith *et al.*,[5] the court said: "It must be conceded that the method of classifying cities for the purpose of legislation has been carried to the very verge of constitutional authority." At the January term of 1896 in the case of The City of Cincinnati *v.* Steinkamp, Trustee,[6] the court said: "Realizing, as every observer must, the growing tendency to render this limitation on legislative power directory merely, and to treat it as if it were devoid even of moral obligation, by resorting to local legislation upon matters which, if of importance, concern the people of all parts of the state, we are impelled by duty, whenever such acts are brought before us for review and their invalidity appears clear, to so declare." In the case of Hixson *v.* Burson *et al.*,[7] the court spoke still more strongly: "The doctrine of classification has nearly wiped out the limitation as to general laws in section six of article thirteen of the constitution, and should itself be overruled, so as to enable us to get back to the wholesome provisions of that section."

In the case of The City of Cincinnati *v.* Taft *et al.*,[8] (decided in 1900), the court discussed the doctrine of *stare decisis* with reference to classification legislation, and declared that when classification became merely isola-

1. 55 Ohio State, 117.
2. 89 Ohio Laws, 302.
3. 59 Ohio State, 546.
4. 47 Ohio State, 499.
5. 48 Ohio State, 211.
6. 54 Ohio State, 285.
7. 54 Ohio State, 470.
8. 63 Ohio State, 141.

tion, *stare decisis* should not prevail. The particular act in question was sustained under the rule requiring stability of judgments, but the court intimated that similar acts would not be upheld in other cases, and also hinted at its opinion that the classification contained in the constitution was an exclusive one.

In the year 1901, in the case of The State *ex rel.* Sheets *v.* Cowles *et al.*,[1] the court laid down four important propositions: (1) That classification was originally upheld in the belief that ultimately other cities would come under the operation of laws applying to all of a class—instead of which classification has become mere isolation; (2) Since the effect of this doctrine became apparent, the cases sustaining classification have been followed without approval; (3) The doctrine of classification is not to be extended; and (4) An attempted classification in order to evade section 26, Article II, of the constitution, is not valid.

These earlier decisions paved the way for the decision rendered in 1902 in the case of The State *ex rel.* Knisely *et al v.* Jones *et al.*,[2] which finally destroyed the whole system of classification. This was a case in mandamus in which the relators, who claimed to be the police commissioners of Toledo under authority of the act of April 27, 1902, demanded possession of the books and property of the police department, held by the defendants, who, denying the validity of said act, claimed to be the legal commissioners. The act in question, following the usual formula of classification legislation, had provided: "All police powers and duties connected with and incident to the appointment, regulation and government of a police force in cities of the third grade of the first class, shall be vested in and exercised by a board of police commissioners, to be appointed by the governor."

In its opinion holding this law unconstitutional, the court pointed out that the doctrine sustaining the original classification of cities did not sustain the classification involved in the present case.[3] Originally, "by an unvarying rule the characteristic of population was made the basis of the classification, and it was made inevitable that every city attaining a population of twenty thousand should advance and become a city of the first class; and that every village attaining a population of five thousand should become a city of the second class. * * * Two things were true and they were of the essence of the doctrine. Advancement was by a rule of unvarying application, and every municipality might become subject to the operation of every statute conferring corporate power upon its own or a higher class. * * * Sections 1546 to 1552 of the Revised Statutes relate exclusively to the subject of classification. The first of these sections now provides that cities of the first class shall be of three grades, and cities of the second class shall be of eight grades. In the present view grades of classes are but added classes. In these eleven classes the eleven principal cities of the state are isolated, so that an act conferring corporate power upon one of them by classified description, confers it upon no other. They have been isolated under the guise of classification, as their growth promised realization of the belief which was the foundation of the judicial doctrine of classi-

1. 64 Ohio State, 162.
2. 66 Ohio State, 453.
3. Concerning advancement, see *supra*, pp. 25, 39.

fication, viz: that their advancement under the unvarying rule of population would give a wider operation to acts conferring corporate powers. * * * The judicial doctrine of classification was, that all cities having the same characteristic of a substantial equality of population, should have the same corporate power, although another class might be formed upon a substantial difference in population. The classification now provided affords no reason for the belief that it is based upon such substantial difference in population as the judicial doctrine contemplated. * * * The increasingly numerous classes of municipalities show that even when a difference in population is made to appear as the basis of classification, the differences in population are so trivial that they cannot be regarded as the real basis. * * * In view of the trivial differences in population, and of the nature of the powers conferred, it appears from such examination, that the present classification cannot be regarded as based upon differences in population, or upon any other real or supposed differences in local requirements. Its real basis is found in the differing views or interests of those who promote legislation for the different municipalities of the state. An intention to do that which would be violative of the organic law should not be imputed upon mere suspicion. But the body of legislation relating to this subject shows the legislative intent to substitute isolation for classification, so that all the municipalities of the state which are large enough to attract attention shall be denied the protection intended to be afforded by this section of the constitution. The provisions of the section could not be more clear or imperative, and relief from the present confusion of municipal acts and the burdens which they impose would not be afforded by its amendment. Since we cannot admit that legislative power is in its nature illimitable, we must conclude that this provision of the paramount law annuls the acts relating to Cleveland and Toledo, if they confer corporate power.

"Counsel for the relators, in support of the act relating to Toledo, urge the conclusion that even though the act should be regarded as special, it is not repugnant to this section of the constitution, because, in their view, it does not confer corporate powers. * * * Though it might be difficult to give a conceptual definition of corporate powers which would be found complete and accurate in all cases, an accurate descriptive definition readily occurs, and it is sufficient for present purposes. They are such powers as are usually conferred upon corporations. In the present aspect of the subject they are such powers as are usually conferred upon municipal corporations. They are classified by Judge Dillon as follows:

" 'If we analyze the complex powers usually conferred upon a municipality in this country we shall discover that these are of two general classes, viz.: (1) Those which relate to health, good government, efficient police, etc., in which all the inhabitants have an equal interest and ought to have an equal voice. (2) Those which directly involve the expenditure of money and especially those relating to local improvements the expense of which ultimately falls upon the property owners.'

"Surely we shall not err if we regard the phrase 'corporate powers,' as embracing all the powers which, within the observation of those who framed and adopted the constitution, were conferred upon and exercised

by all the cities of the state.[1] Of these powers perhaps none is more conspicuously exercised than that of maintaining the public order and enforcing municipal ordinances."

After fifty years of special legislation, the Supreme Court had at last announced its determination to give effect to the constitutional limitations upon this subject. Under the view of classification and the broad definition of corporate powers in this case, the government of practically every municipality in the state was clearly invalid. The act of March 16, 1891,[2] organizing the city government of Cleveland, was declared unconstitutional upon the same ground as the case just cited, and the decision[3] was announced on the same day, June 26, 1902. Judgment of ouster was granted against the city officials, but execution of that judgment was suspended until October 2, 1902, so as to give the legislature opportunity to provide new municipal machinery for the cities of the state.[4]

1. Compare with the narrower definition of corporate powers given in The State *v.* Pugh, 43 Ohio State, 98, *supra*, p. 34.
2. 88 Ohio Laws, 105.
3. The State of Ohio *ex rel.* The Attorney General *v.* Beacom *et al.*, 66 Ohio State, 491.
4. *Supra*, pp. 30-31.

CHAPTER IV.

History of Pennsylvania's Attempt to Prohibit Special Municipal Legislation.

I.—CONSTITUTIONAL CONVENTION OF 1872–73.

The present constitution of Pennsylvania was drawn up by a convention—the fourth in the history of the state—which assembled at Harrisburg, Nov. 12, 1872. It was composed of 132 members who chose for their president, William M. Meredith of Philadelphia. The organization having been perfected, standing committees appointed and preliminary business completed, the convention adjourned Nov. 27, 1872, to meet in Philadelphia the following January—having accepted the invitation of the Philadelphia council to meet in that city. The convention convened at Philadelphia Jan. 7, 1873, and continued its sessions until July 15, when a recess was taken until September. Again assembling September 16, the convention continued its sessions until its work was completed on November 3, 1873, whereupon it adjourned to meet at Harrisburg, December 27, 1873, to receive and count the returns. The vote on the constitution resulted: In favor of adoption, 253,560; against adoption, 109,198; plurality in favor of the constitution, 144,362.

The convention had been summoned largely in response to a popular demand that certain grave abuses be checked by restricting the power of the state legislature,[1] and throughout its work the convention kept this purpose constantly in view. To those studying municipal government, the chief interest in the convention debates lies in the proposed limitations upon legislative control of cities. Two of the standing committees recommended that the general assembly's power of control over municipal corporations be limited by constitutional provision in three important respects: (1) By forbidding the general assembly to pass any local or special law regulating the affairs of cities. (2) By providing that the general assembly should not delegate its power over municipal administration to any special commission, private corporation or association. (3) By delimiting a sphere of local autonomy within which municipal corporations should have the right to pass laws for their own regulation. The first two of these limitations were recommended by the committee on legislation, as well as by the committee on cities and city charters; the third limitation was recommended only by the latter committee.

1. See Dickson, Development in Pennsylvania of Constitutional Restraints upon the Power and Procedure of the Legislature, p. 24 *et seq.*

On the advisability of prohibiting local legislation with reference to cities, the convention was practically a unit. The committee on legislation recommended the prohibition of special or local laws upon a number of subjects, including measures "regulating the affairs of counties, cities, townships, wards, boroughs, or school districts."[1] This part of the committee's report prohibiting special or local laws upon some twenty-six different subjects was discussed by the convention, section by section;[2] but the particular section quoted above, prohibiting special or local laws concerning cities, was passed without discussion, so unanimous was the sentiment in its favor.[3] A similar provision was recommended by the committee on cities and city charters,[4] but this part of their report was stricken out, the matter having been already provided for by the adoption of the section as recommended by the committee on legislation.[5]

The strong sentiment in the convention against special legislation is well illustrated by the speech of Mr. Mantor,[6] who pointed out that in the seven years from 1866 to 1872, both inclusive, the legislature had passed 475 general laws and 8,775 private acts.[7] Continuing, he said: "But, Mr. Chairman, what a fearful commentary is this on the abuses of special legislation! * * * What sort of justice, I ask, can there be that will allow the law-making power in this state to change at each and every session of the legislature, some act, because a few favored citizens desire it? * * * Necessary legislation is greatly retarded, the expenses to the commonwealth are greatly enlarged, the assumption of such rights degrades the dignity of any legislative body, and withal impairs the efficiency of legislation for good to the whole people. * * *

"The people all over the state are asking that we shall circumscribe the acts of our legislature by incorporating in this constitution a section like this, that will make all laws general. I am one of those who believe that nearly all objects for legislation can be equally accomplished under general law. * * * It will not be denied that there is a fevered anxiety about the abuses growing out of special privileges. We should meet this matter at the threshold and grapple it with the strong arms of the Constitution, only looking to the best interests of the present and the necessities of the future."

Equally unanimous was the sentiment of the convention against the delegation of legislative power to municipal commissions. Accordingly,

1. Constitution of Pennsylvania, Art. III, Sec. 7.
2. Debates Pennsylvania Constitutional Convention, II, 589-622; V, 248-267; VII, 332-436.
3. *Ibid*, II, 593.
4. Debates Penn. Constitutional Convention, II, 35.
5. *Ibid*, VI, 225.
6. *Ibid*, II, 590.
7. These acts were distributed as follows:

Year.	General laws.	Special laws.
1866	50	1096
1867	86	1392
1868	73	1150
1869	77	1276
1870	54	1276
1871	81	1353
1872	54	1232
Total, 1866-1872	475	8775

with a view to restrict legislative power in this respect, the Committee on Legislation reported a provision as follows: "The General Assembly 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, or to levy taxes or perform any municipal function whatever."[1]

In discussing this section, Mr. Newlin of Philadelphia pointed out that in that city the legislature had created a commission not a single member of which was elected by the people, and none of whose proceedings could be reviewed by any other body, which had increased the debt of the city by thirteen million dollars.[2]

An able speech in favor of the provision was made by Mr. Worrell, who declared such a limitation to be one of the most necessary reforms presented for the consideration of the convention. "If we leave with the legislature the power to create commissions, which shall absorb and exercise the proper and legitimate functions of the various municipalities, it would be wise not to attempt to reform municipal governments, and not to take any action affecting cities and city charters. * * * If the legislature be vested with the right of quartering upon a city, without its consent, irresponsible commissions, to exercise any or all of the powers and functions of the municipal departments, it will practically nullify any provision intended to secure intelligent, independent and responsible government of the various political districts of the Commonwealth. No legislation has been more generally condemned than that which restrains a municipality in the exercise of the powers of local government.

"Mr. Chairman, no local public improvement should be authorized or directed until the municipality has determined that such improvement is needed, *and that the condition of the city finances* will warrant the proper expenditure on that account; and unless these considerations are determined affirmatively by the municipality, the people should not be subjected to burdensome taxation by the legislature or any other body, for the purpose of erecting unneeded improvements, or those which the public treasury will not justify."[3]

Mr. Gowen of Philadelphia declared himself in favor of going even further than was proposed by the committee, and accordingly presented an amendment making it the duty of the Legislature, in all cases where such commissions had been created, to provide for vesting all such power directly in the local authorities.[4] This amendment was rejected and the original provision was then adopted.

One of the most interesting features of the convention was the unsuccessful effort made to secure the adoption of a constitutional provision delimiting a sphere of local autonomy within which municipalities should be free from legislative interference. Such a provision was recommended in the following terms by the committee on cities and city charters in the latter part of Section 4 of its report: "Every municipality shall have

1. Constitution of Pennsylvania, Art. III, Sec. 20.
2. Debates, II, 697.
3. Debates, II, 698 *et seq.*
4. Debates, II, 699.

ower to pass laws for its own regulation not repugnant to the Constitution of the United States or of the Commonwealth."[1]

Mr. Dallas of Philadelphia proposed to amend this section by inserting he word "exclusive" so that the provision would read, "Every municipality hall have exclusive power," etc. Supporting his amendment, Mr. Dallas aid: "The purpose I had in view in proposing to insert the word 'exclusive' as simply to give to the local authorities of a city the exclusive power to overn its own internal affairs, my view being that for every local comunity there should be local self-government in all those matters which ffect only the locality meaning thereby their interior regulations."[2]

Similar views were voiced by Mr. Littleton of Philadelphia who declared: "I hope that the Convention will see that there is some propriety n giving the local authorities of large cities absolute control over matters urely local in their nature. Why should we have to go to the Legislature nd ask acts of Assembly to be voted upon by men living two or three undred miles away from a city like Philadelphia to regulate its local affairs? Of course, those members are not able to know the particular eeds and wants of the city."[3]

The first speaker in opposition to the amendment was Mr. Armstrong of Villiamsport who stated that if this were a question that affected Philaelphia alone he would be disposed to follow the judgment of the delegates ho represented that city; but that he believed it would be highly dangerus to extend such a power to cities all over the state.[4]

Mr. Ewing of Pittsburg also declared himself opposed to the provision n the ground that it was an unnecessary restriction upon the legislature's ower, and a dangerous grant of power to city councils. "We may well ave the government of the cities to be determined by the Legislature under he restrictions which we have already laid down for the Legislature. We ave provided that they shall only pass general laws; we have hedged in heir power and authority and their manner of passing laws, so that I think ve can fairly trust them to delegate to the municipal governments the necssary power to regulate their own internal affairs. * * * I suppose if ve finally pass the article on Legislation, which has already passed on secnd reading, it will be utterly impossible for the Legislature to enforce the ind of acts that have been complained of—local and special laws affecting articular localities in the different cities."

Continuing, Mr. Ewing further urged that councils were unworthy to be ntrusted with so great a power. "As a matter of experience in our region f the state and in our city, the very worst legislation we have ever had n relation to the city has been that which was asked and demanded of the egislature by the city council—I mean special local legislation—and frequently the Legislature has stood guard between the people and the city ouncils, and has refused to pass legislation that was asked by the city councils and which would have been very injurious to the people of the city."[5]

1. Debates, II, 35.
2. Debates, VI, 227.
3. Debates, VI, 228.
4. Debates, VI, 228.
5. Debates, VI, 229.

This speech was ably answered by Mr. Bardsley of Philadelphia, who urged that city councils could properly be clothed with the proposed powers. "The members of the city councils are the direct representatives of the people of the city. They come from their own neighborhoods; they come there elected by their immediate friends and constituents; and the power is held by the people once every year to turn out of office those who will not study the interests of the whole community. The experience of the cities with their members of the Legislature is such as to make the people earnest and anxious in the desire that this Convention shall make a radical reform in the particular now under consideration. What we ask in this city, for example, is that we shall be allowed to pass such laws as will best conduce to the comfort and prosperity of our people.* * * We ask that we may be allowed to use our own judgment, that we may be allowed to be instructed by our own people as to what legislation is needed and required for the cities, and I hope that this Convention will approve and endorse the section now under consideration."[1]

Mr. Minor of Titusville declared the proposed provision unnecessary, since by prohibiting special acts for cities, the evil of legislative interference had been removed. Further, he believed that councils could not be safely trusted with such large powers of local autonomy. "It is wrong for us for all time to * * * say that there shall be vested in the councils exclusive, paramount power, perhaps even beyond the courts themselves. Councils, knowing that they have the power, will use it. Power possessed draws to itself power. There is always an inducement to abuse when you cannot appeal to any other authority to check it."[2]

Mr. Biddle, the only Philadelphia delegate who opposed the provision, said: "I agree with the gentleman from Crawford (Mr. Minor) * * * that there might be a great many things under the generality of this language attempted by the municipal governments which would be wrong to the last degree."[3]

The debate closed with the speech of Mr. De France opposing the provision. "If you make the power exclusive, the Legislature could not annul any act of the city council * * * because the cities would have the exclusive power of governing themselves just as much as the State of Pennsylvania has the power of governing herself.

"Although I want the cities to have some power in the first place, I believe the city councils would perhaps commit as great outrages as the Legislature and perhaps more if they had the exclusive power of determining how they should be governed."[4]

The amendment to the provision, as well as the committee's original recommendation, was rejected by the convention, and thus ended the attempt to delimit, by constitutional provision, a sphere of local autonomy. Subsequent events have proven that those who opposed this section were mistaken in thinking that by reason of Article III, Section 7, legislative interference in the affairs of a particular city would be thenceforth impossible.

1. Debates, VI, 230.
2. Debates, VI, 231.
3. Debates, VI, 231.
4. Debates, VI, 231.

Whether they were right in their other argument that such large powers over local affairs could not be safely entrusted to councils has never, in Pennsylvania been put to the test of experience.[1]

II.—LEGISLATIVE CLASSIFICATION OF MUNICIPALITIES.

The first legislature meeting under the new constitution proceeded upon the theory that it had power to classify the cities of the state, and that a law applying to all the members of a class (even though such class included but one city) was not a special, but a general law,[2] and hence not in violation of Article III, Section 7. Accordingly the Act of May 23, 1874, was passed,[3] dividing the cities of the state into three classes. (1) Those containing a population of over 300,000; (2) those with a population over 100,000 and less than 300,000; (3) those with a population exceeding 10,000 and less than 100,000. The act then specifies, at considerable length, the powers and organization of the municipal government of each class.

This act was upheld by the Supreme Court of the state in the leading case of Wheeler *v.* Philadelphia[4]. The decision in this case was based upon three propositions, as follows:

(1.) The power of classification existed at the time of the adoption of the constitution. It had been exercised by the legislature from the foundation of the government, and its continued exercise is necessary to the public welfare. Hence "the true question is, not whether classification is authorized by the terms of the constitution, but whether it is expressly prohibited." The constitution nowhere contains any such prohibition, but on the contrary, the power of classification for certain purposes is expressly recognized.

(2.) The Act of 1874 contemplates that other cities by increase of population will enter the higher classes, and therefore it is not local or special.

(3.) If classification be not allowed, either the large cities would lose needed legislation, or the small ones be overburdened by that adopted.[5]

The classification of cities established by the Act of 1874 continued in force for two years, or until the passage of the Act of April 11th, 1876,[6] dividing the cities of the state into five classes as follows:

Class.	Population.
I.	300,000 or more
II.	100,000 — 300,000
III.	30,000 — 100,000
IV.	12,000 — 30,000
V.	Less than 12,000

1. For the states which have adopted constitutional provisions permitting cities to frame their own charters, see *supra*, p. 16.
2. The generally accepted doctrine of classification; see *supra*, p. 36.
3. Pa. Laws, 230.
4. 77 Pa. St. 338.
5. For a further discussion of this case see *infra*, p. 54.
6. Pa. Laws, 20.

The classification established by this act continued in force for eleven years, or until the act of May 24th, 1887,[1] classifying the cities of the state as follows:

Class.	Population.
I.	600,000 or more
II.	150,000 — 600,000
III.	75,000 — 150,000
IV.	45,000 — 75,000
V.	20,000 — 45,000
VI.	10,000 — 20,000
VII.	All cities having less than 10,000

Both of the acts last named, that of April 11th, 1876, and of May 24, 1887, were declared unconstitutional by the Supreme Court in Ayars' Appeal,[2] as violating Section 7 of Article III of the Constitution.[3]

The above decision, rendered in 1888, necessitated a new classification act (the fourth since the adoption of the constitution), and this was accordingly passed May 8, 1889.[4] This act divided the cities of Pennsylvania into three classes, as follows:

Class.	Population.
I.	600,000 or more
II.	100,000—600,000
III.	Less than 100,000

The act further provided that the population of a city should be determined in accordance with the last Federal census, and made it the duty of the governor to certify when a city should be entitled to advance, such advance then being obligatory upon the city.[5] This act was sustained by the Supreme Court in the case of Harris' Appeal.[6]

III.—DECISIONS OF THE SUPREME COURT.

This Provision to be So Construed as to Prevent the Mischief it Was Designed to Remedy.

In interpreting the seventh section of Article III, the court has considered the causes which led to its adoption, and has then aimed to give it such liberal construction as would prevent the mischief which it was designed to remedy. Thus in Ayars' Appeal,[7] Sterrett, J., said: "During the session of the Legislature immediately preceding the adoption of the present constitution, nearly one hundred and fifty local or special laws were enacted for the city of Philadelphia, more than one third that number for the city of Pittsburg, and for other municipal divisions of the state, about the same proportion. This was by no means exceptional. The pernicious system of

1. Pa. Laws, 204.
2. 122 Pa. St. 266.
3. Discussion of this case, *infra*, p. 56.
4. Pa. Laws, 133.
5. Contrary to the rule in Ohio, where advancement was optional with the city. *Supra*, p. 39.
6. 160 Pa. St. 494.
7. 122 Pa. St. 266.

special legislation, practiced for many years before, had become so general and deep-rooted, and the evils resulting therefrom so alarming, that the people of the Commonwealth determined to apply the only remedy that promise any hope of relief. Doubtless, it was a proper appreciation of the magnitude of these evils as much as anything else that called into existence the convention that framed the present constitution, and induced its adoption by an overwhelming vote. One of the manifest objects of that instrument was to eradicate that species of legislation, and substitute, in lieu of it, general laws whenever it was possible to do so. This is so clearly apparent that no unbiased mind can contemplate the seventh section of Article III, and kindred provisions, without reaching that conclusion. That section contains a schedule of nearly fifty prolific subjects of previous special and local legislation, and ordains, 'The General Assembly shall not pass any local or special law,' relating to either of them. As an additional safeguard in cases where special legislation is not expressly prohibited, the next section declares, 'No local or special bill shall be passed unless notice of the intention to apply therefor shall have been published,' etc. * * *

"The purpose of the provision under consideration was not to limit legislation, but merely to prohibit doing, by local or special laws, that which can be accomplished by general laws. It relates not to the substance, but to the method of legislation, and imperatively demands the enactment of general instead of local or special laws, whenever the former are at all practicable."[1]

In harmony with the foregoing is the broad construction which the court has placed upon the word "affairs" as used in section seven. Thus in Morrison *v.* Bachert,[2] Paxson, J., said: "It was held by the learned judge of the court below, however, that an Act regulating the fees of the prothonotary or other county officers was not a law 'regulating the affairs of counties,' and he defines the 'affairs of counties' to be such 'as concern counties in their governmental and corporate capacity.' This will not do. It is too narrow a construction of the constitution. That instrument was intended for the benefit of the people, and must receive a liberal construction. 'A constitution is not to receive a technical construction, like a common-law instrument or statute. It is to be interpreted so as to carry out the great principles of government, and not to defeat them:' Commonwealth *v.* Clark; 7 W. and S., 127. When it speaks of the affairs of a county, it means such affairs as affect the people of that county."[3]

Limitations Upon Local and Special Legislation Apply Only to General Assembly.

It should be noted that the constitutional restrictions upon local and special legislation govern the General Assembly only, and do not constitute limitations upon the legislative power of a municipality. A municipal ordinance is not a law within the meaning of the constitutional limitation upon

1. See also Morrison *v.* Bachert, 112 Pa. St. 322; Scranton School District's Appeal, 113 Pa. St. 176; City of Scranton *v.* Silkman, 113 Pa. St. 191.
2. 112 Pa. St. 322.
3. See also Montgomery *v.* Commonwealth, 91 Pa. St. 125.

the passing of local and special laws. In Klingler *v.* Beckel,[1] the question was as to the validity of a borough ordinance prohibiting the erection of wooden buildings within certain prescribed limits, enacted under the provisions of the Act of June 3, 1885.[2] The court below held that the ordinance was invalid because it prohibited the erection of such buildings in only a portion of the borough, and asserted that under the provision of the constitution prohibiting special or local legislation, it was beyond the power of the council as it was beyond the power of the Legislature to legislate for only a portion of the borough. This decision was reversed by the Supreme Court, and Paxson, J., declared: "It by no means follows that when the Legislature by a general law confers upon a borough the power of regulating its local affairs, it may not do so by ordinances that are special in their character. The object of the constitutional provision was clearly to prevent the Legislature from interfering in local affairs by means of special legislation, and, if the town councils of cities and boroughs cannot regulate them, they are in a bad way indeed. The principle contended for would prevent the town councils of a city or borough from passing an ordinance to pave one street, unless it also provided for the paving of all the other streets within the limits of the municipality. In Baldwin *v.* The City of Philadelphia, 99 Pa. St., 164, it was decided than an ordinance of the city was not a 'law' within the meaning of that clause of the constitution which declares that 'no law shall extend the term of any public officer, or increase or diminish his salary or emoluments after his election or appointment.' The reasoning of that case applies equally to that section of the constitution prohibiting special legislation."[3]

This Provision is Prospective.

This clause of Section 7, Article III, the Supreme Court has declared to be prospective in its operation; and hence it does not repeal local or special acts passed before the constitution went into operation.[4] Nor is an act, otherwise constitutional, rendered invalid by a provision that it shall not affect prior local or special acts.[5]

What is a Special or Local Law?

From the doctrines laid down by the court, a general law may be defined as one which applies to, and operates uniformly upon, all members of any class of persons, places or things. A special law, on the other hand, is one applicable to less than a class of subjects; that is, it relates to particular persons, places or things.[6] A local law is one that applies to less than a class of places: that is, it is a special law of local application.[7] Thus laws

1. 117 Pa. St. 326.
2. Pa. L. 55.
3. See also Norristown *v.* Citizens' Passenger Railway Company, 148 Pa. St. 87; McCormick *v.* Fayette County, 150 Pa. St. 191.
4. Harrison *v.* Courtright, 4 Luz. L. Reg. 297; County of Allegheny *v.* Gibson's Son and Co., 90 Pa. St. 397; County of Crawford *v.* Nash, 99 Pa. St. 253; Comm. *v.* Balph, 111 Pa. St. 365.
5. Evans *v.* Philippi, 117 Pa. St. 226; Comm. *v.* Sellers, 130 Pa. St. 32; Cheltenham Twp. Road, 140 Pa. St. 136; Lackawanna Twp. Harris' Appeal, 160 Pa St. 494.
6. This distinction is clearly made in Wheeler *v.* Philadelphia, 77 Pa. St. 338.
7. The principle of classification as affecting the character of a law is discussed on p. 49 *et seq.*

changing the name of a certain person, or granting a divorce, or creating a particular corporation, are instances of special laws; while acts regulating the affairs of Pittsburg, or changing the location of the county seat, are instances of local laws, (i. e., special laws of local application).

This distinction between general acts on the one hand, and special and local acts on the other, is clearly set forth in many cases, and is well stated by Williams, J., in Weinman *v.* Passenger Railway Company:[1] "The subject of this statute is, therefore, street railway companies, which is a subject for general legislation, while the statute professes to deal only with a limited number of these railways, and these are selected by reference to their location in certain cities. Under the guise of a general law, we have here one which is special, because it relates to a few members of the general class of corporations known as street railway companies, and local because its operations are confined to particular localities, viz., cities of the second and third class.

What Is a Proper Classification Ultimately a Judicial Question.

While the subject of classification is legislative in the first instance, and the presumption is that the legislative classification is valid and based upon sufficient and proper grounds, yet the ultimate decision as to the constitutionality thereof is for the court.[2] This principle is clearly stated by Sterrett, J., in Ayars' Appeal,[3] as follows: "It has also been suggested that the question of necessity for classification and the extent thereof, as well as of what are local or special laws, is a legislative and not a judicial question. The answer to that is obvious. The people, in their wisdom, have seen fit not only to prescribe the form of enacting laws, but also as to certain subjects, the method of legislation, by ordaining that no local or special law relating to those subjects shall be passed. Whether in any given case, the Legislature has transcended its power and passed a law in conflict with that limitation is essentially a question of law, and must necessarily be decided by the courts. To warrant the conclusion that the people, in ordaining such limitations, intended to invest their law makers with judicial power, and thus make them final arbitrators of the validity of their own act, would require the clearest and most emphatic language to that effect. No such intention is expressed in the constitution, and none can be inferred from any of its provisions. That these limitations were designed to establish a fixed and permanent rule cannot be doubted; but, if the ultimate application of that rule were to rest solely in the judgment of the body on which it was intended to operate, nothing could be more flexible."

Proper Basis for Classification.

According to the doctrine laid down by the court in Commonwealth *v.* Patton,[4] population is the only proper basis for the classification of cities or counties. "The moment we resort to geographical distinctions we enter the domain of special legislation, for the reason that such classification

1. 118 Pa. St. 192.
2. Same rule obtains in Ohio; *supra*, p. 31.
3. 122 Pa. St. 266.
4. 88 Pa. St. 258.

operates upon certain cities or counties to the perpetual exclusion of all others."

It will be noted that the language of this decision, especially the declaration that "there can be no proper classification of cities or counties except by population" is broader than the particular point decided in this case, which is, that geographical location is not a proper basis for classification.[1] Whether there may be other proper basis for classification besides population,[2] is not settled by the decision in this case, the language used by the learned court to the contrary notwithstanding.

Classification May be Valid Though Only One City be Included in a Given Class.

The Pennsylvania court agrees with the Supreme Court of Ohio in holding that a classification of cities, otherwise proper, is not rendered invalid by reason of the fact that but one city is included in a given class.[3] This principle was clearly stated in the leading case of Wheeler *v.* Philadelphia,[4] which involved the validity of the Act of May 23, 1874. This act divided the cities of the state into three classes, Philadelphia being the only city included in the first class. In rendering this decision, Paxson, J., said: "But it is contended, that even if the right to classify exists, the exercise of it by the Legislature, in this instance, is in violation of the constitution, for the reason that there is but one city in the state with a population exceeding 300,000; that to form a class containing but one city is in point of fact legislating for that one city, to the exclusion of all others, and constitutes the local and special legislation prohibited by the constitution. This argument is plausible but unsound. * * *

"Legislation is not only intended to meet the wants of the present, but to provide for the future. It deals not with the past, but in theory at least, anticipates the needs of a state, healthy with a vigorous development. It is intended to be permanent. At no distant day Pittsburg will probably become a city of the first class; and Scranton, or others of the rapidly growing interior towns, will take the place of the city of Pittsburg as a city of the second class. In the meantime, is the classification as to cities of the first class bad because Philadelphia is the only one of the class? We think not. Classification does not depend upon numbers. The first man, Adam, was as distinctly a class when the breath of life was breathed into him as at any subsequent period. The word is used not to designate numbers, but a rank or order of persons or things; in society it is used to indicate equality, or persons distinguished by common characteristics, as the trading classes; the laboring classes; in science it is a division or arrangement, containing the subordinate divisions of order, genius and species."[5]

1. *Contra,* The State *v.* Hammer, 42 N. J. L. 485.
2. In Ohio other bases than population have been held valid; *supra,* p. 37.
3. The State *v.* Pugh, 43 Ohio St. 98; *supra,* p. 39
4. 77 Pa. St. 338; followed in Kilgore *v.* Magee, 85 Pa. St. 401; Nason *v.* Erie County Poor Directors, 126 Pa. St. 445; Whitney *v.* Pittsburg, 138 Pa. St. 427.
5. For a further account of this case, see *supra,* p. 49.

Classification Must Not be Pretended, False Nor Evasive.

The classification of cities upon which an act is based must be a real classification, not a pretended or evasive one. A good example of sham classification is afforded by the Act of April 18, 1878 (P. L., 29), entitled "An act to provide for the holding of courts in certain cities of this Commonwealth." By this act it was enacted "that in all counties of this Commonwealth where there is a population of more than 60,000 inhabitants, and in which there shall be any city incorporated at the time of the passage of this Act with a population exceeding 8,000 inhabitants, situate at a distance from the county-seat of more than twenty-seven miles by the usually traveled public road, it shall be the duty of the president judge * * * to make an order providing for the holding of one week of court or more * * * for the trial of criminal or civil cases in the said city."

The court held this act invalid as a local law under a false and pretended classification, and Paxson, J., after quoting the above, said: "This is classification run mad. Why not say all counties named Crawford, with a population exceeding 60,000, that contain a city called Titusville, with a population of over 8,000, and situate twenty-seven miles from the county seat? Or all counties with a population over 60,000, watered by a certain river, or bounded by a certain mountain?"[1]

This act in modified form was again passed by the Assembly on June 12, 1879,[2] but was again held unconstitutional by the court as being a mere evasion of the constitution.[3]

The Act of June 8, 1891,[4] entitled "An Act to prevent the pollution of the water of streams supplying cities of this Commonwealth," declared it to be unlawful "hereafter to establish any cemetery upon lands located within one mile from any city of this Commonwealth, the drainage from which empties or passes into any stream from which the supply of water is obtained." This act the court held to be invalid, and Williams, J., said: "If * * * we look into its provisions we shall find that they do not relate to cities of the first class or any other class. They relate distinctly and clearly to a strip of territory lying on the outside of the city of Philadelphia, having a breadth of one mile, and a drainage into any stream from which the water supply of the city is obtained. No municipal power, or duty, or officer is the subject of legislative regulation by this act, but it lays its hand on cemeteries and forbids their establishment within this narrow strip of territory. * * * This act does not undertake to deal with cemeteries within cities of the first class, but with those that are wholly outside of them. It does not attempt to deal with all cemeteries that are outside, but only with those that are within one mile from the city lines. * * * It would be difficult to imagine a better example of a law both local and special than this."[5]

The Act of June 8, 1893,[6] authorizing the "taking of certain public

1. Commonwealth *v.* Patton, 88 Pa. St. 258.
2. P. L. 174.
3. Scowden's Appeal, 96 Pa. St. 422.
4. P. L. 216.
5. Philadelphia *v.* Westminster Cemetery Co., 162 Pa. St. 105.
6. P. L. 42.

burial places, under certain circumstances, for places of common school education," was also adjudged invalid by the Supreme Court. In this case the court said: "It is well known that this Act of Assembly was prepared and its passage procured for this particular case, to enable this school board to take this burial ground, and that this was done after a special law avowedly for the same purpose had been vetoed by the Governor. It is special legislation in the guise of a general law—the most specious and vicious form that special legislation can assume."[1]

An act is local, notwithstanding its general form, provided it relates only to a particular building in a certain city. Thus, the Act of May 24, 1893, entitled "An act to abolish commissioners of public buildings, and to place all public buildings heretofore under the control of such commissioners, under the control of the department of public works in cities of the first class," is a local act. It applies solely to Philadelphia, and to but one particular building in that city, and regulates the affairs of that city by placing a particular building in the control of the department of public works.[2]

Classification Must Not be Unnecessary Nor Excessive.

Classification was originally sustained on the ground of necessity,[3] and is limited thereby: hence if the legislative classification appears to the court to be unnecessary or excessive, the classification will be declared invalid. The application of this principle marks the parting of the ways between the Ohio and the Pennsylvania courts. Both courts originally sustained the classification of cities on the ground of necessity, and declared the court to be the final judge as to the existence of such necessity; but while the Ohio court allowed the legislature large discretion in the creation of additional classes (permitting the two original classes to be increased to eleven), the Pennsylvania court has refused to allow the original three-class plan to be extended.

The leading case in Pennsylvania on this point is Ayar's Appeal.[4] In this case, the Act of May 24, 1887,[5] dividing the cities of the state into seven classes,[6] and providing for the incorporation and government of cities of the fourth, fifth, sixth, and seventh classes, was held invalid as being an unnecessary and excessive classification. For the same reason this decision also declared unconstitutional the Act of April 11, 1876,[7] (amending the original Act of May 23, 1874[8]), and increasing the number of classes of cities to five.[9]

In this case the court reviewed the decision in the case of Wheeler *v.* Philadelphia[10] and Kilgore *v.* Magee,[11] and pointed out that in these cases the

1. City of York School District's Appeal, 169 Pa. St. 70.
2. Perkins *v.* Philadelphia, 156 Pa. St. 554.
3. Wheeler *v.* Philadelphia, 77 Pa. St. 338.
4. 122 Pa. St. 266; followed in Shoemaker *v.* Harrisburg, 122 Pa. St. 285; Berghaus, *v.* Harrisburg, 122 Pa. St. 289; Comm. *v.* Smoulter, 126 Pa. St. 137; Comm. *v.* Miller, 126 Pa. St. 137; Meadville *v.* Dickson, 129 Pa. St. 1.
5. P. L. 204.
6. See *supra*, p. 50.
7. P. L. 20.
8. P. L. 230; *supra*, p. 49.
9. See *supra*, p. 49.
10. 77 Pa. St. 338.
11. 85 Pa. St. 401.

original classification act dividing cities into three classes had been sustained on the ground of necessity and was limited thereby. Continuing, Sterrett, J., said: "Subsequent legislation clearly indicates that the scope of the decision in Wheeler *v.* Philadelphia was either misunderstood or ignored. It was never intended to license indiscriminate classification as a mere pretext for the enactment of laws essentially local or special. Repeated and pointed admonitions of that fact were given in subsequent cases involving the general subject. * * *

"The underlying principle of all the cases is that classification, with the view of legislating for either class separately, is essentially unconstitutional, unless a necessity therefor exists,—a necessity springing from manifest peculiarities, clearly distinguishing those of one class from each of the other classes, and imperatively demanding legislation for each class, separately, that would be useless and detrimental to the others. Laws enacted in pursuance of such classification and for such purposes, are, properly speaking, neither local nor special. They are general laws, because they apply alike to all that are similarly situated as to their peculiar necessities. All legislation is necessarily based on a classification of its subjects, and when such classification is fairly made, laws enacted in conformity thereto cannot be properly characterized as either local or special.

"The Act of 1874 dividing the cities of the state into three classes * * * was sustained as to such of its principles as have been involved in adjudicated cases, because it was considered within the spirit if not the letter of the constitution. As to the number of classes created, that act appears to have covered the entire ground of classification. It provided for all existing as well as every conceivable prospective necessity. It is impossible to suggest any legislation that has or may hereafter become necessary for any member of either class, that cannot, without detriment to other members of the same class, be made applicable to all of them. If classification had stopped where the Act of 1874 left it, it would have been well, but it did not. Without the slightest foundation in necessity, the number of classes was soon increased to five, and afterward to seven, and if the vicious principle on which that was done be recognized by the courts, the number may at any time be further increased until it equals the number of cities in the Commonwealth. The only possible purpose of such classification is evasion of the constitutional limitations, and as such it ought to be unhesitatingly condemned."

Classification Must Not Work Exclusion.

A valid classification act must not be so framed as to exclude from its provisions certain cities or counties, but it must be operative from time to time so that it may be possible for other cities or counties, by increase of population, to come within its operation.[1] It is for this reason that the courts, by the great weight of authority, have declared a classification based upon geographical conditions to be improper; for geographical conditions being permanent, an act which is special in character at the beginning of its

1. The State *v.* Pugh, 43 Ohio St. 98; Topeka *v.* Gillette, 32 Kansas, 431.

application, must always remain so.[1] For the same reason an act containing a proviso that it shall not apply to counties having over 200,000 inhabitants is local, because by this proviso certain counties are permanently excluded from the operation of the act. In this case,[2] Mercer, J., said: "Within reasonable limits and for some purposes classification is allowable. It has been sustained on the basis of population of counties on the assumption that those having a small population may ultimately have one much larger. Here the larger are excluded. We cannot assume that their population will ever be reduced to less than the number named. They are, therefore, practically and permanently excluded by the intent and purpose of this act, which is special in its terms and local in its effect.[3]

Legislation for Cities by Classes Must be Confined to Municipal Matters Proper.

As already pointed out,[4] the three-class division of the cities of the state is constitutional, and a law relating to all the members of a class is general and not special; but, to be valid, such a law must pertain to a municipal matter. Classification having been upheld on the ground of necessity and in order to permit legislation to be adapted to the diverse municipal needs of the cities of the state, it naturally follows that all legislation based upon such classification must be within the purposes of the classification: that is, it must relate to municipal affairs. "Classification of cities and laws confined thereto are permissible only in matters relating to their municipal government, but the rights of persons and property must be secured by general laws, which must be uniform and in force everywhere throughout the State."[5]

The first decision based upon this distinction was that of Weinman *v.* Passenger Railway Company,[6] involving the Act of March 19, 1879,[7] which provided for the incorporation and government of street railway companies in cities of the second and third classes. This act was held invalid as being both local and special. In rendering the opinion, Williams, J., said: "It is urged that this statute is sustainable under the decision of this court recognizing the power of the Legislature to classify the cities of the Commonwealth for purposes of municipal government, but those cases rest upon a very different principle from that involved in the present case. * * * It has been found desirable to divide cities into classes upon the basis of their population. * * * Each of these classes requires legislation peculiar to itself, but such legislation must be applicable to all members of the class to which it relates, and must be directed to the existence and regulation of

1. Commonwealth *v.* Patton, 88 Pa. St. 258; *supra*, p. 53.
2. Davis *v.* Clark, 106 Pa. St. 377.
3. Same principle laid down in Monroe *v.* Luzerne County, 103 Pa. St. 278; Luzerne County *v.* Glennon, 109 Pa. St. 564; McCarty *v.* Commonwealth, 110 Pa. St. 243; Morrison *v.* Bachert, 112 Pa. St. 322; City of Scranton *v.* Silkman, 113 Pa. St. 191; Commonwealth *v.* Wyman, 137 Pa. St. 508; Rymer *v.* Luzerne County, 142 Pa. St. 108; Guldin *v.* Schuylkill County, 149 Pa. St. 210; Commonwealth *v.* Macferron, 152 Pa. St. 244; Perkins *v.* Philadelphia, 156 Pa St.. 554; Philadelphia *v.* Westminster Cemetery Co., 162 Pa. St. 105; York City School Districts' Appeal, 169 Pa. St. 70.
4. *Supra*, p. 49.
5. Philadelphia *v.* Haddington Church, 115 Pa. St. 291.
6. 118 Pa. St. 192; *supra*, p. 53.
7. P. L. 9.

municipal powers and to matters of local government. The supposed classification in the Act of 1879 is of a very different character.

"The Act provides for the incorporation and government of street railway companies, but it does not affect all such companies. It selects such companies as may be located in cities of the second and third class, and makes special provision for them, while all other street railway companies remain under the operation of the general law. This is just what the constitution declares shall not be done."

Another important case upon this point is *In re* Ruan Street.[1] This case involved the Act of May 6, 1887,[2] which related to the improvement of streets in cities of the first class, providing for the assessment and payment of damages and benefits arising therefrom, etc. This act was held invalid (except as to the first two sections), on the ground that it did not relate to municipal purposes within the principle justifying the classification of cities. In this decision the court declared: "We come now to inquire what legislation remains forbidden to cities, notwithstanding classification. I reply that all legislation not relating to the exercise of corporate powers, or to corporate officers and their powers and duties, is unauthorized by classification. * * * For example, there cannot be one rate of interest in cities of the first class, another in those of the second or third, and still another for the rest of the State, but the rate, when fixed by law, must apply to all parts and divisions of the State alike. The same thing is true of the law of descent, and so on, through the entire list of subjects upon which local and special legislation is forbidden. If classification can relieve against the constitutional prohibition as to one of these subjects, it can relieve as to all."

Again, in Shaaber *v.* Reading,[3] the decision in Ruan street was explained as follows: "What was denied was the right of the Legislature to make the classification of cities the basis of legislation for them on subjects not relating to the organization or administration of their municipal governments, but to questions of public concern, such as the forms of procedure in the courts of the State; the rate of interest; exemptions of property from levy and sale on legal process; the mode of proceeding to secure a citizen compensation for an entry on his property for public use by virtue of the right of eminent domain, and the like. In other words, we held that while the classification of cities authorizes all necessary legislation for them as cities, in the management of their municipal affairs, it does not make three separate States within the territorial limits of Pennsylvania, for each of which there may be different laws, on subjects of a general character, from those in force in the rest of the Commonwealth. On the other hand, while cities may have the legislation needful to the proper regulation and discharge of all municipal powers, they are, under the constitution, and they must remain, a part of the State of Pennsylvania, for all purposes not municipal, and subject to the laws of the State upon all subjects not of municipal concern."

1. 132 Pa. St. 257.
2. P. L. 87.
3. 133 Pa. St. 653.

This principle was also very clearly stated by Williams, J., in the opinion in Wyoming street:[1] "Some confusion seems to exist, however, in regard to the definition of a general law, and a theory has been advanced in several recent cases, and has been contended for by the appellee in this case, that the division of the cities of the state into classes by the Act of 1874, which was recognized as a necessary classification in Wheeler *v.* Philadelphia, 77 Pa. St., 338, required us to hold any law to be general which embraces all the cities of a given class, without regard to the subject to which it relates. This theory overlooks the objects and purposes of classification, which are very clearly set forth in the first section of the act which divides the cities of the state into three classes. These are, to make provision for the municipal needs of cities which differ greatly in population. Differences in population make it necessary to provide different machinery for the administration of 'certain corporate powers,' and to make a difference in 'the number, character, powers and duties of certain corporate officers,' corresponding with the needs of the population to be provided for. An Act of Assembly that relates to a subject within the purposes of classification, as they are thus declared by law, is a general law, although it may be operative in a very small portion of the territory of the state, if it relates to all the cities of a given class. * * *

"The test, therefore, by which all laws may be tried is their effect. If they operate upon the exercise of some power or duty of a municipality of the given class, or relate to some subject within the purposes of classification, they are general, otherwise they are local."[2]

1. 137 Pa. St. 494.
2. Same principle laid down in Straub *v.* Pittsburg, 138 Pa. St. 356; Pittsburg's Petition, 138 Pa. St. 401; Scranton *v.* Whyte, 148 Pa. St. 419; Reeves *v.* Philadelphia Traction Company, 152 Pa. St. 153; Safe Deposit & Trust Company *v.* Fricke, 152 Pa. St. 231; McKay *v.* Trainor, 152 Pa. St. 242; Commonwealth *v.* MacFerron, 152 Pa. St. 244; McAskie's Appeal, 154 Pa. St. 24; Harris' Appeal, 160 Pa. St. 494; Bruce *v.* Pittsburg, 166 Pa. St. 152; Van Loon *v.* Engle, 171 Pa. St. 157.

CHAPTER V.

How Shall the State Control Municipalities?

The experience of both Ohio and Pennsylvania shows that in these states constitutional limitations upon special municipal legislation have failed to accomplish their purpose of protecting cities against such legislation. The reasons for this failure are twofold: (1) The legislative unwillingness to grant the cities, by general law, adequate powers, especially adequate financial powers. (2) The failure of the constitution to define "special act" —thus making possible the judicial doctrine of classification, the practical effect of which is to destroy the protection which the constitutional limitation was designed to afford.

Hence there still remains for solution the problem of the best means of avoiding the evil of constant legislative interference in local affairs. Several conclusions seem warranted by past experience.

(1). The first step, clearly, is to utilize all the protection afforded by a liberal construction of constitutional provisions. Although the term "special act" is not defined in the constitution, the convention debates show conclusively that the framers of the constitution meant to prohibit all acts which did not apply to all cities of the state. These provisions have not been thus broadly construed: in their decision sustaining classification the courts have seemed to lose sight of the doctrine that "constitutional provisions are to be broadly construed so as to carry out the great principles of government." An important step toward a proper construction of these provisions has, however, been taken in both Pennsylvania and Ohio: in Ohio, by the recent decisions[1] overruling the entire doctrine of classification; and in Pennsylvania by the decision in Ayars' Appeal[2] laying down the rule of exigency as a limit upon the number of classes that may be created, and declaring that in the judgment of the court, three classes of cities cover every conceivable necessity. While the Pennsylvania court has never allowed the doctrine of classification to be carried to the extreme formerly sanctioned in Ohio, its decisions upon classification deny to the chief city of the state the protection against special legislation which the framers of the constitution intended to afford; and the first desideratum in Pennsylvania would seem to be to follow the recent decision of the Ohio Supreme Court, and overrule the entire doctrine of classification. Classifica-

1. The State *ex rel.* Knisely *et al. v.* Jones *et al.*, 66 Ohio State, 453; The State of Ohio *ex rel.* The Attorney General *v.* Beacom *et al.*, 66 Ohio State, 491.
2. 122 Pa. St. 266.

tion forbidden, legislation must proceed by general law, and legislative interference in local affairs will at once greatly decrease.

(2). Another step which might be taken in conjunction with the foregoing would be the adoption of a constitutional amendment permitting cities to frame charters for their own government.[1] In 1875 Missouri took the lead in this direction by adopting a constitutional provision permitting cities with over 100,000 population to frame their own charters. California adopted a similar provision in 1879, the provision being extended in 1890 to all cities with over 3,500 inhabitants. In 1889 Washington was admitted as a state with a constitution which extended this privilege to cities with more than 20,000 inhabitants. Minnesota extends the privilege to any city or village in the state, and Colorado in 1902 extended the privilege to first and second class cities. Such a provision is the most radical step which has yet been taken in American politics in the endeavor to secure home rule for cities. The objections to this plan are that it carries local autonomy to an extreme, and fails to recognize that the state has a direct and vital interest in the governmental functions of the city, and hence may legitimately control the city upon its public or governmental side.

(3). Another solution strongly urged by very high authority is the introduction of a system of administrative control of cities in place of the present method of legislative control.[2]

That legislative control of municipalities is discredited can scarcely be controverted. The legislature being a partisan body controlled by a party majority, frequently acts with reference solely to the partisan advantages resulting from its control over local affairs, instead of with reference to the welfare of the city. New and unnecessary municipal offices have been created, cities have been redistricted, the mode of appointing the police force has been changed, whenever such action seemed expedient for party reasons. This interference for partisan ends has perhaps been the greatest evil resulting from legislative control.

Moreover, legislative control is unintelligent control. The great majority of the legislators take no legitimate interest in municipal legislation, and such legislation is usually passed perfunctorily upon the recommendation of the representatives from the particular municipality, receiving little or no consideration from the legislature as a whole. Hence legislative control is also irresponsible control—the local representatives being usually able to shift responsibility for improper measures upon the entire legislative body.

Furthermore, legislative control is excessive. The legislature has almost invariably shown itself unwilling to grant cities large discretion in local matters, and has generally restrained the municipalities within such narrow limits that they have been compelled frequently to address the legislature for additional powers. The legislature has entirely overlooked the distinc-

1. *Supra*, p. 16.
2. The following books and articles discuss this subject: Goodnow, Frank J.: Municipal Problems; Municipal Home Rule. Holls, F. W.: State Boards of Municipal Control, Proceedings of the Fourth National Conference for Good City Government, held in Baltimore, 1896, p. 226. Jenks, J. W.: A State Municipal Board. Shaw, Albert: Municipal Government in Great Britain; Municipal Government in Continental Europe.

tion between local and general affairs, and has interfered almost as freely in purely local matters as in those public ones which may properly be subjected to state control, and hence local autonomy has been largely destroyed.

Finally, legislative control is inefficient control. The friends of special legislation formerly urged that such legislation for cities was necessary in the interests of the state as a whole, especially as a bulwark against municipal extravagance. Legislative control has, however, proven a very inefficient bulwark, as the legislature has utterly failed in its role of guardian of the financial interests of the city—on the contrary, it has frequently countenanced raids upon the municipal treasury which local control would never have suffered[1].

The five chief counts in the indictment of legislative control, then, are that such control is partisan, unintelligent, irresponsible, excessive and inefficient. Legislative control of municipal affairs being discredited, what is the remedy? Most writers have believed it to consist in: (1) a careful distinction between those municipal functions which are private or local in their nature and those which are public or governmental; (2) in granting to the municipality unrestricted control of its local functions; and, (3) in the establishment of a state municipal board as a means of controlling the public or governmental functions of the municipality.

The establishment of a state municipal board is suggested by the successful experience of England, France and Germany, where administrative control of municipalities prevails. Thus in England the Local Government Board at London exercises a large degree of control over the public or governmental functions of municipalities. Poor relief, public health, constabulary, education, expenditures, are all subjected to a central administrative control. This control in England, as in France and Germany, has generally proven highly efficient.

What would be the advantages of the introduction in this country of a system of administrative control of municipal affairs? Advocating the establishment of a Municipal Government Board in the state of New York, Professor J. W. Jenks summarizes the advantages as follows:

"A Municipal Government Board then would tend: (1) to make clear the true relations between the functions of state and local governments; (2) to secure the efficient performance of state functions by local officials; (3) to furnish to the public information regarding the performance of local functions in such comparative form that it would be of great service to local officials; (4) to do supervising work of such a nature that it would check continual interference in local affairs by the legislature without checking the legislature in the making of needed general laws; (5) to stimulate by publicity and encouragement local pride and activity in affairs purely local and to develop the spirit of local home rule; (6) to guide, by accurate and full information, public opinion on the various questions arising in connection with city government.

"It is hardly too much to say that every authority on municipal government in this country and Europe favors a central administrative supervision of local governments along the lines here laid down. The demand

1. Such as acts compelling cities to create debts against their will; authorizing a city to issue bonds to the amount of $20,000,000 to build a railroad, etc.

for the reform of the evils of our city governments, and for the lessening of legislative interference with them is strong; the best remedy seems to be the one suggested.

"There is every reason to believe that from the money saved to the state and municipalities by the supervision of the Board the expenses of its administration would be paid many times over, while the general excellence and efficiency of the government would be greatly increased. It is not to be expected that any new board would work a revolution in our municipal politics and give us an ideal system; but it does seem probable that no other improvement, ordinarily suggested, in our methods of city government would be likely to yield so large favorable immediate results as would the establishment of a Municipal Government Board."

The advantages of this method of controlling cities upon their public or governmental side appear clear. Such a plan would be, to a large extent, an innovation in our political system; but in most states some form or degree of administrative control already exists in state boards of equalization, state superintendents or commissioners of schools, state boards of health, etc. But the proposed plan involves a great extension of administrative control, and it must not be overlooked, as a question of practical politics, that a strong prejudice against state boards now exists in the minds of many voters. This prejudice is doubtless in part due to the fact that many such boards have been created for improper objects—for purposes which threatened the vital interests of the cities[1]. It would be necessary, then, to remove this prejudice by convincing the voters that a state municipal board created for the purpose of controlling the governmental functions of municipalities would in no way threaten the legitimate interests of municipalities. At the present time in many states the tendency seems to be away from any sort of central control, and the conception of home rule held by many voters would, if carried out, involve an abdication on the part of the state of practically all control over municipal affairs. Intelligent public opinion will concede that the state has a legitimate interest in the control of the public functions of the municipality; and, eventually, when a more clear conception prevails of the proper relation of the city to the state and of the real meaning of home rule for cities, a plan of state administrative control may be accepted as the best solution of the method by which the state may efficiently control cities upon their governmental side, while leaving to the cities themselves regulation of local affairs.

1. Such as the measure introduced in the Ohio General Assembly at the session of 1904 providing for the granting of all local franchises by a state board.