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TAX LAWS OF TEXAS

ANNOTATED

This book not for circulation

by
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“Cultivated mind is the guardian genius of democracy, and while guided and controlled by virtue is the noblest attribute of man. It is the only dictator that freemen acknowledge and the only security that freemen desire.”

—From the first message of Mirabeau B. Lamar, President of the Republic of Texas to the Congress, December, 1838.

AN EXPLANATION

Owing to the many and frequent changes of our tax laws and their almost daily interpretations by the Courts and State officials prompts us to fully explain our COMPLETE TAX SERVICE. This service consists of:

(1) One copy of TEXAS TAX LAWS—ANNOTATED, which includes tax and corporation laws up to and including acts of the Regular Session, Forty-Fourth Legislature, 1935; also the Constitution of Texas annotated. It contains about 550 pages, buckram binding.

(2) One annual subscription to Texas Tax Journal with bulletins giving State and Federal court tax decisions of the Texas tax laws, rulings of heads of State Departments, new laws on tax matters, and corporations in general.

(3) An annual service in personally answering tax questions under the Texas Laws for each individual subscriber to the service, and give our authority.

(4) Filing reports, examining records, briefing specific tax questions, and other detailed matters in State Departments.

(5) In August of each year we compile all the decisions, rulings, and new laws of the previous year in pamphlet form as a Supplement to our Texas Tax Laws—Annotated. A copy of these annual supplements are furnished free to each subscriber upon renewal. The cost of this complete service is \$15.00. A renewal, if you desire to renew at the end of the year, consists of an annual subscription to the Texas Tax Journal and other service features named. The annual renewal cost is \$10.00.

A SEPARATE SERVICE

Frequently individuals, corporations, associations and estates who are non-residents desire the services of a competent and reliable agency in Texas to look after their State, county, city and district taxes. If such services are desired we will be glad to quote our charges.

TEXAS TAX JOURNAL
P. O. Box 1094
Austin, Texas

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P R E F A C E

Soon after the first issue of the TEXAS TAX JOURNAL (published monthly) in October, 1922, we concluded that we could best serve its readers and the patrons of our TAX SERVICE by procuring the service of a highly competent man in the Supreme Court Library, hence, we began a monthly bulletin service in the Texas Tax Journal, giving a summary of the decisions of the higher courts, rulings of the Attorney General, and other State officials, new tax laws, and amendments to existing laws, and answering tax questions under the Texas laws. We also began the briefing of tax questions, filing reports, and examining records. The growth of this authentic and prompt tax service led to the compilation of the TEXAS TAX LAWS—ANNOTATED in the early part of 1927. This edition is about exhausted, hence, we have compiled the 1935 edition, making it much more complete than the 1927 edition. It includes the tax laws passed by the Regular Session of the Forty-fourth Legislature that adjourned May 11, 1935, also we give the State Constitution in full with all amendments now in effect, and it is also fully annotated by giving the latest leading court decisions and rulings of the Attorney General affecting each section.

Our TEXAS TAX LAWS—ANNOTATED is the only complete and up-to-date annotation in the State. Our TAX SERVICE is authentic and prompt, and covers the entire State, for we realize taxation is the life blood of government.

LOOKING FORWARD

We shall not recount the many weak parts of what we term our tax system. They have forced inequality of taxation, encouraged slack enforcement, and forced the willing taxpayer to pay heavy penalties to make up the loss caused by the delinquent taxpayer.

TRANSITORY TAX STAGE

The cost of government has increased to such an extent that the base of our tax structure must be greatly enlarged. All indications point, at this time, to a serious consideration by the next session of the Legislature (one will likely be called in September or October, 1935) to relieve property of its excessive tax burden by placing a tax on the gross receipts of retail sales of personal property (a "sales tax" to retire bonds), registration of intangible personal property, delinquent tax adjustments, and an increase of franchise tax, etc.

BASE OF OUR TAX STRUCTURE

The tax situation in Texas is, in fact, in a transitory stage. Under the present setup no more than one-half of the property taxable under the present law contributes to the cost of government in Texas. This one-half, in plain language, is sapped of its sale value, and can not support the heavy tax load longer, and this, of course, will soon force a revamping of our whole tax structure, and within the next two or four years a complete new system will likely be inaugurated. These changes will be carefully watched and correctly reported in the Texas Tax Journal each month with notes, citations, and explanations as to the changes of the present laws given in the Texas Tax Laws—Annotated, and individual explanations as to procedure and particular tax questions affecting any of our subscribers will be given them when we are called on, at no extra cost for this service.

Every taxpayer should make arrangements to follow every step of these inevitable changes, with an authoritative agency, as to the effect of the new laws and changes in the present laws. The Texas Tax Journal will keep you advised, regardless of the expense of such authentic and prompt service.

We desire to express our appreciation to Judge J. A. King, former State Tax Commissioner, at present an active member of the Austin Bar, and also to Mr. L. K. Smoot, Author of the Texas Court Rules—Annotated, for their valuable and indispensable assistance in the preparation of this work.

TEXAS TAX JOURNAL
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CHAPTER I.
CONSTITUTION OF TEXAS

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CONSTITUTION OF TEXAS

The text is the Constitution of 1876 except when amended, which amendments are carefully noted and the date of adoption given in each instance.

PREAMBLE.

Humbly invoking the blessings of Almighty God, the people of the State of Texas do ordain and establish this Constitution.

ARTICLE I.

BILL OF RIGHTS.

That the general, great and essential principles of liberty and free government may be recognized and established, we declare:

Section 1. Texas is a free and independent state, subject only to the Constitution of the United States; and the maintenance of our free institutions and the perpetuity of the Union depend upon the preservation of the right of local self-government, unimpaired to all the states.

1. *Love v. Wilcox*, 119 Texas 256, 28 S. W. (2d) 515, 70 A. L. R. 1484; *Dancy v. Wells*, 8 S. W. (2d) 198; *Brown v. City of Galveston*, 97 Texas 14, 75 S. W. 488.

Sec. 2. **Political Power inherent in the people.** All political power is inherent in the people, and all free governments are founded on their authority, and instituted for their benefit. The faith of the people of Texas stands pledged to the preservation of a republican form of government, and, subject to this limitation only, they have at all times the inalienable right to alter, reform or abolish their government in such manner as they may think expedient.

2. *Parsons v. City of Galveston*, 53 S. W. 160; Inheritance Tax law. *State v. Jones*, 5 S. W. (2d) 973; *Interstate Forwarding Co. v. Vineyard*, 121 Texas 289, 49 S. W. (2d) 403; Health regulation, *City of El Paso v. Jackson*, 59 S. W. (2d) 822. Political Parties: *Bell v. Hill*, 123 Texas 531, 74 S. W. (2d) 113.

Sec. 3. **All Free men to have equal rights.** All free men, when they form a social compact, have equal rights, and no man, or set of men, is entitled to exclusive separate public emoluments, or privileges, but in consideration of public services.

3. Regulation of trade: *O'Brien v. Amerman*, 112 Texas 254, 247 S. W. (2d) 270; Occupation Tax: *Lovenberg v. City of Galveston*, 17 Texas Civ. App., 162, 42 S. W. 1024; *Dallas Gas Co. v. State*, 261 S. W. 1063; Health Regulation: *Langley v. City of Dallas*, 252 S. W. 203.

Sec. 4. **No religious test for officers or public trusts.** No religious test shall ever be required as a qualification to any

office, or public trust, in this state; nor shall any one be excluded from holding office on account of his religious sentiment, provided he acknowledges the existence of a Supreme Being.

4. *Kemper v. State*, 63 Texas Crim. Rep., 1, 138 S. W. 1025; *Trial v. State*, 84 Texas Crim. Rep., 16, 205 S. W. 343.

Sec. 5. No religious test for witnesses. No person shall be disqualified to give evidence in any of the courts of this state on account of his religious opinions, or for the want of any religious belief, but all oaths or affirmations shall be administered in the mode most binding upon the conscience, and shall be taken subject to the pains and penalties of perjury.

5. *Faubion v. State*, 104 Texas Crim. Rep., 78, 282 S. W. 597; *Colter v. State*, 37 Texas Crim. Rep., 284, 39 S. W. 576; *Trammel v. Mount*, 68 Texas, 210, 4 S. W. 377, 2 Am. St. Rep., 479.

Sec. 6. Freedom in religious worship. All men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences. No man shall be compelled to attend, erect or support any place of worship, or to maintain any ministry against his consent. No human authority ought, in any case whatever, to control or interfere with the rights of conscience in matters of religion, and no preference shall ever be given by law to any religious society or mode of worship. But it shall be the duty of the legislature to pass such laws as may be necessary to protect equally every religious denomination in the peaceable enjoyment of its own mode of public worship.

6. *Church v. Bullock*, 104 Texas 1, 109 S. W. 115, 16 L. R. A. (N. S.) 860; *City of New Braunfels v. Waldschmidt*, 109 Texas 302, 207 S. W. 303.

Sec. 7. No appropriation for sectarian purposes. No money shall be appropriated or drawn from the treasury for the benefit of any sect, or religious society, theological or religious seminary; nor shall property belonging to the state be appropriated for any such purposes.

7. *Church v. Bullock*, 104 Texas 1, 109 S. W. 115, 16 L. R. A. (N. S.) 860.

Sec. 8. Liberty of speech and press; libel. Every person shall be at liberty to speak, write or publish his opinions on any subject, being responsible for the abuse of that privilege; and no law shall ever be passed curtailing the liberty of speech or of the press. In prosecutions for the publication of papers investigating the conduct of officers, or men in public capacity, or when the matter published is proper for public information, the truth thereof may be given in evidence. And in all indictments for libels, the jury shall have the right to determine the law and the facts, under the direction of the court, as in other cases.

8. Freedom of Speech: *Belo v. Wren*, 63 Texas 686, *Hawks v. Yancy*, 265 S. W. 233; Blacklisting: *St. Louis S. W. Ry. Co. v. Griffin*, 106 Texas 477, 171 S. W. 703, L. R. A. 1917B, 1108.

Sec. 9. Unreasonable Seizures and Searches. The people shall be secure in their persons, houses, papers and possessions, from all unreasonable seizures or searches; and no warrant to search any place, or to seize any person or thing, shall issue without describing them as near as may be, nor without probable cause, supported by oath or affirmation.

9. Search and seizure: *Dupree v. State*, 102 Texas 455, 119 S. W. 301; Physical Examination: *Texas Emp. Ins. Assn. v. Downing*, 218 S. W. 112; Arrest without warrant: *Gulf, C. & S. F. Ry. Co. v. Kreigel*, 204 S. W. 1071.

Sec. 10. Guaranties in criminal prosecutions. In all criminal prosecutions, the accused shall have a speedy public trial by an impartial jury. He shall have the right to demand the nature and cause of the accusation against him, and to have a copy thereof. He shall not be compelled to give evidence against himself. He shall have the right of being heard by himself or counsel or both, shall be confronted with the witnesses against him, and shall have compulsory process for obtaining witnesses in his favor. Except that when the witness resides out of the State and the offense charged is a violation of any of the anti-trust laws of this State, the defendant and the State shall have the right to produce and have the evidence admitted by deposition, under such rules and laws as the legislature may hereafter provide. And no person shall be held to answer for a criminal offense, unless on indictment of a grand jury, except in cases in which the punishment is by fine, or imprisonment otherwise than in the penitentiary, in cases of impeachment, and in cases arising in the army or navy, or in the militia, when in actual service in time of war or public danger.

10. Speedy trial: *Moreau v. Bond*, 114 Texas 468, 271 S. W. 379; Witness: *Campbell v. Peacock*, 176 S. W. 774; *Ingerson v. McWillie*, 87 Texas 647, 30 S. W. 869.

Sec. 11. Bail. All prisoners shall be bailable by sufficient sureties, unless for capital offenses when the proof is evident; but this provision shall not be so construed as to prevent bail after indictment found, upon examination of the evidence, in such manner as may be prescribed by law.

11. Right to bail: *Ex parte Adams*, 119 Texas Crim. Rep., 135, 44 S. W. (2d) 713; Burden of proof: *Ex parte Carter*, 119 Texas 137, 44 S. W. (2d) 731.

Sec. 12. Habeas corpus. The writ of habeas corpus is a writ of right, and shall never be suspended. The legislature shall enact laws to render the remedy speedy and effectual.

12. Use of writ: *Ex parte Lipscomb*, 111 Texas 409, 239 S. W. 1101; *Ex parte Beamer*, 285 S. W. 255; *Constantin v. Smith*, 57 Fed. (2d) 227, 287 U. S. 378, 53 Sup. Ct. Rep., 190.

Sec. 13. Excessive bail and fine; courts open. Excessive bail shall not be required, nor excessive fines imposed, nor cruel or unusual punishment inflicted. All courts shall be open; and every person for an injury done him, in his lands, goods, person or reputation, shall have remedy by due course of law.

13. Excessive bail: *Ex parte Colston*, 105 Texas Crim. Rep., 306, 288 S. W. 211; *Garza v. State*, 55 S. W. (2d) 1042; Use of courts: *City of Wichita Falls v. Lipscomb*, 50 S. W. (2d) 867, *Hanks v. City of Port Arthur*, 121 Texas 102, 48 S. W. (2d) 600.

Sec. 14. Twice in jeopardy. No person, for the same offense, shall be twice put in jeopardy of life or liberty; nor shall a person be again put upon trial for the same offense, after a verdict of not guilty in a court of competent jurisdiction.

14. Former jeopardy: *Hamilton v. State*, 115 Texas Crim. Rep., 393; *Hunt v. State*, 59 S. W. (2d) 836.

Sec. 15. Right of trial by jury. The right of trial by jury shall remain inviolate. The legislature shall pass such laws as may be needed to regulate the same, and to maintain its purity and efficiency.

15. Right of trial by jury: *Casstevens v. Texas & P. Ry. Co.* 119 Texas 456, 32 S. W. (2d) 637, 73 A. L. R. 89; *Texas Mut. L. Ins. Co. v. Morris*, 55 S. W. (2d) 146.

Sec. 16. Bill of attainder and ex post facto laws. No bill of attainder, ex post facto law, retroactive law, or any law impairing the obligation of contracts, shall be made.

16. Retroactive law: *Ball v. Mann Commission Co.*, 48 S. W. (2d) 780, error dismissed 121 Texas 495, 50 S. W. 1090; Impairment of contract: *Langever v. Miller*, 124 Texas _____, 76 S. W. (2d) 1025; *Travelers Ins. Co. v. Marshall*, 124 Texas _____, 76 S. W. (2d) 1007.

Sec. 17. Eminent domain; privileges and franchise. No person's property shall be taken, damaged or destroyed for, or applied to, public use without adequate compensation being made, unless by the consent of such person; and when taken, except for the use of the State, such compensation shall be first made, or secured by a deposit of money; and no irrevocable or uncontrollable grant of special privileges or immunities shall be made; but all privileges and franchises granted by the legislature, or created under its authority, shall be subject to the control thereof.

17. Eminent domain: *City of Waco v. Roberts*, 121 Texas 217, 48 S. W. (2d) 577; *Kahn v. City of Houston*, 121 Texas 301, 48 S. W. (2d) 595; *Chicago, R. I. & G. Ry. Co. v. Tarrant County W. C. & I. Dist.*, 123 Texas 432, 73 S. W. (2d) 55.

Sec. 18. Debt. No person shall ever be imprisoned for debt.

18. Imprisonment for debt: *Lowery v. English*, 299 S. W. 478; *Ex parte Davis*, 101 Texas 607, 111 S. W. 394, 17 L. R. A. (N. S.) 1140; *South v. State*, 72 Texas Crim. Rep., 381, 162 S. W. 510.

Sec. 19. Due course of law. No citizen of this State shall be deprived of life, liberty, property, privileges or immunities, or in any manner disfranchised, except by the due course of the law of the land.

19. Parties to suit: *Camp v. Gulf Production Co.*, 122 Texas 392, 61 S. W. (2d) 773; Taxation: *State v. Ball*, 116 Texas 527, 296 S. W. 1085; *Slater v. Ellis County Levee Imp. District*, 120 Texas 272, 36 S. W. (2d) 1014.

Sec. 20. No outlawry or transportation. No citizen shall be outlawed; nor shall any person be transported out of the State for any offense committed within the same.

20. Citizenship: *Koy v. Schneider*, 110 Texas 369, 221 S. W. 880; Removal of officer: *Dorenfield v. State*, 123 Texas 467, 73 S. W. (2d) 83.

Sec. 21. Corruption of blood; forfeiture; suicides. No conviction shall work corruption of blood, or forfeiture of estate; and the estates of those who destroy their own lives shall descend or vest as in case of natural death.

21. American Natl Ins. Co. v. Coates, 112 Texas 267, 246 S. W. 356; *Davis v. Laning*, 85 Texas 39, 19 S. W. 846.

Sec. 22. Treason. Treason against the State shall consist only in levying war against it, or adhering to its enemies, giving them aid and comfort; and no person shall be convicted of treason except on the testimony of two witnesses to the same overt act, or on confession in open court.

22. *Kemper v. State*, 63 Texas Crim. Rep., 1, 138 S. W. 1025.

Sec. 23. Right to bear arms. Every citizen shall have the right to keep and bear arms in the lawful defense of himself or the State; but the legislature shall have power, by law, to regulate the wearing of arms, with a view to prevent crime.

23. *Deuschle v. State*, 109 Texas Crim. Rep., 355, 4 S. W. (2d) 559; *Caswell & Smith v. State*, 148 S. W. 1159.

Sec. 24. Military. The military shall at all times be subordinate to the civil authority.

24. *Ex parte Dailey*, 93 Texas Crim. Rep., 68, 246 S. W. 91, 26 A. L. R. 133; *Constantin v. Smith*, 57 Fed. (2d) 227, 287 U. S. 378, 53 Sup. Ct. 190.

Sec. 25. Quartering soldiers. No soldier shall in time of peace be quartered in the house of any citizen without the consent of the owner, nor in time of war but in a manner prescribed by law.

Sec. 26. Perpetuities; monopolies; primogeniture; entailments. Perpetuities and monopolies are contrary to the genius of a free government, and shall never be allowed; nor shall the law of primogeniture or entailments ever be in force in this State.

25. *Wallace v. First Natl Bank*, 120 Texas 92, 35 S. W. (2d) 1036; *Sims v. McMullan*, 37 S. W. (2d) 141.

Sec. 27. Right of Petition Guaranteed. The citizens shall have the right, in a peaceable manner, to assemble together for their common good, and apply to those invested with the powers of government for redress of grievances or other purposes, by petition, address or remonstrance.

26. *Love v. Wilcox*, 119 Texas 256, 28 S. W. (2d) 515, 70 A. L. R. 1484; *Koehler v. DuBose*, 200 S. W. 239; *Bell v. Hill*, 123 Texas 531, 74 S. W. (2d) 113.

Sec. 28. Power to Suspend Laws. No power of suspending laws in this State shall be exercised, except by the legislature.

27. *Harris v. Municipal Gas Co.*, 59 S. W. (2d) 355; *American Rio Grande Land & Irr. Co. v. Karle*, 237 S. W. 358; *Jones v. Williams*, 121 Texas 94, 45 S. W. (2d) 130.

Sec. 29. "Bill of Rights" Inviolable. To guard against transgressions of the high powers herein delegated, we declare that everything in this "Bill of Rights" is expected out of the general powers of government, and shall forever remain inviolate, and all laws contrary thereto, or to the following provisions, shall be void.

28. *City of Wichita Falls v. Lipscomb*, 50 S. W. (2d) 867; *Bell v. Hill*, 123 Texas 531, 74 S. W. (2d) 113.

ARTICLE II.

THE POWERS OF GOVERNMENT.

Section 1. Departments of Government to Be Kept Distinct. The powers of the government of the State of Texas shall be divided into three distinct departments, each of which shall be confided to a separate body of magistracy, to-wit: Those which are legislative to one, those which are executive to another, and those which are judicial to another; and no person or collection of persons, being of one of these departments, shall exercise any power properly attached to either of the others, except in the instances herein expressly permitted.

29. *Burgess v. American Rio Grande L. & Irr. Co.*, 295 S. W. 649; *Alpha Pet. Co. v. Terrell*, 122 Texas 257, 59 S. W. (2d) 364; *Motl v. Boyd*, 116 Texas 82, 286 S. W. 458; *Rochelle v. Lane*, 105 Texas 350, 148 S. W. 558.

ARTICLE III.

LEGISLATIVE DEPARTMENT.

Sec. 1. **The Legislature.** The legislative power of this State shall be vested in a senate and house of representatives, which together shall be styled, "The Legislature of the State of Texas."

30. *Harris v. Municipal Gas Co.*, 59 S. W. (2d) 355; *Stephenson v. Woods*, 119 Texas, 564, 34 S. W. (2d) 346.

Sec. 2. **Number of Members of Each House.** The senate shall consist of thirty-one members, and shall never be increased above this number. The house of representatives shall consist of ninety-three members until the first apportionment thereafter, the number of representatives may be increased by the legislature, upon the ratio of not more than one representative for every fifteen thousand inhabitants; provided, the number of representatives shall never exceed one hundred and fifty.

31. *San Antonio & A. P. Ry. Co. v. Blair*, 108 Texas 434, 196 S. W. 502.

Sec. 3. **Election of Senators; New Apportionment.** The senators shall be chosen by the qualified electors for the term of four years; but a new senate shall be chosen after every apportionment, and the senators elected after each apportionment shall be divided by lot into two classes. The seats of the senators of the first class shall be vacated at the expiration of the first two years, and those of the second class at the expiration of four years, so that one-half of the senators shall be chosen biennially thereafter.

Sec. 4. **Election of Representatives; Term of Office.** The members of the house of representatives shall be chosen by the qualified electors, and their term of office shall be two years from the day of their election.

Sec. 5. **Time of Meeting.** The legislature shall meet every two years at such time as may be provided by law and at other times when convened by the Governor. When convened in regular session, the first thirty days thereof shall be devoted to the introduction of bills and resolutions, acting upon emergency appropriations, passing upon the confirmation of the recess appointees of the Governor and such emergency matters as may be submitted by the Governor in special message to the legislature; provided that during the succeeding thirty days of the regular session of the legislature the various committees of each house shall hold hearings to consider all bills and resolutions and other matters then pending; and such emergency matters as may be submitted by the Governor; provided further that during the following sixty

days the Legislature shall act upon such bills and resolutions as may be then pending and upon such emergency matters as may be submitted by the Governor in special messages to the legislature provided however, either house may otherwise determine its order of business by an affirmative vote of four-fifths of its membership. (Adopted Nov. 4, 1930.)

32. *Ferguson v. Maddox*, 114 Texas 176, 263 S. W. 888.

Sec. 6. Qualifications of Senators. No person shall be a senator, unless he be a citizen of the United States, and, at the time of his election, a qualified elector of this State, and shall have been a resident of this State five years next preceding his election, and the last year thereof a resident of the district for which he shall be chosen, and shall have attained the age of twenty-six years.

33. *Dickson v. Strickland*, 114 Texas 176, 265 S. W. 1012; *State ex rel Candler v. Court of Civil Appeals*, 123 Texas, 549, 75 S. W. (2d) 253.

Sec. 7. Qualifications of Representatives. No person shall be a representative, unless he be a citizen of the United States, and, at the time of his election, a qualified elector of this State, and shall have been a resident of this State two years next preceding his election, the last year thereof a resident of the district for which he shall be chosen, and shall have attained the age of twenty-one years.

Sec. 8. Each House to Judge Qualifications of Its Own Members. Each house shall be the judge of the qualifications and election of its own members; but contested elections shall be determined in such manner as shall be provided by law.

Sec. 9. President Pro Tem; Speaker of House; Officers. The senate shall, at the beginning and close of each session, and at such other times as may be necessary, elect one of its members president pro tempore, who shall perform the duties of the lieutenant-governor in any case of the absence or disability of that officer, and whenever the said office of lieutenant-governor shall be vacant. The house of representatives shall, when it first assembles, organize temporarily, and thereupon proceed to the election of a speaker from its own membership; and each house shall choose its other officers.

Sec. 10. Quorum. Two-thirds of each house shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and compel the attendance of absent members, in such manner and under such penalties as each house may provide.

Sec. 11. Rules; Power to Punish and Expel. Each house may determine the rules of its own proceedings, punish members for

disorderly conduct, and, with the consent of two-thirds, expel a member, but not a second time for the same offense.

34. *Terrell v. King*, 118 Texas 237, 14 S. W. (2d) 786; *Jenkins v. Taylor*, 4 S. W. (2d) 656.

Sec. 12. Journals; Yeas and Nays. Each house shall keep a journal of its proceedings, and publish the same; and the yeas and nays of the members of either house on any question shall, at the desire of any three members present, be entered on the journals.

35. *Williams v. Taylor*, 83 Texas 672, 19 S. W. 156; *El Paso & S. W. Ry. Co. v. Foth*, 101 Texas 133, 100 S. W. 171.

Sec. 13. Vacancies, How Filled. When vacancies occur in either house, the Governor, or the person exercising the power of Governor, shall issue writs of election to fill such vacancies; and should the governor fail to issue a writ of election to fill any such vacancy within twenty days after it occurs, the returning officer of the district in which such vacancy may have happened, shall be authorized to order an election for that purpose.

Sec. 14. Privilege From Arrest. Senators and representatives shall, except in cases of treason, felony or breach of the peace, be privileged from arrest during the session of the legislature, and in going to or returning from the same, allowing one day for every twenty miles such member may reside from the place at which the legislature is convened.

Sec. 15. May Punish Disorderly Conduct. Each house may punish, by imprisonment, during its session, any person not a member, for disrespectful or disorderly conduct in its presence or for obstructing any of its proceedings; provided, such imprisonment shall not, at any one time, exceed forty-eight hours.

36. *Ex parte Wolters*, 64 Texas Crim. Rep., 238, 144 S. W. 531; *Ex parte Youngblood*, 94 Texas Crim. Rep., 509.

Sec. 16. Sessions to Be Open. The sessions of each house shall be open, except the senate when in executive session.

Sec. 17. Adjournments. Neither house shall, without the consent of the other, adjourn for more than three days, nor to any other place than where the legislature may be sitting.

Sec. 18. Ineligibility of Members; Not to Be Interested in Contracts. No senator or representative shall, during the term for which he may be elected, be eligible to any civil office of profit under this State, which shall have been created, or the emoluments of which may have been increased, during the term; no

member of either house shall, during the term for which he is elected, be eligible to any office or place, the appointment to which may be made, in whole or in part, by either branch of the legislature; and no member of either house shall vote for any other member for any office whatever, which may be filled by a vote of the legislature, except in such cases as are in this constitution provided. Nor shall any member of the legislature be interested, either directly or indirectly, in any contract with the State, or any county thereof, authorized by any law passed during the term for which he shall have been elected.

37. *Dickson v. Strickland*, 114 Texas 176, 265 S. W. 1012; *State ex rel Candler v. Court of Civil Appeals*, 123 Texas 549, 75 S. W. (2d) 253; *Lillard v. Freestone County*, 23 Texas Civ. App. 363, 57 S. W. 338.

Sec. 19. What Officers Ineligible. No judge of any court, secretary of state, attorney general, clerk of any court of record, or any person holding a lucrative office under the United States, or this State, or any foreign government, shall, during the term for which he is elected or appointed, be eligible to the legislature.

38. *Dickson v. Strickland*, 114 Texas 176, 265 S. W. 1012; *State ex rel Candler v. Court of Civil Appeals*, 123 Texas, 549, 75 S. W. (2d) 253 .

Sec. 20. Receivers or Disbursers of Public Funds. No person who at any time may have been a collector of taxes, or who may have been otherwise intrusted with public money, shall be eligible to the legislature, or to any office of profit or trust under the state government, until he shall have obtained a discharge for the amount of such collections, or for all public moneys with which he may have been intrusted.

39. *Oglesby's Sureties v. State of Texas*, 73 Texas 658, 11 S. W. 873.

Sec. 21. Freedom in Debate. No member shall be questioned in any other place for words spoken in debate in either house.

40. *Canfield v. Gresham*, 82 Texas 10, S. W. 390; *Ex parte Wolters*, 64 Texas Crim. Rep., 238, 144 S. W. 531.

Sec. 22. Personal Interest in Measure or Bill. A member who has a personal or private interest in any measure or bill, proposed or pending before the legislature, shall disclose the fact to the house of which he is a member, and shall not vote thereon.

Sec. 23. Removal Vacates Office. If any senator or representative remove his residence from the district or county for which he was elected, his office shall thereby become vacant, and the vacancy shall be filled as provided in section 13 of this article.

Sec. 24. Per Diem and Mileage. Members of the Legislature shall receive from the public Treasury a per diem of not exceeding

\$10.00 per day for the first 120 days of each session and after that not exceeding \$5.00 per day for the remainder of the session.

In addition to the per diem the members of each House shall be entitled to mileage in going to and returning from the seat of government, which mileage shall not exceed \$2.50 for every 25 miles, the distance to be computed by the nearest and most direct route of travel, from a table of distance prepared by the Comptroller to each county seat now or hereafter to be established; no member to be entitled to mileage for any extra session that may be called within one day after the adjournment of a regular or called session. (Adopted Nov. 4, 1930.)

41. Terrell v. King, 118 Texas 237, 14 S. W. (2d) 786.

Sec. 25. Senatorial Districts. The State shall be divided into senatorial districts of contiguous territory according to the number of qualified electors, as nearly as may be, and each district shall be entitled to elect one senator; and no single county shall be entitled to more than one senator.

42. Lytle v. Halff, 75 Texas 128, 12 S. W. 610; Smith v. Patterson, 111 Texas 535, 242 S. W. 749.

Sec. 26. Representatives; How Apportioned. The members of the house of representatives shall be apportioned among the several counties, according to the number of population in each, as nearly as may be, on a ratio obtained by dividing the population of the State, as ascertained by the most recent United States census, by the number of members of which the house is composed; provided, that whenever a single county has sufficient population to be entitled to a representative, such county shall be formed into a separate representative district; and when two or more counties are required to make up the ratio of representation, such representative or representatives shall be apportioned to such county, and for any surplus of population it may be joined in a representative with any other contiguous county or counties.

43. Smith v. Patterson, 111 Texas 535, 242 S. W. 749.

Sec. 27. Elections for Members. Elections for senators and representatives shall be general throughout the State, and shall be regulated by law.

44. Smith v. Patterson, 111 Texas 525, 242 S. W. 749, 752.

Sec. 28. Reapportionment at Each Census. The legislature shall, at its first session after the publication of each United States decennial census, apportion the State into senatorial and representative districts, agreeably to the provisions of sections 25 and 26 of this article; and until the next decennial census, when the first apportionment shall be made by the legislature, the State

shall be and it is hereby divided into senatorial and representative districts as provided by ordinance of the convention on that subject.

45. *Smith v. Patterson*, 111 Texas 535, 242 S. W. 749, 752.

PROCEEDINGS.

Sec. 29. Enacting Clause. The enacting clause of all laws shall be: "Be it enacted by the legislature of the State of Texas."

46. *Slack v. State*, 61 Texas Crim. Rep., 372, 136 S. W. 1073; *American Ind. Co. v. City of Austin*, 112 Texas 239, 246 S. W. 1019; *Weekes v. City of Galveston*, 21 Texas Civ. App. 102, 51 S. W. 544.

Sec. 30. Laws to Be Passed by Bill; Amendments. No law shall be passed, except by bill, and no bill shall be so amended in its passage through either house as to change its original purpose.

47. *State v. East Texas Ry. Co.* 283 Fed. 584; *Houston & T. C. Ry. Co. v. Stuart*, 48 S. W. 799; *Harris County v. Hammond*, 203 S. W. 445.

Sec. 31. Bills May Originate in Either House; Amendment or Rejection by Other House. Bills may originate in either house, and, when passed by such house, may be amended, altered or rejected by the other.

48. *Parshall v. State*, 62 Texas Crim. Rep., 177, 138 S. W. 759.

Sec. 32. Bills to Be Read on Three Several Days; Suspension of Rule. No bill shall have the force of a law until it has been read on three several days in each house, and free discussion allowed thereon; but in case of imperative public necessity (which necessity shall be stated in a preamble, or in the body of the bill), four-fifths of the house, in which the bill may be pending, may suspend this rule, the yeas and nays being taken on the question of suspension, and entered upon the journals.

49. *Ex parte May*, 118 Texas Crim. Rep., 165, 40 S. W. (2d) 811; *Day Land & Cattle Co. v. State*, 68 Texas 526, 4 S. W. 865; *Orrick v. City of Ft. Worth*, 52 Texas Civ. App., 308, 114 S. W. 677.

Sec. 33. Bills for Raising Revenue. All bills for raising revenue shall originate in the house of representatives, but the senate may amend or reject them as other bills.

50. *Geib v. State*, 31 Texas Crim. App., 514, 21 S. W. 190; *Raymond v. Kibbe*, 45 Texas Civ. App. 209, 95 S. W. 727; *Stuard v. Thompson*, 251 S. W. 277.

Sec. 34. Bill or Resolution Defeated, Not to Be Considered Again. After a bill has been considered and defeated by either house of the legislature, no bill containing the same substance shall be passed into a law during the same session. After a resolution

has been acted on and defeated, no resolution containing the same substance shall be considered at the same session.

51. *King v. Terrell*, 218 S. W. 42; *Conley v. Texas Division United Daughters of the Confederacy*, 164 S. W. 24.

Sec. 35. Bill to Contain But One Subject; to Be Expressed in Title. No bill (except general appropriation bills, which may embrace the various subjects and accounts, for and on account of which moneys are appropriated) shall contain more than one subject, which shall be expressed in its title. But if any subject shall be embraced in an act, which shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be so expressed.

52. *Board of School Trustees of Young County v. Bullock Common School Dist.* 55 S. W. (2d) 358; *Limestone County v. Robbins*, 120 Texas 341, 38 S. W. (2d) 580.

Sec. 36. Reviving or Amending Laws. No law shall be revived or amended by reference to its title; but in such case the act revived, or the section or sections amended, shall be re-enacted and published at length.

53. *Clark v. Finley*, 93 Texas 177, 54 S. W. 343; *American Ind. Co. v. City of Austin*, 112 Texas 239, 246 S. W. 1019; *Popham v. Patterson*, 121 Texas 615, 51 S. W. (2d) 680.

Sec. 37. Reference to Committees. No bill shall be considered, unless it has been first referred to a committee and reported thereon, and no bill shall be passed which has not been presented and referred to and reported from a committee at least three days before the final adjournment of the legislature.

54. *Day Land & Cattle Co. v. State*, 68 Texas 526, 4 S. W. 865; *Williams v. Taylor*, 83 Texas City 667, 19 C. W. 156.

Sec. 38. Signing Bills. The presiding officer of each house shall, in the presence of the house over which he presides, sign all bills and joint resolutions passed by the legislature, after their titles have been publicly read before signing; and the fact of signing shall be entered on the journals.

55. *El Paso S. W. Ry. Co. v. Foth*, 101 Texas 133, 100 S. W. 171; *Holman V. Pabst*, 27 S. W. (2d) 340.

Sec. 39. When Laws Take Effect. No law passed by the legislature, except the general appropriation act, shall take effect or go into force until ninety days after the adjournment of the session at which it was enacted, unless in case of an emergency, which emergency must be expressed in a preamble or in the body of the act, the legislature shall, by vote of two-thirds of all the

members elected to each house otherwise direct; said vote to be taken by yeas and nays, and entered upon the journals.

56. *Freeman v. Terrell*, 115 Texas, 530, 284 S. W. 946; *Ex parte May*, 118 Texas Crim. Rep., 165, 40 S. W. (2d) 811.

Sec. 40. Business and Duration of Special Sessions. When the legislature shall be convened in special session, there shall be no legislation upon subjects other than those designated in the proclamation of the Governor calling such session, or presented to them by the Governor; and no such session shall be of longer duration than thirty days.

57. *Ferguson v. Maddox*, 114 Texas 85, 263 S. W. 888; *Jackson v. Walker*, 121 Texas 303, 49 S. W. (2d) 693.

Sec. 41. Elections; Votes, How Taken. In all elections by the senate and house of representatives, jointly or separately, the vote shall be given viva voce, except in the election of their officers.

REQUIREMENTS AND LIMITATIONS.

Sec. 42. To Pass Necessary Laws. The legislature shall pass such laws as may be necessary to carry into effect the provisions of this constitution.

58. *Dallas County Levee Imp. Dist. No. 6 v. Rugel*, 36 S. W. (2d) 188; *City of El Paso v. Jackson*, 59 S. W. (2d) 822.

Sec. 43. Revision and Publication of Laws. The first session of the legislature under this constitution shall provide for revising, digesting and publishing the laws, civil and criminal; and a like revision, digest and publication may be made every ten years thereafter; provided, that in the adoption of and giving effect to any such digest or revision, the legislature shall not be limited by sections 35 and 36 of this article.

59. *Harris County v. Crocker*, 112 Texas 450, 248 S. W. 652; *Stephens v. Stephens*, 292 S. W. 290; *Briggs v. Buckner*, 19 S. W. (2d) 190.

Sec. 44. Compensation of Officers; Payment of Claims. The legislature shall provide by law for the compensation of all officers, servants, agents and public contractors, not provided for in this constitution, but shall not grant extra compensation to any officer, agent, servant or public contractors, after such public service shall have been performed or contract entered into for the performance of the same, nor grant by appropriation or otherwise, any amount of money out of the treasury of the State, to any individual, on a claim, real or pretended, when the same shall not have been provided for by the pre-existing law, nor employ any one in the name of the State, unless authorized by pre-existing law.

60. *Dallas County v. Lively*, 106 Texas 364, 167 S. W. 219; *Byrd v. City of Dallas*, 118 Texas 28, 6 S. W. (2d) 738; *Cherokee County v. Odom*, 118 Texas 288, 15 S. W. (2d) 538.

Sec. 45. Change of Venue. The power to change the venue in civil and criminal cases shall be vested in the courts, to be exercised in such manner as shall be provided by law; and the legislature shall pass laws for that purpose.

61. *Phipps v. State*, 100 Texas Crim. Rep., 607, 272 S. W. 209; *Henderson v. State*, 104 Texas Crim. Rep., 495, 283 S. W. 497.

Sec. 46. Vagrant Laws. The legislature shall, at the first session after the adoption of this constitution, enact effective vagrant laws.

62. *Belton v. Head*, 137 S. W. 417; *Ex parte Strittmatter*, 58 Texas Crim. Rep., 156, 124 S. W. 906.

Sec. 47. Lotteries. The legislature shall pass laws prohibiting the establishment of lotteries and gift enterprises in this State, as well as the sale of tickets in lotteries, gift enterprises or other evasions involving the lottery principle, established or existing in other states.

63. *Storrie v. Houston City Ry. Co.*, 92 Texas 129, 46 S. W. 796; *Barry v. State*, 39 Texas Crim. App., 240, 45 S. W. 571; *Featherstone v. Independent Service Station Assn.* 10 S. W. (2d) 124.

Sec. 48. Power to Levy Taxes. The legislature shall not have the right to levy taxes or impose burdens upon the people, except to raise revenue sufficient for the economical administration of the government, in which may be included the following purposes:

The payment of all interest upon the bonded debt of the State;

The erection and repairs of public buildings;

The benefit of the sinking fund, which shall not be more than two per centum of the public debt; and for the payment of the present floating debt of the State, including matured bonds for the payment of which the sinking fund is inadequate;

The support of public schools, in which shall be included colleges and universities established by the State; and the maintenance and support of the Agricultural and Mechanical College of Texas;

The payment of the cost of assessing and collecting the revenue; and the payment of all officers, agents and employes of the State government, and all incidental expenses connected therewith;

The enforcement of quarantine regulations on the coast of Texas;

The protection of the frontier.

64. *Tarrant County v. Butler*, 35 Texas Civ. App., 421, 80 S. W. 656;

Storrie v. Houston City Ry. Co., 92 Texas 139, 46 S. W. 796; *Cherokee County v. Odom*, 118 Texas 286, 15 S. W. (2d) 538; *Richardson v. Liberty Ind. Sch. Dist.*, 39 S. W. (2d) 823.

Sec. 49. When Debts May Be Created. No debt shall be created by or on behalf of the State, except to supply casual deficiencies of revenue, repel invasion, suppress insurrection, defend the State in war, or pay existing debt; and the debt created to supply deficiencies in the revenue shall never exceed, in the aggregate at any one time, two hundred thousand dollars.

65. *Charles Scribner's Sons v. Marrs*, 114 Texas 11, 262 S. W. 722; *Kilpatrick v. Compensation Claim Board*, 259 S. W. 164.

Sec. 50. Credit of State Not to Be Pledged. The legislature shall have no power to give or to lend, or to authorize the giving or lending, of the credit of the State in aid of, or to any person, association or corporation, whether municipal or other; or to pledge the credit of the State, in any manner whatsoever, for the payment of the liabilities, present or prospective, of any individual, association of individuals, municipal or other corporation whatsoever.

66. *Terrell v. Middleton*, 187 S. W. 367; *City of Aransas Pass v. Keeling*, 112 Texas 339, 247 S. W. 818; *Cherokee County v. Odom*, 118 Texas 288, 15 S. W. (2d) 538; *Winder Bros. v. Sterling*, 118 Texas 268, 14 S. W. (2d) 802.

Sec. 51. Tax Levy Authorized for Confederate Soldiers and Sailors and Their Widows. The legislature shall have no power to make any grant or authorize the making of any grant of public moneys to any individual, association of individuals, municipal or other corporations whatsoever; provided, however, the legislature may grant aid to indigent and disabled Confederate soldiers and sailors under such regulations and limitations as may be deemed by the legislature as expedient, and to their widows in indigent circumstances under such regulations and limitations as may be deemed by the legislature as expedient; to indigent and disabled soldiers, who, under special laws of the State of Texas, during the war between the States, served in organizations for the protection of the frontier against Indian raids or Mexican marauders, and to indigent and disabled soldiers of the militia who were in active service during the war between the States, and to the widows of such soldiers who are in indigent circumstances, and who are or may be eligible to receive aid under such regulations and limitations as may be deemed by the legislature as expedient; and also grant for the establishment and maintenance of a home for said soldiers and sailors, their wives and widows and women who aided in the Confederacy, under such regulations and limitations as may be provided for by law; provided the legislature may provide for husband and wife to remain together in the home. There is

hereby levied in addition to all other taxes heretofore permitted by the Constitution of Texas, a State ad valorem tax on property of seven (\$.07) cents on the one hundred (\$100) dollars valuation for the purpose of creating a special fund for the payment of pensions for services in the Confederate army and navy, frontier organizations and the militia of the State of Texas, and for the widows of such soldiers serving in said armies, navies, organizations or militia; provided that the legislature may reduce the tax rate herein levied, and provided further, that the provisions of this section shall not be construed so as to prevent the grant of aid in cases of public calamity. (Adopted Nov. 6, 1928.)

67. *Bexar County v. Linden*, 110 Texas 339, 220 S. W. 761; *Kilpatrick v. Compensation Claim Board*, 259 S. W. 164; *Empire Gas & Fuel Co. v. State*, 121 Texas 138, 47 S. W. 265; *Jones v. Williams*, 121 Texas 94, 45 S. W. (2d) 130.

Sec. 51a. The legislature shall have power to authorize by law the issuance and sale of the bonds of the State of Texas, not to exceed the sum of Twenty Million (\$20,000,000.00) Dollars, bearing interest at a rate not to exceed four and one-half (4½%) per centum per annum; and payable serially or otherwise not more than Ten (10) years from their date, and said bonds shall be sold for not less than par and accrued interest and no form of commission shall be allowed in any transaction involving said bonds. The proceeds of the sale of such bonds to be used in furnishing relief and work relief to needy and distressed people and in relieving the hardships resulting from unemployment, but to be fairly distributed over the State and upon such terms and conditions as may be provided by law and the legislature shall make such appropriations as are necessary to pay the interest and principal of such bonds as the same become due. The power hereby granted to the legislature to issue bonds hereunder is expressly limited to the amount stated and to two years from and after the adoption of this grant of power by the people. Provided that the legislature shall provide for the payment of the interest and redemption of any bonds issued under the terms hereof from some source other than a tax on real property and the indebtedness as evidenced by such bonds shall never become a charge against or lien upon any property, real or personal, within this State. (Adopted August 26, 1933.)

Sec. 52. **Counties, Cities, Etc., Not to Grant Money or to Become Stockholders.** The legislature shall have no power to authorize any county, city, town or other political corporation or subdivision of the State, to lend its credit or to grant public money or thing of value in aid of, or to, any individual, association or corporation whatsoever, or to become a stockholder in such corporation, association or company; provided, however, that under

legislative provision any county, any political subdivision of a county, any number of adjoining counties, or any political subdivision of the State, or any defined district now or hereafter to be described and defined within the State of Texas, and which may or may not include towns, villages or municipal corporations, upon a vote of a two-thirds majority of the resident property taxpayers voting thereon who are qualified electors of such district or territory to be affected thereby, in addition to all other debts, may issue bonds or otherwise lend its credit in any amount not to exceed one-fourth of the assessed valuation of the real property of such district or territory, except that the total bonded indebtedness of any city or town shall never exceed the limits imposed by other provisions of this constitution, and levy and collect such taxes to pay the interest thereon and provide a sinking fund for the redemption thereof, as the legislature may authorize, and in such manner as it may authorize the same, for the following purposes, to-wit:

(a) The improvement of rivers, creeks and streams to prevent overflows, and to permit navigation thereof, or irrigation thereof, or in aid of such purposes.

(b) The construction and maintenance of pools, lakes, reservoirs, dams, canals and waterways for the purposes of irrigation, drainage or navigation, or in aid thereof.

(c) The construction, maintenance and operation of macadamized, graveled or paved roads and turnpikes, or in aid thereof. (Adopted November 8, 1904.)

68. *Byrd v. City of Dallas*, 118 Texas 28, 6 S. W. (2d) 738; *Parker v. El Paso County Water Imp. Dish.*, 116 Texas 631, 297 S. W. 737; *City of Breckenridge v. Stephens Co.*, 120 Texas 318, 40 S. W. (2d) 43; *Dallas Joint Stock Land Bank of Dallas v. Ellis County Levee Imp. Dist.*, 55 S. W. (2d) 227.

Sec. 53. Extra Compensation by Municipal Corporations. The legislature shall have no power to grant, or to authorize any county or municipal authority to grant, any extra compensation, fee or allowance to a public officer, agent, servant or contractor after service has been rendered or a contract has been entered into, and performed in whole or in part; nor pay, nor authorize the payment of, any claim created against any county or municipality of the State, under any agreement or contract, made without authority of law.

69. *Payne v. City of Perrytown*, 49 S. W. (2d) 497; *Harlingen Ind. Sch. Dist. v. C. H. Page & Bros.*, 48 S. W. (2d) 983; *Henson v. Commissioners County of Henderson County*, 56 S. W. (2d) 240.

Sec. 54. Liens on Railroads. The legislature shall have no power to release or alienate any lien held by the State upon any railroad, or in anywise change the tenor or meaning, or pass any

act explanatory thereof; but the same shall be enforced in accordance with the original terms upon which it was acquired.

Sec. 55. No Power to Release Debts. The legislature shall have no power to release or extinguish, or to authorize the releasing or extinguishing, in whole or in part, the indebtedness, liability or obligation of any corporation or individual, to this State or to any county or defined subdivision thereof, or other municipal corporation therein, except delinquent taxes which have been due for a period of at least ten years. (Adopted November 8, 1932.)

70. *State v. Pioneer Oil & Ref. Co.*, 292 S. W. 869; *West's Exrs. v. Cameron County*, 14 S. W. (2d) 836; *Jones v. Williams*, 121 Texas 94, 45 S. W. (2d) 130.

Sec. 56. Local and Special Laws. The legislature shall not, except as otherwise provided in this constitution, pass any local or special law, authorizing:

- The creation, extension or impairing of liens;
- Regulating the affairs of counties, cities, towns, wards or school districts;
- Changing the names of persons or places;
- Changing the venue in civil or criminal cases;
- Authorizing the laying out, opening, altering or maintaining of roads, highways, streets or alleys;
- Relating to ferries or bridges, or incorporating ferry or bridge companies, except for the erection of bridges crossing streams which form boundaries between this and any other state;
- Vacating roads, town plats, streets or alleys;
- Relating to cemeteries, graveyards, or public grounds not of the State;
- Authorizing the adoption or legitimation of children;
- Locating or changing county seat;
- Incorporating cities, towns or villages, or changing their charters;
- For the opening and conducting of elections, or fixing or changing the places of voting;
- Granting divorces;
- Creating offices, or prescribing the powers and duties of officers, in counties, cities, towns, election or school districts;
- Changing the law of descent or succession;
- Regulating the practice or jurisdiction of, or changing the rules of evidence in, any judicial proceeding or inquiry before courts, justices of the peace, sheriffs, commissioners, arbitrators or other tribunals, or providing or changing methods for the collection of debts, or the enforcing of judgments, or prescribing the effect of judicial sales of real estate;

Regulating the fees, or extending the powers and duties of aldermen, justices of the peace, magistrates or constables;

Regulating the management of public schools, the building or repairing of school houses, and the raising of money for such purposes;

Fixing the rate of interest;

Affecting the estates of minors, or persons under disability;

Remitting fines, penalties and forfeitures, and refunding money legally paid into the treasury;

Exempting property from taxation;

Regulating labor, trade, mining and manufacturing;

Declaring any named person of age;

Extending the time for the assessment or collection of taxes, or otherwise relieving any assessor or collector of taxes from the due performance of his official duties, or his securities from liability;

Giving effect to informal or invalid wills or deeds;

Summoning or impaneling grand or petit juries;

For limitation of civil or criminal actions;

For incorporating railroads or other works of internal improvements;

And in all other cases where a general law can be made applicable, no local or special law shall be enacted; provided, that nothing herein contained shall be construed to prohibit the legislature from passing special laws for the preservation of the game and fish of this State in certain localities.

71. *City of Beaumont v. Fall*, 116 Texas 314, 291 S. W. 202; *Henderson County v. Allred*, 120 Texas 483, 40 S. W. (2d) 17; *Jones v. Williams*, 121 Texas 94, 45 S. W. (2d) 130; *Tinner v. Crow*, 124 Texas . . . , 72 S. W. (2d) 588.

Sec. 57. Notice of Local or Special Laws. No local or special law shall be passed, unless notice of the intention to apply therefor shall have been published in the locality where the matter or thing to be affected may be situated, which notice shall state the substance of the contemplated law, and shall be published at least thirty days prior to the introduction into the legislature of such bill and in the manner to be provided by law. The evidence of such notice having been published shall be exhibited in the legislature before such act shall be passed.

72. *Whitehead v. Granberry Ind. Sch. Dist.*, 45 S. W. 421; *Stephensen v. Wood*, 119 Texas 564, 34 S. W. (2d) 246; *Parker v. Harris County Drainage Dist.*, 143 S. W. 351.

Sec. 58. Sessions to Be Held at Austin: Seat of Government. The legislature shall hold its sessions at the city of Austin, which is hereby declared to be the seat of government.

ARTICLE IV.
EXECUTIVE DEPARTMENT.

Section 1. Officers of Executive Department. The executive department of the State shall consist of a Governor, who shall be the chief executive officer of the State, a lieutenant-governor, secretary of state, comptroller of public accounts, treasurer, commissioner of the general land office, and attorney general.

73. *Dickson v. Strickland*, 114 Texas 176, 265 S. W. 1012; *State v. Court of Civil Appeals*, 123 Texas 549, 75 S. W. (2d) 253; *Gulf Refining Co. v. City of Dallas*, 10 S. W. (2d) 151.

Sec. 2. Election of Executive Officers. All the above officers of the executive department, except secretary of state, shall be elected by the qualified voters of the State at the time and places of election for members of the legislature.

74. *Dickson v. Strickland*, 114 Texas 176, 265 S. W. 1012; *State v. Court of Civil Appeals*, 123 Texas 549, 75 S. W. (2d) 253.

Sec. 3. Election Returns; Ties; Contest. The returns of every election for said executive officers, until otherwise provided by law, shall be made out, sealed up, and transmitted by the returning officers prescribed by law, to the seat of government, directed to the secretary of state, who shall deliver same to the speaker of the house of representatives, as soon as the speaker shall be chosen; and the said speaker shall, during the first week of the session of the legislature, open and publish them in the presence of both houses of the legislature. The person voted for at said election, having the highest number of votes for each of said offices respectively, and being constitutionally eligible, shall be declared by the speaker, under sanction of the legislature, to be elected to said office. But if two or more persons shall have the highest and an equal number of votes for either of said offices, one of them shall be immediately chosen for such office by joint vote of both houses of the legislature. Contested elections for either of said offices shall be determined by both houses of the legislature in joint session.

Sec. 4. The Governor, When Installed; Term; Qualifications. The Governor shall be installed on the first Tuesday after the organization of the legislature, or as soon thereafter as practicable, and shall hold his office for the term of two years, or until his successor shall be duly installed. He shall be at least thirty years of age, a citizen of the United States, and shall have resided in this State at least five years immediately preceding his election.

Sec. 5. Governor's Salary and Mansion. He shall, at stated times, receive as compensation for his services an annual salary

of four thousand dollars, and no more, and shall have the use and occupation of the Governor's mansion, fixtures and furniture.

75. *Terrell v. Middleton*, 187 S. W. 367, error refused.

Sec. 6. Governor to Hold No Other Office, Etc. During the time he holds the office of Governor, he shall not hold any other office, civil, military or corporate; nor shall he practice any profession, and receive compensation, reward, fee, or the promise thereof, for the same; nor receive any salary, reward or compensation, or the promise thereof, from any person or corporation, for any service rendered or performed during the time he is Governor, or to be thereafter rendered or performed.

76. *Ex parte Daily*, 93 Texas Crim. Rep., 68, 246 S. W. 91.

Sec. 7. Commander-in-Chief; May Call Out Militia. He shall be commander-in-chief of the military forces of the State, except when they are called into actual service of the United States. He shall have power to call forth the militia to execute the laws of the State, to suppress insurrection, repel invasion, and protect the frontier from hostile incursions by Indians or other predatory bands.

77. *Neff v. Elgin*, 270 S. W. 873; *Constantin v. Smith*, 57 Fed. (2d) 227.

Sec. 8. May Convene Legislature. The Governor may, on extraordinary occasions, convene the legislature at the seat of government, or at a different place, in case that should be in possession of the public enemy, or in case of the prevalence of disease thereat. His proclamation therefor shall state specifically the purpose for which the legislature is convened.

78. *Jackson v. Walker*, 121 Texas 303, 49 S. W. (2d) 693.

Sec. 9. Governor's Message; to Account for Money; Present Estimates, Etc. The Governor shall, at the commencement of each session of the legislature, and at the close of his term of office, give to the legislature information, by message, of the condition of the State; and he shall recommend to the legislature such measures as he may deem expedient. He shall account to the legislature for all public moneys received and paid out by him, from any funds subject to his order, with vouchers, and shall accompany his message with a statement of the same. And at the commencement of each regular session, he shall present estimates of the amount of money required to be raised by taxation for all purposes.

Sec. 10. Cause Laws to Be Executed; Intercourse With Other States. He shall cause the laws to be faithfully executed, and shall conduct, in person, or in such manner as shall be prescribed

by law, all intercourse and business of the State with other States and with the United States.

79. *Neff v. Elgin*, 270 S. W. 873; *Constantin v. Smith*, 57 Fed. (2d) 227.

Sec. 11. May Pardon, Remit Fines, Etc. In all criminal cases, except treason and impeachment, he shall have power, after conviction, to grant reprieves, commutations of punishment, and pardons; and, under such rules as the legislature may prescribe, he shall have power to remit fines and forfeitures. With the advice and consent of the senate, he may grant pardons in cases of treason; and to this end he may respite a sentence therefor, until the close of the succeeding session of the legislature; provided, that in all cases of remissons of fines and forfeitures, or grants of reprieve, commutation of punishment or pardon, he shall file in the office of the secretary of state his reasons therefor.

80. *Underwood v. State*, 111 Texas Crim. Rep., 124, 12 S. W. 206; *Ex parte Block*, 59 S. W. (2d) 828; *Ex parte Frazier*, 91 Texas Crim. Rep., 475, 239 S. W. 972; *Ex parte Thomas*, 108 Texas Crim. Rep., 653, 2 S. W. (2d) 270.

Sec. 12. Filling Vacancies. All vacancies in State or district offices, except members of the legislature, shall be filled, unless otherwise provided by law, by appointment of the Governor, which appointment, if made during its session, shall be with the advice and consent of two-thirds of the senate present. If made during the recess of the senate, the said appointee, or some other person to fill such vacancy, shall be nominated to the senate during the first ten days of its session. If rejected, said office shall immediately become vacant, and the Governor shall, without delay, make further nominations, until a confirmation takes place. But should there be no confirmation during the session of the senate, the governor shall not thereafter appoint any person to fill such vacancy who has been rejected by the senate; but may appoint some other person to fill the vacancy until the next session of the senate, or until the regular election to said office, should it sooner occur. Appointments to vacancies in offices elective by the people shall only continue until the first general election thereafter.

81. *Denison v. State*, 122 Texas 460, 61 S. W. (2d) 1022; *Brumby v. Boyd*, 28 Texas Civ. App., 66 S. W. 874; *State v. Valentine*, 198 S. W. 1006.

Sec. 13. Where Governor Shall Reside. During the session of the legislature, the Governor shall reside where its sessions are held, and at all other times, at the seat of government, except when, by act of the legislature, he may be required or authorized to reside elsewhere.

Sec. 14. Approval of Bills; Veto; Bill Not Returned to Become a Law. Every bill which shall have passed both houses of the

legislature shall be presented to the Governor for his approval. If he approves, he shall sign it; but if he disapproves it, he shall return it, with his objections, to the house in which it originated, which house shall enter the objections at large upon its journal, and proceed to reconsider it. If, after such reconsideration, two-thirds of the members present agree to pass the bill, it shall be sent, with the objections, to the other house, by which likewise it shall be reconsidered; and, if approved by two-thirds of the members of that house, it shall become a law; but in such cases the votes of both houses shall be determined by yeas and nays, and the names of the members voting for and against the bill shall be entered on the journal of each house respectively. If any bill shall not be returned by the Governor with his objections within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the legislature, by its adjournment, prevent its return; in which case it shall be a law, unless he shall file the same, with his objections, in the office of the secretary of state, and give notice thereof by public proclamation within twenty days after such adjournment. If any bill presented to the Governor contains several items of appropriation, he may object to one or more of such items, and approve the other portion of the bill. In such case he shall append to the bill, at the time of signing it, a statement of the items to which he objects; and no item so objected to shall take effect. If the legislature be in session, he shall transmit to the house in which the bill originated a copy of such statement, and the items objected to shall be separately considered. If, on reconsideration, one or more of such items be approved by two-thirds of the members present of each house, the same shall be a part of the law, notwithstanding the objections of the Governor. If any such bill, containing several items of appropriation, not having been presented to the Governor ten days (Sundays excepted) prior to adjournment, be in the hands of the Governor at the time of adjournment, he shall have twenty days from such adjournment within which to file objections to any item thereof, and to make proclamation of the same, and such item or items shall not take effect.

Sec. 15. What to Be Presented for Approval. Every order, resolution or vote, to which the concurrence of both houses of the legislature may be necessary, except on questions of adjournment, shall be presented to the Governor, and, before it shall take effect, shall be approved by him; or, being disapproved, shall be repassed by both houses; and all the rules, provisions and limitations shall apply thereto as prescribed in the last preceding section in the case of a bill.

Lane, 104 Texas 499, 140 S. W. 405; *Minor v. McDonald*, 104 Texas 461, 140 S. W. 141.

83. *Terrell v. King*, 118 Texas 237, 14 S. W. (2d) 786; *Shaw v. Lone Star Building Assn.*, 123 Texas 373, 71 S. W. (2d) 863; *Conley v. Daughters of Confederacy*, 164 S. W. 24.

Sec. 16. Lieutenant Governor; Election, Term; Power and Duties. There shall also be a lieutenant-governor, who shall be chosen at every election for Governor, by the same electors, in the same manner, continue in office for the same time, and possess the same qualifications. The electors shall distinguish for whom they vote as Governor and for whom as lieutenant governor. The lieutenant-governor shall, by virtue of his office, be president of the senate, and shall have, when in committee of the whole, a right to debate and vote on all questions; and, when the senate is equally divided, to give the casting vote. In case of the death, resignation, removal from office, inability or refusal of the governor to serve, or of his impeachment or absence from the State, the lieutenant-governor shall exercise the powers and authority appertaining to the office of Governor until another be chosen at the periodical election, and be duly qualified, or until the governor, impeached, absent or disabled, shall be acquitted, return, or disability be removed.

84. *State ex rel Candler v. Court of Civil Appeals*, 123 Texas 549, 75 S. W. (2d) 253.

Sec. 17. Vacancy in Office; Compensation. If, during the vacancy in the office of Governor, the lieutenant-governor should die, resign, refuse to serve, or be removed from office, or be unable to serve, or if he shall be impeached or absent from the State, the president of the senate, for the time being, shall, in like manner, administer the government until he shall be superseded by a governor or lieutenant-governor. The lieutenant-governor shall, while he acts as president of the senate, receive for his services the same compensation and mileage which shall be allowed to the members of the senate, and no more; and during the time he administers the government, as Governor, he shall receive in like manner the same compensation which the Governor would have received had he been employed in the duties of his office, and no more. The president, for the time being, of the senate, shall during the time he administers the government, receive in like manner the same compensation which the Governor would have received had he been employed in the duties of his office.

Sec. 18. Succession to Governorship. The lieutenant-governor or the president of the senate succeeding to the office of Governor, shall, during the entire term to which he may succeed,

be under all the restrictions and inhibitions imposed in this constitution on the Governor.

Sec. 19. Seal of State; Secretary of State to Keep, Etc. There shall be a seal of the State, which shall be kept by the secretary of state, and used by him officially under the direction of the Governor. The seal of the State shall be a star of five points, encircled by olive and live oak branches, and the words, "The State of Texas."

Sec. 20. Commissions to Be Signed and Sealed. All commissions shall be in the name and by the authority of the State of Texas, sealed with the State seal, signed by the Governor, and attested by the secretary of state.

85. *Ex parte Pinkus*, 114 Texas Crim. Rep., 326, 25 S. W. (2d) 334.

Sec. 21. Secretary of State; Term; Duties; Compensation. There shall be a secretary of State, who shall be appointed by the Governor, by and with the advice and consent of the senate, and who shall continue in office during the term of service of the Governor. He shall authenticate the publication of the laws, and keep a fair register of all official acts and proceedings of the Governor, and shall, when required, lay the same, and all papers, minutes and vouchers relative thereto, before the legislature, or either house thereof, and shall perform such other duties as may be required of him by law. He shall receive for his services an annual salary of two thousand dollars, and no more.

86. *Missouri, K. & T. Ry. Co. v. Shannon*, 100 Texas 379, 100 S. W. 138; *Galveston, H. & N. Ry. Co. v. Hardy*, 93 Texas 340, 55 S. W. 322.

Sec. 22. Attorney General; Term; Duties; Residence; Salary. The attorney general shall hold his office for two years and until his successor is duly qualified. He shall represent the State in all suits and pleas in the supreme court of the State in which the State may be a party, and shall especially inquire into the charter rights of all private corporations, and, from time to time, in the name of the State, take such action in the courts as may be proper and necessary to prevent any private corporation from exercising any power, or demanding or collecting any species of taxes, toll, freight or wharfage, not authorized by law. He shall, whenever sufficient cause exists, seek a judicial forfeiture of such charters, unless otherwise expressly directed by law, and give legal advice in writing to the Governor and other executive officers, when requested by them, and perform such other duties as may be required by law. He shall reside at the seat of government during his continuance in office. He shall receive for his services an annual salary of two thousand dollars, and no more, besides such fees as may

be prescribed by law; provided, that the fees which he may receive shall not amount to more than two thousand dollars annually.

87. *Allen v. Fisher*, 118 Texas 38, 9 S. W. (2d) 731; *Staacle v. Routledge*, 111 Texas 489, 241 S. W. 994; *Herndon v. Hayter*, 28 S. W. (2d) 885; *Camp v. Gulf Production Co.*, 122 Texas 384, 61 S. W. (2d) 773.

Sec. 23. Comptroller, Treasurer, and Commissioner of the General Land Office; Terms; Salaries; Residence; Fees. The comptroller of public accounts, the treasurer, and the commissioner of the general land office, shall each hold office for the term of two years, and until his successor is qualified; receive an annual salary of two thousand five hundred dollars, and no more; reside at the capital of the State during his continuance in office; and perform such duties as are or may be required of him by law. They and the secretary of state shall not receive to their own use any fees, costs or perquisites of office. All fees that may be payable by law for any service performed by any officer specified in this section, or in his office, shall be paid, when received, into the State treasury.

88. *Anderson v. Rogan*, 93 Texas 182, 54 S. W. 242; *Arnold v. State*, 71 Texas 239, 9 S. W. 120.

Sec. 24. Officers to Account; Duty of Governor; False Reports. An account shall be kept by the officers of the executive department, and by all officers and managers of State institutions, of all moneys and choses in action received and disbursed or otherwise disposed of by them, severally, from all sources, and for every service performed; and a semi-annual report thereof shall be made to the Governor under oath. The Governor may, at any time, require information in writing from any and all of said officers or managers, upon any subject relating to the duties, condition, management and expenses of their respective offices and institutions, which information shall be required by the Governor under oath; and the Governor may also inspect their books, accounts, vouchers and public funds; and any officer or manager, who, at any time, shall wilfully make a false report or give false information, shall be guilty of perjury, and so adjudged, and punished accordingly, and removed from office.

89. *Madden v. Hardy*, 92 Texas 614, 50 S. W. 926.

Sec. 25. Laws for Investigation of Breaches of Trust. The legislature shall pass efficient laws facilitating the investigation of breaches of trust and duty by all custodians of public funds, and providing for their suspension from office on reasonable cause shown, and for the appointment of temporary incumbents of their offices during such suspension.

90. *Bonner v. Belstering*, 137 S. W. 1154.

Sec. 26. **Notaries Public.** The Governor, by and with the advice and consent of two-thirds of the senate, shall appoint a convenient number of notaries public for each county, who shall perform such duties as now are or may be prescribed by law.

91. *Faubion v. State*, 104 Texas Crim. Rep., 78, 282 S. W. 597.

ARTICLE V.

JUDICIAL DEPARTMENT.

Section 1. **The Several Courts; Criminal Courts.** The judicial power of this State shall be vested in one supreme court, in courts of civil appeals, in a court of criminal appeals, in district courts, in county courts, in commissioners' courts, in courts of justices of the peace, and in such other courts as may be provided by law. The criminal district court of Galveston and Harris counties shall continue with the district, jurisdiction and organization now existing by law until otherwise provided by law. The legislature may establish such other courts as it may deem necessary, and prescribe the jurisdiction and organization thereof, and may conform the jurisdiction of the district and other inferior courts thereto.

92. *Trimmier v. Carlton*, 116 Texas 572, 296 S. W. 1070; *San Antonio & A. P. Ry. Co. v. Blair*, 108 Texas 434, 196 S. W. 502; *Reasonover v. Reasonover*, 122 Texas 512, 58 S. W. (2d) 817.

Sec. 2. **Supreme Court; Quorum; Qualifications; Election; Salary; Vacancy.** The supreme court shall consist of a chief justice and two associate justices, any two of whom shall constitute a quorum, and the concurrence of two judges shall be necessary to the decision of a case. No person shall be eligible to the office of chief justice or associate justice of the supreme court unless he be, at the time of his election, a citizen of the United States and of this State, and unless he shall have attained the age of thirty years, and shall have been a practicing lawyer or a judge of a court, or such lawyer and judge together, at least seven years. Said chief justice and associate justices shall be elected by the qualified voters of the State at a general election, shall hold their offices six years, or until their successors are elected and qualified, and shall each receive an annual salary of four thousand dollars until otherwise provided by law. In case of a vacancy in the office of chief justice of the supreme court, the Governor shall fill the vacancy until the next general election for state officers; and at such general election the vacancy for the unexpired term shall be filled by election by the qualified voters of the State. The judges of the supreme court who may be in office at the time this amendment takes effect shall continue in office until the expiration of their term of office under the present constitution, and until their successors are elected and qualified.

93. *Dickson v. Strickland*, 114 Texas 176, 265 S. W. 1012; *Gatz v. City of Kerrville*, 121 Texas 92, 43 S. W. (2d) 91.

Sec. 3. Jurisdiction; Terms of Court. The supreme court shall have appellate jurisdiction only, except as herein specified, which shall be co-extensive with the limits of the State. Its appellate jurisdiction shall extend to questions of law arising in cases of which the courts of civil appeals have appellate jurisdiction, under such restrictions and regulations as the legislature may prescribe. Until otherwise provided by law, the appellate jurisdiction of the supreme court shall extend to questions of law arising in the cases in the court of civil appeals in which the judges of any court of civil appeals may disagree, or where the several courts of civil appeals may hold differently on the same question of law, or where a statute of the State is held void. The supreme court and the justices thereof shall have power to issue writs of habeas corpus as may be prescribed by law; and under such regulations as may be prescribed by law, the said courts and the justices thereof may issue the writs of mandamus, procedendo, certiorari, and such other writs as may be necessary to enforce its jurisdiction. The legislature may confer original jurisdiction on the supreme court to issue writs of quo warranto and mandamus in such cases as may be specified, except as against the Governor of the State.

The supreme court shall also have power, upon affidavit or otherwise as by the court may be determined, to ascertain such matters of fact as may be necessary to the proper exercise of its jurisdiction.

The supreme court shall appoint a clerk, who shall give bond in such manner as is now, or may hereafter be, required by law, and he may hold his office for four years, and shall be subject to removal by said court for good cause, entered of record on the minutes of said court, who shall receive such compensation as the legislature may provide. (Adopted August 11, 1891; Am. November 4, 1930.)

94. *Quinn v. Halbrook*, 115 Texas 513, 285 S. W. 1079; *Loving v. Laird*, 122 Texas 18, 50 S. W. (2d) 260; *Richmond v. Hog Creek Oil Co.*, 239 S. W. 904.

Sec. 3a. The Supreme Court may sit at any time during the year at the seat of government for the transaction of business and each term thereof shall begin and end with each calendar year. (Adopted November 4, 1930.)

Sec. 4. Court of Criminal Appeals. The court of criminal appeals shall consist of three judges, any two of whom shall constitute a quorum; and the concurrence of two judges shall be necessary to a decision of said court. Said judges shall have the

same qualifications and receive the same salaries as the judges of the supreme court. They shall be elected by the qualified voters of the State at a general election, and shall hold their offices for a term of six years. In case of a vacancy in the office of a judge of the court of criminal appeals, the governor shall fill such vacancy by appointment for the unexpired term. The judges of the court of appeals who may be in office at the time when this amendment takes effect shall continue in office until the expiration of their term of office under the present constitution and laws as judges of the court of criminal appeals.

95. *Dickson v. Strickland*, 114 Texas 176, 265 S. W. 1012; *Jackson v. State*, 103 Texas Crim. Rep., 318, 280 S. W. 202.

Sec. 5. Jurisdiction; Powers; Term; Clerk; Etc. The court of criminal appeals shall have appellate jurisdiction co-extensive with the limits of the State in all criminal cases of whatever grade, with such exceptions and under such regulations as may be prescribed by law. The court of criminal appeals and the judges thereof shall have the power to issue the writ of habeas corpus, and, under such regulations as may be prescribed by law, issue such writs as may be necessary to enforce its own jurisdiction. The court of criminal appeals shall have power, upon affidavit or otherwise, to ascertain such matters of fact as may necessary to the exercise of its jurisdiction. The court of criminal appeals shall sit for the transaction of business from the first Monday in October to the last Saturday of June in each year, at the state capital and two other places (or the capitay city) if the legislature shall hereafter so provide. The court of criminal appeals shall appoint a clerk for each place at which it may sit; and each clerk shall give bond in such manner as is now or may hereafter be required by law, and who shall hold his office for four years, unless sooner removed by the court for good cause, entered of record on the minutes of said court.

96. *Duffield v. State*, 118 Texas Crim. Rep., 191, 43 S. W. (2d) 104; *De Silvia v. State*, 98 Texas Crim. Rep., 499, 267 S. W. 271.

Sec. 6. Supreme Judicial Districts; Courts of Civil Appeals; Jurisdiction; Terms; Justices; Election; Salary; Clerk. The legislature shall, as soon as practicable after the adoption of this amendment, divide the State into not less than two nor more than three supreme judicial districts, and thereafter into such additional districts as the increase of population and business may require, and shall establish a court of civil appeals in each of said districts, which shall consist of a chief justice and two associate justices, who shall have the qualifications as herein prescribed for justices of the supreme court. Said courts of civil appeals shall have appellate jurisdiction co-extensive with the

limits of their respective districts, which shall extend to all civil cases of which the district courts or county courts have original or appellate jurisdiction, under such restrictions and regulations as may be prescribed by law. Provided, that the decision of said courts shall be conclusive on all questions of fact brought before them on appeal or error.

Each of said courts of civil appeals shall hold its sessions at a place in its district to be designated by the legislature, and at such time as may be prescribed by law. Said justices shall be elected by the qualified voters of their respective districts, at a general election, for a term of six years, and shall receive for their services the sum of three thousand five hundred dollars per annum until otherwise provided by law. Said courts shall have such other jurisdiction, original and appellate, as may be prescribed by law. Each court of civil appeals shall appoint a clerk, in the same manner as the clerk of the supreme court, which clerk shall receive such compensation as may be fixed by law.

Until the organization of the courts of civil appeals, as herein provided for, the jurisdiction, power and organization and location of the supreme court, the court of appeals and the commission of appeals shall continue as they were before the adoption of this amendment.

All civil cases which may be pending in the court of appeals shall as soon as practicable after the organization of the courts of civil appeals be certified to, and the records thereof transmitted to the proper courts of civil appeals to be decided by said courts. At the first session of the supreme court, the court of criminal appeals and such of the courts of civil appeals which may be hereafter created under this article after the first election of the judges of such courts under this amendment. The terms of office of the judges of each court shall be divided into three classes and the justices thereof shall draw for the different classes. Those who shall draw class No. 1 shall hold their office two years, those drawing class No. 2 shall hold their office for four years and those who may draw class No. 3 shall hold their office for six years, from the date of their election and until their successors are elected and qualified, and thereafter each of the said judges shall hold his office for six years, as provided in this constitution. (Adopted August 11, 1891.)

97. *Love v. Wilcox*, 119 Texas 256, 28 S. W. 515; *Morrow v. Corbin*, 122 Texas 553, 62 S. W. (2d) 641.

Sec. 7. Judicial Districts; Judges; Qualifications; Residence; Salary; Etc. The State shall be divided into as many judicial districts as may now or hereafter be provided by law, which may be increased or diminished by law. For each district there shall be elected by the qualified voters thereof, at a general election, a

judge, who shall be a citizen of the United States and of this State, who shall have been a practicing lawyer of this State or a judge of a court of this State, for four years next preceding his election, who shall have resided in the district in which he was elected for two years next preceding his election, who shall reside in his district during his term of office, who shall hold his office for a period of four years, and shall receive for his services an annual salary of two thousand five hundred dollars, until otherwise changed by law. He shall hold the regular terms of his court at the county seat of each county in his district at least twice in each year in such manner as may be prescribed by law. The legislature shall have power by general or special laws to authorize the holding of special terms of the court or the holding of more than two terms in any county for the dispatch of business.

The legislature shall also provide for the holding of district court when the judge thereof is absent, or is from any cause disabled or disqualified from presiding.

The district judges who may be in office when this amendment takes effect shall hold their offices until their respective terms shall expire under their present election or appointment. (Adopted August 11, 1891.)

98. *State v. Manry*, 118 Texas 449, 16 S. W. (2d) 809; *Hunter v. State*, 108 Texas Crim. Rep., 142, 299 S. W. 437; *Turner v. Tucker*, 113 Texas 434, 258 S. W. 149.

Sec. 8. Jurisdiction and Powers. The district court shall have original jurisdiction in all criminal cases of the grade of felony; in all suits in behalf of the State to recover penalties, forfeitures and escheats; of all cases of divorce; of all misdemeanors involving official misconduct; of all suits to recover damages for slander or defamation of character; of all suits for trial of title to land for the enforcement of liens thereon; of all suits for trial of the right of property levied upon by virtue of any writ of execution, sequestration or attachment, when the property levied on shall be equal to or exceed in value five hundred dollars; of all suits, complaints or pleas whatever, without regard to any distinction between law and equity, when the matter in controversy shall be valued at or amount to five hundred dollars, exclusive of interest; of contested elections; and said court, and the judges thereof, shall have proper power to issue writs of habeas corpus, mandamus, injunction, and certiorari, and all writs necessary to enforce their jurisdiction.

The district court shall have appellate jurisdiction and general control in probate matters over the county court established in each county, for appointing guardians, granting letters testamentary and of administration, probating wills, for settling the accounts of executors, administrators, and guardians, for the

transaction of all business appertaining to estates; and original jurisdiction and general control over executors, administrators, guardians and minors, under such regulations as may be prescribed by law. The district court shall have appellate jurisdiction and general supervisory control over the county commissioners' court, with such exceptions and under such regulations as may be prescribed by law; and shall have general original jurisdiction over all causes of action whatever for which a remedy or jurisdiction is not provided by law or this constitution, and such other jurisdiction, original and appellate, as may be provided by law. (Secs. 1, 2, 3, 4, 5, 6, 7 and 8, Art. 5, adopted August 11, 1891.)

99. Aucutt v. Aucutt, 122 522, 62 S. W. (2) 77; Reasonover v. Reasonover, 122 Texas 512, 53 S. W. (2d) 817; Jones v. Alexander, 122 Texas 328, 59 S. W. (2d) 1080; Briggs v. Brewster, 122 Texas 588, 62 S. W. (2d) 980.

District court only has jurisdiction of cases involving the title of land. Stewart v. Rockdale State Bank, 124 Texas _____, 79 S. W. (2d) 116.

Sec. 9. Clerk of District Court; Term; Removal; Filling Vacancy. There shall be a clerk for the district court of each county, who shall be elected by the qualified voters for the State and county officers, and who shall hold his office for two years, subject to removal by information, or by indictment of a grand jury, and conviction by a petit jury. In case of vacancy, the judge of the district court shall have the power to appoint a clerk, who shall hold until the office can be filled by election.

100. Duclos v. Harris County, 251 S. W. 569; Kruegel v. Daniels, 50 Texas Civ. App., 215, 109 S. W. 1108; Lytle v. Half, 75 Texas 128, 12 S. W. 610.

Sec. 10. Jury Trial; Fee to Be Paid. In the trial of all causes in the district courts, the plaintiff or defendant shall, upon application made in open court, have the right of trial by jury; but no jury shall be impaneled in any civil case, unless demanded by a party to the case, and a jury fee to be paid by the party demanding a jury, for such sum and with such exceptions as may be prescribed by the legislature.

101. Tucker v. Lingo, 248 S. W. 1097; Davis v. Knight, 252 S. W. 227; San Jacinto Oil Co. v. Culberson, 100 Texas 462, 101 S. W. 198.

Sec. 11. Judge Disqualified; Special Pledges; Exchange of Districts; Vacancies. No judge shall sit in any case wherein he may be interested, or where either of the parties may be connected with him, either by affinity or consanguinity, within such a degree as may be prescribed by law, or when he shall have been counsel in the case. When the supreme court, the court of criminal appeals, the court of civil appeals, or any member of either, shall be thus disqualified to hear and determine any case or cases in said court, the same shall be certified to the Governor of the State, who shall immediately commission the requisite num-

ber of persons learned in the law, for the trial and determination of such cause or causes. When a judge of the district court is disqualified by any of the causes above stated, the parties may, by consent, appoint a proper person to try said case; or, upon their failing to do so, a competent person may be appointed to try the same in the county where it is pending, in such manner as may be prescribed by law. And the district judges may exchange districts, or hold courts for each other when they may deem it expedient, and shall do so when required by law. This disqualification of judges of inferior tribunals shall be remedied, and vacancies in their offices filled, as may be prescribed by law. (Adopted August 11, 1891.)

102. *Love v. Wilcox*, 119 Texas 256, 28 S. W. (2d) 515; *Eucaline Medicine Co. v. Standard Inv. Co.*, 25 S. W. (2d) 259; *Milan v. Williams*, 119 Texas 60, 24 S. W. (2d) 391.

Sec. 12. Judges Conservators of Peace; Style of Writs; Prosecutions by State. All judges of courts of this State, by virtue of their office, shall be conservators of the peace throughout the State. The style of all writs and process shall be, "The State of Texas." All prosecutions shall be carried on in the name and by authority of the State of Texas, and shall conclude: "Against the peace and dignity of the State." (Adopted August 11, 1891.)

103. *St. Paul Fire & Marine Ins. Co. v. Earnest*, 116 Texas 565, 296 S. W. 1088; *Morris v. State*, 115 Texas Crim. Rep., 503, 28 S. W. (2d) 155; *Jones v. Alexander*, 122 Texas 328, 59 S. W. (2d) 1080.

Sec. 13. Jurors, Grand and Petit; Number to Return Verdict. Grand and petit juries in the district courts shall be composed of twelve men; but nine members of a grand jury shall be a quorum to transact business and present bills. In trials of civil cases, and in trial of criminal cases below the grade of felony in the district courts, nine members of the jury concurring may render a verdict, but when the verdict shall be rendered by less than the whole number, it shall be signed by every member of the jury concurring in it. When, pending the trial of any case, one or more jurors, not exceeding three, may die, or be disabled from sitting, the remainder of the jury shall have the power to render the verdict; provided, that the legislature may change or modify the rule authorizing less than the whole number of the jury to render a verdict.

104. *Casstevens v. Texas & Pac. Ry. Co.*, 119 Texas 456, 32 S. W. (2d) 637; *Williams v. State*, 118 Texas Crim. Rep., 366, 42 S. W. (2d) 441.

Sec. 14. Districts Fixed by Ordinance. The judicial districts in this State and the time of holding the courts therein are fixed by ordinance forming part of this constitution, until otherwise provided by law.

105. *Bass v. Albright*, 59 S. W. 891; *Kruegel v. Daniels*, 50 Texas Civ. App. 215, 109 S. W. 1108.

Sec. 15. County Clerk; Election; Term of Office; Fees. There shall be established in each county in this State a county court, which shall be a court of record; and there shall be elected in each county, by the qualified voters, a county judge, who shall be well informed in the law of the State, shall be a conservator of the peace, and shall hold his office for two years, and until his successor shall be elected and qualified. He shall receive as a compensation for his services such fees and perquisites as may be prescribed by law.

106. *Goodwin v. Downs*, 280 S. W. 512; *Hooks v. State*, 71 Texas Crim. Rep., 269, 158 S. W. 808.

Sec. 16. Jurisdiction of County Clerk; Appeals; Probate Jurisdiction; May Issue Writs; Judge Disqualified. The county court shall have original jurisdiction of all misdemeanors of which exclusive original jurisdiction is not given to the justice's court as the same is now or may hereafter be prescribed by law, and when the fine to be imposed shall exceed two hundred dollars; and they shall have exclusive jurisdiction in all civil cases when the matter in controversy shall exceed in value two hundred dollars, and not exceed five hundred dollars, exclusive of interest; and concurrent jurisdiction with the district court when the matter in controversy shall exceed five hundred dollars, and not exceed one thousand dollars, exclusive of interest; but shall not have jurisdiction of suits for the recovery of land. They shall have appellate jurisdiction in cases, civil and criminal, of which justice's courts have original jurisdiction, but of such civil cases only when the judgment of the court appealed from shall exceed twenty dollars, exclusive of cost, under such regulations as may be prescribed by law. In all appeals from justices' courts there shall be a trial de novo in the county court; and appeals may be prosecuted from the final judgment rendered in such cases by the county court, as well as all cases, civil and criminal, of which the county court has exclusive or concurrent or original jurisdiction of civil appeals in civil cases to the court of civil appeals, and in such criminal cases to the court of criminal appeals, with such exceptions and under such regulations as may be prescribed by law. The county court shall have the general jurisdiction of a probate court; they shall probate wills, appoint guardians of minors, idiots, lunatics, persons non compos mentis, and common drunkards; grant letters testamentary and of administration; settle accounts of executors; transact all business appertaining to deceased persons, minors, idiots, lunatics, persons non compos mentis, and common drunkards, including the settlement, partition and distribution of estates of deceased persons; and to apprentice minors, as provided by

law; and the county court, or judge thereof, shall have power to issue writs of injunction, mandamus, and all writs necessary to the enforcement of the jurisdiction of said court, and to issue writs of habeas corpus in cases where the offense charged is within the jurisdiction of the county court, or any other court or tribunal inferior to said court. The county court shall not have criminal jurisdiction in any county where there is a criminal district court, unless expressly conferred by law; and, in such counties, appeals from justice's courts and other inferior courts and tribunals in criminal cases shall be to the criminal district court, under such regulations as may be prescribed by law; and in such cases an appeal shall lie from such district court to the court of criminal appeals. When the judge of the county court is disqualified in any case pending in the county court, the parties interested may, by consent, appoint a proper person to try said case, or, upon their failing to do so, a competent person may be appointed to try the same in the county where it is pending in such manner as may be prescribed by law. (Adopted August 11, 1891.)

107. *Oppenheim v. Wood*, 33 S. W. (2d) 265; *McInnis v. Brown County Water Imp. Dist.*, 45 S. W. (2d) 1118.

The county court has no jurisdiction of land titles, *Stewart v. Rockdale State Bank*, 124 Texas _____, 79 S. W. (2d) 116.

Sec. 17. Terms for Criminal Business; Prosecutions; Grand Jury; Indictment Quashed; Jury. The county court shall hold a term for civil business at least once in every two months, and shall dispose of probate business, either in term time or vacation, as may be provided by law; and said court shall hold a term for criminal business once in every month, as may be provided by law. Prosecutions may be commenced in said court by information filed by the county attorney, or by affidavit, as may be provided by law. Grand juries impaneled in the district courts shall inquire into misdemeanors; and all indictments therefor returned into the district court shall forthwith be certified to the county courts, or other inferior courts, having jurisdiction to try them, for trial; and, if such indictment be quashed in the county, or other inferior court, the person charged shall not be discharged if there is probable cause of guilt, but may be held by such court or magistrate to answer an information or affidavit. A jury in the county court shall consist of six men; but no jury shall be impaneled to try a civil case, unless demanded by one of the parties, who shall pay such jury fee therefor, in advance, as may be prescribed by law, unless he makes affidavit that he is unable to pay the same.

108. *Warner v. Crosby*, 75 Texas 295, 12 S. W. 745; *Blair v. Paggi*, 238 S. W. 639.

Sec. 18. Justices of the Peace; Precincts; Terms of Office

Commissioners' Court. Each organized county in the State, now or hereafter existing, shall be divided from time to time, for the convenience of the people, into precincts, not less than four and not more than eight. The present county courts shall make the first division. Subsequent divisions shall be made by the commissioners' court, provided for by this constitution. In each such precinct there shall be elected, at each biennial election, one justice of the peace and one constable, each of whom shall hold his office for two years and until his successor shall be elected and qualified; provided, that in any precinct in which there may be a city of eight thousand or more inhabitants, there shall be elected two justices of the peace. Each county shall in like manner be divided into four commissioners' precincts, in each of which there will be elected by the qualified voters thereof one county commissioner, who shall hold his office for two years and until his successor shall be elected and qualified. The county commissioners so chosen, with the county judge as presiding officer, shall compose the county commissioners' court, which shall exercise such powers and jurisdiction over all county business, as is conferred by this constitution and the laws of the State, or as may be hereafter prescribed.

109. *Ward v. Pong*, 10 S. W. (2d) 590; *Parmer County v. Smith*, 47 S. W. (2d) 883; *Robison v. Whaley Farm Corp.*, 120 Texas 633; *Ashburn Bros. v. Edwards County*, 58 S. W. (2d) 71.

Sec. 19. Criminal Jurisdiction of Justices; Appeals; Ex-officio Notaries. Justices of the peace shall have jurisdiction in criminal matters of all cases where the penalty or fine to be imposed by law may not be more than for two hundred dollars, and in civil matters of all cases where the amount in controversy is two hundred dollars or less, exclusive of interest, of which exclusive original jurisdiction is not given to the district or county courts; and such other jurisdiction, criminal and civil, as may be provided by law, under such regulations as may be prescribed by law; and appeals to the county courts shall be allowed in all cases decided in justices' courts where the judgment is for more than twenty dollars, exclusive of costs, and in all criminal cases, under such regulations as may be prescribed by law. And the justices of the peace shall be ex officio notaries public; and they shall hold their courts at such times and places as may be provided by law.

110. *Alexander v. Svoboda*, 3 S. W. (2d) 423; *Ex parte West*, 111 Texas Crim. Rep., 129, 12 S. W. (2d) 216; *Hooper Lumber Co. v. Texas Fixture Co.*, 111 Texas 168, 230 S. W. 141.

Sec. 20. County Clerk; Election; Term; Duties; Fees; Vacancy. There shall be elected for each county, by the qualified voters, a county clerk, who shall hold his office for two years,

who shall be clerk of the county and commissioners' courts and recorder of the county, whose duties, perquisites and fees of office shall be prescribed by the legislature, and a vacancy in whose office shall be filled by the commissioners' court, until the next general election for county and state officers; provided, that in counties having a population of less than eight thousand persons there may be an election of a single clerk, who shall perform the duties of district and county clerks.

111. *Ex parte Thomas*, 108 Texas Crim. Rep., 653, 2 S. W. (2d) 270; *City of Houston v. Magnolia Park*, 115 Texas 101, 276 S. W. 685.

Sec. 21. County and District Attorneys; Duties; Vacancies; Fees. A county attorney, for counties in which there is not a resident criminal district attorney, shall be elected by the qualified voters of each county, who shall be commissioned by the Governor, and hold his office for the term of two years. In case of vacancy the commissioners' court of the county shall have power to appoint a county attorney until the next general election. The county attorneys shall represent the State in all cases in the district and inferior courts in their respective counties; but, if any county shall be included in a district in which there shall be a district attorney, the respective duties of district attorneys and county attorneys shall, in such counties, be regulated by the legislature. The legislature may provide for the election of district attorneys in such districts, as may be deemed necessary, and make provision for the compensation of district attorneys, and county attorneys; provided, district attorneys shall receive an annual salary of five hundred dollars, to be paid by the State, and such fees, commissions and perquisites as may be provided by law. County attorneys shall receive as compensation only such fees, commissions and perquisites as may be prescribed by law.

112. *Interstate Forwarding Co. v. Vinyard*, 121 Texas 289, 49 S. W. (2d) 403; *Camp v. Gulf Production Co.*, 122 Texas 383, 61 S. W. (2d) 773.

Sec. 22. Jurisdiction of Courts May Be Changed. The legislature shall have power, by local or general law, to increase, diminish or change the civil and criminal jurisdiction of county courts; and, in cases of any such change of jurisdiction, the legislature shall also conform the jurisdiction of the other courts to such change.

113. *Campsey v. Brumley*, 55 S. W. (2d) 810; *State v. Gillette's Estate*, 10 S. W. (2d) 984; *Muench v. Oppenheimer*, 86 Texas 568, 26 S. W. 496.

Sec. 23. Sheriff; Term; Vacancy. There shall be elected by the qualified voters of each county a sheriff, who shall hold his office for the term of two years, whose duties, and perquisites,

and fees of office, shall be prescribed by the legislature, and vacancies in whose office shall be filled by the commissioners' court, until the next general election for county or State officers.

114. *State v. Bigham*, 280 S. W. 1062; *Leonard v. Speer*, 56 S. W. (2d) 640; *Ex parte Thomas*, 108 Texas Crim. Rep., 653, 2 S. W. (2d) 270.

Sec. 24. Removal of Officers by District Court. County judges, county attorneys, clerks of the district and county courts, justices of the peace, constables, and other county officers, may be removed by the judges of the district courts for incompetency, official misconduct, habitual drunkenness, or other causes defined by law, upon the cause therefor being set forth in writing, and the finding of its truth by a jury.

115. *Fowler v. Thomas*, 275 S. W. 253; *Walker v. Walter*, 241 S. W. 524.

Sec. 25. Supreme Court to Regulate Practice. The supreme court shall have power to make and establish rules of procedure, not inconsistent with the laws of the State, for the government of said court and the other courts of this State, to expedite the dispatch of business therein. (Adopted August 11, 1891.)

116. *Brown v. Hooks*, 117 Texas 155, 299 S. W. 228; *Railway Company v. Crawford*, 9 Texas Civ. App., 245, 27 S. W. 822; *In re House Bill 537*, 38th Leg., 113 Texas 367, 256 S. W. 573.

Sec. 26. Appeal in Criminal Cases. The State shall have no right of appeal in criminal cases.

117. *Perry v. State*, 14 Texas Crim. App., 116, *Ex parte Wolters*, 64 Texas Crim. Rep., 238, 144 S. W. 531.

Sec. 27. Transfer of Cases to Their Respective Jurisdictions. The legislature shall, at its first session, provide for the transfer of all business, civil and criminal, pending in district courts, over which jurisdiction is given by this constitution to the county courts or other inferior courts, to such county or inferior courts, and for the trial or disposition of all such cases by such county or other inferior courts.

118. *Bowser v. Willism*, 6 Texas Civ. App., 197, 25 S. W. 453.

Sec. 28. Vacancies to Be Filled by Governor. Vacancies in the office of judges of the supreme court, the court of criminal appeals, the court of civil appeals, and district courts, shall be filled by the Governor, until the next succeeding general election, and vacancies in the office of county judge and justices of the peace shall be filled by the commissioners' court, until the next general election for such offices. (Adopted August 11, 1891.)

119. *Ex parte Thomas*, 108 Texas Crim. Rep., 653, 2 S. W. (2d) 270; *Williams v. Castleman*, 112 Texas 193, 247 S. W. 263; *Lowe v. State*, 83 Texas Crim. Rep., 134, 201 S. W. 986.

Sec. 29. Terms of County Courts; Probate Business; Prosecutions. The county court shall hold at least four terms for both civil and criminal business annually, as may be provided by the legislature, or by the commissioners' court of the county under authority of law, and such other terms each year as may be fixed by the commissioners' court; provided, the commissioners' court of any county having fixed the times and number of terms of the county court, shall not change the same again until the expiration of one year. Said court shall dispose of probate business either in term time or vacation, under such regulation as may be prescribed by law. Prosecutions may be commenced in said courts in such manner as is or may be provided by law, and a jury therein shall consist of six men. Until otherwise provided, the terms of the county court shall be held on the first Monday in February, May, August and November, and may remain in session three weeks. (Adopted August 14, 1883.)

120. *Hughes v. Doyle*, 91 Texas 421, 44 S. W. 64; *Farrow v. Star Ins. Co. of America*, 273 S. W. 318.

ARTICLE VI.

SUFFRAGE.

Section 1. Who Shall Not Be Allowed to Vote. The following classes of persons shall not be allowed to vote in this State, to-wit:

First. Persons under twenty-one (21) years of age.

Second. Idiots.

Third. All paupers supported by any county.

Fourth. All persons convicted of any felony, subject to such exceptions as the legislature may make.

Fifth. All soldiers, marines and seamen, employed in the service of the Army or Navy of the United States. Provided that this restriction shall not apply to officers of the National Guard of Texas, the National Guard Reserve, the Officers Reserve Corps of the United States, nor to enlisted men of the National Guard, the National Guard Reserve, and the Organized Reserves of the United States, nor to retired officers of the United States Army, Navy, and Marine Corps, and retired warrant officers and retired enlisted men of the United States Army, Navy, and Marine Corps. (Adopted November 8, 1932.)

121. *Smith v. Patterson*, 111 Texas 535, 242 S. W. 752; *Cunningham v. McDermott*, 277 S. W. 218.

Sec. 2. Poll Tax Payment Required of Voters. Every person subject to none of the foregoing disqualifications, who shall have attained the age of twenty-one years, and who shall be a citizen of the United States, and who shall have resided in this State one year next preceding an election, and the last six months

within the district or county in which such person offers to vote, shall be deemed a qualified elector; provided, that electors living in any unorganized county may vote at any election precinct in the county to which such county is attached for judicial purposes; and provided, further, that any voter who is subject to pay a poll tax under the laws of the State of Texas shall have paid said tax before offering to vote at any election in this State and hold a receipt showing that said poll tax was paid before the first day of February next preceding such election. Or, if said voter shall have lost or misplaced said tax receipt, he or she, as the case may be, shall be entitled to vote upon making affidavit before any officer authorized to administer oaths that such tax receipt has been lost. Such affidavit shall be made in writing and left with the judge of the election. The husband may pay the poll tax of his wife and receive the receipt therefor. In like manner the wife may pay the poll tax of her husband and receive a receipt therefor. The legislature may authorize absentee voting. And this provision of the constitution shall be self-enacting without the necessity of further legislation. (Adopted November 4, 1902. Adopted fourth Saturday in July, 1921.)

122. *Bonham v. Fuchs*, 228 S. W. 1112; *Stuard v. Thompson*, 251 S. W. 277; *Johnston v. Peters*, 260 S. W. 911; *Smith v. Patterson*, 111 Texas 545, 242 S. W. 749.

Sec. 3. Electors in Towns and Cities; When Must Pay Taxes. All qualified electors of the State, as herein described, who shall have resided for six months immediately preceding an election within the limits of any city or corporate town, shall have the right to vote for mayor and all other elective officers; but in all elections to determine expenditure of money or assumption of debt, only those shall be qualified to vote who pay taxes on property in said city or incorporated town; provided, that no poll tax for the payment of debts thus incurred shall be levied upon the persons debarred from voting in relation thereto. (Adopted fourth Saturday in July, 1921.)

123. *Cameron v. Connally*, 117 Texas 159, 299 S. W. 221; *Fortinberry v. State*, 283 S. W. 146; *Kempen v. Burns*, 195 S. W. 643; *Wendover v. Tobin*, 261 S. W. 434.

Sec. 3a. When an election is held by any county, or any number of counties, or any political sub-division of the State, or any political sub-division of a county, or any defined district now or hereafter to be described and defined within the State and which may or may not include towns, villages or municipal corporations, or any city, town or village, for the purpose of issuing bonds or otherwise lending credit, or expending money or assuming any debt, only qualified electors who own taxable property in the State, county, political sub-division, district, city, town or village where

such election is held, and who have duly rendered the same for taxation, shall be qualified to vote and all electors shall vote in the election precinct of their residence. (Adopted November 8, 1932.)

Sec. 4. Election by Ballot; Registration in Cities of 10,000 Inhabitants or More. In all elections by the people, the vote shall be by ballot, and the legislature shall provide for the numbering of tickets and make such other regulations as may be necessary to detect and punish fraud and preserve the purity of the ballot-box; and the legislature may provide by law for the registration of all voters in all cities containing a population of ten thousand inhabitants or more. (Adopted August 11, 1891.)

124. Tomlinson v. Williamson, 243 S. W. 287; McCharen v. Mead, 275 S. W. 117; State v. City of Waxahachie, 81 Texas 626, 17 S. W. 347.

Sec. 5. Voters shall, in all cases, except treason, felony or breach of the peace, be privileged from arrest during their attendance at elections, and in going to and returning therefrom.

ARTICLE VII.

EDUCATION.

THE PUBLIC FREE SCHOOLS.

Section 1. Public Schools To Be Established. A general diffusion of knowledge, being essential to the preservation of the liberties and rights of the people, it shall be the duty of the legislature of the State to establish and make suitable provision for the support and maintenance of an efficient system of public free schools.

125. Charlton v. Cousins, 103 Texas 116, 124 S. W. 422; Turbeville v. Gowdy, 272 S. W. 559; Blewitt v. Megargel County Line School District, 285 S. W. 271.

Sec. 2. School Funds; What Constitutes. All funds, lands and other property heretofore set apart and appropriated for the support of public schools, all the alternate sections of lands reserved by the State out of grants heretofore made or that may hereafter be made to railroads, or other corporations, of any nature whatsoever, one-half of the public domain of the State, and all sums of money that may come to the State from the sale of any portion of the same, shall constitute a perpetual public school fund.

126. Post v. Emery, 205 S. W. 514; Imperial Irrigation Dist. v. Jayne, 104 Texas 395, 138 S. W. 575; State v. Hatcher, 115 Texas 332, 281 S. W. 192.

Sec. 3. School Taxes. One-fourth of the revenue derived

from the State occupation taxes and a poll tax of one dollar on every inhabitant of the State, between the ages of twenty-one and sixty years, shall be set apart annually for the benefit of the public free schools; and, in addition thereto, there shall be levied and collected an annual ad valorem State tax of such an amount, not to exceed thirty-five cents on the one hundred dollar valuation, as, with the available school fund arising from all other sources, will be sufficient to maintain and support the public schools of this State for a period of not less than six months in each year, and it shall be the duty of the State board of education to set aside a sufficient amount out of the said tax to provide free text books for the use of children attending the public free schools of this State; provided, however, that should the limit of taxation herein named be insufficient the deficit may be met by appropriation from the general funds of the State and the legislature may also provide for the formation of school districts by general laws; and all such school districts may embrace parts of two or more counties. And the legislature shall be authorized to pass laws for the assessment and collection of taxes in all said districts, and for the management and control of the public school or schools of such district, whether such districts are composed of territory wholly within a county or in parts of two or more counties. And the legislature may authorize an additional ad valorem tax to be levied and collected within all school districts, heretofore formed or hereafter formed, for the further maintenance of public free schools, and the erection and equipment of school buildings therein; provided, that a majority of the qualified property taxpaying voters of the district, voting at an election to be held for that purpose, shall vote such tax, not to exceed in any one year one dollar on the one hundred dollars valuation of the property subject to taxation in such district, but the limitation upon the amount of school district tax herein authorized shall not apply to incorporated cities or towns, constituting separate and independent school districts, nor to independent or common school districts created by general or special laws. (Adopted November 2, 1926.)

127. Tax not voted cannot be levied or collected on any property in school district: *Young v. Edna Ind. Sch. Dist.*, 34 S. W. (2d) 857; *Treacchar v. City of Galveston*, 28 S. W. (2d) 887; *Carlton Ind. Sch. Dist. v. Jordon*, 25 S. W. (2d) 610; *Prosper Ind. Sch. Dist. v. County School Trustees*, 58 S. W. (2d) 5.

Sec. 3a. County-line Districts, Validation; Bonds; Taxation. Every school district heretofore formed, whether formed under the general law or by special act, and whether the territory embraced within its boundaries lies wholly within a single county or partly in two or more counties, is hereby declared to be, and from its formation to have been, a valid and lawful district. All bonds heretofore issued by any such districts which have been

approved by the attorney general and registered by the comptroller, are hereby declared to be, and at the time of their issuance to have been, issued in conformity with the constitution and laws of this State; and any and all such bonds are hereby in all things validated and declared to be valid and binding obligations upon the district or districts issuing the same. Each such district is hereby authorized to, and shall, annually levy and collect an ad valorem tax sufficient to pay the interest on all such bonds and to provide a sinking fund sufficient to redeem the same at maturity, not to exceed such a rate as may be provided by law under other provisions of this constitution. And all trustees, heretofore elected in districts made up from more than one county, are hereby declared to have been duly elected, and shall be and are hereby named as trustees of their respective districts, with power to levy the taxes herein authorized, until their successor shall be duly elected and qualified, as is, or may be, provided by law. (Adopted August 3, 1909.)

128. *Oakwood Ind. Sch. Dist. v. Liberty Common Sch. Dist. No. 34*, 10 S. W. (2d) 174; *Gillespie v. Lightfoot*, 103 Texas 359, 127 S. W. 799; *Cowan v. Capps*, 286 S. W. 161.

Sec. 4. Sale of School Lands; No Relief to Purchasers; Investment of Proceeds. The lands herein set apart to the public free school fund shall be sold under such regulations, at such times, and on such terms as may be prescribed by law; and the legislature shall not have power to grant any relief to purchasers thereof. The comptroller shall invest the proceeds of such sales, and of those heretofore made, as may be directed by the board of education herein provided for, in the bonds of the United States, the State of Texas, or counties in said State, or in such other securities, and under such restrictions as may be prescribed by law; and the State shall be responsible for all investments. (Adopted August 14, 1883.)

129. *Empire Gas & Fuel Co. v. State*, 121 Texas 138, 47 S. W. (2d) 265; *State v. Bradford*, 121 Texas 515, 50 S. W. (2d) 1065; *Greene v. Robison*, 109 Texas, 367, 210 S. W. 498.

Sec. 5. Principal Shall Be Permanent Fund; Interest; Alienation; Sectarian Schools. The principal of all bonds and other funds, and the principal arising from the sale of the lands herein-before set apart to said school fund, shall be the permanent school fund; and all the interest derivable therefrom and the taxes herein authorized and levied shall be the available school fund, to which the legislature may add not exceeding one per cent annually of the total value of the permanent school fund; such value to be ascertained by the board of education until otherwise provided by law; and the available school fund shall be applied annually to the support of the public free schools. And no law shall

ever be enacted appropriating any part of the permanent or available school fund to any other purpose whatever; nor shall the same, or any part thereof, ever be appropriated to or used for the support of any sectarian school; and the available school fund herein provided shall be distributed to the several counties according to their scholastic population and applied in such manner as may be provided by law. (Adopted August 11, 1891.)

130. *Greene v. Robison*, 117 Texas, 516, 8 S. W. (2d) 655; *Mumme v. Marrs*, 120 Texas 383, 40 S. W. (2d) 31; *Church v. Bullock*, 100 S. W. 1025.

Sec. 6. County School Lands; Limitations; Settlers; Proceeds. All lands heretofore or hereafter granted to the several counties of this State for educational purposes, are of right the property of said counties respectively, to which they were granted, and title thereto is vested in said counties; and no adverse possession or limitation shall ever be available against the title of any county. Each county may sell or dispose of its lands, in whole or in part, in manner to be provided by the commissioners' court of the county. Actual settlers residing on said lands, shall be protected in the prior right of purchasing the same to the extent of their settlement, not to exceed one hundred and sixty acres, at the price fixed by said court, which price shall not include the value of existing improvements made thereon by such settlers. Said lands and the proceeds thereof, when sold, shall be held by said counties alone as a trust for the benefit of public schools therein; said proceeds to be invested in bonds of the United States, the State of Texas, or counties in said State, or in such other securities and under such restrictions as may be prescribed by law; and the counties shall be responsible for all investments; the interest thereon and other revenue, except the principal, shall be available fund. (Adopted August 14, 1883.)

131. *Ehlinger v. Clark*, 117 Texas 574, 8 S. W. (2d) 666; *Williams v. Pure Oil Co.*, 49 S. W. (2d) 846; *Rushing v. Lynch*, 22 S. W. (2d) 482.

Sec. 6a. All agriculture or grazing school land mentioned in section 6 of this article owned by any county shall be subject to taxation except for State purposes to the same extent as lands privately owned. (Adopted November 2, 1926.)

Sec. 7. Schools for White and Colored. Separate schools shall be provided for the white and colored children, and impartial provision shall be made for both.

Sec. 8. Board of Education. The legislature shall provide by law for a State Board of Education, whose members shall be appointed or elected in such manner and by such authority and shall serve for such terms as the legislature shall prescribe not to ex-

ceed six years. The said board shall perform such duties as may be prescribed by law. (Adopted November 6, 1928.)

ASYLUMS.

Sec. 9. Lands of Asylums; Sale. All lands heretofore granted for the benefit of the lunatic, blind, deaf and dumb, and orphan asylums, together with such donations as may have been, or may hereafter be made to either of them, respectively, as indicated in the several grants, are hereby set apart to provide a permanent fund for the support, maintenance and improvement of said asylums. And the legislature may provide for the sale of the lands and the investment of the proceeds in manner as provided for the sale and investment of school lands in section 4 of this article.

UNIVERSITY.

Sec. 10. University; Land and Funds. The legislature shall, as soon as practicable, establish, organize and provide for the maintenance, support and direction of a university of the first class, to be located by a vote of the people of this State, and styled, "The University of Texas," for the promotion of literature, and the arts and sciences, including an agricultural and mechanical department.

132. *Foley v. Benedict*, 122 Texas 193, 55 S. W. (2d) 805; *State v. Hatcher*, 115 Texas 332, 281 S. W. 192; *Empire Gas & Fuel Co. v. State*, 121 Texas 138, 47 S. W. (2d) 265.

Sec. 11. Funds; How Invested. In order to enable the legislature to perform the duties set forth in the foregoing section, it is hereby declared all lands and other property heretofore set apart and appropriated for the establishment and maintenance of the University of Texas, together with all the proceeds of sales of the same, heretofore made or hereafter to be made, and all grants, donations and appropriations that may hereafter be made by the State of Texas, or from any other source, except donations limited to specific purposes, shall constitute and become a Permanent University Fund. And the same as realized and received into the Treasury of the State (together with such sums belonging to the Fund, as may now be in the Treasury), shall be invested in bonds of the United States, the State of Texas, or counties of said State, or in School Bonds of municipalities, or in bonds of any city of this State, or in bonds issued under and by virtue of the Federal Farm Loan Act approved by the President of the United States, July 17, 1916, and amendments thereto; and the interest accruing thereon shall be subject to appropriation by the Legislature to accomplish the purpose declared in the foregoing section; provided, that the one-tenth of the alternate section of the lands

granted to railroads, reserved by the State, which were set apart and appropriated to the establishment of the University of Texas, by an Act of the Legislature of February 11, 1858, entitled "An Act to establish the University of Texas," shall not be included in, or constitute a part of, the Permanent University Fund. (Adopted November 8, 1932.) *State v. Hatcher*, 115 Texas, 332, 281 S. W. 192.

Sec. 12. Lands to Be Sold; Relief of Purchasers. The land herein set apart to the university fund shall be sold under such regulations, at such times, and on such terms as may be provided by law; and the legislature shall provide for the prompt collection, at maturity, of all debts due on account of university lands heretofore sold, or that may hereafter be sold, and shall in neither event have the power to grant relief to the purchasers.

Sec. 13. Agricultural and Mechanical College; Appropriations. The Agricultural and Mechanical College of Texas, established by an act of the legislature, passed April 17, 1871, located in the county of Brazos, is hereby made and constituted a branch of the University of Texas, for instruction in agriculture, the mechanic arts, and the natural sciences connected therewith. And the legislature shall, at its next session, make an appropriation, not to exceed forty thousand dollars, for the construction and completion of the buildings and improvements, and for providing the furniture necessary to put said college in immediate and successful operation.

Sec. 14. Branch University for Colored. The legislature shall, also, when deemed practicable, establish and provide for the maintenance of a college or branch university for the instruction of the colored youths of the State, to be located by a vote of the people; provided, that no tax shall be levied, and no money appropriated out of the general revenue, either for this purpose or for the establishment and erection of the buildings of the University of Texas.

Sec. 15. Land appropriated for Universities; to Be Sold. In addition to the lands heretofore granted to the University of Texas, there is hereby set apart, and appropriated, for the endowment, maintenance, and support of said university and its branches, one million acres of the unappropriated public domain of the State, to be designated and surveyed as may be provided by law; and said lands shall be sold under the same regulations, and the proceeds invested in the same manner, as is provided for the sale and investment of the permanent university fund, and the legislature shall not have power to grant any relief to the purchasers of said lands.

133. *Empire Gas & Fuel Co. v. State*, 121 Texas 138, 47 S. W. (2d) 265; *Group No. 1 Oil Corp. v. Bass*, 283 U. S. 279, 51 Sup. Ct., 432.

Sec. 16. The legislature shall fix by law the terms of all offices of the public school system and of the State institutions of higher education, inclusive, and the terms of members of the respective boards, not to exceed six years. (Adopted November 6, 1928.)

134. *Popham v. Patterson*, 121 Texas 615, 51 S. W. (2d) 680.

Sec. 16a. All land mentioned in Sections 11, 12 and 15 of Article VII, of the Constitution of the State of Texas, now belonging to the University of Texas shall be subject to the taxation for county purposes to the same extent as lands privately owned; provided they shall be rendered for taxation upon values fixed by the State Tax Board; and providing that the State shall remit annually to each of the counties in which said lands are located an amount equal to the tax imposed upon said land for county purposes. (Adopted November 4, 1930.)

ARTICLE VIII.

TAXATION AND REVENUE.

Section 1. To Be Equal and Uniform; Poll, Occupation and Income Taxes; Exemptions; Limitations upon Counties, Cities, Etc. Taxation shall be equal and uniform. All property in this State, whether owned by natural persons or corporations, other than municipal, shall be taxed in proportion to its value, which shall be ascertained as may be provided by law. The legislature may impose a poll tax. It may also impose occupation taxes, both upon natural persons and upon corporations, other than municipal, doing any business in this State. It may also tax incomes of both natural persons and corporations, other than municipal, except that persons engaged in mechanical and agricultural pursuits shall never be required to pay an occupation tax; provided, that two hundred and fifty dollars worth of household and kitchen furniture, belonging to each family in this State shall be exempt from taxation; and provided, further, that the occupation tax levied by any county, city or town, for any year on persons or corporations pursuing any profession or business, shall not exceed one-half of the tax levied by the State for the same period on such profession or business.

135. "True full value in money," for the purpose of taxation of property is reasonable cash market value. *Phillips Pet. Co. v. Townsend*, 63 Fed. (2d) 293.

Valuation of property for the purpose of taxation shall be as of January 1 of year for which rendered. *Humble Oil & Ref. Co. v. State*, 3 S. W. (2d) 559.

Municipal property exempt from taxes. *City of Dallas v. State*, 28 S. W. (2d) 937.

Corporation franchise tax. *Southern Realty Corp v. McCallum*, 1 Fed. Supp. 614.

Remission of penalty and interest by legislature. *Jones v. Williams*, 121 Texas 94, 45 S. W. (2d) 130.

Tax must be in proportion to value. *Richardson v. State*, 53 S. W. (2d) 508.

Sec. 1a. Homestead Exemptions. Three Thousand Dollars (\$3,000.00) of the assessed value of all residence homesteads as now defined by law shall be exempt from all taxation for all State purposes; provided this exemption shall not be applicable to that portion of the State ad valorem taxes levied for State purposes remitted within those counties or other political subdivisions now receiving any remission of State taxes, until the expiration of such period of remission, unless before the expiration of such period the board or governing body of any one or more of such counties or political subdivisions shall have certified to the State Comptroller that the need for such remission of taxes has ceased to exist in such county or political subdivision; then this section shall become applicable to each county or political subdivision as and when it shall become within the provisions hereof. (Adopted August 26, 1933.)

Sec. 2. Occupation Tax; Exemptions. All occupation taxes shall be equal and uniform upon the same class of subjects within the limits of the authority levying the tax; but the legislature may, by general laws, exempt from taxation public property used for public purposes; actual places or [of] religious worship, also any property owned by a church or by a strictly religious society for the exclusive use as a dwelling place for the ministry of such church or religious society, and which yields no revenue whatever to such church or religious society; provided that such exemption shall not extend to more property than is reasonably necessary for a dwelling place and in no event more than one acre of land; places of burial not held for private or corporate profit; all buildings used exclusively and owned by persons or associations of persons for school purposes and the necessary furniture of all schools and property used exclusively and reasonably necessary in conducting any association engaged in promoting the religious, educational and physical development of boys, girls, young men or young women operating under a State or National organization of like character; also the endowment funds of such institutions of learning and religion not used with a view to profit; and when the same are invested in bonds or mortgages, or in land or other property which has been and shall hereafter be bought in by such institutions under foreclosure sales made to satisfy or protect such bonds or mortgages, that such exemption of such land and

property shall continue only for two years after the purchase of the same at such sale by such institution and no longer, and institutions of purely public charity; and all laws exempting property from taxation other than the property above mentioned shall be null and void. (Adopted November 6, 1928.)

136. Equality and uniformity of occupation taxes. *State v. Jones*, 5 S. W. (2d) 973; *Gerard v. Smith*, 52 S. W. (2d) 347.

Corporation franchise tax on proportion of outstanding capital, surplus and long-term indebtedness. *Southern Realty Corp. v. McCallum*, 1 Fed. Sup., 614.

Property used for public purpose. *St. Edward's College v. Morris*, 82 Texas 1, 17 S. W. 512; *Bexar-Medina-Atascosa Counties Water Imp. Dist. v. State*, 21 S. W. (2d) 747.

Institutions of public charity. *Benevolent, P. O. of E. Lodge No. 151 v. City of Houston*, 44 S. W. (2d) 488; *Santa Rosa Infirmary v. City of San Antonio*, 259 S. W. 926.

Sec. 3. Taxes to Be Collected for Public Purposes Only. Taxes shall be levied and collected by general laws and for public purposes only.

137. Levy of taxes by general law. *Galveston & W. Ry. Co. v. City of Galveston*, 96 Texas 520, 74 S. W. 537; *Beene v. Waples*, 108 Texas 140, 187 S. W. 191.

Taxes must be for general purpose. *Waples v. Marrast*, 108 Texas, 5 184 S. W. 180; *Terrell v. Middleton*, 187 S. W. 367; *City of Henderson v. Fields*, 258 S. W. 523; *Davis v. City of Taylor*, 123 Texas 39, 67 S. W. (2d) 1033; *Anderson v. City of San Antonio*, 123 Texas 163, 67 S. W. (2d) 1036.

Sec. 4. Corporations. The power to tax corporations and corporate property shall not be surrendered or suspended by act of the legislature, by any contract or grant to which the State shall be a party.

138. Legislature has right to impose franchise tax. *Gaar, Scott & Co. v. Shannon*, 52 Texas Civ. App., 634, 115 S. W. 361.

Sec. 5. Railroads Taxes Due Cities and Towns. All property of railroad companies, of whatever description, lying or being within the limits of any city or incorporated town within this State, shall bear its proportionate share of municipal taxation; and, if any such property shall not have been heretofore rendered, the authorities of the city or town, within which it lies, shall have power to require its rendition, and collect the usual municipal tax thereon, as on other property lying within said municipality.

139. Municipal corporation may tax property of railroad within the limits of the city. *City of Tyler v. Coker*, 58 Texas Civ. App., 605, 124 S. W. 729.

Sec. 6. Appropriations; How Made, and for What Period. No money shall be drawn from the treasury but in pursuance of specific appropriations made by law; nor shall any appropriation of money be made for a longer term than two years, except by

the first legislature to assemble under this constitution, which may make the necessary appropriations to carry on the government until the assemblage of the sixteenth legislature.

140. Appropriations of money can be made only in pursuance of a specific law. *Cherokee County v. Odom*, 118 Texas 288, 15 S. W. (2d) 538; *Charles Scribner's Sons v. Marrs*, 114 Texas 11, 262 S. W. 722.

Sec. 7. Special Funds Not to Be Borrowed or Diverted. The legislature shall not have power to borrow, or in any manner divert from its purpose, any special fund that may or ought to come into the treasury; and shall make it penal for any person or persons to borrow, withhold or in any manner to divert from its purpose, any special fund, or any part thereof.

141. Legislature is without power to devote public school property to any purpose or beneficiary other than public school children. *Love v. City of Dallas*, 120 Texas 351, 40 S. W. (2d) 20.

Sec. 8. Railroad Property, How Assessed. All property of railroad companies shall be assessed, and the taxes collected in the several counties in which said property is situated, including so much of the roadbed and fixtures as shall be in each county. The rolling stock may be assessed in gross in the county where the principal office of the company is located; and the county tax paid upon it shall be apportioned by the comptroller, in proportion to the distance such road may run through any such county, among the several counties through which the road passes, as a part of their tax assets.

142. Property of railroad company shall be assessed and the taxes collected in the county where such property is located. *Missouri, K. & T. Ry. Co. v. Shannon*, 100 Texas 379, 100 S. W. 138; *State v. Houston & T. C. Ry. Co.*, 209 S. W. 820.

Property of motor bus company may be taxed at its home office. *Southland Greyhound Lines v. City of Fort Worth*, 123 Texas 13, 67 S. W. (2d) 361.

Sec. 9. Rate of State and Municipal Taxation. The State tax on property, exclusive of the tax necessary to pay the public debt, and of the taxes provided for the benefit of the public free schools, shall never exceed thirty-five cents on the one hundred dollars valuation; and no county, city or town shall levy more than twenty-five cents for city or county purposes, and not exceeding fifteen cents for roads and bridges, and not exceeding fifteen cents to pay jurors, on the one hundred dollars valuation, except for the payment of debts incurred prior to the adoption of the amendment September 25, 1883; and for the erection of public buildings, streets, sewers, water works and other permanent improvements, not to exceed twenty-five cents on the hundred dollars valuation, in any one year, and except as in this constitution otherwise provided; and the legislature may also authorize an additional

annual ad valorem tax to be levied and collected for the further maintenance of the public roads; provided, that a majority of the qualified property taxpaying voters of the county, voting at an election to be held for that purpose, shall vote such tax, not to exceed fifteen cents on the one hundred dollars valuation of the property subject to taxation in such county. And the legislature may pass local laws for the maintenance of the public roads and highways, without the local notice required for special or local laws. (Adopted November 6, 1906.)

143. Cities and counties cannot exceed constitutional limitation as to rate of taxes. *Earnest v. Standefer*, 54 S. W. (2d) 228; *Hughes v. Harris County Comrs. Ct.*, 35 S. W. (2d) 818; *Anderson v. Parsley*, 37 S. W. (2d) 358; *Tinner v. Crow*, 124 Texas _____, 78 S. W. (2d) 588.

Sec. 10. Taxes Not to Be Released. The legislature shall have no power to release the inhabitants of, or property in, any county, city or town, from the payment of taxes levied for State or county purposes, unless in case of great public calamity in any such county, city or town, when such release may be made by a vote of two-thirds of each house of the legislature.

144. Legislature has power to release the penalties and interest on delinquent taxes. *Jones v. Williams*, 121 Texas 94, 45 S. W. (2d) 130.

Legislature may remit taxes to community to build sea wall, or in case of public calamity. *City of Aransas Pass v. Keeling*, 112 Texas 339, 247 S. W. 813; *Martin v. Hidalgo County*, 271 S. W. 436.

Sec. 11. Where Property Is to Be Assessed. All property, whether owned by persons or corporations, shall be assessed for taxation, and the taxes paid in the county, where situated, but the legislature may, by a two-thirds vote, authorize the payment of taxes of non-residents of counties to be made at the office of the comptroller of public accounts. And all lands and other property not rendered for taxation by the owner thereof shall be assessed at its fair value by the proper officer.

145. Property should be assessed and taxes collected in county where situated. *Great Southern Life Ins. Co. v. City of Austin*, 112 Texas 1, 243 S. W. 778; *Stephens County v. Mid-Kansas Oil and Gas Co.*, 113 Texas 160, 254 S. W. 290.

Bonds and notes owned by non-resident are taxable where they have acquired a situs within the State. *Hardesty Bros. v. Fleming*, 57 Texas 395; *Llano Cattle Co. v. Faught*, 69 Texas 402, 5 S. W. 494.

Tax assessor may assess and place on unrendered roll property omitted from the tax rolls. *Coleman v. Crowds*, 178 S. W. 585.

Sec. 12. Unorganized Counties. All property subject to taxation in, and owned by residents of, unorganized counties, shall be assessed and the taxes thereon paid in the counties to which such unorganized counties shall be attached for judicial purposes; and lands lying in and owned by non-residents of unorganized counties, and lands lying in the territory not laid off into counties, shall be

assessed, and the taxes thereon collected, at the office of the comptroller of the State.

146. Collection of taxes on non-resident in unorganized county may be enforced by collector in organized county to which it is attached for judicial purposes. *Llano Cattle Co. v. Faught*, 69 Texas 402, 5 S. W. 494; *Magnolia Cattle & Land Co. v. Love*, 2 Texas Civ. App., 385, 21 S. W. 574.

Sec. 13. Tax Sales; Deeds; Redemption. Provision shall be made by the first legislature for the speedy sale, without the necessity of a suit in court, of a sufficient portion of all lands and other property for the taxes due thereon, and every year thereafter for the sale in like manner of all lands and other property upon which the taxes have not been paid; and the deed of conveyance to the purchaser for all lands and other property thus sold shall be held to vest a good and perfect title in the purchaser thereof, subject to be impeached only for actual fraud; provided, that the former owner shall within two years from date of the filing for record of the Purchaser's Deed have the right to redeem the land on the following basis:

(1) Within the first year of the redemption period upon the payment of the amount of money paid for the land, including one (\$1.00) dollar tax deed recording fee and all taxes, penalties, interest and costs paid plus not exceeding twenty-five (25%) of the aggregate total;

(2) Within the last year of the redemption period upon the payment of the amount of money paid for the land, including one (\$1.00) dollar tax deed recording fee and all taxes, penalties, interest and costs paid plus not exceeding fifty (50%) per cent of the aggregate total. (Adopted November 2, 1932.)

147. Property may be sold for the non-payment of taxes, with privilege of owner redeeming same within two years. *Dallas County Levee Imp. Dist. v. Rugel*, 36 S. W. (2d) 188.

Prior to amendment of 1932, owner could redeem property sold for taxes within two years, by paying double the amount bid at tax sale. *Rogers v. Moore*, 100 Texas 220, 97 S. W. 685.

Sec. 14. Election of Assessors. There shall be elected by the qualified [qualified] electors of each county at the same time and under the same law regulating the election of State and county officers, an assessor and collector of taxes, who shall hold his office, for two (2) years and until his successor is elected and qualified; and such assessor and collector of taxes shall perform all the duties with respect to assessing property for the purpose of taxation and of collecting taxes as may be prescribed by the legislature. (Adopted November 8, 1932.)

148. The sureties on tax assessor's bond are liable so long as the assessor holds his office. *Steusoff v. Liberty County*, 34 S. W. (2d) 643.

Sec. 15. Tax Liens and Sales. The annual assessment made upon landed property shall be a special lien thereon, and all property, both real and personal, belonging to any delinquent taxpayer shall be liable to seizure and sale for the payment of all taxes and penalties due by such delinquent; and such property may be sold for the payment of the taxes and penalties due by such delinquent, under such regulations as the legislature may provide.

149. *Richey v. Moor*, 112 Texas 493, 249 S. W. 172; *State Mort. Co. v. Affleck*, 51 S. W. (2d) 274 (Com. App.).

(1) "We thing the unit of calculation by which the number of tracts is to be fixed is the last or smallest subdivision into which the land has been divided.

(2) "When a survey is divided into town or city additions, all lands or lots in each such addition owned by the party being sued constitute one trace, provided there be no subdivision of the addition.

(3, 4) "If the addition has been divided into smaller subdivisions, such as blocks, then each subdivision or block constitutes a tract, within the meaning of the statute, although it is divided into lots; in that case, the lots owned therein, whether all or only a part thereof, collectively constitute a tract, the unit being the block, unless such lots have in turn been subdivided, in which event the subdivided lot becomes the unit of measurement, as a tract.

"Applying the above rule, the county attorney is entitled to \$5 for the first tract and \$1 for each additional tract involved in the same suit; the county clerk is entitled to \$1 for all services rendered in the suit (*Article 7332*); and the tax collected to \$1 for each 'correct assessment' (*Article 7331*), each tract considered as one assessment.

"It follows from the foregoing that both the trial court and the court of civil appeals erred in their judgments, which are here reversed, and the cause is remanded for another trial.

"The foregoing opinion is adopted as the opinion of the supreme court, and judgment will be entered in accordance therewith."—*Cureton, C. J. State v. Slater*, 120 Texas 431, 38 S. W. (2d) 1097.

Sec. 16. Tax Collectors. The sheriff of each county in addition to his other duties shall be the assessor and collector of taxes therefor; but, in counties having ten thousand (10,000) or more inhabitants, to be determined by the last preceding census of the United States, an assessor and collector of taxes shall be elected and qualified. (Adopted November 8, 1932.)

Sec. 17. Power of Legislature as to Taxes. The specification of the objects and subjects of taxation shall not deprive the legislature of the power to require other subjects or objects to be taxed, in such manner as may be consistent with the principles of taxation fixed in this constitution.

150. The inheritance tax law providing for certain exemptions is not inconsistent with the principles of taxation as fixed by the Constitution. *State v. Jones*, 5 S. W. (2d) 973.

Property in warehouse is subject to taxation in the name of the owner. *Interstate Forwarding Co. v. Vineyard*, 121 Texas, 289, 49 S. W. (2d) 403.

Sec. 18. Equalization of Taxes. The legislature shall provide

for equalizing, as near as may be, the valuation of all property subject to or rendered for taxation, (the county commissioners' court to constitute a board of equalization); and may also provide for the classification of all lands with reference to their value in the several counties.

151. Boards of equalization can only act on matters of valuation, and in that regard their action is final. *San Antonio St. Ry. Co. v. San Antonio*, 22 Texas Civ. App., 341, 54 S. W. 907; *Galveston Gas. Co. v. County of Galveston*, 54 Texas, 287.

Sec. 19. Exemption of Farm Products, When. Farm products in the hands of the producer, and family supplies for the home and farm use, are exempt from all taxation until otherwise directed by a two-thirds vote of all the members elect to both houses of the legislature. (Adopted first Tuesday in September, 1879.)

ARTICLE IX.

COUNTIES.

Section 1. Creation and Organization of Counties; Changing Lines. The legislature shall have power to create counties for the convenience of the people, subject to the following provisions:

First. In the territory of the State exterior to all counties now existing, no new counties shall be created with a less area than nine hundred square miles, in a square form, unless prevented by pre-existing boundary lines. Should the State lines render this impracticable in border counties, the area may be less. The territory referred to may, at any time, in whole or in part, be divided into counties in advance of population, and attached, for judicial and land surveying purposes, to the most convenient organized county or counties.

Second. Within the territory of any county or counties now existing, no new county shall be created with a less area than seven hundred square miles, nor shall any such county now existing be reduced to a less area than seven hundred square miles. No new counties shall be created so as to approach nearer than twelve miles of the county seat of any county from which it may, in whole or in part, be taken. Counties of a less area than nine hundred, but of seven hundred or more square miles, within counties now existing, may be created by a two-thirds vote of each house of the legislature, taken by yeas and nays, and entered on the journals. Any county now existing may be reduced to an area of not less than seven hundred square miles by a like two-thirds vote. When any part of a county is stricken off and attached to, or created into, another county, the part stricken off shall be holden for and obliged to pay its proportion

of all the liabilities then existing of the county from which it was taken, in such manner as may be prescribed by law.

Third. No part of any existing county shall be detached from it and attached to another existing county until the proposition for such change shall have been submitted, in such manner as may be provided by law, to a vote of the electors of both counties, and shall have received a majority of those voting on the question in each.

152. In creating new counties Legislature must fix boundaries so as not to leave any territory outside of any county. *Garza County v. Lynn County*, 58 S. W. (2d) 24; *Hunt County v. Rains County*, 7 S. W. (2d) 648.

COUNTY SEATS.

Sec. 2. **How Created and Changed.** The legislature shall pass laws regulating the manner of removing county seats; but no county seat situated within five miles of the geographical center of the county shall be removed, except by a vote of two-thirds of all the electors voting on the subject. A majority of such electors, however, voting at such election, may remove a county seat from a point more than five miles from the geographical center of the county to a point within five miles of such center, in either case the center to be determined by a certificate from the commissioner of the general land office.

152a. Removal of county seat. *Turner v. Tucker*, 113 Texas 434, 258 S. W. 149; *Ralls v. Parrish*, 105 Texas 253, 147 S. W. 564; *Moore v. Pittman*, 280 S. W. 873.

Sec. 3. (1) Holding the belief that the highest degree of local self government which is consistent with the efficient conduct of those affairs by necessity lodged in the Nation and the State will prove most responsive to the will of the people, and result to reward their diligence and intelligence by greater economy and efficiency in their local governmental affairs, it hereby is ordained:

(2) Any county having a population of sixty-two thousand (62,000) or more according to the then last Federal Census may adopt a County Home Rule Charter, to embrace those powers appropriate hereto, within the specific limitations hereinafter provided. It further is provided that the legislature, by a favoring vote of two-thirds of the total membership of both the senate and the house of representatives, may authorize any county, having a population less than that above specified, to proceed hereunder for the adoption of a Charter; however, as a condition for such authorization, it is required that notice of the intent to seek legislative authority hereunder must be published in one or more newspapers, to give general circulation in the county affected, not less than once per week for four (4) consecutive weeks, and the first of such publications shall appear not less than thirty (30)

days next prior to the time an Act making proposal hereunder may be introduced in the legislature. No County Home Rule Charter may be adopted by any county save upon a favoring vote of the resident qualified electors of the affected county. In elections submitting to the voters a proposal to adopt a Charter (unless otherwise provided by a two-thirds vote of the total membership of each house of the legislature) the votes cast by the qualified electors residing within the limits of all the incorporated cities and towns of the county shall be separately kept but collectively counted and the votes of the qualified electors of the county who do not reside within the limits of any incorporated city or town likewise shall be separately kept and separately counted, and unless there be a favoring majority of the votes cast within and a favoring majority of the votes cast without such collective cities and towns, the Charter shall not be adopted. It is expressly forbidden that any such Charter may inconsonantly affect the operation of the General Laws of the State relating to the judicial, tax, fiscal, educational, police, highway and health systems, or any other department of the State's superior government. Nothing herein contained shall be deemed to authorize the adoption of a Charter provision inimical to or inconsistent with the sovereignty and established public policies of this State, and no provision having such vice shall have validity as against the State. No Charter provision may operate to impair the exemption of homestead as established by this Constitution and the Statutes relating thereto.

(3) a. A Charter hereunder may provide: the continuance of a county commissioners' court, as now constituted, to serve as the governing body of a county to operate hereunder; or, may provide for a governing body otherwise constituted, which shall be elective, and service therein shall be upon such qualifications, for such terms, under such plan of representation, and upon such conditions of tenure and compensation as may be fixed by any such Charter. The terms for service in such governing body may exceed two (2) years, but shall not exceed six (6) years. In any event, in addition to the powers and duties provided by any such Charter, such governing body shall exercise all powers, and discharge all duties which, in the absence of the provisions hereof, would devolve by law on county commissioners and county commissioners' courts. Further, any such Charter may provide for the organization, reorganization, establishment and administration of the government of the county, including the control and regulation of the performance of and the compensation for all duties required in the conduct of the county affairs, subject to the limitations herein provided.

b. A Charter hereunder may provide that judges of county courts (including that county court designated in this Constitution), and justices of the peace be compensated upon a salary

basis in lieu of fees. The jurisdiction of the county court designated in this Constitution, and the duties of the judges thereof, may be confined to that general jurisdiction of a probate court which elsewhere is defined in this Constitution. The office of justice of the peace may be made either elective or appointive. Other than as herein provided, no such Charter shall provide for altering the jurisdiction or procedure of any court. The duties of district attorney and/or county attorney may be confined to representing the State in civil cases to which the State is a party and to enforcement of the State's Penal Code, and the compensation of said attorneys may be fixed on a salary basis in lieu of fees.

c. Save as hereinabove and hereinafter otherwise provided, such Charters, within the limits expressed therein, may invest the governing body to be established for any county electing to operate hereunder with the power to create, consolidate or abolish any office or department, whether created by other provisions of the Constitution or by statute, define the duties thereof, fix the compensation for service therein, make the same elective or appointive and prescribe the time, qualifications and conditions for tenure in any such office; save, that no such Charter other than as hereinbefore authorized, shall provide to regulate the status, service, duties or compensation of members of the legislature, judges of the courts, district attorneys, county attorneys, or any office whatever by the law of the State required to be filled by an election embracing more than one county. Excepting herefrom nominations, elections or appointments to offices, the terms whereof may not have expired prior to the adoption of this Amendment to the Constitution, at such time as a Charter provision adopted hereunder may be in effect (save as to those offices which must continue to be elective, as herein elsewhere specified), and all terms of county officers and all contracts for the giving of service by deputies under such officers, may be subject to termination by the administrative body of the county, under an adopted Charter so providing, and there shall be no liability by reason thereof.

d. Any county electing to operate hereunder shall have the power, by Charter provision, to levy, assess and collect taxes, and to fix the maximum rate for ad valorem taxes to be levied for specific purposes, in accordance with the Constitution and laws of this State, provided, however, that the limit of the aggregate taxes which may be levied, assessed and collected hereunder shall not exceed the limit or total fixed, or hereafter to be fixed, by this Constitution to control counties, and the annual assessment upon property, both real, personal and mixed, shall be a first superior and prior lien thereto.

e. In addition to the powers herein provided, and in addition to powers included in County Home Rule Charters, any county

may, by a majority vote of the qualified electors of said county, amend its Charter to include other powers, functions, duties and rights which now or hereafter may be provided by this Constitution and the statutes of the State for counties.

(4) Any county operating hereunder shall have the power to borrow money from all purposes lawful under its Charter, to include the refunding of a lawful debt, in a manner conforming to the General Laws of the State, and may issue therefor its obligations. Such obligations, other than those to refund a lawful debt, shall not be valid unless authorized by a majority of all votes cast by those resident qualified voters of the area affected by the taxes required to retire such obligations, who may vote thereon. In case of county obligations, maturing after a period of five (5) years, the same shall be issued to mature serially, fixing the first maturity of principal at a time not to exceed two (2) years next after the date of the issuance of such obligations. Such obligations may pledge the full faith and credit of the county; but in no event shall the aggregate obligations so issued, in principal amount outstanding at any one time, exceed the then existing Constitutional limits for such obligations and such indebtedness and its supporting tax shall constitute a first and superior lien upon the property taxable in such county. No obligation issued hereunder shall be valid unless prior to the time of the issuance thereof there be levied a tax sufficient to retire the same as it matures, which tax shall not exceed the then existing Constitutional limits.

(5) Such Charter may authorize the governing body of a county operating hereunder to prescribe the schedule of fees to be charged by the officers of the county for specified service, to be in lieu of the schedule for such fees prescribed by the General Laws of the State; and, to appropriate such fees to such funds as the Charter may prescribe; provided, however, no fee for a specified service shall exceed in amount the fee fixed by General Law for that same service. Such Charters as to all judicial officers, other than district judges, may prescribe the qualifications for services, provided the standards therefor be not lower than those fixed by the General Laws of the State.

(6) a. Subject to the express limitations upon the exercise of the powers by this subdivision to be authorized, such Charters may provide (or omit to provide) that the governmental and/or proprietary functions of any city, town, district or other defined political subdivision (which is a governmental agency and embraced within the boundaries of the county) be transferred, either as to some or all of the functions thereof, and yielded to the control of the administrative body of the county. No such transfer or yielding of functions may be effected, unless the proposal is submitted to a vote of the people, and, unless otherwise provided

by a two-thirds vote of the total membership of each house of the legislature, such a proposal shall be submitted as a separate issue, and the vote within and without any such city, town, district, or other defined governmental entity, shall be separately cast and counted, and unless two-thirds of the qualified votes cast within the yielding defined governmental entity, and a majority of the qualified votes cast in the remainder of the county, favor the proposed merger, it shall not be effected. In case of the mergers hereby authorized, without express Charter provision therefor, in so far as may be required to make effective the object of the proposed merger, the county shall succeed to all the appropriate lawful powers, duties, rights, procedures, restrictions and limitations which prior to the merger were reposed in, or imposed upon, the yielding governmental agency. Particularly, it is provided that the power to create funded indebtedness and to levy taxes in support thereof may be exercised only by such procedures, and within such limits, as now are, or hereafter may be, provided by law to control such appropriate other governmental agencies were they to be independently administered. Such mergers may be effected under proposed contracts between the county and any such yielding governmental agency, to be approved at an election as hereinbefore provided for. In order to increase governmental efficiency and effect economy the county may contract with the principal city of the county to perform one or more of its functions, provided such contracts shall not be valid for more than two (2) years.

b. In cases of the partial or complete merger of the government of a city operating under a Home Rule Charter, with the government of a county operating hereunder, those city Charter provisions affected thereby shall cease to control, and the county Charter provisions shall control.

c. When any embraced incorporated city or town elects to merge its governmental functions with those of the county under the provisions hereof, such Charter may provide for defining or redefining the boundaries of such cities and towns, provided, however, that in defining or redefining the boundaries of such cities and towns, such boundaries may be extended only to include those areas contiguous to such cities as are urban in character; and as to such cities or towns and for the benefit thereof the county, in addition to the primary city and county tax herein authorized and any other lawful district tax, may levy and collect taxes upon the property taxable within such city or town as defined or redefined, within the limits authorized by Sections 4 and 5 of Article XI of this Constitution, (or any Amendment thereof), for incorporated cities according to the population, provided that no tax greater than that existing at the time of such merger or for any added purpose shall be imposed upon any such city or

town unless authorized by a majority of all votes cast by the resident qualified voters of such city or town.

d. Areas urban in character though not incorporated, under appropriate Charter provision may be defined as such by the governing body of the county, provided, however, that no portion of the county shall be defined as an urban area unless it has sufficient population to entitle it to incorporate under the then existing laws of the State; and no such urban area, when created, shall be vested with any taxing or bonding power which it would not possess if it were operating as a separate incorporated unit under the then existing Constitutional and statutory provisions of this State; and provided further that the governing body of the county for the government of such areas shall have and exercise all powers and authority granted by law to the governing bodies of similar areas when separately incorporated as a city or town, and such areas shall be subject to additional taxation within the same Constitutional limits as control taxation for a city or a town of like population. Likewise such Charter may provide for the governing board of the county subject to existing Constitutional and statutory provisions to define, create and administer districts and have and exercise the powers and authority granted by the Constitution and laws relative to the same.

(7) No provision of this Constitution inconsonant with the provisions of this Section 3, of Article IX, shall be held to control the provisions of a Charter adopted hereunder, and conforming herewith. Charters adopted hereunder shall make appropriate provision for the abandonment, revocation, and amendment thereof, subject only to the requirements that there must be a favoring majority of the vote cast upon such a proposal, by the qualified resident electors of the county; and, no Charter may forbid amendments thereof for a time greater than two (2) years. The provisions hereof shall be self-executing, subject only to the duty of the legislature to pass all laws (consistent herewith) which may be necessary to carry out the intent and purpose hereof. Further, the legislature shall prescribe a procedure for submitting to decision, by a majority vote of the electors voting thereon, proposed alternate and elective Charter provisions. (Adopted August 26, 1933.)

ARTICLE X.

RAILROADS.

Section 1. **Connecting at State Line; Crossing; Continuous Lines.** Any railroad corporation or association, organized under the law for the purpose, shall have the right to construct and operate a railroad between any points within this State, and to connect at the State line with railroads of other States. Every

railroad company shall have the right, with its road, to intersect, connect with or cross any other railroad; and shall receive and transport each the other's passengers, tonnage and cars, loaded or empty, without delay or discrimination, under such regulations as shall be prescribed by law.

153. Railroads can operate within the State and receive trains from connecting lines at the State line. *Missouri K. & T. Ry. Co. v. State*, 167 S. W. 822; writ of error denied: 107 Texas 540, 181 S. W. 721; *Gulf C. & S. F. Ry. Co. v. Woods*, 262 S. W. 229; *Sabine & E. T. Ry. Co. v. Gulf & Interstate Ry. Co.*, 92 Texas 166, 46 S. W. 784.

Sec. 2. Public Highways; Common Carriers; Duty of Legislature; Fixing Rates. Railroads heretofore constructed, or which may hereafter be constructed, in this State are hereby declared public highways, and railroad companies common carriers. The legislature shall pass laws to regulate railroad freight and passenger tariffs, to correct abuses, and prevent unjust discrimination and extortion in the rates of freight and passenger tariffs on the different railroads in this State, and enforce the same by adequate penalties; and, to the further accomplishment of these objects and purposes, may provide and establish all requisite means and agencies invested with such powers as may be deemed adequate and advisable. (Adopted November 4, 1890).

154. Railroads are public highways and common carriers. *Gulf C. & S. F. Ry. Co. v. Hines*, 4 S. W. (2d) 641; *City of Denison v. Municipal Gas Co.*, 117 Texas 291, 257 S. W. 616.

Railroad Commission may regulate rates on railroads. *Railroad Commission v. Weld*, 95 Texas 278, 66 S. W. 1095; *Panhandle & S. F. Ry. Co. v. Guthrie*, 248 S. W. 106.

Sec. 3. To Keep Public Office in State; Directors; Annual Reports. Every railroad or other corporation, organized or doing business in this State under the laws or authority thereof, shall have and maintain a public office or place in this State for the transaction of its business, where transfers of stock shall be made, and where shall be kept for inspection by the stockholders of such corporation, books, in which shall be recorded the amount of capital stock subscribed, the names of the owners of the stock, the amounts owned by them respectively, the amount of stock paid, and by whom, the transfer of said stock, with the date of the transfer, the amount of its assets and liabilities, and the names and places of residence of its officers. The directors of every railroad company shall hold one meeting annually in this State, public notice of which shall be given thirty days previously; and the president or superintendent shall report annually, under oath, to the comptroller or Governor, their acts and doings, which report shall include such matters relating to railroads as may be prescribed by law. The legislature shall pass laws enforcing by suitable penalties the provisions of this section.

155. Railroad must abide by its contract to maintain shops at certain place. *Missouri, K. & T. Ry. Co. v. State*, 275 S. W. 673.

Sec. 4. Rolling Stock; Property Not Exempt from Execution. The rolling stock and all other movable property belonging to any railroad company or corporation in this State shall be considered personal property; and its real and personal property, or any part thereof, shall be liable to execution and sale in the same manner as the property of individuals; and the legislature shall pass no laws exempting any such property from execution and sale.

156. Execution may be levied against land belonging to railroad to satisfy debt against it. *San Antonio & G. S. Ry. Co. v. San Antonio & G. R. Ry. Co.*, 76 S. W. 728; *Texas-Mex. Ry. Co. v. Wright*, 88 Texas 350, 31 S. W. 613.

Sec. 5. No Consolidation With Competing Lines. No railroad or other corporation, or the lessees, purchasers or manager of any railroad corporation, shall consolidate the stock, property or franchises of such corporation with, or lease or purchase the works or franchises of, or in any way control any railroad corporation owning or having under its control a parallel or competing line; nor shall any officer of such railroad corporation act as an officer of any other railroad corporation or having the control of a parallel or competing line.

157. Consolidation of railroads. *East Line & R. R. Ry. Co. v. State*, 75 Texas 434, 12 S. W. 690; *Missouri, K. & T. Ry. Co. v. State*, 275 S. W. 673.

Sec. 6. No Consolidation With Foreign Roads. No railroad company organized under the laws of this State shall consolidate by private or judicial sale or otherwise with any railroad company organized under the laws of any other State or of the United States.

158. *Atchison, T. & S. F. Ry. Co. v. Weeks*, 248 Fed. 970; *Missouri, K. & T. Ry. Co. v. State*, 275 S. W. 673. See also *Texas & Pacific Ry. Co. v. State*, 124 Texas —, 78 S. W. (2d) 580.

Sec. 7. Street Railways. No law shall be passed by the legislature granting the right to construct and operate a street railroad within any city, town or village, or upon any public highway, without first acquiring the consent of the local authorities having control of the street or highway proposed to be occupied by such street railroad.

159. Consent of city must be secured to operate railway therein. *Denison & S. Ry. Co. v. St. Louis S. W. Ry. Co.*, 96 Texas 233, 72 S. W. 161; *Kansas City, M. & O. Ry. Co. v. City of Sweetwater*, 104 Texas 329, 137 S. W. 1117.

Sec. 8. Benefit of Future Legislation. No railroad corporation, in existence at the time of the adoption of this Constitution,

shall have the benefit of any future legislation, except on condition of complete acceptance of all the provision of this Constitution applicable to railroads.

160. East Line & R. R. Co. v. State, 75 Texas 434, 12 S. W. 690.

Sec. 9. Must Be Constructed Through County Seats. No railroad hereafter constructed in this State shall pass within a distance of three miles of any county seat, without passing through same, and establishing and maintaining a depot therein, unless prevented by natural obstacles, such as streams, hills or mountains; provided, such town or its citizens shall grant the right of way through its limits and sufficient ground for ordinary depot purposes.

161. Citizens have right to compel railway company to pass through county seat. Kansas City, M. & O. Ry. Co. v. State, 106 Texas 249, 163 S. W. 582; Felton v. Kansas City, M. & O. Ry. Co., 143 S. W. 650; Cleburne v. Gulf, C. & S. F. Ry. Co., 66 Texas 457, 1 S. W. 342.

ARTICLE XI.

MUNICIPAL CORPORATIONS.

Section 1. Counties. The several counties of this State are hereby recognized as legal subdivisions of the State.

162. Public roads in a county belong to the State. Robbins v. Limestone County, 114 Texas 345, 268 S. W. 915.

Sec. 2. Public Buildings and Roads. The construction of jails, courthouses and bridges, and the establishment of county poor-houses and farms, and the laying out, construction and repairing of county roads, shall be provided for by general laws.

163. Constitution fixes rate beyond which Legislature cannot impose tax for public improvements. Collinsworth County v. Allred, 120 Texas 473, 40 S. W. (2d) 13; Hughes v. Harris County Commissions Court, 35 S. W. (2d) 818.

Sec. 3. Not to Become Stockholders or Make Donations. No county, city or other municipal corporation, shall hereafter become a subscriber to the capital of any private corporation or association, or make any appropriation or donation to the same, or in anywise loan its credit; but this shall not be construed to in any way affect any obligation heretofore undertaken pursuant to law.

164. Public benefit in behalf of individual is forbidden by Constitution. Bland v. City of Taylor, 123 Texas 39, 67 S. W. (2d) 1033; City of Cleburne v. Brown, 73 Texas 443, 11 S. W. 440.

Sec. 4. Chartering by General Law; Dues to Be Collected in Current Money. Cities and towns having a population of five thousand or less may be chartered alone by general law. They

may levy, assess and collect such taxes as may be authorized by law, but no tax for any purpose shall ever be lawful for any one year which shall exceed one and one-half per cent of the taxable property of such city; and all taxes shall be collectible only in current money, and all licenses and occupation taxes levied, and all fines, forfeitures and penalties accruing to said cities and towns shall be collectible only in current money. (Amended November 2, 1920.)

165. Construction of section before amendment implied with amendment. *Bass v. City of Clifton*, 261 S. W. 795; *Rochford v. City of Port Neches*, 46 S. W. (2d) 1057.

Appropriation from ad valorem tax may be added to special assessment fund to pay improvement warrants. *Clark v. W. L. Pearson & Co.*, 121 Texas 34, 39 S. W. (2d) 27.

Sec. 5. Cities of Five Thousand; Taxation and Debt. Cities having more than five thousand (5,000) inhabitants may, by a majority vote of the qualified voters of said city, at an election held for that purpose, adopt or amend their charters, subject to such limitations as may be prescribed by the legislature, and providing that no charter or any ordinance passed under said charter shall contain any provision inconsistent with the Constitution of the State, or of the general laws enacted by the legislature of this State; said cities may levy, assess and collect such taxes as may be authorized by law or by their charters; but no tax for any purpose shall ever be lawful for any one year, which shall exceed two and one-half per cent of the taxable property of such city, and no debt shall ever be created by any city, unless at the same time provision be made to assess and collect annually a sufficient sum to pay the interest thereon and creating a sinking fund of at least two per cent thereon; and provided further, that no city charter shall be altered, amended or repealed oftener than every two years. (Adopted November 5, 1912.)

166. City's right to amend charter. *McCutcheon v. Wozencraft*, 116 Texas 440, 294 S. W. 1105; *City of Wichita Falls v. Continental Oil Co.*, 117 Texas 256, 1 S. W. (2d) 596; *City of Goose Creek v. Hunnicutt*, 120 Texas 471, 39 S. W. (2d) 617.

City must provide sinking fund for indebtedness. *City of Beaumont v. Fall*, 116 Texas 314, 291 S. W. 202; *City of Fort Worth v. Bobbitt*, 121 Texas 14, 41 S. W. (2d) 228; *City of Houston v. Allred*, 123 Texas 334, 71 S. W. (2d) 257; *City of Richmond v. Allred*, 123 Texas 365, 71 S. W. (2d) 233; *City of Dayton v. Allred*, 123 Texas, 60, 68 S. W. (2d) 172.

Sec. 6. Municipal Taxation. Counties, cities and towns are authorized, in such mode as may now or may hereafter be provided by law, to levy, assess and collect the taxes necessary to pay the interest and provide a sinking fund to satisfy any indebtedness heretofore legally made and undertaken; but all such taxes shall be assessed and collected separately from that levied, as-

essed and collected for current expenses of municipal government, and shall, when levied, specify in the act of levying the purpose therefor; and such taxes may be paid in the coupons, bonds or other indebtedness for the payment of which such tax may have been levied.

167. Taxation to satisfy indebtedness. Dallas Joint Stock Land Bank of Dallas v. Ellis County Levee Imp. Dist., 55 S. W. (2d) 227; ;City of Laredo v. Looney, 108 Texas 119, 185 S. W. 556.

Sec. 7. Special Taxation for Sea Walls, Etc.; Restrictions and Limitations; Eminent Domain. All counties and cities bordering on the coast of the Gulf of Mexico are hereby authorized upon a vote of two-thirds majority of the resident property taxpayers voting thereon at an election called for such purpose to levy and collect such tax for construction of sea walls, breakwaters, or sanitary purposes, as may now or may hereafter be authorized by law, and may create a debt for such works and issue bonds in evidence thereof. But no debt for any purpose shall ever be incurred in any manner by any city or county unless provision is made, at the time of creating the same, for levying and collecting a sufficient tax to pay the interest thereon and provide at least two per cent (2%) as a sinking fund; and the condemnation of the right of way for the erection of such works shall be fully provided for. (Adopted November 8, 1932.)

168. Revenue bonds payable out of earnings of utility not a debt against city. City of Dayton v. Allred, 123 Texas 60, 68 S. W. (2d) 172; City of Richmond v. Allred, 123 Texas 365, 71 S. W. (2d) 233.

Sec. 8. State Aid for Sea Walls, Etc. The counties and cities on the gulf coast being subject to calamitous overflows, and a very large proportion of the general revenue being derived from those otherwise prosperous localities, the legislature is especially authorized to aid by donation of such portion of the public domain as may be deemed proper, and in such mode as may be provided by law, the construction of seawalls, or breakwaters, such aid to be proportioned to the extent and value of the works constructed, or to be constructed, in any locality.

169. Legislature not limited to two year period when making donations under this section. City of Aransas Pass v. Keeling, 112 Texas 339, 247 S. W. 818.

Sec. 9. Public Property; Buildings, Etc. The property of counties, cities and towns, owned and held for public purposes, such as public buildings and the sites therefor, fire engines and the furniture thereof, and all property used, or intended for extinguishing fires, public grounds and all other property devoted exclusively to the use and benefit of the public, shall be exempt from forced sale and from taxation; provided, nothing herein

shall prevent the enforcement of the vendor's lien, the mechanic's or builder's lien, or other liens now existing.

170. Certain city property is exempt from forced sale and taxes. *Texas Emp. Ins. Assn. v. City of Tyler*, 283 S. W. 929; *Peach River Lbr. Co. v. Montgomery*, 124 S. W. 904; *City of Ft. Worth v. Reynolds*, 190 S. W. 501.

Sec. 10. City or Town May Be School District; Special Tax. The legislature may constitute any city or town a separate and independent school district. And when the citizens of any city or town have a charter, authorizing the city authorities to levy and collect a tax for the support and maintenance of a public institution of learning, such tax may hereafter be levied and collected, if, at an election held for that purpose, two-thirds of the taxpayers of such city or town shall vote for such tax.

171. Taxation for school purposes in cities composing independent school district. *Treacarr v. City of Galveston*, 28 S. W. (2d) 887; *County School Board of Angelina County v. Homer Common School Dist.*, 291 S. W. 268; 1049, 276 U. S. 633; *Marchman v. McCoy Hotel Operating Co.*, 21 S. W. Roberts v. Epperson, 288 S. W. 595.

ARTICLE XII.

PRIVATE CORPORATIONS.

Section 1. Created by General Laws. No private corporation shall be created except by general laws.

172. Corporations are subject to general laws. *Jefferson Co. Title Guar. Co. v. Tarver*, 119 Texas 410, 29 S. W. (2d) 316; *State v. Dilbeck*, 297 S. W. 1049, 267 U. S. 633; *Marchman v. McCoy Hotel Operating Co.*, 21 S. W. (2d) 552.

Sec. 2. General Laws to Be Enacted. General laws shall be enacted providing for the creation of private corporations, and shall therein provide fully for the adequate protection of the public and of the individual stockholders.

173. See authorities under section 1 and *St. Regis Candies v. Hovas*, 3 S. W. (2d) 429 (Com. App.).

Sec. 3. Franchises Under Legislative Control. The right to authorize and regulate freights, tolls, wharfage or fares, levied and collected, or proposed to be levied and collected by individuals, companies or corporations, for the use of highways, landings, wharves, bridges and ferries, devoted to public use, has never been and shall never be relinquished or abandoned by the State, but shall always be under legislative control and depend upon legislative authority.

Sec. 4. Under Surveillance of Attorney General, Etc. The first legislature assembled after the adoption of this Constitution shall provide a mode of procedure by the attorney general and

district or county attorneys, in the name and behalf of the State, to prevent and punish the demanding and receiving or collection of any and all charges, as freight, wharfage, fares or tolls, for the use of property devoted to the public, unless the same shall have been specially authorized by law.

174. Suit to oust one from the exercises of a franchise not authorized by law. *State v. International & G. N. Ry. Co.*, 89 Texas 566, 35 S. W. 1067; *Morris & Cummings v. State*, 62 Texas 728.

Sec. 5. Freights, Fares, Etc., Subject to Legislative Control. All laws granting the right to demand and collect freights, fares, tolls or wharfage, shall at all times be subject to amendment, modification or repeal by the legislature.

174a. City cannot barter away power to it. *Fink v. City of Clarendon*, 282 S. W. 912.

Sec. 6. Stock and Bonds. No corporation shall issue stock or bonds except for money paid, labor done or property actually received, and all fictitious increase of stock or indebtedness shall be void.

175. Issuance of stock and liability of corporation for not required full payment of subscription. *Stevens v. Davenport*, 19 S. W. (2d) 445; *World Oil Co. v. Hicks*, 34 S. W. (2d) 581; *Cisco & N. E. R. Co. v. Ricks*, 33 S. W. (2d) 878.

176. Notes, property or patents may be received for corporate stock issued. *Hamilton Rubber Mfg. Co. v. Stewart*, 48 Fed. (2d) 8, 284 U. S. 620; *Hamilton-Turner Grocery Co. v. Hander*, 293 S. W. 341; *Atlas Trailers Water Mufflers v. McCallum*, 118 Texas 173, 12 S. W. (2d) 957.

Sec. 7. Vested Rights Protected. Nothing in this article shall be construed to divest or affect rights guaranteed by any existing grant or statute of this State, or of the Republic of Texas.

177. President of corporation cannot benefit by his own fraud. *Joy v. Godchaux*, 35 Fed (2d) 649.

ARTICLE XIII.

SPANISH AND MEXICAN LAND TITLES.

Section 1. Fines, Penalties and Escheats. All fines, penalties, forfeitures and escheats, which have heretofore accrued to the Republic and State of Texas, under their constitutions and laws, shall accrue to the State under this Constitution; and the legislature shall provide a method for determining what lands have been forfeited, and for giving effect to escheats; and all such rights of forfeiture and escheat to the State shall, ipso facto, inure to the protection of the innocent holders of junior titles, as provided in sections 2, 3 and 4 of this article.

178. Land granted to alien will escheat to the State at his death. *Webb's*

heirs v. Kirby Lbr. Co., 48 Texas Civ. App. 543, 107 S. W. 581; Gillette's Estate v. State, 286 S. W. 261; Texas Mex. Ry. Co. v. Locke, 74 Texas 370, 12 S. W. 80.

Sec. 2. Lands Not Recorded, Archived or in Possession. Any claim of title or right to land in Texas, issued prior to the thirteenth day of November, 1835, not duly recorded in the county where the land was situated at the time of such record, or not duly archived in the general land office, or not in the actual possession of the grantee thereof, or some person claiming under him, prior to the accruing of junior title thereto from the sovereignty of the soil, under circumstances reasonably calculated to give notice to said junior grantee, has never had, and shall not have, standing or effect against such junior title, or color of title, acquired without such or actual notice of such prior claim of title or right; and no condition annexed to such grants, not archived or recorded, or occupied, as aforesaid, has been, or ever shall be, released or waived, but actual performances of all such conditions shall be proved by the person or persons claiming under such title or claim of right, in order to maintain action thereon, and the holder of such junior title, or color of title, shall have all the rights of the government which have heretofore existed, or now exist, arising from the non-performance of all such conditions.

179. Change of sovereignty does not affect private property rights. *Miller v. Letzerich*, 121 Texas 248, 49 S. W. (2d) 404; *Manry v. Robison*, 122 Texas 213, 56 S. W. (2d) 438.

Sec. 3. Non-payment of Taxes; Presumptions. Non-payment of taxes on any claim of title to land dated prior to the thirteenth day of November, 1835, not recorded, or archived, as provided in section 2, by the person or persons so claiming, or those under whom he or they so claim, from that date up to the date of the adoption of this Constitution, shall be held to be a presumption that the right thereto has reverted to the State, and that said claim is a sale demand, which presumption shall only be rebutted by payment of all taxes on said lands, State, county, and city or town, to be assessed on the fair value of such lands by the comptroller, and paid to him, without commutation or deduction for any part of the above period.

Sec. 4. Titles Not to Be Recorded; Actual Possessors; "Duly Recorded" Defined. No claim of title or right to land, which issued prior to the thirteenth day of November, 1835, which has not been duly recorded in the county where the land was situated at the time of such record, or which has not been duly archived in the general land office, shall ever hereafter be deposited in the general land office, or recorded in this State, or delineated on the maps, or used as evidence in any of the courts of this State, and

the same are stale claims; but this shall not affect such rights or presumptions as arise from actual possession. By the words, "duly recorded," as used in sections 2 and 4 of this article, it is meant that such claim of title or right to land shall have been recorded in the proper office, and that mere errors in the certificate of registration, or informality, not affecting the fairness and good faith of the holder thereof, with which the record was made, shall not be held to vitiate such record.

180. Evidence of title to Mexican grants. *Von Rosenberg v. Haynes*, 85 Texas 357, 20 S. W. 143; *Downing v. Diaz*, 80 Texas 436, 16 S. W. 49; *San Lorenzo Title & Imp. Co. v. City Mortgage Co.*, 124 Texas —, 73 S. W. (2d) 513.

Sec. 5. Claims Declared Void. All claims, locations, surveys, grants and titles of any kind, which are declared null and void by the Constitution of the Republic or State of Texas, are, and the same shall remain forever, null and void.

Sec. 6. Forgers of Land Titles. The legislature shall pass stringent laws for the detection and conviction of all forgers of land titles, and may make such appropriations of money for that purpose as may be necessary.

181. Legislature may pass laws to prosecute land frauds. *Hanks v. State*, 13 Texas Crim. App., 289; *Johnson v. State*, 9 Texas Crim. App., 249; *Francis v. State*, 7 Texas Crim. App., 501.

Sec. 7. Certain Sections Not a Repeal of Laws. Sections 2, 3, 4 and 5 of this article shall not be so construed as to set aside or repeal any law or laws of the Republic or State of Texas, releasing the claimants of headrights of colonists of a league of land, or less, from compliance with the conditions of which their grants were made.

ARTICLE XIV.

PUBLIC LANDS AND LAND OFFICE.

Section 1. General Land Office; Grants to Be Registered in; To Be Self-sustaining. There shall be one general land office in the State, which shall be at the seat of government, where all land titles which have emanated, or may hereafter emanate, from the State shall be registered, except those titles the registration of which may be prohibited by this Constitution. It shall be the duty of the legislature at the earliest practicable time to make the land office self-sustaining, and from time to time the legislature may establish such subordinate offices as may be deemed necessary.

182. Land office is depository for all land titles, maps and field notes on public lands. *Holmes v. Yates*, 122 Texas 428, 61 S. W. (2d) 771; *Miller v. Yates*, 122 Texas 435, 61 S. W. (2d) 767.

Sec. 2. Revival, Survey and Location of Genuine Certificates. All unsatisfied genuine land certificates barred by section 4, article 10, of the Constitution of 1869, by reason of the holders or owners thereof failing to have them surveyed and returned to the land office by the first day of January, 1875, are hereby revived. All unsatisfied genuine land certificate now in existence shall be surveyed and returned to the general land office within five years after the adoption of this Constitution, or be forever barred; and all genuine land certificates hereafter issued by the State shall be surveyed and returned to the general land office within five years after issuance, or be forever barred. Provided, that all genuine land certificates heretofore or hereafter issued shall be located, surveyed or patented, only upon vacant and unappropriated public domain, and not upon any land titled or equitably owned under color of title from the sovereignty of the State, evidence of the appropriation of which is on the county records or in the general land office; or when the appropriation is evidenced by the occupation of the owner, or of some person holding for him.

183. Surveying of land claims and issuance of certificates therefor by land commissioner. *State v. Bradford*, 121 Texas 515, 50 S. W. (2d) 1065; *Weatherly v. Jackson*, 123 Texas 213, 71 S. W. (2d) 259.

Sec. 3. Grants to Railways. The legislature shall have no power to grant any of the lands of this State to any railway company, except upon the following restrictions and conditions:

First. That there shall never be granted to any such corporation more than sixteen sections to the mile; and no reservation of any part of the public domain for the purpose of satisfying such grant shall ever be made.

Second. That no land certificate shall be issued to such company until they have equipped, constructed and in running order at least ten miles of road; and on the failure of such company to comply with the terms of its charter, or to alienate its land at a period to be fixed by law, in no event to exceed twelve years from the issuance of the patent, all said land shall be forfeited to the State and become a portion of the public domain, and liable to location and survey. The legislature shall pass general laws only to give effect to the provisions of this section.

184. Grants to railway companies. *Texas Central Ry. Co. v. Bowman*, 97 Texas 417, 79 S. W. 295; *Raoul v. Terrell*, 99 Texas 157, 87 S. W. 1146; *Day L. & C. Co. v. State*, 68 Texas 526, 4 S. W. 865.

Sec. 4. Sale Only to Actual Settlers. No certificate for land shall be sold at the land office except to actual settlers upon the same, and in lots not to exceed one hundred and sixty acres.

185. Land shall be sold to actual settlers. *Houston & T. C. Ry. Co. v. State*, 95 Texas 526, 68 S. W. 777; *Houston & T. C. Ry. Co. v. State*, 90 Texas 608, 40 S. W. 402.

Sec. 5. Alienation of Railroad Grants; Duty of Attorney General. All lands heretofore or hereafter granted to railway companies, where the charter or law of the State required or shall hereafter require their alienation within a certain period, on pain of forfeiture, or is silent on the subject of forfeiture, and which lands have not been or shall not hereafter be alienated, in conformity with the terms of their charters and the laws under which the grants were made, are hereby declared forfeited to the State, and subject to pre-emption, location and survey, as other vacant lands. All lands heretofore granted to said railroad companies to which no forfeiture was attached, on their failure to alienate, are not included in the foregoing clause; but in all such last named cases it shall be the duty of the attorney general, in every instance, where alienations have been or hereafter may be made, to inquire into the same, and if such alienation has been made in fraud of the rights of the State, and is colorable only, the real and beneficial interest being still in such corporation, to institute legal proceedings in the county where the seat of government is situated, to forfeit such lands to the State; and, if such alienation be judicially ascertained to be fraudulent and colorable as aforesaid, such lands shall be forfeited to the State and become a part of the vacant public domain, liable to pre-emption, location and survey.

186. Railroad cannot claim land after all its acts show forfeiture. *Allison v. Richardson*, 171 S. W. 1021; *Van Camp v. Gulf Production Co.*, 122 Texas, 383, 61 S. W. (2d) 773.

Sec. 6. Grants to Heads of Families and Single Men. To every head of a family without a homestead there shall be donated one hundred and sixty acres of public land, upon condition that he will select and locate said land and occupy the same three years and pay the office fees due thereon. To all single men of eighteen years of age and upwards shall be donated eighty acres of public land, upon the terms and conditions prescribed for heads of families.

187. Pre-emption homestead claim not allowed to those having homestead. *Murphy v. Johnson*, 54 S. W. (2d) 158; *Riggs v. Baleman*, 228 S. W. 179 (Com. App.).

Sec. 7. Mines and Minerals. The State of Texas hereby releases to the owner or owners of the soil all mines and minerals that may be on the same, subject to taxation as other property.

188. Rights of land owner under the Relinquish Act. *Stephens Co. v. Mid-Kansas Oil & Gas Co.*, 113 Texas 160, 254 S. W. 290; *Federal Royalty Company v. State*, 124 Texas _____, 77 S. W. (2d) 1021.

Sec. 8. Time Extended to Comply With Act of 1870. Persons residing between the Nueces river and the Rio Grande, and own-

ing grants for lands, which emanated from the government of Spain, or that of Mexico, which grants have been recognized and validated by the State, by acts of the legislature, approved February 10, 1852, August 15, 1870, and other acts, and who have been prevented from complying with the requirements of said acts by the unsettled conditions of the country, shall be allowed until the first day of January, 1880, to complete their surveys, and the plots thereof, and to return their field-notes to the general land office; and all claimants failing to do so shall be forever barred; provided, nothing in this section shall be so construed as to validate any titles not already valid, or to interfere with the rights of third persons.

189. Rights of settler under Mexican titles to land near the Mexican border. *Gallardo v. State*, 106 Texas, 274, 166 S. W. 369.

ARTICLE XV. IMPEACHMENT.

Section 1. Power Vested in House. The power of impeachment shall be vested in the house of representatives.

190. Speaker of House of Representatives may assemble House to investigate charges of impeachment. *Maddox v. Ferguson*, 114 Texas 85, 263 S. W. 888; *Ferguson v. Wilcox*, 119 Texas 280, 28 S. W. (2d) 526.

Sec. 2. Trial by Senate. Impeachment of the Governor, lieutenant governor, attorney general, treasurer, commissioner of the general land office, comptroller and the judges of the supreme court, court of appeals and district courts, shall be tried by the senate.

Sec. 3. Oath of Senators. When the senate is sitting as a court of impeachment, the senators shall be on oath, or affirmation, impartially to try the party impeached; and no person shall be convicted without the concurrence of two-thirds of the senators present.

Sec. 4. Judgment; Convict Subject to Indictment. Judgment in cases of impeachment shall extend only to removal from office, and disqualification from holding any office of honor, trust or profit under this State. A party convicted on impeachment shall also be subject to indictment, trial and punishment, according to law.

191. Impeachment* of one member of family no bar to other members holding office. *Dickson v. Strickland*, 114 Texas 176, 265 S. W. 1012.

Sec. 5. Officer Suspended Pending Proceedings. All officers against whom articles of impeachment may be preferred shall be suspended from the exercise of the duties of their office during

the pendency of such impeachment. The Governor may make a provisional appointment to fill the vacancy occasioned by the suspension of an officer until the decision on the impeachment.

Sec. 6. Removal of District Judges. Any judge of the district courts of the State who is incompetent to discharge the duties of his office, or who shall be guilty of partiality, or oppression, or other official misconduct, or whose habits and conduct are such as to render him unfit to hold such office, or who shall negligently fail to perform his duties as judge, or who shall fail to execute in a reasonable measure the business in his courts, may be removed by the supreme court. The supreme court shall have original jurisdiction to hear and determine the causes aforesaid when presented in writing upon the oaths, taken before some judge of a court of record, of not less than ten lawyers, practicing in the courts held by such judge, and licensed to practice in the supreme court; said presentment to be founded either upon the knowledge of the persons making it or upon the written oaths as to the facts of credible witnesses. The supreme court may issue all needful process and prescribe all needful rules to give effect to this section. Causes of this kind shall have precedence and be tried as soon as practicable.

Sec. 7. Trial and Removal of Other Officers. The legislature shall provide by law for the trial and removal from office of all officers of this State, the modes for which have not been provided in this constitution.

192. Removal of officer for misconduct. *Bland v. State*, 38 S. W. 252; *Bonner v. Belsterling*, 104 Texas 432, 138 S. W. 571.

ADDRESS.

Sec. 8. Removal of Judges of Supreme Court and Court of Appeals. The judges of the supreme court, court of appeals and district courts, shall be removed by the Governor on the address of two-thirds of each house of the legislature, for wilful neglect of duty, incompetency, habitual drunkenness, oppression in office, or other reasonable cause which shall not be sufficient ground for impeachment; provided, however, that the cause or causes for which such removal shall be required, shall be stated at length in such address and entered on the journals of each house; and provided, further, that the cause or causes shall be notified to the judge so intended to be removed, and he shall be admitted to a hearing in his own defense before any vote for such address shall pass; and, in all such cases, the vote shall be taken by yeas and nays and entered on the journals of each house respectively.

ARTICLE XVI.

GENERAL PROVISIONS.

Section 1. **Official Oath.** Members of the legislature, and all officers, before they enter upon the duties of their offices, shall take the following oath or affirmation: "I (————), do solemnly swear (or affirm), that I will faithfully and impartially discharge and perform all the duties incumbent upon me as ———, according to the best of my skill and ability, agreeably to the Constitution and laws of the United States and of this State; and I do further solemnly swear, (or affirm), that, since the adoption of the Constitution of this State, I, being a citizen of this State, have not fought a duel with deadly weapons, within this State nor out of it, nor have I sent or accepted a challenge to fight a duel with deadly weapons, nor have I acted as second in carrying a challenge, or aided, advised or assisted any person, thus offending; and I furthermore solemnly swear, (or affirm), that I have not, directly nor indirectly, paid, offered or promised to pay, contributed nor promised to contribute, any money or valuable thing, or promised any public office or employment, as a reward for the giving or withholding a vote at the election at which I was elected, (or, if the office is one of appointment, to secure my appointment). So help me God."

193. Oath of office of school trustee. *State v. Cocke*, 54 Texas 482; *Buchanan v. Graham*, 36 Texas Civ. App., 468, 81 S. W. 1237.

What is bribery? *State v. Humphries*, 74 Texas 466, 12 S. W. 99; *West v. Dugger*, 278 S. W. 241.

Sec. 2. **Criminals Disfranchised; Free Suffrage to Be Protected.** Laws shall be made to exclude from office, serving on juries, and from the right of suffrage, those who may have been or shall hereafter be convicted of bribery, perjury, forgery or other high crimes. The privilege of free suffrage shall be protected by laws regulating elections, and prohibiting under adequate penalties all undue influence therein from power, bribery, tumult or other improper practice.

194. Regulation of elections: *Westerman v. Minns*, 111 Texas 29, 227 S. W. 196; *Yett v. Cook*, 115 Texas 205, 281 S. W. 837; *McCallum v. Bounds*, 122 Texas 116, 52 S. W. (2d) 1047; *Ferguson v. McCallum*, 122 Texas 157, 53 S. W. (2d) 768; *Sterling v. Ferguson*, 122 Texas 122, 53 S. W. (2d) 753.

Sec. 3. **Fines and Costs to Be Discharged by Manual Labor.** The legislature shall make provision whereby persons convicted of misdemeanors and committed to the county jails in default of payment of fines and costs, shall be required to discharge such fines and costs by manual labor, under such regulations as may be subscribed by law.

Sec. 4. Duelling. Any citizen of this State who shall, after the adoption of this constitution, fight a duel with deadly weapons, or send or accept a challenge to fight a duel with deadly weapons, either within this State or out of it, or who shall act as second, or knowingly assist in any manner those thus offending, shall be deprived of the right of suffrage, or of holding any office of trust or profit under this State.

195. *Griffin v. State*, 100 Texas Crim. Rep. 641, 274 S. W. 611.

Sec. 5. Bribery in Elections. Every person shall be disqualified from holding any office or profit, or trust, in this State, who shall have been convicted of having given or offered a bribe to procure his election or appointment.

196. See Section 1.

Sec. 6. Appropriations for Private Purposes; Expenditures to Be Published. No appropriation for private or individual purposes shall be made. A regular statement, under oath, and an account of the receipts and expenditures of all public money, shall be published annually, in such manner as shall be prescribed by law.

197. Appropriations may be made to pension fire department employees. *Byrd v. City of Dallas*, 118 Texas 237, 6 S. W. (2d) 738.

Sec. 7. No Papers to Circulate as Money. The legislature shall, in no case, have power to issue "treasury warrants," "treasury notes," or paper of any description intended to circulate as money.

Sec. 8. Workhouses. Each county in the State may provide, in such manner as may be prescribed by law, a manual labor poor-house and farm, for taking care of, managing, employing and supplying the wants of its indigent and poor inhabitants.

Sec. 9. Forfeiture of Residence. Absence on business of the State, or of the United States, shall not forfeit a residence obtained, so as to deprive any one of the right of suffrage, or of being elected or appointed to any office, under the exceptions contained in this Constitution.

198. Government employee may bring suit in county of residence though temporarily employed at seat of government. *Houston Printing Company v. Tennant*, 120 Texas 539, 39 S. W. (2d) 1089, *Id.* 76 S. W. (2d) 762.

Sec. 10. Deduction From Salaries. The legislature shall provide for deductions from the salaries of public officers who may neglect the performance of any duty that may be assigned them by law.

Sec. 11. Interest; Usuary. All contracts for a greater rate of interest than ten per centum per annum shall be deemed usurious, and the first legislature after this amendment is adopted shall provide appropriate pains and penalties to prevent the same; but when no rate of interest is agreed upon, the rate shall not exceed six per centum per annum. (Adopted August 11, 1891.)

199. What constitutes usury. *Commerce Trust Co. v. Best*, 124 Texas ____, 80 S. W. (2d) 942; *Jennings v. Texas Farm Mort. Co.*, 124 Texas ____, 80 S. W. (2d) 931; *Odell v. Commerce Farm Cr. Co.*, 124 Texas ____, 80 S. W. (2d) 295; *Marble Sav. Bank v. Davis*, 124 Texas ____, 80 S. W. (2d) 298.

Sec. 12. Officers Not Eligible. No member of congress, nor person holding or exercising any office of profit or trust, under the United States, or either of them, or under any foreign power, shall be eligible as a member of the legislature, or hold or exercise any office of profit or trust under this State.

200. *State v. DeGress*, 53 Texas 387; *Ex parte Dailey*, 93 Texas Crim. Rep., 68, 246 S. W. 91.

Sec. 13. Arbitration. It shall be the duty of the legislature to pass such laws as may be necessary and proper to decide differences by arbitration, when the parties shall elect that method of trial.

201. One's right to resort to courts. *Panhandle & S. F. Ry. Co. v. Curtis*, 245 S. W. 781; *Robbs v. Woolfolk*, 224 S. W. 232.

Sec. 14. Residence of Officers. All civil officers shall reside within the State, and all district or county officers within their districts or counties, and shall keep their offices at such places as may be required by law; and failure to comply with this condition shall vacate the office so held.

202. *Ehlinger v. Rankell*, 9 Texas Civ. App., 424, 29 S. W. 240; *Chambers v. Baldwin*, 282 S. W. 793 (Com. App.).

Sec. 15. Wife's Separate Property. All property, both real and personal, of the wife, owned or claimed by her before marriage, and that acquired afterward by gift, devise or descent, shall be her separate property and laws shall be passed more clearly defining the rights of the wife, in relation as well to her separate property as that held in common with her husband. Laws shall also be passed providing for the registration of the wife's separate property.

203. Separate property of the wife. *Levin v. Jeffers*, 122 Texas 83, 52 S. W. (2d) 81; *Hawkins v. Britton State Bank*, 122 Texas 69, 52 S. W. (2d) 243.

Sec. 16. Banking Corporations. The legislature shall, by general laws, authorize the incorporation of corporate bodies with banking and discounting privileges, and shall provide for a system

of State supervision, regulation and control of such bodies which will adequately protect and secure the depositors and creditors thereof. Each shareholder of such corporate body incorporated in this State, so long as he owns shares therein, and for twelve months after the date of any bona fide transfer thereof, shall be personally liable for all debts of such corporate body existing at the date of such transfer, to an amount additional to the par value of such shares so owned or transferred, equal to the par value of such shares so owned or transferred. No such corporate body shall be chartered until all of the authorized capital stock has been subscribed and paid for in full in cash. Such body corporate shall not be authorized to engage in business at more than one place, which shall be designated in its charter. No foreign corporation, other than the national banks of the United States, shall be permitted to exercise banking or discounting privileges in this State. (Adopted November 8, 1904.)

204. *Furr v. Chapman*, 286 S. W. 171 (Com. App.); *Shropshire v. Shaw*, 49 S. W. (2d) 708 (Com. App.).

Sec. 17. Officers in Office to Perform Duties. All officers within this State shall continue to perform the duties of their offices until their successors shall be duly qualified.

205. *Hardaway v. State*, 113 Texas Crim. Rep., 436, 22 S. W. (2d) 919; *State v. Jordan*, 28 S. W. (2d) 921.

Sec. 18. Vested Rights. The rights of property and of action which have been acquired under the Constitution and the laws of the Republic and State, shall not be divested; nor shall any rights or actions which have been divested, barred or declared null and void by the Constitution of the Republic and State, be re-invested, renewed or reinstated by this Constitution; but the same shall remain precisely in the situation which they were before the adoption of this Constitution, unless otherwise herein provided; and provided, further, that no cause of action heretofore barred shall be revived.

206. *Miller v. Letzerich*, 121 Texas 248, 49 S. W. (2d) 404; *Limestone County v. Robbins*, 120 Texas 341, 33 S. W. (2d) 580.

Sec. 19. Jurors. The legislature shall prescribe by law the qualification of grand and petit jurors.

207. *Evans v. Galbraith-Foxworth Lbr. Co.*, 31 S. W. 496; *San Antonio & A. P. Ry. Co. v. Lester*, 84 S. W. 403.

Sec. 20. a. Sale of Liquors. The manufacture, sale, barter or exchange in the State of Texas of spirituous, vinous or malt liquors or medicated bitters capable of producing intoxication, or any other intoxicant whatever except vinous or malt liquors of not

more than three and two-tenths per cent (3.2%) alcoholic content by weight, (except for medicinal, mechanical, scientific or sacramental purposes) are each and all hereby prohibited. The legislature shall enact laws to enforce this section, and may from time to time prescribe regulations and limitations relative to the manufacture, sale, barter, exchange or possession for sale of vinous or malt liquors of not more than three and two-tenths per cent (3.2%) alcoholic content by weight; provided the legislature shall enact a law or laws whereby the qualified voters of any county, justice's precinct, town or city, may by a majority vote of those voting, determine from time to time whether the sale of beverage purpose of vinous or malt liquors containing not more than three and two-tenth per cent (3.2%) alcohol by weight shall be prohibited within the prescribed limits; and provided further that in all counties in the State of Texas and in all political subdivisions thereof, wherein the sale of intoxicating liquors had been prohibited by local option elections held under the laws of the State of Texas, and in force at the time of the taking effect of Section 20, Article 16, of the Constitution of Texas, it shall continue to be unlawful to manufacture, sell, barter or exchange in any such county or in any such political subdivision thereof, any spirituous, vinous or malt liquors or medicated bitters, capable of producing intoxication or any other intoxicant whatsoever, unless and until a majority of the qualified voters in said county or political subdivision thereof voting in an election held for such purpose shall determine it to be lawful to manufacture, sell, barter and exchange in said county or political subdivision thereof vinous or malt liquors containing not more than three and two-tenths per cent (3.2%) alcoholic content by weight, and the provision of this subsection shall be self-enacting. (Adopted August 26, 1933.)

THE LEGISLATURE SHALL ENACT LAWS TO ENFORCE THIS
SECTION.

b. Until the legislature shall prescribe other or different regulations on the subject, the sale of spirituous, vinous or malt liquors, or medicated bitters capable of producing intoxication, or any other intoxicants whatever, for medicinal purposes, shall be made only in cases of actual sickness and then only upon the prescription of a regular practicing physician subject to the regulations applicable to sales under prescriptions in prohibited territory by virtue of Article 589, Chapter 7, Title 11 of the Penal Code of the State of Texas.

c. This amendment is self-operative and until the legislature shall prescribe other or different penalties, any person acting for himself or in behalf of another, or in behalf of any partnership, corporation or association of persons, who shall, after the adop-

tion of this amendment violate any part of this constitutional provision shall be deemed guilty of a felony, and shall, upon conviction in a prosecution commenced, carried on and concluded in the manner prescribed by law in cases of felony, be punished by confinement in the penitentiary for a period of time not less than one year nor more than five years, without the benefit of any law providing for a suspended sentence. And the district courts and the judges thereof, under their equity powers, shall have the authority to issue, upon suit of the attorney general, injunctions against infractions or threatened infractions of any part of this constitutional provision.

d. Without effecting the provisions herein, intoxicating liquors are declared to be subject to the general police powers of the State; and the legislature shall have the power to pass any additional prohibitory law or laws in aid thereof, which it may deem advisable.

e. Liability for violating any liquor law in force at the time of the adoption of this amendment shall not be affected by this amendment, and all remedy, civil and criminal, for such violations shall be preserved. [Note: Sections 20 b, c, d and e, supra, adopted May 24, 1919.]

208. Valdez v. State, 110 Texas Crim. Rep., 390, 10 S. W. (2d) 549; Piper v. State, 116 Texas Crim. Rep., 378, 34 S. W. (2d) 283.

Sec. 21. Stationery, Etc.; Public Printing. All stationery and printing, except proclamations and such printing as may be done at the deaf and dumb asylum, paper and fuel used in the legislative and other departments of the Government, except the judicial department, shall be furnished, and the printing and binding of the laws, journals and department reports, and all other printing and binding, and the repairing and furnishing the halls and rooms for the meetings of the legislature and its committees, shall be performed under contract, to be given to the lowest responsible bidder, below such maximum price, and under such regulations, as shall be prescribed by law. No member or officer of any department of the government shall be in any way interested in such contracts; and all such contracts shall be subject to the approval of the Governor, secretary of state and comptroller.

Sec. 22. Fence Laws. The legislature shall have the power to pass such fence laws, applicable to any subdivision of the State or counties, as may be needed to meet the wants of the people.

Sec. 23. Stock Laws. The legislature may pass laws for the regulation of live stock and the protection of stock-raisers in the stock-raising portion of the State, and exempt from the operation

of such laws other portions, sections or counties; and shall have power to pass general and special laws for the inspection of cattle, stock and hides, and for the regulation of brands; provided, that any local law thus passed shall be submitted to the freeholders of the section to be affected thereby, and approved by them before it shall go into effect.

209. *Armstrong v. Whitten* (D. C.), 41 Fed. (2d) 241; *State v. Castleberry*, 252 S. W. 221; *Scurlock v. Wingate*, 283 S. W. 307; *Neal v. Cain*, 247 S. W. 694.

Sec. 24. Roads; Convict Labor. The legislature shall make provision for laying out and working public roads, for the building of bridges, and for utilizing fines, forfeitures and convict labor to all these purposes.

210. *Robbins v. Limestone County*, 114 Texas 345, 268 S. W. 915; *Gonzales County v. Houston*, 81 S. W. 117.

Sec. 25. Drawbacks and Rebatement. That all drawbacks and rebatements of insurance, freight, transportation, carriage, wharfage, storage, compressing, baling, repairing, or for any other kind of labor or service of, or to any cotton, grain, or any other produce or article of commerce in this State, paid or allowed or contracted for, to any common carrier, shipper, merchant, commission merchant, factor, agent, or middleman of any kind, not the true and absolute owner thereof, are forever prohibited; and it shall be the duty of the legislature to pass effective laws punishing all persons in this State who pay, receive or contract for, or respecting the same.

Sec. 26. Homicide; Civil Action For. Every person, corporation or company, that may commit a homicide, through wilful act or omission, or gross neglect, shall be responsible, in exemplary damages, to the surviving husband, widow, heirs of his or her body, or such of them as there may be, without regard to any criminal proceeding that may or may not be had in relation to the homicide.

211. *Chronister Lbr. Co. v. Williams*, 116 Texas 207, 288 S. W. 402; *Smith v. Farrington*, 117 Texas 459, 6 S. W. (2d) 736; *Morton Salt Co. v. Wells*, 123 Texas 151, 70 S. W. (2d) 409.

Sec. 27. Vacancies in Office. In all elections to fill vacancies of office in this State, it shall be to fill the unexpired term only.

212. *Nicks v. Curl*, 38 Texas Civ. App., 445, 86 S. W. 371.

Sec. 28. Wages Exempt From Garnishment. No current wages for personal service shall ever be subject to garnishment.

213. *Alemite Co. v. Magnolia Pet. Co.*, 50 S. W. (2d) 369; *J. M. Radford Gro. Co. v. McKean*, 41 S. W. (2d) 639.

Sec. 29. Barratry. The legislature shall provide by law for defining and punishing barratry.

214. *Fish v. Sadler*, 155 S. Q. 1185; *Thompson & Tucker Lbr. Co. v. Platt*, 154 S. W. 268; *Ford v. Munroe*, 144 S. W. 349.

Sec. 30. Duration of Office. The duration of all offices not fixed by this Constitution shall never exceed two years; provided, that when a railroad commission is created by law it shall be composed of three commissioners, who shall be elected by the people at a general election for State officers, and their terms of office shall be six years; provided, railroad commissioners first elected after this amendment goes into effect shall hold office as follows: One shall serve two years, and one four years, and one six years, their terms to be decided by lot, immediately after they shall have qualified. And one railroad commissioner shall be elected every two years thereafter. In case of vacancy in said office, the Governor of the State shall fill said vacancy by appointment until the next general election. (Adopted Novemembr 6, 1894.)

215. *City of Denison v. Municipal Gas Co.*, 117 Texas 291, 3 S. W. (2d) 794; *Donges v. Beall*, 41 S. W. (2d) 531; *Terrell v. Alpha Pet. Co.*, 122 Texas 257, 59 S. W. (2d) 372.

Sec. 31. Physicians. The legislature may pass laws prescribing the qualifications of practioners of medicine in this State, and to punish persons for malpractice, but no preference shall ever be given by law to any schools of medicine.

216. *Robertus v. State*, 119 Texas Crim. Rep., 370; 45 S. W. (2d) 595; *Hayman v. City of Galveston*, 273 U. S. 414, 47 Sup. Ct., 363, 71 L. Ed. 714.

Sec. 32. Board of Health and Vital Statistics. The legislature may provide by law for the establishment of a board of health and vital statistics, under such rules and regulations as it may deem proper.

Sec. 33. Payment of Warrants by Accounting Officers. The accounting officers of this State shall neither draw nor pay a warrant upon the Treasury in favor of any person, for salary or compensation as agent, officer or appointee, who holds at the same time any other office or position of honor, trust or profit, under this State or the United States, except as prescribed in this Constitution. Provided, that this restriction as to the drawing and paying of warrants upon the Treasury shall not apply to officers of the National Guard of Texas, the National Guard Reserve, the Officers Reserve Corps of the United States, nor to enlisted men of the National Guard, the National Guard Reserve, and the Organized Reserves of the United States, nor to retired officers of the United States Army, Navy, and Marine Corps, and retired

warrant officers and retired enlisted men of the United States Army, Navy, and Marine Corps. (Adopted November 8, 1932.)

217. *Terrell v. King*, 118 Texas 237, 14 S. W. (2d) 786.

Sec. 34. How United States May Acquire Forts, Etc. The legislature shall pass laws authorizing the Governor to lease or sell to the Government of the United States a sufficient quantity of the public domain of the State necessary for the erection of forts, barracks, arsenals, and military stations, or camps, and for other needful military purposes; and the action of the Governor therein shall be subject to the approval of the legislature.

Sec. 35. Laborers on Public Works to Be Protected. The legislature shall, at its first session, pass laws to protect laborers on public buildings, streets, roads, railroads, canals and other similar public works, against the failure of contractors or sub-contractors to pay their current wages when due, and to make the corporation, company or individual, for whose benefit the work is done, responsible for their ultimate payment.

218. *Kerbow v. Wooldridge*, 184 S. W. 746; *N. O. Nelson Co. v. Stephenson*, 168 S. W. 61; *City of Belton v. Head*, 137 S. W. 417.

Sec. 36. Payment of School Teachers. The legislature shall, at its first session, provide for the payment or funding, as they may deem best, of the amounts found to be justly due to the teachers in the public schools, by the State, for service rendered prior to the first day of July, 1873, and for the payment, by the school districts in the State, of amounts justly due teachers of public schools by such district to January, 1876.

219. *Parker v. Buckner*, 67 Texas 20, 2 S. W. 746; *City of Belton v. Head*, 137 S. W. 417.

Sec. 37. Mechanic's Liens. Mechanics, artisans and material men, of every class, shall have a lien upon the buildings and articles made or repaired by them, for the value of their labor done thereon, or material furnished therefor; and the legislature shall provide by law for the speedy and efficient enforcement of said liens.

220. *Byrne v. Williams*, 45 S. W. (2d) 336; *Gugenheim v. Dallas Plumbing Co.*, 59 S. W. (2d) 105.

Sec. 38. Commissioner of Insurance, Statistics and History. The legislature may, at such time as the public interest may require, provide for the office of commissioner of insurance, statistics and history, whose term of office, duties and salary shall be prescribed by law.

221. *City of Denison v. Municipal Gas Co.*, 117 Texas 291, 3 S. W. (2d) 794.

Sec. 39. Memorials of Texas History. The legislature may, from time to time, make appropriations for preserving and perpetuating memorials of the history of Texas, by means of monuments, statues, paintings and documents of historical value.

222. *Conley v. Texas Div. United Daughters of Confederacy*, 164 S. W. 24.

Sec. 40. Only One Civil Office to Be Held. No person shall hold or exercise, at the same time, more than one civil office of emolument, except that of justice of peace, county commissioner, notary public and postmaster, officer of the National Guard, the National Guard Reserve, and the Officers Reserve Corps of the United States and enlisted men of the National Guard, the National Guard Reserve, and the Organized Reserves of the United States, and retired officers of the United States Army, Navy, and Marine Corps, and retired warrant officers, and retired enlisted men of the United States Army, Navy, and Marine Corps, unless otherwise specially provided herein. Provided, that nothing in this Constitution shall be construed to prohibit an officer or enlisted man of the National Guard, and the National Guard Reserve, or an officer in the Officers Reserve Corps of the United States, or an enlisted man in the Organized Reserves of the United States; or retired officers of the United States Army, Navy, and Marine Corps, and retired warrant officers, and retired enlisted men of the United States Army, Navy, and Marine Corps, from holding in conjunction with such office any other office or position of honor, trust or profit, under this State or the United States, or from voting at any election; general, special or primary, in this State when otherwise qualified. (Adopted November 8, 1932.)

223. *Jones v. Alexander*, 122 Texas 328, 59 S. W. (2d) 1080; *First Baptist Church v. City of Fort Worth*, 26 S. W. (2d) 196.

Sec. 41. Bribery. Any person who shall, directly or indirectly, offer, give or promise any money or thing of value, testimonial, privilege or personal advantage, to any executive or judicial officer or member of the legislature, to influence him in the performance of any of his public or official duties, shall be guilty of bribery, and shall be punished in such manner as shall be provided by law. And any member of the legislature, or executive or judicial officer, who shall solicit, demand or receive, or consent to receive, directly or indirectly, for himself or for another, from any company, corporation or person, any money, appointment, employment, testimonial, reward, thing of value or employment, or of personal advantage or promise thereof, for his vote or official influence, or for withholding the same, or with any understanding, expressed or implied, that his vote or official action shall be in any way influenced thereby, or who shall solicit, demand and receive any such money or other advantage, matter

or thing aforesaid, for another, as the consideration of his vote or official influence, in consideration of the payment or promise of such money, advantage, matter or thing to another, shall be held guilty of bribery, within the meaning of the Constitution, and shall incur the disabilities provided for such offenses, with a forfeiture of the office they may hold, and such other additional punishment as is or shall be provided by law.

224. *Graves & Houtchens v. Diamond Hill Ind. Sch Dist.*, 243 S. W. 638; *Davis v. State*, 101 Texas Crim. Rep., 243, 275 S. W. 1060.

Sec. 42. Inebriate Asylum. The legislature may establish an inebriate asylum for the cure of drunkenness and reform of inebriates.

Sec. 43. No Exemption From Public Duty. No man, or set of men, shall ever be exempted, relieved or discharged from the performance of any public duty or service imposed by general law, by any special law. Exemptions from the performance of such public duty or service shall only be made by general law.

225. *Bonner v. Belsterling*, 137 S. W. 1154.

Sec. 44. County Treasurer and Surveyor. The legislature shall prescribe the duties, and provide for the election, by the qualified voters of each county in this State, of a county treasurer and a county surveyor, who shall have an office at the county seat, and hold their office for two years, and until their successors are qualified; and shall have such compensation as may be provided by law.

226. *Shaw v. Smith*, 29 S. W. (2d) 1000; *Carver v. Wheeler County*, 200 S. W. 537; *Charlton v. Cousins*, 103 Texas 116, 124 S. W. 422.

Sec. 45. Records of the History of Texas. It shall be the duty of the legislature to provide for collecting, arranging and safely keeping such records, rolls, correspondence, and other documents, civil and military, relating to the history of Texas, as may be now in the possession of parties willing to confide them to the care and preservation of the State.

227. *Conley v. Daughters of the Confederacy*, 164 S. W. 24.

Sec. 46. Militia. The legislature shall provide by law for organizing and disciplining the militia of the State, in such manner as they shall deem expedient, not incompatible with the constitution and the laws of the United States.

Sec. 47. Scruples Against Bearing Arms. Any person who conscientiously scruples to bear arms shall not be compelled to do so, but shall pay an equivalent for personal service.

Sec. 48. Laws to Remain in Force. All laws and parts of laws now in force in the State of Texas, which are not repugnant to the Constitution of the United States, or to this Constitution, shall continue and remain in force as the laws of this State, until they expire by their own limitation or shall be amended or repealed by the legislature.

228. *Dickson v. Strickland*, 114 Texas 176, 265 S. W. 1012; *McIntruf v. State*, 20 Texas Crim. App., 335.

Sec. 49. Exemptions From Forced Sales. The legislature shall have power, and it shall be its duty, to protect by law from forced sale a certain portion of the personal property of all heads of families, and also of unmarried adults, male and female.

229. *Jon E. Morrison & Co. v. Murff*, 212 S. W. 212; *American Law Book Co. v. Dykes*, 278 S. W. 247; *Stephens v. Cox*, 255 S. W. 241; *Mitchell v. Western Cas. & Guar. Ins. Co.*, 163 S. W. 630.

Sec. 50. Homestead Exemptions; Incumbrance; Pretended Sales. The homestead of a family shall be, and is hereby, protected from forced sale, for the payment of all debts except for the purchase money thereof, or a part of such purchase money, the taxes due thereon, or for work and material used in constructing improvements thereon, and in this last case only when the work and material are contracted for in writing, with the consent of the wife in the same manner as is required in making a sale and conveyance of the homestead; nor shall the owner, if a married man, sell the homestead without the consent of the wife, given in such manner as may be prescribed by law. No mortgage, trust deed, or other lien on the homestead shall ever be valid, except for the purchase money therefor, or improvements made thereon, as hereinbefore provided, whether such mortgage, or trust deed, or other lien, shall have been created by the husband alone, or together with his wife; and all pretended sales of the homestead involving any condition of defeasance shall be void.

230. *Stewart v. Rockdale State Bank*, 124 Texas _____, 79 S. W. (2d) 116; *Sisk v. Randon*, 123 Texas 326, 70 S. W. (2d) 689; *Thompson v. Kay*, 124 Texas _____, 77 S. W. (2d) 201.

Sec. 51. Homestead Defined. The homestead, not in a town or city, shall consist of not more than two hundred acres of land, which may be in one or more parcels, with the improvements thereon; the homestead in a city, town or village, shall consist of lot or lots, not to exceed in value five thousand dollars, at the time of their designation as the homestead, without reference to the value of any improvements thereon; provided, that the same shall be used for the purposes of a home, or as a place to exercise the calling or business of the head of a family; provided,

also, that any temporary renting of the homestead shall not change the character of the same, when no other homestead has been acquired.

231. *Sargeant v. Sargeant*, 118 Texas 343, 15 S. W. (2d) 589; *Mays v. Mays*, 43 S. W. 148; *Woods v. Alvarado State Bank*, 118 Texas 586, 19 S. W. (2d) 35.

Sec. 52. Descent of Homestead. On the death of the husband or wife, or both, the homestead shall descend and vest in like manner as other real property of the deceased, and shall be governed by the same laws of descent and distribution, but it shall not be partitioned among the heirs of the deceased during the lifetime of the surviving husband or wife, or so long as the survivor may elect to use or occupy the same as a homestead, or so long as the guardian of the minor children of the deceased may be permitted, under the order of the proper court having the jurisdiction, to use and occupy the same.

232. *Cline v. Niblo*, 117 Texas 474, 8 S. W. (2d) 633; *Crayton v. Phillips*, 4 S. W. (2d) 691; *Thompson v. Kay*, 124 Texas _____, 77 S. W. (2d) 201; *Ellis v. Scott*, 58 S. W. (2d) 194.

Sec. 53. Declaration Validating Process and Writs. That no inconvenience may arise from the adoption of this Constitution, it is declared that all process and writs of all kinds which have been or may be issued and not returned or executed when this Constitution is adopted, shall remain valid, and shall not be, in any way, affected by the adoption of this Constitution.

233. *Bass v. Albright*, 59 S. W. (2d) 891.

Sec. 54. Indigent Lunatics. It shall be the duty of the legislature to provide for the custody and maintenance of indigent lunatics, at the expense of the State, under such regulations and restrictions as the legislature may prescribe.

Sec. 55. Pensions. The legislature may provide annual pensions, not to exceed one hundred and fifty dollars per annum, to surviving soldiers or volunteers in the war between Texas and Mexico, from the commencement of the revolution in 1835, until the first of January, 1837; and also to the surviving signers of the Declaration of Independence of Texas; and to the surviving widows, continuing unmarried, of such soldiers and signers; provided, that no such pension be granted except to those in indigent circumstances, proof of which shall be made before the county court of the county where the applicant resides, in such manner as may be provided by law.

Sec. 56. No Appropriation for Immigration. The legislature shall have no power to appropriate any of the public money for

the establishment and maintenance of a bureau of immigration, or for any purpose of bringing immigrants to this State.

Sec. 57. State Capitol. Three million acres of public domain are hereby appropriated and set apart for the purpose of erecting a new State capitol and other necessary public buildings at the seat of government, said lands to be sold under the direction of the legislature; and the legislature shall pass suitable laws to carry this section into effect.

234. Findlay v. State, 113 Texas 30, 250 S. W. 651.

Sec. 58. Board of Prison Commissioners; Term of Office, Etc. The legislature shall have full power and authority to provide by law for the management and control of the Prison System of Texas; and to this end shall have power and authority to place the prison system under the supervision, management and control of such trained and experienced officer, or officers, as the legislature may from time to time provide for by law. (Adopted November 2, 1926.)

235. Stamps v. Title, 167 S. W. 776.

Sec. 59. (a) The conservation and development of all of the natural resources of this State, including the control, storing, preservation and distribution of its storm and flood waters, the waters of its rivers and streams, for irrigation, power and all other useful purposes, the reclamation and irrigation of its arid, semi-arid and other lands needing irrigation, the reclamation and drainage of its overflowed lands, and other lands needing drainage, the conservation and development of its forest, water and hydro-electric power, the navigation of its inland and coastal waters, and the preservation and conservation of all such natural resources of the State are each and all hereby declared public rights and duties; and the legislature shall pass all such laws as may be appropriate thereto.

(b) There may be created within the State of Texas, or the State may be divided into, such number of conservation and reclamation districts as may be determined to be essential to the accomplishment of the purposes of this amendment to the constitution, which districts shall be governmental agencies and bodies politic and corporate with such powers of government and with the authority to exercise such rights, privileges and functions concerning the subject matter of this amendment as may be conferred by law.

(c) The legislature shall authorize all such indebtedness as may be necessary to provide all improvements and the maintenance thereof requisite to the achievement of the purposes of

this amendment, and all such indebtedness may be evidenced by bonds of such conservation and reclamation districts, to be issued under such regulations as may be prescribed by law and shall also, authorize the levy and collection within such districts of all such taxes, equitably distributed, as may be necessary for the payment of the interest and the creation of a sinking fund for the payment of such bonds; and also for the maintenance of such districts and improvements, and such indebtedness shall be a lien upon the property assessed for the payment thereof; provided the legislature shall not authorize the issuance of any bonds or provide for any indebtedness against any reclamation district unless such proposition shall first be submitted to the qualified property tax-paying voters of such district and the proposition adopted. (Adopted August 21, 1917.)

236. *Parker v. El Paso County Water Imp. Dist.*, 116 Texas 631, 297 S. W. 737; *Trimmer v. Carlton*, 116 Texas 572, 296 S. W. 1070; *Slater v. Ellis County Levee Imp. Dist.*, 120 Texas 272, 36 S. W. (2d) 1014; *State v. Bradford*, 121 Texas 515, 50 S. W. (2d) 1065; *Chicago, R. I. & G. Ry Co. v. Tarrant Co. W. C. Dist.*, 123 Texas 432, 73 S. W. (2d) 55.

Sec. 60. That the Constitution of the State of Texas be so amended as to authorize a Texas Centennial, commemorating the heroic period of early Texas history, and celebrating a century of our independence and progress, to be held at such times, places and in such manner as may be designated by the legislature of Texas.

That the legislature of Texas be authorized to make appropriation for the support and maintenance thereof; provided, that this authorization shall not be construed to make appropriations for any other future exposition or celebration of any kind or character. (Adopted November 8, 1932.)

ARTICLE XVII.

MODE OF AMENDING THE CONSTITUTION OF THIS STATE.

Section 1. **Amendments to the Constitution Provided For.** The legislature, at any biennial session, by a vote of two-thirds of all the members elected to each house, to be entered by yeas and nays on the journals, may propose amendments to the Constitution, to be voted upon by the qualified electors for members of the legislature, which proposed amendments shall be duly published once a week for four weeks, commencing at least three months before an election, the time of which shall be specified by the legislature, in one weekly newspaper of each county in which such a newspaper may be published; and it shall be the duty of the several returning officers of said election to open a poll for, and make returns to the secretary of state of the number of legal votes cast at said election for and against said amend-

ments; and, if more than one be proposed, then the number of votes cast for and against each of them; and, if it shall appear from said return that a majority of the votes cast have been cast in favor of any amendment, the said amendment so receiving a majority of the votes cast shall become a part of this Constitution, and proclamation shall be made by the Governor thereof.

237. *Collinsworth County v. Allred*, 120 Texas 473, 40 S. W. (2d) 13; *Mumme v. Marrs*, 120 Texas 383, 40 S. W. (2d) 31; *Cartledge v. Wortham*, 105 Texas 585, 153 S. W. 299; *Itasca Ind. Sch. Dist. v. McElroy*, 103 Texas 64, 123 S. W. 117.

CHAPTER II.
AUTHORITY, DUTIES,
POWERS, ETC.

INTRODUCTION TO CHAPTER II.

This chapter, in five sections, covers the statutory provisions supported by proper annotations of the authority, duties, powers, and limitations of county judges, county clerks, county courts, county auditors, commissioners' courts, and boards of equalization.

Section 1 deals with the election and qualifications of the county judge, the county clerk, special judges, jurisdiction of the county court, and the powers, duties and responsibilities of the county judge in matters of probate, and the authority vested in the county clerk to act as county auditor in certain cases.

Section 2 deals with the creation of the commissioners' courts, vacancies, quorum, terms, minutes, and compensation.

Section 3 defines the specific powers of the commissioners' courts, among which are: the delegated powers to levy taxes, approve official bonds, time when taxes are to be levied, fill vacancies, advertise for bids and all contracts to be made in open court and the manner and form of issuing time warrants.

Section 4 deals with the commissioners' courts when sitting as boards of equalization and defines other important functions.

Section 5 has to do with the corporate powers and privileges of counties, claims, and suits thereon, county finances, county auditors, their duties, powers, and privileges.

It has been our purpose to make this chapter a useful and handy storeroom of information for county commissioners and county officials as within it has been gathered the statutory provisions which have to do with the workings of the commissioners' court, and the vested powers of the county judge, the county clerk, and the auditor and boards of equalization.

Authority, Duties, Powers, and Limitations of County Judges,
County Clerks, County Courts, County Auditors,
Commissioners' Courts and Boards of
Equalization.

SECTION 1.

COUNTY JUDGES AND COUNTY CLERKS.

Art. 1927. [1731] [1124] [1133] **Election and qualification.** A county judge who shall be well-informed in the law of this State shall be elected in each county by the qualified voters thereof, at each general election, and shall hold his office for two years. [Const. Art. 5, Sec. 15; Art. 16, Sec. 17; Acts 1876, p. 17, Sec. 1; G. L. Vol. 8, p. 853.]

1. This Article does not require a County Judge to be a lawyer. *Little v. State*, 75 Texas 616, 12 S. W. 965.

Art. 1928. [1732] [1125] [1134] **Bond.** The county judge shall, before entering upon the duties of his office, execute a bond payable to the treasurer of his county to be approved by the commissioners court of his county, in a sum of not less than one thousand nor more than ten thousand dollars, the amount to be fixed by the commissioners court, conditioned that he will pay over to the person or officer entitled to receive it, all moneys that may come into his hands as county judge, and that he will pay over to his county all moneys illegally paid to him out of county funds, as voluntary payments or otherwise, and that he will not vote or give his consent to pay out county funds except for lawful purposes. [Acts 1883, p. 50; Acts 1923, p. 13; G. L. Vol. 9, p. 356.]

2. Where the bond of the County Judge is offered to the Commissioners' Court and disapproved and no other bond is presented, there is a vacancy in the office which the Court should fill. *Gouhenour v. Anderson*, 81 S. W. 104. (Civ. App.) No writ of error.

3. Where Judge loses an election contest, the sureties on his bond are not liable for the salary and fees which he received. *Rowlett v. White*, 46 S. W. 372. (Civ. App.) No writ of error; see also *Rice v. Vasner*, 110 S. W. 1005. (Civ. App.) No writ of error.

Art. 1929. [1733] [1126] [1135] **Absence from office.** He shall attend at his office from day to day, and not absent himself from the county or the State without the permission of the commissioners court, to be entered on its minutes, nor shall he be absent with such permission for a longer period than ninety days. [Acts 1883, p. 8; G. L. Vol. 9, p. 314.]

Art. 1930. [1737] [1130] **Special county judge.** When a judge of the county court is disqualified, the parties may, by consent, appoint a proper person to try such case. [Acts 1893, p. 75.]

4. Where case is tried before a special Judge and appealed, the record Court set out the selection and qualification of said special Judge. *Merrick v. Rogers*, 46 S. W. 370. (Civ. App.) No writ of error; see also *Heidelberg Amusement Club v. Mercedes Lumber Company*, 180 S. W. 1133. No writ of error.

5. A special Judge can not serve unless the regular Judge is disqualified. *Compere v. Girand*, 42 S. W. (2d) 278. (Civ. App.) No writ of error; *Bailey v. Triplett Bros.*, 278 S. W. 250. (Civ. App.) No writ of error.

Art. 1931. [1738] [1131] **Governor may appoint special judge.** Whenever a judge of the county court is disqualified to try a civil case pending in the county court, and the parties shall fail at the first term of the court to agree upon a special judge, the judge shall certify his disqualification to the Governor and the failure to agree upon another to try the same, whereupon the Governor shall appoint some person, learned in the law to try such case. [Id.]

6. Where members of the Bar elect special Judge under Art. 1934, he has jurisdiction to try case when appointee of Governor has not qualified. *Ford v. Simmons*, 171 S. W. 1077. No writ of error.

7. In Probate Appeals bond is made payable to County Judge and special Judge held to be "County Judge." *Walnitzek v. Lewis*, 162 S. W. 963. (Civ. App.) No writ of error.

8. Effort must first be made to agree on special Judge before Governor has authority to appoint. *Clements v. Fort Worth D. S. P. R. R. Co.*, 7 S. W. (2d) 895. (Civ. App.) No writ of error.

Art. 1932. [1738] [1131] **Special judge in probate matter.** When a county judge is disqualified to act in any probate matter, he shall forthwith certify his disqualification therein to the Governor, whereupon the Governor shall appoint some person to act as special judge in said case, who shall act from term to term until such disqualification ceases to exist. [Id.]

Art. 1933. [1739] [1132] **Appointment by wire.** Whenever the county judge or the special judge shall be disqualified from trying a case, the parties or their counsel may agree upon an attorney for the trial thereof; and, if they shall fail to agree upon an attorney at or before the time it is called for trial, or if the trial of the case is pending and the county judge should become unable to act, or is absent, and a special judge is selected who is disqualified to proceed with the trial, and the parties then fail to select or agree upon a special judge who is qualified, the county judge or special judge presiding shall certify the fact to

the Governor immediately, whereupon the Governor shall appoint a special judge, qualified to try same. Such appointment may be made by telegram or otherwise. The special judge shall proceed to the trial or disposition of such case. Any special judge agreed upon or appointed to try cases shall receive the same pay for his services as is provided by law for county judges. [Id.]

Art. 1934. [1741-2] **Election of judges.** If a county judge fails to appear at the time appointed for holding the court, or should he be absent during the term or unable or unwilling to hold the court, a special county judge may be elected in like manner as is provided for the election of a special district judge. The special county judge so elected shall have all the authority of the county judge while in the trial and disposition of any case pending in said court during the absence, inability, or such refusal of the county judge. Similar elections may be held at any time during the term, to supply the absence, failure or inability of the county judge, or any special judge, to perform the duties of the office. When a special county judge shall have been so elected, the clerk shall enter upon the minutes of the court, a record such as is provided for in like cases in the district court. [Acts 1897, p. 7.]

9. This Article is Constitutional. *Porter v. State*, 48 (Cr. App.) (Cr. R.) 125, 86 S. W. 768; *Hooper v. State*, 62 (Cr. R.) 105, 136 S. W. 790; *Ford v. Simmons*, 171 S. W. 1077. (Civ. App.) No writ of error.

10. For special statute covering appointing of Judge in R. R. Condemnation Cases see Article 3266, R. C. S. 1925.

Art. 1935. [1743] [1133] [1142] **Election and power.** A clerk of the county court of each county shall be elected at each general election for a term of two years. Each such clerk shall be authorized to issue all marriage licenses, to administer all oaths and affirmations, and to take affidavits and depositions to be used as provided by law in any of the courts. [As amended Acts 1929, 41st Leg., p. 571, ch. 276, § 1.]

11. The clerk may receive payment of a judgment of the court. *Roberts v. Powell*, 54 S. W. 643. (Civ. App.) No writ of error.

Art. 1936. [1745-6] **Clerk pro tem.** Where a county clerk shall be a party to any motion or proceeding in his court, the county judge shall, on his own motion, or on application of any person interested, appoint a clerk pro tempore for the purposes of such suit, motion or proceeding. The person so appointed shall take the oath to faithfully and impartially perform the duties of such appointment, and shall also enter into bond, payable to the State of Texas, in such amount as may be required by the

judge, to be approved by him, and conditioned for the faithful performance of his duties under such appointment. The person so appointed shall perform all the duties required by law of the clerk in the particular suit, motion or proceeding in which he may be appointed. [Acts 1887, p. 102; G. L. Vol. 9, p. 900.]

12. Where the clerk is a party to the litigation and issues the process thereon, it should be set aside on motion. *Lewis v. Hutchison*, 16 S. W. 654. (Court of Appeals.)

Art. 1937 [1747] [1137] [1144] **Bond and oath.** Each county clerk shall, before entering upon the duties of his office give bond with two or more good and sufficient sureties, to be approved by the commissioners court of the county, payable to the Governor in a sum to be fixed by the commissioners court, not less than two thousand nor more than ten thousand dollars conditioned for the safekeeping of the records and the faithful discharge of the duties of his office, and further conditioned that said clerk will pay over to his county all moneys illegally paid to him out of the county funds, as voluntary payments or otherwise. Said clerk shall also take and subscribe the official oath which shall be indorsed upon the bond, and the bond and oath so taken and approved shall be recorded in the county clerk's office, and deposited in the office of the clerk of the district court. A certified copy of such bond may be put in suit in the name of the Governor for the use of the party injured. [Acts 1876, p. 10; G. L. Vol. 8, p. 846; Acts 1923, p. 24.]

13. Sureties on bond of County Clerk are liable for an abuse of authority. The act of a Deputy Clerk issuing illegal warrants creates liability against the bondsmen. *Myers v. Colquitt*, 173 S. W. 993. (Civ. App.) No writ of error.

Art. 1938. [1748-9-50] **Deputies.** The county clerk may in writing, appoint one or more deputies under his hand and the seal of his court, which shall be recorded in the office of such clerk, and shall be deposited in the office of the district clerk. Deputies shall take the official oath and shall act in the name of their principal, and may do and perform all such official acts as may be lawfully done and performed by such clerk in person. When the clerk does not reside at the county seat, he shall have a deputy residing there. [Acts 1876, p. 10; P. D. 500; G. L. Vol. 8, p. 846.]

14. The jurat of a Deputy County Clerk is legal. *Mayhew v. Commissioners' Court of Coryell County*, 214 S. W. 943. (Civ. App.) No writ of error; see also *Clup v. Commissioners' Court of Coryell County*, 214 S. W. 944. (Civ. App.) No writ of error.

15. A Deputy may perform all official acts as well as the Clerk. *Jones v. Mac Corquodale*, 218 S. W. 59, 62. (Civ. App.) Writ refused.

Art. 1939. **Soldiers' records.** Each county clerk shall record in a well bound book the official discharge of each soldier, sailor or other person resident in the county who served at home or abroad in the army or navy forces of the United States in the late World War. For such services said clerk shall be allowed by the commissioners court, out of the general fund of the county, not to exceed fifteen cents for each one hundred words so recorded. [Acts 1919, p. 154.]

Art. 1940. [1753] [1143] [1150] **Clerk of commissioners court.** They shall be ex-officio clerks of the commissioners court.

Art. 1941. [1754] [1144] [1151] **Recorders.** They shall be ex-officio recorders for their several counties, and as such shall record in suitable books to be procured for that purpose all deeds, mortgages and other instruments required or permitted by law to be recorded; they shall be the keepers of such record books, and shall keep the same properly indexed, arranged and preserved. [Id.]

Art. 1942. [1755] [1145] [1152] **Custody of records.** They shall be keepers of the records, books, papers and proceedings of their respective courts in civil and criminal cases and in matters of probate, and see that the same are properly indexed, arranged and preserved, and shall perform such other duties in that behalf as may be by law imposed on them. [Id.]

Art. 1943. [1756] [1146] [1153] **Keep record of proceedings.** They shall keep a fair record of all the acts done and proceedings had in their respective courts, and enter all judgments of the court, under the direction of the judge, and shall keep a record of each execution issued, and of the returns thereon. [Id. P. D. 504.]

Art. 1944. [1757] [1147] [1154] **Index to judgments.** They shall provide and keep in their respective offices, as part of the records thereof, full and complete alphabetical indexes of the names of the parties to all suits filed in their courts, which indexes shall be kept in well bound books, and shall state in full the names of all the parties to such suits, which shall be indexed and cross indexed, so as to show the name of each party under the proper letter; and a reference shall be made opposite each name to the page of the minute book upon which is entered the judgment in each case. [Acts 1876, p. 25; G. L. Vol. 8, p. 861.]

Art. 1945. [1758] [1148] [1155] **Other dockets, indexes, etc.** The clerk shall keep such other dockets, books and indexes

as may be required by law; and all books, records and filed papers belonging to the office of county clerks shall at all reasonable times be open to the inspection and examination of any citizen, who shall have the right to make copies of the same. [Acts 1905, p. 114.]

Art. 1946. [1759] [1149] [1156] **Report fines and jury fees.** On the last day of each term of the county court, the clerk shall make a written statement showing all moneys received by him for jury fees and fines since his last statement, with the names of the parties from whom received; and the name of each juror who has served at such term; the number of days he served, and the amount due him for such service. Such statement shall be examined and corrected by the presiding judge, and be approved and signed by him. When so approved and signed it shall be recorded in the minutes of the court. [Acts 1876, p. 23; G. L. Vol. 8, p. 859.]

Art. 1947. [1760] [1150] [1157] **Jury fees and fines.** The clerk shall pay to the county treasurer all jury fees and fines received by him to the use of the county.

Art. 1948. [1762] [1153] [1160] **Shall use seal.** Where in any county a joint clerk shall have been elected, he shall, in performing the duties of county clerk, use the seal of said court to authenticate his official acts as such clerk.

Art. 1949. [1763] [1154] [1161] **Exclusive original jurisdiction.** The county court shall have exclusive original jurisdiction in civil cases when the matter in controversy shall exceed in value two hundred dollars, and shall not exceed five hundred dollars, exclusive of interest. [Const. Art. 5, Sec. 16; Acts 1876, p. 172; G. L. Vol. 8, p. 1008.]

Art. 1950. [1764] [1155] [1162] **Concurrent original jurisdiction.** The county court shall have concurrent jurisdiction with the district court when the matter in controversy shall exceed five hundred and not exceed one thousand dollars, exclusive of interest. [Id.]

Art. 1951. [1766] [1157] [1164] **No jurisdiction.** The county court shall not have jurisdiction of any suit to recover damages for slander or defamation of character, nor of suits of the recovery of lands, nor suits for the enforcement of liens upon land, nor of suits in behalf of the State for escheats, nor of suits for divorce, nor of suits for the forfeiture of the charters of corporations and incorporated companies, nor of suits for the trial of the right to property levied on by virtue of any writ

of execution, sequestration or attachment, when the property levied on shall be equal to or exceed in value five hundred dollars. [Id.]

Art. 1952. [1767] [1158] [1165] **Appellate jurisdiction.** The county court shall have appellate jurisdiction in civil cases over which the justice courts have original jurisdiction when the judgment appealed from or the amount in controversy shall exceed twenty dollars, exclusive of costs. [Id.]

Art. 1953. [1768] [1159] [1166] **Certiorari to justice courts.** The county court shall also have jurisdiction in cases brought up from the justice courts by certiorari.

16. The practice in the County Court is the same as that of the District Court and is not properly within the scope of this work, however the County Judge is often called upon to pass upon questions concerning the jurisdiction of his court. Oftentimes cases are brought before the court when jurisdiction is lacking and which ought to have been brought in some other forum and which cannot be adjudicated in the County Court.

17. Art. 1949. Shall exceed in value \$200.00 and shall not exceed in value \$500.00.

In an action to foreclose a chattel mortgage the jurisdiction is determined by value of mortgaged property and not by the amount of debt secured thereby. *McKee v. LeFors*, 253 S. W. 598, (Civ. App.) except where the lien is fixed by statute and limited to certain part of the property, such as a landlord's lien. *R. O. Kipp Co. v. Anglin*, 270 S. W. 893. (Civ. App.) No writ of error.

18. Where the value of the mortgaged property is less than the debt the court has jurisdiction but where the value of the property exceeds the debt, such value fixes the jurisdiction. *Marshall v. G. A. Stowers Furniture Co.*, 167 S. W. 230. (Civ. App.) No writ of error.

19. A claim in good faith of an amount sufficient to give County Court jurisdiction sustains jurisdiction to decide case though plaintiff failed to prove such claim. *C. R. Garner & Co. v. Riley*, 238 S. W. 953. (Civ. App.) No writ of error.

20. The County Court is without jurisdiction of an action for a money judgment where the amount sued for is less than \$100.00 unless the debt is secured by property worth more than \$200.00. *Thompson v. Perryman*, 141 S. W. 184. (Civ. App.) No writ of error.

21. Where note provides for attorney's fees it is as much a part of the note as the principal sum and if the attorney's fee when added to the principal exceeds the sum of \$200.00 the County Court has jurisdiction. *McRimmon & Co. v. Hart*, 87 S. W. 882. (Civ. App.) No writ of error.

22. Original jurisdiction of a forcible detainer suit is in the Justice Court and not the County Court. *Benavides v. Benavides*, 174 S. W. 293. (Civ. App.) No writ of error.

23. The County Court has exclusive jurisdiction of a money demand for \$500.00. *Waller v. Gray*, 94 S. W. 1098. (Civ. App.) No writ of error.

24. Art. 1950. County Court has concurrent jurisdiction with District Court when matter in controversy exceeds \$500.00 and does not exceed \$1,000.00.

The County Court is of limited jurisdiction and its jurisdiction must be definitely shown and will not be presumed. *Bohl v. Brown*, 2 App. C. C., par. 540.

25. Art. 1952. County Court has appellate jurisdiction over Justice Courts when amount exceeds twenty dollars. See Art. 2454 and Art. 1953.

26. Art. 56, C. C. P. The County Court has original jurisdiction over all misdemeanor cases when the fine allowed to be imposed shall exceed \$200.00.

27. Art. 57, C. C. P. The County Court has appellate jurisdiction in criminal cases in which justice and other inferior courts have original jurisdiction.

28. Art. 1083-1093, C. C. P., deals with the duty of County Judges in the trial and committment of delinquent children.

Under Commissioners' Courts we have discussed the duties which devolve upon the courts in maintaining juvenile delinquents.

Art. 1954. [1769] [1160] [1167] **Motions against officers.** The county court may hear and determine all motions against sheriffs and other officers of the court for failure to pay over moneys collected under the process of said court, or other defalcation of duty in connection with such process. [Acts 1876, p. 23; G. L. Vol. 8, p. 859.]

Art. 1955. [1770] [1161] [1168] **To punish for contempt.** The county court may punish, by fine not exceeding one hundred dollars, and by imprisonment not exceeding three days, persons guilty of contempt of such court. [Acts 1846, p. 200; P. D. 1409; G. L. Vol. 2, p. 1506.]

Art. 1956. [1771] [1169] **Law and equity powers.** Subject to the limitation stated in this chapter, the county court is authorized to hear and determine any cause which is cognizable by courts, either of law or equity, and to grant any relief which could be granted by said courts, or either of them. [Id; P. D. 1410.]

Art. 1957. [1772] [1163] [1170] **To grant remedial writs.** The county judge, either in term time or vacation, may grant writs of mandamus, injunction, sequestration, attachment, garnishment, certiorari and supersedeas, and all other writs necessary to the enforcement of the jurisdiction of the court. [Const. Art. 5, Sec. 16; Acts 1876, p. 19; G. L. Vol 8, p. 855.]

Art. 1958. [1773] [1164] [1171] **Appointing attorneys.** The county judge may appoint counsel to attend to the cause of any party who makes affidavit that he is too poor to employ counsel to attend to the same. [Acts 1846, p. 200, Sec. 11; P. D. 1414; G. L. Vol. 2, p. 1506.]

Art. 1959. [1774] [1165] [1172] **Additional authority.** The county court and the county judge shall also have such authority as may be vested in them by law.

Art. 1960 [1775] [1166] **Changed jurisdiction; eminent domain.** Where the jurisdiction of a county court has been taken away, altered or changed by existing laws, the same shall remain as established, until otherwise provided by law. Jurisdiction shall obtain in all matters of eminent domain over which the county courts have jurisdiction by the general laws of this State. [Acts 1885, p. 77; G. L. Vol. 9, p. 697.]

Art. 1961. [1776] [1167] **Terms of court.** The county court shall hold at least four terms for both civil and criminal business annually, and such other terms each year as may be fixed by the commissioners' court. After having fixed the times and number of terms of a county court, they shall not change the same until the expiration of one year. Until, or unless otherwise provided, the term of the county court shall be held on the first Monday in February, May, August and November, and may remain in session three weeks; provided said court shall be open at all times for the transaction of probate business. [As amended Acts 1929, 41st Leg., 1st C. S., p. 107, Ch. 48, Sec. 2.]

29. Special terms. County Commissioners' Court has authority to fix extra terms for County Courts. *Farrow v. Star Ins. Co. of America.* (Civ. App.) 273 S. W. 318. No writ of error.

Art. 1962. [1176-1177] **Other terms.** The commissioners court may, at a regular term thereof, by an order entered upon its records, provide for more terms of the county court for the transaction of civil, criminal and probate business, and fix the times at which each of the four terms required by the Constitution, and the terms exceeding four, if any, shall be held not to exceed six annually, and may fix the length of each term. When the number of the terms of the county court has been fixed, the court shall not change the order before one year from the date of entry of the original order fixing such terms. [Acts 1885, p. 53.]

Art. 1963. [1776] [1167] **Probate business.** Said court shall dispose of probate business either in term time or vacation under such regulations as may be prescribed by law. [Id.]

Art. 1964. [1178] [1169] **Judge failing to appear.** If the county judge fails to appear at the time appointed for holding his court and no election of a special judge is had, the sheriff of the county, or, in his default, any constable of the county, shall adjourn the court from day to day for three days. If the judge

should not appear on the fourth day and no special judge is elected, the sheriff or constable as the case may be, shall adjourn the court until the next regular term thereof. [Acts 1846, p. 200; P. D. 1412; G. L. Vol. 2, p. 1506.]

Art. 1965. [1779-1780] [1170] [1175] **Minutes.** The minutes of the proceedings of each preceding day of the session shall be read in open court on the morning of the succeeding day, except on the last day of the session, on which day they shall be read, and if necessary be corrected, and signed in open court by the County Judge. Each special judge shall sign the minutes of such proceedings as were had before him; provided the probate minutes of said court shall be approved by the presiding judge every thirty days. [As amended Acts 1929, 41st Leg., 1st C. S., p. 107, Ch. 48, Sec. 3.]

Art. 1966. [1781] [1172] [1177] **Seal of the court.** Each county court shall be provided with a seal, having engraved thereon a star of five points in the center, and the words, "County Court of.....County, Texas," the impress of which shall be attached to all process, except subpoenas, issued out of such court, and shall be used to authenticate the official acts of the clerk and of the county judge. [Id.]

Art. 1967. [1783] [1174] [1179] **Probate day designated.** On the first day of the term for civil business, the county judge shall, by an order entered on the minutes, designate a day for taking up the probate business; and the probate docket shall thereupon be called in its regular order unless otherwise ordered by the court. [Acts 1876, p. 22; G. L. Vol. 8, p. 858.]

THE POWERS, DUTIES, AND RESPONSIBILITIES OF THE COUNTY JUDGE AND COUNTY COURT IN MATTERS OF PROBATE

The statutes which cover the probate jurisdiction of the county court are embraced within article 3290 R. S. 1925 to an including Article 3703 thereof. Setting out these articles in extenso would hardly come within the scope and purview of this work, however, they are so closely related to and cover so many duties of the county judge that we feel justified in noting the salient and pertinent provisions which deal with and concern the responsibilities of the county judge in the administration of the estates and probate of wills.

The county court when it sits in matters of probate is a court of general jurisdiction and entitled to all the rights of a court of that class. It has the same judicial discretion in regard to matters coming before it that the district court has with reference to matters within its jurisdiction. *Crawford v. McDonald*, 88 Texas 626,

33 S. W. 325; and as a general rule the probate court has exclusive control of sales of property belonging to estates being administered in such court. *Nevill v. Hinkle*, 276 S. W. 324. (Civ. App. No writ of error.)

Art. 5, Sec. 16, of the Constitution defines the powers of the probate court in general terms as follows:

“That county courts shall have the general jurisdiction of a probate court. They shall probate wills; appoint guardians of minors, idiots, lunatics, persons non compos mentis and common drunkards; grant letters testamentary and of administration; settle the accounts of executors; transact all business appertaining to deceased persons, minors, lunatics, persons non compos mentis and common drunkards, including the settlement, partition and distribution of estates of deceased persons, etc.”

In connection with the above Constitutional provisions see *Alarÿdyce v. Hambleton*, 96 Texas 30; 70 S. W. 76.

Art. 5, Sec. 8, as changed by amendment of September 22, 1891, provides that:

“The district court shall have appellate jurisdiction and general control over executors, administrators and guardians and minors, under such regulations as may be prescribed by law.”

Exercise of constitutional grants of probate authority must conform to valid statutory regulations. *Smith v. Pascal*, 1 S. W. (2d) 1086. (Com. App.)

Where the county court has acquired jurisdiction over decedent's estate it cannot be destroyed, diminished, or suspended by bringing action in another court. *O'Neil v. Norton*, 29 S. W. (2d) 1060. (Com. App.)

When by reason of unusual issues involved the scope and power of the probate court is inadequate to grant the full relief prayed for, the district court has jurisdiction. [Id.]

The county judge may and it is his duty to protect the assets of an estate from dissipation by those having charge thereof pending a contest of a will. *Buchanan v. Davis*, 60 S. W. (2d) 192. (Com. App.)

The administration of estates as embraced within our constitutional and statutory enactments, include every necessary provision to conserve and protect the interests, rights, and property involved,, properly taking out administration, the right to administration, mode and manner of filing proceedings before the probate court either for temporary or permanent administration or the issuance of letters testamentary, the oath and bonds of administrators and executors, independent executors, liability on

bonds, administrators de bonis non, guardian and ward, setting aside the homestead, classification of estates as to claims, etc.

The statutes dealing with Guardian and Ward are embraced within 4102 R. S. 1925 to and including 4339 thereof. These statutes are very comprehensive and point out in detail the proper and legal method of managing and disposing of the estate of the ward, and the guardian's control of the person of the ward during the term for which the guardianship shall exist.

In our jurisprudence perhaps probate proceedings necessitate and require more vigilance and care in following the statutory procedure than in any other matters coming before a court. Especially should the county judge see to it that in the progress of an estate through his court that nothing be left undone which the statutes designate should be done.

All decisions, orders, decrees, and judgments of the county court in probate matters shall be rendered in open court, and the same shall be entered on the records of the court during the term at which they are rendered. Art. 3302 R. S. 1925. All decisions, orders, and judgments not entered on the records, as required by this article are nullities. *West v. Keeton*, 42 S. W. 1034. (Civ. App. No writ of error.)

To place upon the county judge exclusive responsibility for the administration of estates, Article 3304 R. S. 1925, provides that there shall be no trial by jury in probate matters in the county court and the statutes confer upon the county clerk the same degree of "Eternal Vigilance" to see to it that from the opening to the close of an estate in his court, that the letter of the law is carried out.

The 42nd Legislature, Ch. 123, p. 210, made an important change in the service of citation and notices in probate matters and provided for 10 day services of citation returnable to the court on the first Monday after the services were perfected, and thus expedited the hearing of probate matters.

The 44th Legislature passed House Bill No. 541 which provides for ten day service of citation in guardianship matters so as to make the procedure conform to the law of service of citation in other probate matters.

Where a will is offered for probate it must be produced and proven or its absence must be accounted for before it will be admitted to probate and before a will can be given effect it must be probated according to statutory requirements. *Weidner v. Katt*, 279 S. W. 909 (Civ. App. Dismissed W. O. J.); *Taylor v. Martin's estate*, 117 Texas 302, 3 S. W. (2d) 408. Where real estate is located in Texas it does not pass under will probated in Scotland

until properly probated in Texas. *Kennedy's estate v. Richardson*, 41 S. W. (2d) 95. (Civ. App. No writ of error.)

The county judge can hardly go wrong if, in passing upon probate matters he is thoroughly conversant with and follows the statutes governing same.

Art. 1968. [1784] [1175] [1180] **When case is transferred.** Whenever a cause shall be transferred from the county court to the district court, the clerk shall immediately make out a transcript of all the proceedings had in said cause in the county court, and shall transmit the same, duly certified as such, together with a bill of the costs which have accrued in said court, and the original papers in the cause, to the clerk of the district court. [Acts 1876, p. 19; G. L. Vol. 8, p. 855.]

Art. 1969. [1785] [1176] **Jurisdiction taken away.** Each clerk of the county court where the civil and criminal jurisdiction, or either, of the county courts has been transferred to the district court, shall make out a certified copy of all judgments remaining unsatisfied, which have been rendered in civil or criminal cases in the county court, and transmit the same to the clerk of the district court of their respective counties. [Acts 1879, p. 10; G. L. Vol. 9, p. 42.]

Art. 1970. County courts at law. All county courts at law and all similar courts by whatever name known, which now exist, shall be continued in force, together with their organization, jurisdiction, duties, powers, procedure and emoluments that now exist by law, until otherwise changed by law.

Stenographer or clerk for county judge in certain counties.—In any county in this State of less than one hundred thousand inhabitants according to the United States census of nineteen hundred twenty, which county contains a city of more than forty-three thousand inhabitants according to said census, the county judge shall be allowed to employ a stenographer or clerk at a salary not exceeding one hundred twenty-five dollars per month, such salary to be paid monthly by the county by warrants drawn on the general county fund. Such stenographer or clerk shall be subject to removal at the will of such county judge. [Acts 1929, 41st Leg., p. 296, Ch. 136, Sec. 1.]

County judge to employ stenographer or clerk, salary. Sec. 1. In any county of this State of less than one hundred thousand inhabitants, wherein is situated a city having an actual population of 38,489 inhabitants or more, the county judge shall ascertain the population of any city in his county necessary to be ascertained under this Act by making application to the mayor of

any such city for a certificate as to the population of such city. It shall be the duty of any such mayor to ascertain by some reasonable, accurate estimate the population of any such city and his certificate to same under oath shall authorize the county judge to assume its correctness and act upon the information contained in such certificate in making any appointment of a stenographer or clerk under this Act. The population of the county shall be based on the latest United States Census for the purposes of this Act.

Sec. 2. In any county in this State of less than 100,000 inhabitants wherein is situated a city having a population of 38,489 inhabitants so certified by the mayor of the town, as provided in Section 1, hereof, the county judge shall be allowed to employ a stenographer or clerk at a salary not exceeding one hundred and twenty-five (\$125.00) dollars per month, such salary to be paid monthly by the county by warrants drawn on the general county fund, under orders of the commissioners court of such county. Such stenographer or clerk shall be subject to removal at the will of such county judge. [Acts 1929, 41st Leg., 2nd C. S., p. 156, Ch. 79.]

County auditors or clerks to compile tax statistics for counties and municipalities; reports to State auditor; compilation of information by State auditor.—Sec. 1. The county auditor in each county, if there be a county auditor, and if not, then the county clerk of each county shall secure and compile during the month of September the following information from the county, cities and towns, school districts and all other local units of government within the county authorized to levy and collect taxes, or to issue bonds:

- (a) The amount of taxes collected for all purposes during the previous fiscal year.
- (b) The amount of taxes delinquent at the end of the previous fiscal year.
- (c) The amount to the credit of sinking funds to retire bonded indebtedness at the end of the previous fiscal year.
- (d) The amount of outstanding bonded indebtedness and outstanding warrants at the end of the previous fiscal year.

Sec. 2. The county auditor, or in counties not having any county auditor, the county clerk is hereby authorized, empowered, and directed to require from various officials of the county, cities and towns, school districts and all other local units of government within the county authorized to levy and collect taxes, or to issue bonds, such reports as are necessary to enable him to compile the information set forth in Section 1 of this Act; and it shall be the duty of the county auditor, if there be a county auditor, and if not,

then of the county clerk, to send a request to the proper officials for such information between the 1st and 15th days of September of each year, and officials to whom such requests are sent, are required to furnish the information requested on or before September 30th of each year.

Sec. 3. When this information is received, it shall be the duty of the county auditor, if there be a county auditor, and if not, then of the county clerk, to maintain a file in his office to be open to the inspection of any taxpayer, of all reports submitted to him in compliance with the provisions of this Act. And it shall also be the duty of the county auditor, if there be one, if not, the county clerk, to make a compiled report covering the county at large showing the total outstanding bonded indebtedness and outstanding warrants within the county, the total moneys then on deposit to the credit of sinking funds within the county to retire outstanding bonded indebtedness, the total amount of taxes collected for all purposes within the county, and the total amount of taxes delinquent at the end of the fiscal year within the county assessed for all purposes. This report shall be compiled by the county auditor, if there be a county auditor, if not, then by the county clerk, and such county auditor or county clerk, as the case may be, shall forward such report to the State auditor at Austin not later than October 15th of each year.

Sec. 4. The State auditor shall, upon receipt of the information called for in this Act from the various county auditors, or county clerks throughout the State, prepare a compiled report for the State at large—which report shall furnish the following information for each county in the State:

(a) The amount of taxes collected for all purposes during the previous fiscal year by the county and all governmental divisions thereof.

(b) The total amount of taxes levied for all purposes due the county, as well as the amounts due all governmental subdivisions within the county, delinquent at the close of the previous fiscal year.

(c) The total amount accumulated at the end of the previous fiscal year to the credit of sinking funds set aside to retire bonds heretofore issued by the county and by any and all governmental subdivisions within the county.

(d) The total amount of all outstanding bonded indebtedness and outstanding warrants of the county and all governmental subdivisions thereof, at the end of the previous fiscal year.

(e) The grand total of each of the above items for the State at large.

Sec. 6. In case of the failure of any official of any unit of government in the State to furnish the above referred to reports to the county auditor, or the county clerk as the case may be, within the time specified by this Act, it shall be the duty of the county auditor, or the county clerk, to give official notice to the county attorney of the proper county, of the failure of such official to comply with the provisions of this Act, and it shall be the duty of the county attorney to immediately instigate proceedings for the punishment of such official.

Sec. 7. Reports called for herein are in addition to reports already required by law, and no additional compensation shall be paid to any official of the county or State for the compilation of such reports. [Acts 1931, 42nd Leg., p. 500, Ch. 279.]

SECTION 2.

CREATION OF COMMISSIONERS' COURTS—VACANCIES—QUORUM—TERMS—MINUTES—COMPENSATION—ACTS INVALID.

Art. 2339. [2236] [1532] [1509]] **Election.** Each county shall be divided into four commissioners precincts, and one commissioner shall be elected biennially in each precinct, and each commissioner shall hold his office for two years. [Const. Art. 5, Sec. 18; Acts 1876, p. 51, Sec. 3; G. L. Vol 8, p. 887.]

30. A commissioners precinct is a political subdivision of the county within the meaning of the Constitution. Art. 16, Sec. 20. *Cofield v. Britton*, 109 S. W. 493. (Civ. App.) Dismissed W. O. J.

31. Taxpayers will not be heard to complain of the validity of the re-districting of commissioners precincts making them more convenient. *Ward v. Bond*, 10 S. W. (2d) 590. (Civ. App.) No writ of error.

32. Under Art. 16, Sec. 17 and Art. 5, Sec. 18 of the Constitution and Arts. 2339, 2341, 3030, 3032 of the Revised Statutes of 1925 the county commissioner's term expired when result of election was required to be declared and if no commissioner was elected there was a vacancy, and the defendant's subsequent qualification was not premature. *Tom v. Klepper*. 172 S. W. 721. (Civ. App.) Writ refused.

Art. 2340. [2239] [1535] [1512] **Oath and bond.** Before entering upon the duties of their office, the county judge and each commissioner shall take the official oath, and shall also take a written oath that he will not be directly or indirectly interested in any contract with, or claim against, the county in which he resides, except such warrants as may issue to him as fees of office. Each commissioner shall execute a bond to be approved by the county judge in the sum of three thousand dollars, payable to the county treasurer, conditioned for the faithful performance of the duties of his office, that he will pay over to his county all moneys illegally paid to him out of county funds, as voluntary payments or otherwise, and that he will not

vote or give his consent to pay out county funds except for lawful purposes. [Acts 1923, p. 14.]

33. Within thirty days after election commissioners may qualify. An organization perfected prior to the expiration of that time is premature. *Cassin v. Zavalla County*, 70 Texas 419, 8 S. W. 97.

34. The county judge in connection with two commissioners cannot organize the court before the others have qualified and before the expiration of the time allowed by law for such qualification. *Cassin v. Zavalla County*, 70 Texas 419, 8 S. W. 97.

35. County commissioner is without authority to receive assignment of claims against the county except such warrants as may be assigned to him as fees of office. *Knippa v. Stewart Iron Works*, 66 S. W. 322. (Civ. App.) No writ of error.

36. Under above article petition against county commissioner for amounts collected for services to county in which he could not be interested, which failed to show that such amounts were collected other than for real owners, did not state a cause of action, and did not show liability of sureties of official bond. *Polk v. Roebuck*, 184 S. W. 513. (Civ. App.) No writ of error.

37. Under Const. Art. 16, Sec. 17, providing that all officers shall continue to perform the duties of their office until their successors are elected and qualified, county commissioners and county judge who, having qualified and served during one term of office, or re-elected to the same offices for another term and who continue to perform the duties of the office but do not take the oath of office or give a new bond are, nevertheless, de jure officers. *State v. Jordan*, 28 S. W. (2d) 921. (Ct. Civ. App., Amarillo.) Dismissed W. O. J.

Art. 2341. [2240] [1536] [1513] **Vacancy.** In case of vacancy in the office of commissioner, the county judge shall appoint some suitable person living in the precinct where such vacancy occurs, to serve as commissioner for such precinct until the next general election. [Acts 1876, p. 51; G. L. Vol. 8, p. 887.]

38. See *Tom v. Klepper*, 172 S. W. 721. (Civ. App.) Writ refused.

Art. 2342. [2237] [1533] [1510] **The Court.** The several commissioners, together with the county judge, shall compose the "Commissioners Court," and the county judge, when present, shall be the presiding officer of said court. [Const. Art. 5, Sec. 18; Acts 1876, p. 51; G. L. Vol. 8, p. 887.]

39. Where the county judge is not present all of the commissioners must be in attendance to constitute a legal court. *West v. Burke*, 60 Texas 51.

40. A commissioner's court, which is required by article 2344 to authenticate all official acts under seal, is a "court of record." *Bradford v. Moseley*, 223 S. W. 171. (Com. App.)

41. An officer to whom is committed the power of acting in a judicial or quasi-judicial capacity is not personally liable for an honest, though mistaken, exercise of his power. *Comanche County v. Burks*, 166 S. W. 470. (Civ. App.) Writ refused.

42. Where an appeal has been taken from the action of a commissioners' court in the matter of assessing damages for laying out a public road through one's land, neither notice of appeal nor appeal bond are required to be given. *Karnes County v. Ray*, 57 S. W. 77. (Civ. App.) No writ of error.

43. The district judge has no authority to remove from office a county official for incompetency or misconduct, unless said official is found guilty thereof by jury. *State ex rel. Hale v. O'Meara, Co. Judge*, 74 S. W. (2d) 146. (Civ. App., San Antonio.) No writ of error.

44. Where population of county is less than 25,000 inhabitants the salary of the county judge is not controlled by the maximum fee bill. *Hood v. Cain*, 32 S. W. (2d) 485. (Ct. Civ. App., Amarillo.) Writ refused.

Art. 2343. [2238] [1534] [1511] **Quorum.** Any three members of the said court, including the county judge, shall constitute a quorum for the transaction of any business, except that of levying a county tax. [Id.]

45. A tax levied at a called session of the court, or without the presence of the full membership, is invalid. *Free v. Scarbrough*, 70 Texas 672, 8 S. W. 430.

46. Except for the purpose of taxation, if three members of the court are present it is immaterial that the county judge is absent. *Racer v. State*, 73 S. W. 968. (Crim. App.)

47. At a meeting of the commissioners' court, one commissioner being absent and the county judge presided, a verbal order was made increasing the judge's compensation and there being no proof that he voted for such increase, the mere fact that he presided did not render the order invalid; for, under the above article "any three members of the said court, including the county judge, shall constitute a quorum," a quorum is on hand when any three commissioners or the county judge and two commissioners are present and hence such order was duly passed at a meeting with a quorum present, regardless of the judge's participation. *Dalton v. Allen*, 110 Texas 68, 215 S. W. 439.

Art. 2344. [2278] [1566] [1529]. **Seal.** Each commissioners court shall have a seal, whereon shall be engraved a star with five points, the words, "Commissioners Court, _____ County, Texas," (the blank to be filled with the name of the county) which seal shall be kept by the clerk of said court and used in authentication of all official acts of the court, or of the presiding officer or clerk of said court, in all cases where a seal may be necessary for the authentication of any of said acts. [Acts 1876, p. 53; G. L. Vol. 8, p. 889.]

Art. 2345. [2279] [1557] [1530] **The clerk.** The county clerk shall be ex-officio clerk of the commissioners court; and he shall attend upon each term of said commissioners court; preserve and keep all books, papers, records and effects belonging thereto, issue all notices, writs and process necessary for the proper execution of the powers and duties of the commissioners court, and perform all such other duties as may be prescribed by law. [Id.]

Art. 2346. [2280-1] [1558-9] [1531-2] **Process.** All notices, citations, writs and process issued from said court shall be in the name of the "State of Texas," and shall be directed to

the sheriff or any constable of a county and shall be dated and signed officially by the clerk, and shall have the seal of the court impressed thereon. All process of said court, when not otherwise directed by law shall be executed at least five days before the return day thereof, which return day shall be specified in the process. Subpoenas for witnesses may be executed and returned forthwith when necessary. [Id.]

Art. 2347. [2282] **Notice posted.** Whenever the commissioners court shall be unable to secure the publication of any notice or report required by law in the manner and for the fee provided therefor, such notice or report may be made and published by posting one copy of such notice at the courthouse door, and one of said copies shall be posted at some public place in each commissioners precinct for thirty days prior to the next succeeding term of the commissioners court. No two such copies shall be posted in the same town or city. [Acts 1899, p. 39.]

Art. 2348. [2274-5] [1552-3] [1525-6] **Regular terms.** The regular terms of the commissioners court shall be commenced and be held at the court house on the second Monday of each month throughout the year and may continue in session one week; provided the court need not hold more than one session each quarter if the business of the court does not demand a session. Any session may adjourn at any time the business of the court is disposed of. Special terms may be called by the county judge or three of the commissioners, and may continue in session until the business is completed. [Acts 1876, p. 53; Acts 1911, p. 198; G. L. Vol. 8, p. 889.]

48. A commissioners' court may change the boundaries of precincts at a special term. *State v. Dowlen and Rigsby*, 43 S. W. 271. (Civ. App.) Writ refused.

49. "Term" when used with reference to the court signifies a space of time during which a court may hold a session, the session commences when the court convenes for a term and continues until final adjournment. *Lipari v. State*, 19 App. 433; *Labadie v. Dean*, 47 Texas 90.

Art. 2349. [2276-7] **Minutes.** The court shall require the county clerk to keep suitable books in which shall be recorded the proceedings of each term of the court; which record shall be read and signed after each term by the county judge, or the member presiding and attested by the clerk. The clerk shall also record all authorized proceedings of the court between terms; and such record shall be read and signed on the first day of the term next after such proceedings occurred. [Id.]

50. The record is the best evidence of the proceeding of a court and must be recorded by the clerk and signed by the presiding judge at the end of

each term and attested by the clerk. *Brown v. Reese*, 67 Texas 318, 3 S. W. 292.

51. It was not necessary to enter upon the minutes of commissioners court contract for the improvement of highways, when such work was done under the supervision of engineer employed by commissioners court, as they had the authority to employ such engineer to superintend the improvements. *Williams v. DeFee*, 77 S. W. (2d) 729. (Civ. App., Amarillo.) No writ of error.

52. In a suit upon contract with county for expense of auditing account of county official the identical contract must be sued upon, and where, upon trial of the case the evidence showed no order of such contract appeared on minutes of commissioners court, the contract is void. *Wichita County v. Allred*, 27 S. W. (2d) 653. (Ct. Civ. App., Amarillo.) No writ of error.

53. An order of commissioners court, properly passed, may be proved by oral testimony and it is not essential to its validity that it be spread upon the minutes of the court. *Brooks v. Frio County*, 28 S. W. (2d) 1107. (Ct. Civ. App., San Antonio.) No writ of error.

54. The commissioners court is a court of record and speaks through its minutes rather than through the mouth of one of its members; and where the order of a commissioners court recites the offer of a party to sell to the county certain tractors and the acceptance of same by the commissioners court with an additional order to pay for the same out of the county funds, a contract has been made and parol evidence is inadmissible to vary same. *Colonial Trust Co. v. Hill County*, 27 S. W. (2d) 144. (Com. App.)

Art. 2350. Commissioners' salaries. Section 1. That Article 2350, Title 44, of the Revised Civil Statutes of the State of Texas, 1925, as amended by Acts of the Thirty-ninth Legislature, Regular Session, Chapter 135, Section 1; and as amended by Act of the Fortieth Legislature, page 435, Chapter 290, Section 1; and as amended by Act of the Fortieth Legislature, First Called Session, page 138, Chapter 46, Section 1; and as amended by Act of the Forty-third Legislature, Regular Session, Chapter 216; and as amended by Act of the Forty-third Legislature, First Called Session, Chapter 83, page 220; be and the same is hereby amended so as to hereafter read as follows:

In counties having the following assessed valuations, respectively, as shown by the total assessed valuations of all properties certified by the county assessor and approved by the commissioners court, for county purposes, for the previous year, from time to time, the county commissioners of such counties shall each receive annual salaries not to exceed the amounts herein specified, said salaries to be paid in equal monthly installments, at least one-half, and not exceeding three-fourths, out of the road and bridge fund and the remainder out of the general fund

of the county; said assessed valuations and salaries applicable thereto being as follows:

| Assessed Valuations | Salaries to be paid each Commis- sioner |
|--|---|
| \$ 6,000,001 and less than \$ 10,000,000 not to exceed..... | \$1,400 |
| \$ 10,000,001 and less than \$ 13,000,000 not to exceed..... | 1,600 |
| \$ 13,000,001 and less than \$ 20,000,000 not to exceed..... | 1,800 |
| \$ 20,000,001 and less than \$ 30,000,000 not to exceed..... | 2,250 |
| \$ 30,000,001 and less than \$ 78,000,000 not to exceed..... | 2,400 |
| \$ 78,000,001 and less than \$130,000,000 not to exceed..... | 3,400 |
| \$130,000,001 and less than \$150,000,000 not to exceed..... | 3,600 |
| \$150,000,001 and over..... | 4,200 |

In counties having assessed valuation of less than \$4,500,000, each commissioner shall receive five dollars (\$5.00) per day for each day served as commissioner, and a like amount when acting as ex-officio road superintendent in his commissioner's precinct, provided in no event shall his total compensation exceed nine hundred (\$900) in any one year.

In counties having assessed valuation of more than \$4,500,001 and less than \$6,000,000, each commissioner shall receive five dollars (\$5.00) per day for each day served as commissioner, and a like amount when acting as ex-officio road superintendent in his commissioner's precinct, provided in no event shall his total compensation exceed twelve hundred dollars (\$1,200) in any one year.

Sec. 2. The salary of each county commissioner and each county judge may be paid wholly out of the county general fund or, at the option of the commissioners court may be paid out of the county general fund and out of the road and bridge fund in the following proportions: County judge not to exceed seventy-five per cent (75%) of such salaries may be paid out of the road and bridge fund, and the remainder out of the general fund of the county, and each county commissioner's salary may, at the discretion of the commissioners court, all be paid out of the road and bridge fund; provided this section shall not apply except in counties where the constitutional limit of twenty-five (25) cents on the one hundred dollars (\$100) is levied for general purposes.

Sec. 3. The commissioners court, at its first regular meeting each year, shall, by order duly made and entered upon the minutes of same court, fix the salaries of the county commissioners for such year, within the limits as provided for in this Act.

Sec. 4. That all laws, both general and special, or parts of laws, both general and special, in conflict with the foregoing Act be, and the same are hereby, expressly repealed; provided, how-

ever, that in all counties having a population of not less than 14,588 and not more than 14,800, according to the last available Federal Census and each available census thereafter, and a valuation of over sixty million dollars (\$60,000,000), according to the last approved tax roll for county purposes, each precinct commissioner shall be entitled to receive a salary not in excess of three thousand dollars (\$3,000) per annum, payable in equal monthly installments.

Sec. 5. If any section, clause, sentence, or other part of this Act shall for any reason be declared unconstitutional that shall not affect in any way the constitutionality of the remaining provisions hereof.

Acts of 1935, 44th Leg., H. B. No. 408, Ch., p.

Invalid Legislation

Of late it has become a common practice of the legislature to pass "local and special laws" covering salaries of county officers applicable only to particular counties, under the guise of general legislation, basing the acts on number of inhabitants or specific amount of assessed valuation, so that the facts will disclose that a particular legislative act could only apply to one county in the State. The appellate courts have not been slow to condemn this kind of legislation. The Constitution is plain in its terms of limitation upon the power of the legislature to pass "local and special laws," therefore a brief discussion of the constitutional provisions and the construction thereof by the courts may be instructive.

Sec. 56 of Art. 3 of our State Constitution, so far as applicable here, reads as follows:

"Sec. 56. The legislature shall not, except as otherwise provided in this Constitution, pass any local or special law, authorizing: * * *

"Regulating the affairs of counties, cities, towns, wards or school districts. * * *

"Incorporating cities, towns or villages, or changing their charters."

The only exception to the above limitation on local or special laws is found in Section 9 of Article 8 of the Constitution as follows:

"And the legislature may pass local laws for the maintenance of the public roads and highways, without the local notice required for special or local laws."

As said by the Commission of Appeals in *Austin Bros. v. Patton*, 288 S. W. 182, holding the road law of Houston County invalid,

"(Quoting Section 56 of Article 3 of the Constitution.)
It is not 'otherwise provided' in the Constitution that the

legislature may pass a local or special law 'regulating the affairs of counties.' Therefore the legislature is prohibited by the above quoted provision from passing any local or special law regulating the affairs of counties except as such regulation may be necessary or incidental to some other law which the legislature is authorized by the Constitution to pass.

"Without entering at large upon the discussion of what is here meant by a 'local or special law,' it is sufficient to say that a statute which relates to persons or things as a class is a general law, while a statute which relates to particular persons or things of a class is special, and comes within the constitutional prohibition. *Clark v. Finley*, 93 Texas 171, 54 S. W. 343. A local law is one the operation of which is confined to a fixed part of the territory of the State. [Id.] The statute under consideration relates to Houston County only—a particular one of the class, all counties being the class. It is therefore a special law. The statute is one the operation of which is confined to that part of the territory of the State fixed and embraced in the confines of Houston County. Operating as it does in a fixed part of the territory of the State and its operation being confined to that fixed part of the State it is a local statute."

The Supreme Court in *City of Fort Worth v. Bobbitt*, 36 S. W. (2d) 470, approved an opinion of the Commission of Appeals, holding that an act of the legislature providing that cities with a certain number of inhabitants might issue certain bonds, etc., was a local law and that the act was unconstitutional, the facts having disclosed that the number of inhabitants applied only to Fort Worth, in substance holding that a "local law" within constitutional prohibition is primarily a law that in fact, if not in form, is directed only to a specific spot, but in dealing with a "general law" affecting only specific territory the court laid down a very clear rule for the construction of such statutes, as follows:

"Of course we do not mean to hold that an act general in its nature and terms would be in contravention of the above constitutional provisions, merely because at the time of its passage it only affects one city; in fact we hold to the contrary. We think, however, that an act which is so drawn that by its plain and explicit provisions it is made to apply to one city only in the State, and can never in any contingency apply to any other city, is just as repugnant to the constitutional provisions under discussion as though the name of the city to which the act does apply had been written into the act in the first instance. In other words, we think

that a city can be designated by description just as effectively as it can be named.

“To state our views in another form, we hold that a law that has uniform application throughout the State to cities of a certain class, as to population, or other legitimate classification, is not repugnant to the constitutional provision under discussion, even though there is only one city in the State of that class, but when the law is so drawn that it applies only to one city, and can never apply to any but this one city in any possible event, the law is unconstitutional and void, because such law is not based on classification but on isolation. Cooley’s Constitutional Limitations (8th Ed.) Notes, Vol 1, pages 262, 263.”

In line with the above holding is *Womack v. Carson*, 65 S. W. (2d) 485 (Com. App.) and *Smith v. State*, 49 S. W. (2d) 739 (Crim. App.).

SECTION 3

COMMISSIONERS COURTS—SPECIFIC POWERS—TO LEVY TAXES— APPROVAL OF OFFICIAL BONDS WHEN TAXES TO BE LEVIED— TO FILL VACANCIES—ADVERTISE FOR BIDS—CONTRACTS TO BE MADE IN OPEN COURT AND THE MANNER AND FORM OF ISSUING TIME WARRANTS.

Art. 2351. [2241] [1537] [1514] **Certain powers specified.**
Each commissioners court shall:

1. Lay off their respective counties into precincts, not less than four, and not more than eight, for the election of justices of the peace and constables, fix the times and places of holding justices courts, and shall establish places in such precincts where elections shall be held; and shall establish justices precincts and justices courts for the unorganized counties as provided by law.
2. Establish public ferries whenever the public interest may require.
3. Lay out and establish, change and discontinue public roads and highways.
4. Build bridges and keep them in repair.
5. Appoint road overseers and apportion hands.
6. Exercise general control over all roads, highways, ferries and bridges in their counties.
7. Provide and keep in repair court houses, jails and all necessary public buildings.
8. Provide for the protection, preservation and disposition of all lands granted to the county for education or schools.
9. Provide seals required by law for the district and county courts.

10. Audit and settle all accounts against the county and direct their payment.

11. Provide for the support of paupers and such idiots and lunatics as cannot be admitted into the lunatic asylum, residents of their county, who are unable to support themselves. By the term resident as used herein, is meant a person who has been a bona fide inhabitant of the county not less than six months and of the State not less than one year.

12. Provide for the burial of paupers.

13. Punish contempts by fine not to exceed twenty-five dollars or by imprisonment not to exceed twenty-four hours, and in case of fine, the party may be held in custody until the fine is paid.

14. Issue all such notices, citations, writs and process as may be necessary for the proper execution of the powers and duties imposed by such court and to enforce its jurisdiction.

15. Said court shall have all such other powers and jurisdiction, and shall perform all such other duties, as are now or may hereafter be prescribed by law. [Const. Art. 5; Acts 1876, p. 51; G. L. Vol. 8, p. 887; Acts 1885, p. 89; G. L. Vol 9, p. 708; Acts 1911, p. 236.]

55. Court has authority under Const. Art. 5, Sec. 18 to divide county into justice precincts but where manifestly the division is unfair it will be enjoined. *Dubose v. Woods* (Civ. App.), 162 S. W. 3. No writ of error. See also *Williams v. Castleman*, 112 Texas 193; 247 S. W. 263.

56. Mere verbal permission to connect with county sewer is a license without consideration and may be revoked. *Fayette County v. Krause*, 73 S. W. 51. (Civ. App.) Writ refused.

57. Where funds are not available contract to paint the jail could not be enforced. *Bray v. Harris County*, 141 S. W. 174. (Civ. App.) No writ of error.

58. County cannot be held liable for burial expense of paupers unless it has authorized same. *McNorton v. Val Verde County*, 25 S. W. 653. (Civ. App.) No writ of error.

59. Where claim has been allowed by court it cannot be attacked collaterally and can only be revised by appeal taken for that purpose. *E. D. Edmondson v. Cummings*, 203 S. W. 428. (Civ. App.)

60. Court may contract for water for public buildings but not for private purposes. *Edwards County v. Jennings*, 33 S. W. 585. (Civ. App.) No writ of error.

61. The commissioners court has exclusive charge of county affairs and it alone can make contracts for the county. *American Disinfecting Company v. Freestone County*, 193 S. W. 440. (Civ. App.) No writ of error. See also *Germo Mfg. Company v. Coleman County*, 184 S. W. 1063. (Civ. App.) No writ of error.

62. The Constitution makes these courts a part of our judicial system and gives the district court appellate jurisdiction over them; they are courts of general jurisdiction within the scope of the powers vested in them. *Bradford v. Moseley*, 223 S. W. 171 (Com. App.)

63. Court cannot divest itself of the power to designate the location of bridges to be built. *Moore v. Coffman*, 189 S. W. 94. (Civ. App.) Aff. 200 S. W. 374. (Sup. Ct.)

64. The jurisdiction of the court is confined to county business. *Electric Company v. Keenan*, 88 Texas 197, 30 S. W. 868.

65. The court may change the boundaries of a justice precinct, although a resident may be deprived of the right to vote at an election. *Hastings v. Townsend*, 136 S. W. 1143. (Civ. App.) No writ of error.

66. After a contractor has performed his contract, either in whole or part, the court has no authority under Art. 3, Sec. 53 of the Constitution to give him extra compensation. *Shelby County v. Gibson*, 44 S. W. 302. (Civ. App.) Writ refused.

67. The court has power to contract for the construction of public buildings. *Polly v. Hopkins*, 74 Texas 145, 11 S. W. 1084.

68. The court cannot pass to another or delegate its vested powers. *Russell v. Cage*, 66 Texas 428.

69. Before suit is instituted upon a claim it must first be presented to the court for action thereon. *Norwood v. Gonzales Co.*, 79 Texas 218, 14 S. W. 1057.

70. The court has authority to retain attorneys to represent it in suits in which it was interested. *Bank v. Presidio County*, 26 S. W. 775. (Civ. App.) No writ of error.

71. The power is vested exclusively in the court to determine whether a suit shall be brought for the benefit of the county, except where such power may be lodged elsewhere. *Looscan v. Harris County*, 58 Texas 511; *Smith v. Mosley*, 74 Texas 631; 12 S. W. 748.

72. The powers and duties of the Commissioners Court are limited and when the statute prescribes the exercise of certain powers and the performance of certain duties, those requirements must be strictly adhered to. *State v. Johnson*, 52 S. W. (2d) 110. (Civ. App., San Antonio.) No writ of error.

73. County commissioners court has broad discretion in distributing road and bridge funds among commissioners precincts, first considering the need without reference to precinct lines, and then judiciously and equitably dividing the funds, subject to review by court of competent jurisdiction. *Shivers v. Stovall*, 75 S. W. (2d) 276. (Civ. App., Dallas.) Writ granted.

74. The court is one of general jurisdiction and its judgment is entitled to the same weight as that of any other duly constituted court. *Schiller v. Duncan*, 21 S. W. (2d) 571. (Civ. App.) No writ of error.

75. A justice of the peace can only hold his court for civil business at the time and place fixed by the order of the commissioners court. *Alexander v. Svoboda*, 3 S. W. (2d) 423. (Com. App.)

76. It is beyond the power of the court to divert county funds from the purpose directed by statute. *Adams v. Stephens County*, 41 S. W. (2d) 989. (Civ. App.) No writ of error.

77. The commissioners court has the implied power to employ expert aid to assist in compiling and listing information regarding the taxing of certain oil and gas properties, and such information, when used by the tax assessor, in the absence of independent knowledge of his own, does not render the assessment invalid. *Federal Royalty Co. v. State*, 42 S. W. (2d) 670. (Ct. Civ. App., El Paso.) 77 S. W. (2d) 1021. (Sup. Ct.)

78. The commissioners court cannot exceed the powers granted it by law, although it has a wide discretion within those limitations regarding the establishing, opening and controlling of public roads. *El Paso Electric Com-*

pany v. Leeper, 42 S. W. (2d) 863. (Ct. Civ. App., El Paso.) No writ of error.

79. Since claim on the part of any county officer against the county is contrary to sound public policy and is not enforceable, a former county commissioner could not recover from the county for use of his truck which had been used for the benefit of the county. Cornutt v. Clay County, 75 S. W. (2d) 299. (Civ. App., Eastland.) No writ of error.

80. Commissioners court has the right to designate in pre-election order the highway on which proceeds of a bond issue should be spent, and where such road is designated, by naming the highway and the towns through which it shall pass, the construction of said highway, missing the towns named, is an unlawful diversion and subject to injunction. Fletcher v. Ely, 53 S. W. 817. (Civ. App., Amarillo.) No writ of error.

81. Article 5160 R. S. 1925, requiring any person, etc., entering into a formal contract with the State or counties or other subdivisions, for the construction of buildings or other public works to give bond, etc., does not apply to a contract to prepare a map and plat system, as such undertaking is not a "public work" within the meaning of statutes above mentioned. Employers Casualty Co. v. Stewart Abstract Co., 17 S. W. 781. (Com. of App.)

82. Where a county makes a contract, under legislative authority, (Art. 7335 and 7344, R. S. 1925) to have a map and plat system made for the county, agreeing to pay for same with county warrants, payable from the delinquent taxes, penalties and interest, as collected, and that said warrants shall draw 6% interest until paid, said contract is not a debt such as contemplated under Art. 11, Sec. 7 of the Constitution, as the payment is based solely upon the contingency of the collection of the delinquent and plat system, issuing county warrants to be paid out of the delinquent taxes, interest and penalties, the State and county alike bear a percentage part of the cost of collection of such tax as each receive a benefit therefrom. Madison County v. Wallace, 15 S. W. (2d) 535; Cherokee County v. Odom, 15 S. W. (2d) 538. (Both Sup. Ct.)

83. The public highways of the State are for the use of the public generally, and the commissioners court can exercise only such authority over them as is given to it by the statutes; and where it attempt to lease the highways within the county for the purpose of exploring for oil and gas, such operation, necessarily creating an obstruction to the use of said highway, is a nuisance per se, and under article 784 Penal Code, 1925, said contract would be void, notwithstanding the lessee holds a lease upon the adjoining property. Boone v. Clark, 214 S. W. 607. (Ct. Civ. App.) Writ of error refused.

84. A contract by a county for the development of oil upon its school lands whereby it agrees to accept a money consideration and one-eighth of the oil, or its equivalent as royalty, is not a diversion of the school fund. Ehlinger v. Clark, 8 S. W. (2d) 666. (Sup. Ct.)

85. Architectural service is one of skill, and a county may contract for it without asking for competitive bid as required by Art. 1659, R. S., 1925. Stephen County v. McCammon, 40 S. W. (2d), 267. (Com. App.)

86. The county commissioners court, under Art. 1577, have full power to appoint a commissioner to sell real estate belonging to the county at public auction, and deed made by such commissioner conveying such land in the name of the county carries full title to purchaser. Edwards v. Lubbock County, 33 S. W. (2d) 482. (Ct. Civ. App., Amarillo.) No writ of error.

87. The Constitution and Laws of the State form part of any contract made by the commissioners court, and where commissioners court make a contract for the construction of a new court house, a tax levy could be made

only so far as limited to 25 cents on the \$100 valuation which had not already been reached for other purposes. *Anderson v. Parsley*, 37 S. W. (2d) 358. (Civ. App., Fort Worth.) Writ refused.

88. Arts. 7335 and 7344, R. S. 1925, is legislative authority for the commissioners court to contract and pay for an abstract of property within the county out of delinquent taxes, penalties, and interest collected, including the percentage part of the State's taxes, and such contract is not in violation of Art. 11, Sec. 7 of the State Constitution. *Madison County v. Wallace*, 15 S. W. (2d) 535; *Cherokee County v. Odom*, 15 S. W. (2d) 538. (Sup. Ct.)

89. The powers and duties of the commissioners court are fixed by law and cannot be extended by the courts, and where a party has been fatally injured in an accident on the highway and a physician, other than the regular county physician, is called under instructions of the county judge who states that the county will pay "the expenses," the county is not liable to physicians and hospitals for their claims, such persons not being a pauper dependent upon the county, and county judge having no authority to employ physician or bind the county without permission of the commissioners court. *Willacy County v. Valley Baptist Hospital*, 29 S. W. (2d) 456. (Ct. Civ. App., San Antonio.) No writ of error.

90. Although the statute, Arts. 3941-3943, R. S. 1925, place a maximum amount on the compensation which may be allowed to the county treasurer, the commissioners court may fix a lesser amount as his salary. *Shaw v. Smith County*, 29 S. W. (2d) 1000. (Com. App.)

91. Notwithstanding Art. 2368, R. S. 1925, which provides that county cannot contract for an amount in excess of \$2,000.00 without asking for competitive bids, county may contract for labor to be performed when such labor requires technical knowledge. *Caldwell v. Crosser*, 20 S. W. (2d) 822. (Ct. Civ. App.) Writ of error refused.

92. It is not a violation of the Constitution (Art. 11, Sec. 7), providing that no debt for any purpose shall ever be incurred unless provision is made at the time for a sufficient tax to pay the interest and sinking fund thereon, for a county to contract for the audit of county record, the cost of which is uncertain in that it is for a stipulated amount per day for an uncertain number of days, to be paid out of the general revenue. *West Audit Co. v. Yoakum County*, 35 S. W. (2d), 404. (Com. App.)

93. The commissioners court, having the power to levy taxes, has the power to enforce the collection and for that purpose may make a contract with an individual to collect delinquent taxes, compensating him out of such taxes collected. See R. S., 1925, Arts. 7254, 7255. *Rusk County v. Maloney*, 38 S. W. (2d) 868. (Civ. App., Texarkana.) Writ refused.

94. The powers and duties of the commissioners court are fixed by the Constitution and they have no authority to make contracts not authorized by the Constitution. Where money is paid on warrant issued by the commissioners court in payment of the publication of citations for delinquent tax suits, in which no judgments were taken or taxes collected, county may recover, as such payment was unauthorized under the constitutional authority of the commissioners court. *Nunn-Warren Pub. Co. v. Hutchinson County*, 45 S. W. (2d) 651. (Ct. Civ. App., Amarillo.) No writ of error.

95. Contracts to collect delinquent taxes made by the commissioners court, unless approved by the attorney general and comptroller are void. *Sylvan Sanders Co. v. Scurry County*, 77 S. W. (2d) 709. (Civ. App., Eastland.) Writ of error refused Feb. 6, 1935.

96. The commissioners court cannot divert the funds of the county from their statutory purposes, and they have no authority to authorize warrant in payment of tax collectors' claim for certain excess fees. *Adams v. Stephens Co.*, 41 S. W. (2d) 989. (Ct. Civ. App., Eastland.) No writ of error.