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CONSTITUTIONAL LIMITATIONS ON PUBLIC FINANCE
IN SOUTH CAROLINA

HUGER SINKLER*  

Municipal corporations, like private corporations, are seldom in a position to pay cash for important capital outlays. Consequently, when the demand for increased service requires large expenditures for capital improvements, municipal corporations, like private corporations, must go borrowing. This is true as a practical matter even in instances where there is no limit upon the annual tax rate which may be levied by the municipal corporation, for "to pay as you go" would require a tax levy so large that the individual taxpayer might well have to go in debt to pay his share of the cost of the particular improvement. In this day and time of high income taxes, the interest rate paid by the individual is usually double or treble the interest borne by the tax-free public security. Hence, it is obviously fairer to all concerned that the municipal corporation go in debt and pay interest at some rate approximating 2%, rather than to have the taxpayer go in debt to pay his share of the cost of the capital improvement, and pay interest on his debt thus incurred at perhaps 5%. Such a procedure seems all the more justified in instances where the term of the debt does not extend beyond the usefulness of the project financed thereby.

In the case of a private corporation, the incurring of debt can generally be done by the board of directors of the corporation, and always with the approval of its stockholders, but in the case of the municipal corporation it is frequently the case that the directors (the municipal officeholders) alone may not borrow, and in some instances,

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1. For the purposes of this Article, the terms "public finance" or "municipal finance" are used to denote the long term borrowings by the State, its counties, cities and towns, and other subdivisions, which are evidenced by obligations containing a pledge of the taxing power of the unit borrowing the money. Borrowing in anticipation of the collection of taxes, and borrowing by the issuance of bonds payable solely from the revenues of some specified source are not dealt with, unless in the latter instance a pledge of the taxing power is made as additional security. This latter subject, viz., revenue bonds, is one of sufficient importance to require its own treatment. Furthermore, public finance through the issuance of bonds payable solely from the revenues of some specific source was not in vogue at the time our present Constitution was written.

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even the stockholders (the municipal taxpayers) cannot authorize the borrowing.

It is the purpose of this article to discuss some of the Constitutional restrictions surrounding the borrowing by the State and its subdivisions, the conditions which existed at the time these restrictions were written, the way they have been interpreted, and the effect of the restrictions as thus interpreted upon the economic life of the State. The Constitutional provisions which will be discussed restrict, what would otherwise be an unlimited power in the General Assembly to create debt for the State and, in turn, to authorize the several subdivisions of the State to incur indebtedness. For, it is an accepted proposition of Constitutional Law that a State Constitution is not a grant of power to the legislative body, but a set of restrictions limiting an otherwise unlimited power in the legislative branch.

Since its disavowance of allegiance to the British Crown, South Carolina has had five Constitutions. The first two were of short duration, but the third, that of 1790, lasted until superseded by the Constitution of 1868. In none of these first three Constitutions is there any restriction on the incurring of debt by the State or its subdivisions.

Now, the first question considered by those inquiring into the validity of public securities is whether the purpose for which the expenditure is made is a lawful one. This is a most important step, for frequently there are provisions limiting the purposes for which taxes may be levied or debt incurred. Hence, the case of *State ex rel Copes v. the Mayor and Aldermen of the City of Charleston*, decided by the South Carolina Court of Errors in 1857, furnishes an interesting insight on the judicial attitude toward this question under the Constitution of 1790.

Copes, a taxpayer of Charleston, sought to invalidate the action of the City Council of that City in issuing more than Two Million Dollars of bonds to pay for stock subscriptions, which had been taken in several railroad companies. The taxpayer was particularly aggrieved by the fact that some of the railroad companies did not even operate within the State of South Carolina. But, he failed to gain the ear of the Court, either on Circuit or on Appeal. Judge O'Neall rendered both decisions. Citing general language in the Charter of the City of Charleston, which enabled the City Council to make assessments (levy taxes) "for the safety, convenience, benefit and advantage of the said City", he held that these provisions permitted the City Council to subscribe for stock in railroad com-
panies and to assess the taxpayers of the City for the same. On Appeal, Judge O'Neall reasoned thus:

That the General Assembly have all the powers, which the respondents have exercised in their corporation in and for the whole State, I have no doubt. If they (the General Assembly) thought proper, they could build a railroad, with just as much propriety as a Granite State House. Both might lead to an extravagant waste of money, but still the power cannot be questioned. They have dug canals, and built roads, and I have no doubt they will do so again. They have subscribed to railroads in and without the State, and it is very possible, they may do so again. For all these purposes, they have directed bonds to be issued and sold, and for their payment have taxed the property of the State. The powers of the General Assembly in all these respects seem to me to be undoubted, and if so, why may they not clothe a municipal corporation with the same powers to be exercised for the benefit of the people of their charge? It seems to me to be clear they can.

He continued:

The only enquiry legitimate and proper is whether a subscription to a railroad in the State or without the State may not be necessary for the "welfare or conveniency of the city?" Who is to decide that question. The Court? Certainly not. It is by the words of the charter left to the City Council. But let us examine the matter slightly. Charleston in 1783 was looked to as a commercial city. She had realized the importance of commerce in a very striking degree between 1776 and 1783. Before war in reality brooded over her very hearth stones, from 1776 to 1780, her merchants became indeed princes, but from the fall of the city in May 1780 to 1783, she became a garrison town, and saw wealth and commercial enterprise take to themselves wings and flee away. It was therefore of great importance to promote the means and channels of commerce. That from that day to this has been a prime consideration. Why was the Hamburg Railroad conceived and begun? Was it not to promote the commerce and convenience of the city? Why was the Louisville, Cincinnati, and Charleston Railroad projected? Was it not to connect the queen cities of the west and south? Why have all the railroads, in the State and out of the State, to which Charleston has contributed, been built? Certainly presently or remotely to benefit Charleston. Have they not ans-
wered the ends intended? I have no hesitation in saying that though it is probable, there have been instances in which little has been done, where much was expected, for the benefit of the city, that yet in the main they have contributed much to the "welfare and conveniency" of the city. Go back to the period when the Charleston and Hamburg Road was contemplated; when its noble founders Black, Aiken, and others, calculated its income, as a paying concern from the daily travel of five or six passengers in the mail coaches of that time, and compare it with its present annual income of more than a million and a half, and ask has it not contributed to the "welfare and conveniency" of the city? How has it been enabled to do this? Is it not by its connection with the roads within and without the State which have been helped to be built by the generous contributions of the city? So it seems to me. Considered in this way, I have therefore no doubt about the powers exercised. But really there is no necessity for such an argument. *What is a corporation? It is an artificial person, capable not only of exercising given powers, but also of owning real and personal property.* (Italics added.)

The italicized language gives an insight into the Court's viewpoint on the powers of a municipal corporation under the Constitution of 1790. And not to be overlooked, is the fact that the Court saw no great difference between powers of a municipal corporation and powers of a private corporation.

Such is not the case today. There is a marked distinction between powers of a municipal corporation and those of a private corporation. This is well illustrated in the case of *Luther v. Wheeler*, 73 S. C. 83, 52 S. E. 874, 4 LRA (NS) 746 (1905), wherein the distinguished Judge Woods states:

"It is a general and undisputed proposition of law that a municipal corporation possesses and can exercise the following powers, and no others: First, those granted in express words; second, those necessarily or fairly implied in or incident to the powers expressly granted; third, those essential to the declared objects and purposes of the corporation— not simply convenient, but indispensable. Any fair, reasonable doubt concerning the existence of power is resolved by the courts against the corporation and the power is denied... The power to borrow money is not a necessary incident of municipal life, and hence does not exist unless expressly given, or unless some duties are
imposed or powers conferred on the corporation which manifestly could not be exercised at all without borrowing money . . . . The contrary view was taken in a number of the earlier cases cited in 1 DILLON ON MUNICIPAL CORPORATIONS, Par. 118, and by some of the Justices of the Supreme Court of the United States, in Nashville v. Ray, supra. There is now, however, little, if any, judicial dissent from the view that municipal officers are not the general fiscal agents of the corporation, with the implied power to borrow money for corporate purposes. This conviction of the courts has been greatly strengthened by the disasters which have befallen so many communities, growing out of the negligent and fraudulent misappropriation of money, borrowed by counties, cities and towns.

In the case of Bolton v. Wharton, 163 S. C. 242, 161 S. E. 454, 86 ALR 1101 (1931), recovery was sought on a note which was issued to derive funds with which to underwrite stock in a proposed silk manufacturing corporation intended to be located in Union. Apparently, the note was issued because the City was "inspired to such action by the mirage of benefits that were expected to accrue to the City 'from increased taxable values, from advancement of property values generally and from increased impetus to the commercial life of the community' by reason of the formation of such corporation". Denying a recovery, the Court said:

The power given to the city council to issue bonds, so as to bind not only the taxpayers of the city, but their children as well, is a very high confidence and trust, and can be properly exercised for no other purpose than "for the public use of the corporation", no matter how great the temptation may be . . . . We cannot suppose that it was intended to give the city council, as such, the right to go into commerce, to buy for the purpose of selling foods, or to enter into any private business or speculation whatever. Mauldin v. City Council of Greenville (1890) 33 S. C. 1, 24, 11 S. E. 434, 438, 8 L. R. A. 291. The language of Mr. Justice Marion in Haesloop v. City Council of Charleston, supra, 123 S. C. page 286, 115 S. E. 596, 601, seems decisive that these obligations were not issued to realize funds to be put to a purpose "essentially public" in their nature: "In ascertaining what is a public purpose within the power to tax, such benefits from a proposed expenditure as will accrue from increased taxable values, from enhancement of property values generally, and from increased impetus to the commercial life
of the community will ordinarily be considered of too incidental or secondary a character to justify an outlay of public funds”. Applying these rules of law to the instant obligations, it seems beyond cavil that the notes were not issued for a valid public purpose.

One might well stop and ask what had intervened between the time of these cases to cause so marked a divergence in judicial holding. The answer is, war, the most destructive yet to fall upon this Nation, had impoverished South Carolina. And, the peace which immediately followed could well be compared to a plague of locusts. With the government of the state in the hands of ignorant blacks and unprincipled whites, South Carolina was “Reconstructed” to the tune of tax, steal and spend.

The first step toward its readmission to the Union had been the adoption of a Constitution, containing a provision against slavery (Section 2, Article I, Constitution of 1868), a declaration that the Union was indissoluble (Section 5, Article I, Constitution of 1868), and a prohibition against paying debts contracted during the late “Rebellion” (Section 16, Article IX, Constitution of 1868).

“Reconstruction”, as South Carolina was to know it had not reached its fearful climax, when the Constitution of 1868 was adopted and when the document is compared with its predecessor it does not now seem designed to promote the rascality which soon followed. Many parts of this document live today as a part of our Constitution of 1895, and many of its provisions are excellent. While there were no limitations on the extent of debt that might be incurred, provisions were inserted which limited the right to levy taxes for corporate purposes, and, thus, the extravagant speculation complained of in the Copes case would seem prohibited. The procedure by which the debt of the State might be incurred required a two-thirds vote of the membership of each Branch, duly recorded on the Journals of the House. It seems safe to say that these provisions were intended to have a conservative effect. Consequently, it should be recognized that the rascality, stealing and unjustified borrowings that took place during Reconstruction could have occurred just as easily had not the Constitution of 1790 been superseded by that of 1868.

But, there seems no doubt but that the careless spending during Reconstruction days is directly responsible for the limitations of the extent of debt which found their way into the Constitution of 1895 which we now discuss.
I.

PURPOSES FOR WHICH BONDS MAY BE ISSUED

A. Incorporated Cities and Towns

The case of Marshall v. Rose, 213 S. C. 428, 49 S. E. 2d 720 (1948), clearly sets forth the purposes for which incorporated cities or towns may levy taxes and issue general obligation bonds. It was held in that case that the power to incur indebtedness is permitted when authorized by law for public purposes (Article VIII, Section 3) and the power to assess and collect taxes is permitted for corporate purposes. Hence, in order to justify the incurring of debt by an incorporated city or town it must be demonstrated that the purpose for which the debt is to be incurred is both public and corporate. In the Marshall v. Rose case, it was held that a recreational center and swimming pool are proper purposes for which bonds may be issued, and in so holding the Court stated that the Constitutional provisions referred to (Sections 3 and 6, of Article VIII) were not intended to limit municipal expenditure to the absolute necessities of the citizens. Had such been the intention of the framers of the Constitution, more restrictive language would have been used than that which limited the incurring of debt to public purposes, and the levy of taxes to corporate purposes. The Court stated that it was the intention of the Constitution to authorize a reasonable use of public money for objects designed to promote the general welfare.

While it is not the intention of this article to catalogue the purposes for which an incorporated city or town may issue bonds, it can be noted in passing that the Court recently declared that a municipal airport as a proper purpose for which the City of Greenville might issue bonds, in the case of Evatte v. Cass, 217 S. C. 62, 59 S. E. 2d 638 (1950), which case settled the question whose existence was noted in the cases of Brailsford v. Walker, 205 S. C. 228, 31 S. E. 2d 385 (1944), and Parrott v. Gourdin, 205 S. C. 364, 32 S. E. 2d 14 (1944).

It is to be observed in passing that the word "corporate" as used in Section 6 of Article VIII does not seem to be synonymous with the word "public" as used in Section 3. It is conceivable that what might well be a public purpose would not necessarily be a corporate purpose. Perhaps, a far-fetched illustration will serve to denote the distinction. The City of Charleston should certainly be enjoined from issuing bonds to pay for a waterworks system in Columbia.
The system, as such, might be a public purpose but, obviously, it would not be a corporate purpose to the City of Charleston.

B. Counties and Other Political Subdivisions

By Section 5, of Article X of the Constitution, it is provided that the corporate authorities of the counties, townships, school districts, cities, towns and villages may be vested with power to assess and collect taxes for corporate purposes. However, Section 6 of Article X imposes a strict limitation upon the rather broad grant of power made by Section 5, insofar as counties and townships are concerned. Section 6 of Article X provides that the General Assembly should not have power to authorize a county or township to levy a tax or issue bonds for any purpose except those enumerated therein.

The County, as it was conceived by those who wrote the Constitution of 1895, was not intended to perform many functions, and while home rule was not prohibited (cf. Gaud v. Walker, 214 S. C. 451, 53 S. E. 2d 316 (1949) ), it was not provided for, as was the case in the Constitution of 1868. (Section 19, of Article IV of the Constitution of 1868.) At that time, the State was either urban or rural. The unincorporated suburb of today was unknown. In a great many low-country counties, a black majority existed. Hence, while these black majorities might be gerrymandered, as by the creation of a huge Berkeley County and the reduction of Charleston County to a very small area, including little more than the City of Charleston, unless the government of the counties was effected on a State-wide basis, blacks would rule in parts of the State. Furthermore, Tillman, a moving spirit in the Constitution of 1895, envisioned the control of county governments through State-wide factions. Completely overlooked (?) was the possibility that legislative courtesy, which is now so much the order of the day, would permit the domination of the counties by the Senator and the members of the House of Representatives from the particular County, with the rest of the General Assembly taking no part whatsoever in the enactment of its local legislation. But, at any rate, it seems obvious that it was never the intention for the County to perform too many of the public functions, and our Court has literally followed the restrictive provisions of Section 6, of Article X.

Its views on this subject are ascertained in: Gentry v. Taylor, 192 S. C. 145, 5 S. E. 2d 857 (1939), and Parrott v. Gourdin, supra, both denying the right of a County to issue bonds for an airport. (The Constitution was later amended to permit this.) Doran v. Robertson, 203 S. C. 434, 27 S. E. 2d 714 (1943), prohibiting a
County-wide bond issue to obtain funds to construct sewers in a thickly settled section of the County on the ground that sewers are a local improvement, a result which seems eminently fair; and, Powell v. Thomas, 214 S. C. 376, 52 S. E. 2d 782 (1949), holding that while a War Memorial might be a public purpose, it was not one of the purposes enumerated in Section 6 of Article X. The opinion there states:

But the fact that the erection of this War Memorial would subserve a public purpose does not solve the question now presented for determination. As we endeavored to point out in Parrott v. Gourdin et al., 205 S. C. 364, 32 S. E. 2d 14, a proposed expenditure may be for a public purpose or a corporate purpose and yet not be among the purposes enumerated in Article X, Section 6, for which the General Assembly is empowered to authorize a county to levy a tax or issue bonds. We are impelled to hold that the erection of structures for promotion of patriotism, although the most elemental of public purposes, since in patriotism rests the preservation of the republic, is not for a purpose embraced in this section of the Constitution. It is significant that although the framers of the Constitution were fully aware of the custom in South Carolina of erecting statues, monuments and memorials to the soldiers and sailors of various wars and in commemoration of great public events, no exception for this purpose was made in the Constitutional limitation above mentioned.

It follows that the issuance of bonds for the erection of this War Memorial cannot be sustained unless it further appears that it will subserve one of the purposes named in Article X, Section 6 . . . .

While, again, no effort will be made to catalogue purposes for which counties or lesser units may issue general obligation bonds, it is to be noted that both hospitals and public auditoriums have been held to fall within the category of public buildings, which is one of the purposes enumerated in Section 6 of Article X. Battle v. Willcox, 128 S. C. 500, 122 S. E. 516 (1924); Smith v. Robertson, 210 S. C. 99, 41 S. E. 2d 631 (1949); and, Cothran v. Mallory, 211 S. C. 387, 45 S. E. 2d 599 (1947).

C. The State

South Carolina has outstanding many millions of dollars of bonds which have been issued subsequent to the adoption of its present Constitution. But, to the best of the writer's knowledge, the bonds
that have been issued since 1895 have been held validly issued pursuant to legislative enactment, and not subject to any limitation found in the Constitution. The principal debt consists of Highway bonds, which are specially secured by part of the gasoline tax. Although for the payment of these bonds, the faith and credit of the State are pledged, our Court has held that the provisions of Sections 7 and 11 of Article X did not control their issuance. State ex rel Richards v. Moorer, 152 S. C. 455, 150 S. E. 269 (1929).

Unfortunately, the meaning or effect of Section 7 is not discussed in the majority opinion. But, in the course of his dissenting opinion in the Moorer case, supra, Justice Blease states that the provisions of Section 7 of Article X limit the purposes for which the State might incur debt. With a reluctance born of respect for the learning of this Jurist, the writer is not satisfied that Section 7 was intended to limit the purposes for which the State might incur debt.

To evaluate the effect of Section 7, consideration must also be given to Section 11 of Article X.

Section 7 of Article X reads as follows:

No scrip, certificate or other evidence of State indebtedness shall be issued except for the redemption of stock, bonds or other evidence of indebtedness previously issued, or for such debts as are expressly authorized in this Constitution.

The pertinent portions of Section 11 of Article X are as follows:

To the end that the public debt of South Carolina may not hereafter be increased without the due consideration and free consent of the people of the State, the General Assembly is hereby forbidden to create any further debt or obligation, either by the loan of the credit of the State, by guaranty, endorsement or otherwise, except for the ordinary and current business of the State without first submitting the question as to the creation of such new debt, guaranty, endorsement or loan of its credit to the qualified electors of this State at a general State election; and unless two-thirds of the qualified electors of this State, voting on the question, shall be in favor of increasing the debt, guaranty, endorsement, or loan of its credit, none shall be created or made. And any debt contracted by the State shall be by loan on State bonds, of amounts not less than fifty dollars each, bearing interest, payable not more than forty years after final passage of the law authorizing such debt.
Read alone, or with Section 11, the effect of Section 7 is quite puzzling, and it is only after considering its historical background that its obscurity vanishes. Section 7 of Article X was plucked bodily from the Constitution of 1868, where it was Section 10 of Article IX. Fortunately, or unfortunately, as the case may be, all of Article IX of the Constitution of 1868 did not follow Section 7. This is undoubtedly the reason why it is difficult to understand. The correct meaning of this Section, as a part of the Constitution of 1868, was the subject of considerable discussion in the case of *State v. Cardozo*, 5 S. C. 297 (1874). And, its true meaning seems correctly set forth in the dissent of Justice Willard in that case, rather than in the majority opinion. Two of Justice Willard’s brethren of that carpet-bag court did not agree with his views. Was it for the reason, that had they done so, the State would not have been called upon to pay appropriations made by the profligate carpet-bag legislature? At any rate, the majority opinion is unconvincing. In his dissent, Justice Willard points out that the meaning of this Section cannot be ascertained by considering it alone. He states that to get at its true meaning, it is necessary to consider it “by reference to the more general subject and object to which the whole of Article IX has reference”. He notes that under Sections 7 and 14 of Article IX of the Constitution of 1868, the Legislature was given power to create long term debt for extraordinary purposes, which long term debt was required to be in the form of bonds of the State. He also noted that the provisions of this Article of the Constitution clearly indicated it was up to the Legislature to levy taxes for the ordinary expenditures of the State and to pay any deficiency from the preceding year. He then concluded that Section 10 was intended for the purpose of providing a means of converting obligations already created, into obligations of a different form or class, as, for example, the conversion of negotiable bonds into non-negotiable stock, or the conversion of either of the last named obligations “into some form of scrip or evidence of debt capable of molding the obligation to suit the holder or the convenience of the treasury”. And, he was of the belief that the Section was also intended to prohibit the ill-advised issuance of scrip or evidence of indebtedness which might have more or less general circulation among the public and thus become an easy means of the creation of a floating debt. Justice Willard, in effect, determined that while the State might issue bonds for extraordinary purposes, it would have to operate on a pay as you go basis for its ordinary expenditures.

His views on the subject of Article IX seem correct to the writer.
Now, as already noted, while this Section forms a part of our present Constitution, it comes into this Constitution without the other provisions of the Constitution of 1868 which authorized the creation of bonded debt for extraordinary purposes. Therefore, it must be construed in conjunction with its present day companion, Section 11, which specifically authorizes the creation of debt "for the ordinary and current business of the State", and which thus recognizes the right of the State to borrow in anticipation of the collection of its revenues for the purpose of meeting its annual appropriations. Also to be noted is the fact that Section 11 sets forth a method of procedure by which long term debt of the State can be incurred and provides that any debt voted in accordance with the provisions of that Section shall be in State bonds in amounts of not less than fifty dollars each . . . and payable not more than forty years after the final passage of the law authorizing such debt. Now, no where in the present Constitution is there any provision authorizing the creation of debt except "for the ordinary and current business of the State" as noted above. But, in Section 7, there is a provision which removes the prohibition against the issuance of scrip, certificates, or other evidence of State indebtedness "for such debts as are expressly authorized in this Constitution" or for the "redemption of stock, bonds or other evidences of indebtedness previously issued". Now, the refunding of existing debt has been held to be not the creation of new debt, for which reason the provisions of Section 11 have no bearing on refunding bonds. State ex rel Robinson v. Tillman, 39 S. C. 298, 17 S. E. 678 (1893). Similarly, in the case of Lott v. Blackwood, 166 S. C. 58, 164 S. E. 439 (1932), the funding into one bond issue of past due tax anticipatory indebtedness was likewise held not subject to the Constitutional restrictions. What, therefore, is the meaning of Section 7? There are really no debts authorized by the Constitution. And, in neither a refunding nor tax anticipatory operation is it necessary to observe the procedure prescribed by Section 11. Was it therefore intended to prohibit the issuance of long term debt? If so, what was the use of prescribing in Section 11 a method by which bonds may be issued, if there is no purpose under the Constitution for which bonds can be issued? Yet, this would seem to be the impasse reached, if Section 7 of Article X is to have the meaning which is suggested by the dissenting opinion in the Moorer case, referred to earlier. Most of Section 11 would have no meaning. The writer has concluded that the correct interpretation to be given is that advanced by Justice Willard, viz., that the intent of this Section is to prevent the issuance of scrip for
the payment of current State debts. This conclusion is greatly strengthened by reason of the fact that the term, bonds, is not used in Section 7. But bonds as a form of long term debt were well known to those who wrote the Constitution of 1895 and those who wrote the Constitution of 1868. It seems almost certain that this term would have been used in Section 7 if it had been intended to prohibit the creation of further bonded indebtedness. This results in the conclusion that there is no provision in the Constitution limiting the purpose for which the State may incur bonded debt, except Section 6 of Article X and the due process clauses, all of which require that the purpose be public in nature rather than private in nature. This conclusion requires a distinction between the tax anticipatory borrowings, authorized by Section 11, and the issuance of scrip. One exists. In the former case, the loan cannot be made unless the taxes have actually been levied. In the latter instance, the scrip could be issued once an appropriation were made. The distinction seems to be sound.

II.

Constitutional Provisions Prescribing the Procedure for the Incurring of Bonded Debt.

There is no provision in the Constitution restricting the method by which counties or lesser units, such as townships or school districts may incur debt. Evidently, it was felt that the provisions of Section 6, of Article X of the Constitution, restricting the purposes for which debt might be incurred, would suffice. However, there are severely restrictive provisions imposed upon the manner of incurring debt by incorporated cities and towns and by the State.

Section 7, of Article VIII, prohibits the issuance of general obligation bonds by cities and towns until an election be held and the issuance of bonds favored by a majority of those voting in a special election held to submit such question. Provisions of this sort are frequent in many State Constitutions, but the really severe restrictions found in Section 13, of Article II, are those which prescribe as a condition precedent to the ordering of such special bond election, a petition signed by a majority of the freeholders in the incorporated municipality, as shown by its taxbooks, petitioning the governing body to order the election, and the further provision in this Section, which limits suffrage in these bond elections to those who “have paid all taxes. State, County and municipal for the previous year”. At the time the Constitution was originally written,
similar restrictive provisions on voting appeared for practically all types of elections. However, those provisions of the Constitution have been amended, easing the restrictions imposed upon suffrage. There is no general amendment to the provisions of Section 13, Article II, and the original restrictions control. This frequently results in confusion, for it is difficult to explain to persons who have qualified themselves to vote for a mayor or aldermen why they may not vote on the question of incurring bonded debt, without qualifying themselves in the manner provided for by Section 13, of Article II. The confusion will probably increase after the adoption of the 1950 proposal, further amending the Constitutional section dealing with municipal registration.\(^2\)

The restriction in this Section requiring the signatures of a majority of the freeholders of the municipality as shown by its tax-books has on at least one occasion caused the abandonment of a proposed bond issue in the City of Columbia, and delayed a bond issue in the City of Greenville for almost a year.

The State of South Carolina has outstanding many bonds, which are direct obligations of the State, for whose payment the full faith, credit and taxing power of the State are pledged. Yet, none of these have been issued in keeping with the procedure envisioned by that part of the present Constitution which deals with the method by which the State may incur debt. We have seen that Section 11 of Article X is the Section of the Constitution which prescribes the method by which the State may incur debt. It is no more nor less than the 16th amendment to the Constitution of 1868, which became a part of that Constitution in 1873, and was designed to prevent a repetition of the vast peculations of which the corrupt officials of the reconstruction government had been guilty. The provisions of this Section provide that the State may not incur debt (except for ordinary and current business of the State) without first submitting the question as to the creation of such debt to the qualified electors

\(^2\) Section 12 of Article II of the Constitution as it now stands contains a provision making it mandatory upon the General Assembly to provide for the registration of municipal voters before each municipal election. Joint Resolution No. 1063, 46th Statutes at Large, page 2670, makes the proposal that this provision be changed to one which would merely permit the General Assembly to provide for additional registration, if it deems it desirable. The proposal was voted for in the General Election in November and, if ratified by the present General Assembly, will become a part of the Constitution. It seems reasonable to believe that the General Assembly will do away with municipal registration and permit municipal voting on County Registration certificates. In other words, if one is qualified to vote in one election, one will be qualified to vote in all elections, except those held under Section 13, of Article II, relating to the incurring of bonded debt.
of the State in a general State election, and that unless two-thirds
of the qualified electors voting on the question shall favor the increasing
of the debt, no increase shall be made. So far as the writer
knows, the question of incurring bonded debt has not been submitted
to the people of South Carolina, yet at the moment there are outstanding many millions of dollars of general obligation bonds
of the State. These have been issued as a result of the decisions of
the Supreme Court of South Carolina, the most important of which
is the case of State ex rel Richards v. Moorer, supra, which hold
that the provisions of this Section do not prohibit the pledging of the
faith and credit of the State if, in the first instance, a special
fund is established which is sufficient in all likelihood, to discharge
the debt. The Moorer decision has probably had more effect upon
the economy of the State than any other Court decision of the 20th
century. Presumably, the required consent of the people to a bond
issue for highway improvement could not be obtained on the occasion
that the now famous 65 million dollar highway issue was proposed
(36th Statutes at Large, page 670). But, at that time, in the opinion
of the General Assembly, it was necessary: (a), to improve the
educational opportunities of the State by making possible the construc-
tion of modern consolidated schools to be served by school buses, (b),
to promote agricultural interest by affording better transportation
facilities, (c), to promote industrial development of the State by creating sites for factories outside the congested centers of
population, (d), to open up seashore and mountain resorts, and, (e),
to advertise the State’s natural resources (see 36th Statutes at Large,
page 671). Not spelled out, but very much present in the minds of
the framers of the Bill was the impelling desire to get South Caro-
lina out of the mud. The law was upheld in the Moorer case by a
divided court, sitting en banc. From the vantage point of the framers of the 1895 Constitution, and the legal scholar, the dis-
sents are extremely formidable. On the other hand, the action of
the majority has probably done more to promote and advance the
welfare of the State than any other thing, for it has made possible
the magnificent system of highways which we now possess.8

3. The Moorer case and others which followed were not overlooked by
the author of the dissent in the Washington case of Gruen v. Tax Commission,
211 Pa. 2d 651, November 23, 1949. The writer of that dissent states: “There
that State (South Carolina) is finding that the breach of the dyke of debt
limitation . . . is rapidly widening. In Arthur v. Johnston, 185 S. C. 324,
the court complains (emphasis added) that special funds for bond payments
should be derived only from sources related, but admits that . . . there is
no logical basis upon which it can distinguish an allocation of a part of the
State’s income tax to the payment of bonds for the erection of buildings and
III.

DEBT LIMITATIONS

There is no provision found in the Constitution limiting the amount of debt that might be incurred by the State itself. Evidently it was felt that the most effective method of control would consist of the provisions previously discussed. Nevertheless, the subject of debt on the part of the municipalities, counties and subdivisions received considerable attention.

It must be manifest that the makers of our present Constitution have exhibited great care to prevent any reckless issue of bonds by its different governmental agencies.

The quotation is from Mr. Justice Pope's Opinion in the case of Todd v. Laurens, 48 S. C. 395, 26 S. E. 682 (1896), decided March 3rd, 1897. He was commenting on the effects of the limitations imposed by Section 7 of Article VIII and Section 5 of Article X. While the limitation in Section 7, of Article VIII, which limits the bonded debt of incorporated cities and towns to eight per centum of the assessed value of the taxable property therein had its counterpart as Section 17, of Article IX of the Constitution of 1868 (which became effective on the 12th day of December, 1884, 18th Statutes at Large, page 689), the really effective limitation was that imposed by Section 5, of Article X. Section 5 of Article X, provides:

And no county, township, municipal corporation or other political division of this State shall hereafter be authorized to increase its bonded indebtedness if at the time of any proposed increase thereof the aggregate amount of its already existing bonded debt amounts to eight per centum of the value of all taxable property therein as valued for State taxation. And wherever there shall be several political divisions or municipal corporations covering or extending over the territory, or portions thereof, possessing a power to levy a tax or contract a

institutions of higher learning from its earlier cases ... South Carolina's subsequent experiences might suggest: 'Stop! Look! Listen!' " The foregoing quotation is taken from the opinion of Justice Hill of the Washington Supreme Court.

4. There are numerous items of bonded debt which are deductible in computing debt limitations. There are bonds specially secured as, for instance, paying certificates; there are bonds issued for utility purposes, viz., electric light, sanitary sewer and waterworks systems, which are deductible by reason of the Special Amendment of February, 1911; but this is a topic which would require its own discussion. And, it is not the intent of the author to cover the subject here.

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debt, then each of such political divisions or municipal corporations shall so exercise its power to increase its debt under the foregoing eight per cent limitation that the aggregate debt over and upon any territory in this State shall never exceed fifteen per centum of the value of all taxable property in such territory as valued for taxation by the State . . . .

In the **Todd** case which, as already noted, was almost contemporaneous with the effective date of the then new Constitution, the leading opinion construes the provisions of Section 5 of Article X quite literally and proceeds to calculate the debt of the Town of Laurens by the mathematical formula which it prescribes. But, the court was not unanimous in giving to the Section its literal meaning. Three judges merely concurred in result, with McIver, the Chief Justice, stating that he reserved his opinion as to whether the bonded debt of the county could presumably be regarded as any part of the bonded debt of the city. The action of the court prophesied the ultimate fate of this restriction, for some twenty-seven years later the fifteen per cent debt limit was, to all intents and purposes, written out of the Constitution.

Nine years after the **Todd** case, in **Lancaster School District v. The Robinson-Humphrey Company**, 64 S. C. 545, 42 S. E. 998 (1902), decided November 25th, 1902, the Supreme Court in a short opinion states that the indebtedness of the State is not a factor to be considered in ascertaining if a political subdivision exceeds its fifteen per cent debt limit. But the State's debt had not been taken into account by Justice Pope, a fact noted in the opinion. The general effect of this case is to strengthen Justice Pope's views. One could be well justified in assuming that his opinion was now accepted by the Court.

Between the time of these decisions and the case of **Elliott v. Heyward**, 127 S. C. 468, 121 S. E. 257 (1924), decided February 2nd, 1924, there are to be found numerous other cases in which questions dealing with debt limitations were involved, but in none of them is there any clear expression of opinion on the subject. Furthermore, some of these cases, which are later cited by the Court as authority for the proposition that the fifteen per cent debt limit did not control the incurring of debt, were decided on questions of fact. Others dealt with the effect of special amendments to the Constitution. Brief reference is made to these, in an attempt to summarize their holdings:

**Seegers v. Gibbs**, 72 S. C. 532, 52 S. E. 586 (1905), dealt solely
with the effect of a Constitutional Amendment relating to the indebtedness of Columbia.

_Bethea v. Town of Dillon_, 91 S. C. 413, 74 S. E. 983 (1912), dealt with the general amendment relating to waterworks bonds.

_Lillard v. Melton_, 103 S. C. 10, 87 S. E. 421 (1915), held that certain special revenue bonds and paving certificates were deductible.

_Beacham v. Greenville_, 104 S. C. 421, 89 S. E. 401 (1916), merely affirms the _Seegers_ case.

The decision in _Nettles v. Cantwell_, 112 S. C. 24, 99 S. E. 765 (1919), cites each of the above cases and the three earlier cases as authority to permit the issuance of bonds by Charleston County, alleged to be in excess of the fifteen per cent debt limit, without discussing the facts or the applicability of these decisions which could not possibly be said to be harmonious. A very similar citation appears by the editor in the annotation found in 94 A. L. R. 818. The annotation also cites _Graham v. Ervin_, 114 S. C. 419, 103 S. E. 750 (1920). But this case goes off on the facts and the construction of the special Constitutional Amendment relating to the City of Florence and, if anything, follows the leading opinion in the _Todd v. Laurens_ case, _supra_.

Then comes the _Elliott_ case. The opinion is so short that it is quoted in full:

This is in the original jurisdiction and is a petition for injunction, on a rule issued by the Chief Justice.

The facts are undisputed. The sole question is whether the proposed issue of bonds by Fairfield County violates Article X, Section 5, of the Constitution of 1895. We are of the opinion that it does not. It was never contemplated, and is not a fair construction of this Section to say, that a county cannot issue and sell bonds up to 8 per cent of the total assessed value of all the property in the county.

The county is a unit, and is entitled to go to the limit of 8 per cent in issuing and selling bonds. The bonded indebtedness of a county is indivisible. It is upon the entire county, and in the hands of the holders of the bonds the payment is enforceable against the entire county, as a whole and as a unity, and the bondholders cannot be required to resort to a subdivision of the whole for a payment of a proportionate share of the bonds.

The petition is refused.
Next comes the case of Banks v. School District, 129 S. C. 218, 123 S. E. 834 (1924), decided June 9th, 1924. The decree of the Circuit Judge, Judge Featherstone, was adopted as the opinion of the Court. In the decree he discusses the Todd case, supra, and comments on the fact that three of the four members of the Court did not concur in the reasoning of the opinion but merely with its results. His holding, as follows, is based on Elliott v. Heyward, supra:

Evidently, if the 15% debt limit cannot be properly applied to a County it would not be applicable to a school district, for a county, township and school district are allowed under the Constitution exactly the same power to issue and sell bonds.

This decision is followed by Bagnall v. Bridge District, 131 S. C. 109, 126 S. E. 644 (1924). In the opinion in that case, the Court said:

It was never contemplated that a school district by issuing bonds up to the limit prescribed by the Constitution could thereby prevent the county from issuing bonds because the property of the district would there be subjected to a rate of taxation forbidden by the Constitution. The lesser cannot control the greater to this extent.

Finally, comes the decision in Winstead v. Williams, 132 S. C. 365, 128 S. E. 46 (1925), decided May 26th, 1925, answering yes to the question phrased in the opinion as:

Can a municipality issue bonds, exclusive of the water, sewer and light bonds, to the full amount of 8% of the assessed value of property therein regardless of the bonded debt of other political subdivisions covered in whole or in part by said City or Town?

From the foregoing, it will be seen that the Court has held that the 15% debt limit provision in the Constitution has no application to counties, incorporated cities or towns and common school districts. Countless thousands of bonds have been issued on the strength of these decisions. There is one further case that should be mentioned, and that is the case of Powell v. Hargrove, 136 S. C. 345, 134 S. E. 380 (1926). Apparently, from a reading of the opinion, an attack was made on the validity of bonds sought to be issued on the ground that if the High School District exercised its 8% debt limit to the full it would violate the 15% debt limit on at least a
part of the territory comprising the High School District. The Court did not squarely meet the issue, but merely said:

A very close reading of the Act shows that there is no disposition to violate any section of the Constitution as to the limitation of bonded indebtedness by the county, or any political division or subdivision thereof. In Section 3, wherein the authority to issue and sell bonds is given, it is distinctly stated that such bonds shall not exceed 8 per centum of the assessed valuation of the taxable property in each of the said high school districts. And a further proviso is made that the Act shall not be deemed or held to intend or purport to authorize the issuance of bonds in excess of any limit imposed by the Constitution of the State. From the language of this Section, it cannot be doubted that the Legislature had in mind all the provisions of our Constitution with reference to the issuance of bonds for public purposes, and that the whole purpose was to stay, clearly within the letter and spirit of the Constitution. (Italics added.)

Because of the foregoing, the writer has long felt that bonded indebtedness of high school districts must stay within the 15% limitation.

The latest case involving the effect of the fifteen per cent debt limitation is the case of Ashmore v. Greater Greenville Sewer District, 211 S. C. 77, 44 S. E. 2d 88 (1947). The Court had rendered one decision with which it was not satisfied; it afterwards determined to have a rehearing. It asked counsel that all questions that might possibly be involved be thoroughly briefed and allotted extra time for argument when the matter was orally argued at the June term of 1947. In the course of its decision, it took heed of the many questions which had been discussed, including the right of the District involved in that case—a special purpose district created solely to establish and operate a public auditorium—to issue bonds without regard to the fifteen per cent debt limit. It decided that the fifteen per cent debt limit must be observed, but decided that it would stand by the earlier decisions which allowed counties, common school districts, and incorporated cities or towns to regard only the eight per cent debt limit. It is not without significance that the author of the opinion, Mr. Justice Stukes, was among the counsel in the case of Bagnall v. Birdge District, supra.

The writer feels that the Ashmore decision intended to set at rest any further question on this subject and its effect is that we have,
and yet we do not have, a fifteen per cent debt limitation to consider. The limitation clearly has no application to common school districts, counties and incorporated cities or towns. But, it must be observed elsewhere.