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Mayors' & Councilmen's Institute
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NEW COUNCILMEN
AND THE LAW OF MUNICIPAL CORPORATIONS IN CALIFORNIA

As new councilmen you are members of the board of directors of a municipal corporation. When you ascended the platform, held up your right hand, and swore that you would well and faithfully discharge the duties upon which you were about to enter, you became a new individual legally -- a public officer. I will attempt this morning to provide you with a thumbnail sketch of the basic legal powers of your city and a description of some of the individual risks to which your office subjects you.

In this new legal status as directors of the municipal corporation you call home, every living soul in the city is one of your stockholders entitled to be heard at your meetings and to criticize your every official action. Your actions on this board are everyone's business and for very good reason.

As a city councilman, you share with the other members of your city council very drastic legal powers over the lives and property of your municipal stockholders -- the power to declare their conduct criminal, tax them, condemn their property for public use, prohibit their businesses, and to tell them how and for what they may use their property. In return, the community makes the city council responsible for protecting it against crime, disease, fire and a host of other natural, social and economic evils. The power is necessary fully to discharge the responsibility. The city is only one of three levels of government which share these responsibilities and this authority. Cities perform the functions of most vital and direct concern to the health and safety of their inhabitants. Federal and state governments concern themselves generally with the broader economic and social interests of the community, although in recent years there has been a noticeable tendency on the part of the state, acting through its political subdivisions called counties, to provide municipal services and perform municipal functions.

Sec B6

I. LEGAL FOUNDATIONS OF CITY GOVERNMENT

The law governing your city, your collective actions as a city council, and your individual actions as a city councilman, will be found in several places. It will be found in the State and Federal Constitutions, particularly Article XI of the California Constitution, state statutes, codes and rulings of state administrative agencies, the decisions of our state and federal courts, and in your city charter and ordinances.

The fountainhead of city government in California is Article XI, Sections 6 and 8 of the Constitution.

Section 6 provides that:

> "Corporations for municipal purposes shall not be created by special laws; but the Legislature shall by general laws, provide for the incorporation, organization, and classification, in proportion to population of cities and towns . . . ."

and that

> "Cities and towns hereafter organized under charters framed and adopted by authority of the Constitution are hereby empowered . . . to make and enforce all laws and regulations in respect to municipal affairs, subject only to the restrictions and limitations provided in their several charters. . . ."

Section 8 provides that:

> "Any city or city and county containing a population of more than 3,500 inhabitants, as ascertained by the last preceding census . . . may frame a charter for its own government, consistent with and subject to this Constitution; . . . ."

In 1883, the Legislature followed the mandate of Section 6 and adopted the Municipal Corporations Act providing statutory charters for six different classes of cities based on population (Stats. 1883, p. 93). In 1955 the Legislature dropped all numerical classifications and the Act presently provides for one class of city called a "general law" city (Stats. 1955, Ch. 624). Thus, California cities are either chartered cities or general law cities. There are now 294 general law cities and 70 chartered cities.

It will be noted from reading the language of Section 8 set forth above that home-rule charters are available to "any city" containing a population of 3,500 or more. The necessary consequence of this is that a community may not incorporate originally as a chartered city, but must first become a general law city even though the community may have the necessary 3,500 population. The procedure for incorporating as a general law city will be found in Sections 34,300 et seq. of the Government Code.

When the decision to frame a charter for its own government pursuant to Sections 6 and 8 of the Constitution has been made by a city, a charter may be framed in one of two ways. The city council may draft a charter for submission to the electorate or a proposition for the election of a board of freeholders to adopt a charter for submission to the people may be submitted by the city council at a municipal election. After the home-rule charter is approved by the voters of the city, it must be approved by the Legislature by concurrent resolution at the next regular or special session of the Legislature following the city election. The Legislature has power only to approve or reject the charter as a whole and does not have the power to alter or amend a charter.

Charters may be amended or new charters may be adopted following submission of petitions signed by 15 per cent of the registered electors or as submitted by the city council to the electors. Amendments to a charter must be approved by the Legislature in the same manner as an original charter. The procedure for adopting of charters and amendment of charters is set forth in considerable detail in Section 8 of Article XI.

When you read the early history of California and see described the type of state-local relationships which existed at that time, you find it difficult to believe that such conditions ever existed. Prior to the Constitution of

1879, when an influential group of city dwellers wished a new city hall (City of San Francisco v. Canavan, 42 Cal. 541) or street improvement (People v. San Francisco, 36 Cal. 595) or a city bond issue in aid of railroad construction (Stockton & Visalia Railroad v. Stockton, 41 Cal. 147), they would go to the State Capitol, have a special law passed on their behalf and return home to thumb their noses at the city fathers. City government was controlled to the smallest detail from the State Capitol. An excellent description of this period of California's municipal history will be found in the series entitled "Municipal HomeRul e in California" in 30 Calif.L.Rev. 1; 30 Calif.L.Rev. 272; 32 Calif.L. Rev. 341; and 34 Calif.L.Rev. 644.

II. HOME RULE - CALIFORNIA STYLE

Our present State Constitution represents a very strong reaction against this centralized system of local government. The aroused and determined pioneer framers of the 1879 Constitution went "whole hog" and gave California cities genuine "home rule". Unlike other states with similar provisions, our courts have taken these provisions at face value. The California Supreme Court, in fact, four years prior to, and foreshadowing, the adoption of the Constitution of 1879, rendered a decision repudiating the entire doctrine of legislative supremacy and embracing the theory of an "inherent right of local self-government", (People v. Lynch, 51 Cal. 15). Without the full support of our appellate courts, California constitutional home rule provisions would have gone down the same legal drain as comparable provisions in other states. As a result of this home-rule concept in the California Constitution and the full support given it by the courts, you, Ladies and Gentlemen, are councilmen of the most powerful city governments this nation has ever known.

The whole bundle of legal powers exercised by you on behalf of the city, and independently of state government, is municipal home rule, California style. Let us consider the four basic parts of this package which are applicable to all cities; two grants of power to all cities followed by two restrictions on state government for the benefit of all cities:

A. Police Power. Article XI, Section 11 of the State Constitution provides as follows:

> "SEC. 11. Any county, city, town, or township may make and enforce within its limits all such local, police, sanitary and other regulations as are not in conflict with general laws."

This section, which was adopted without debate in the Constitutional Convention of 1879, was a first in the nation. It has subsequently been substantially copied in the states of Washington, Idaho, and Ohio. The majority of the judicial decisions which have construed it have defined its scope as the power to adopt regulations in the form of "rules of conduct to be observed by the citizens". (Von Schmidt v. Widber, 105 Cal. 151). Under this view of the power granted by Article XI, Section 11, the police power granted to counties and cities is the power to enact regulatory ordinances for the benefit of their citizens. This view of Article XI, Section 11, as granting only the power to enact regulatory ordinances, has the support of the majority of the Supreme Court cases in which it has been considered. (Merced County v. Helm, 102 Cal. 159; In re Werner, 129 Cal. 567; Gilgert v. Stockton Port District, 7 Cal.2d 384). On the other hand, there are a number of appellate court decisions which take the point of view that Article XI, Section 11 grants to cities the power to

undertake functions and provide services considered necessary for the public welfare independently of other charter-derived or statutory authority. (de Aryan v. Butler, 119 Cal.App.2d 674 [authority to introduce fluorides into municipal water system]; Jardine v. City of Pasadena, 199 Cal. 64 [authority to establish isolation hospital]). The only safe assumption for reconciling these apparently conflicting decisions is to assume that Article XI, Section 11 does not grant the authority to undertake functions, but is limited to the enactment and enforcement of regulatory ordinances. Since the provision of new services will normally involve the expenditure of funds, some source of authority to proceed other than Article XI, Section 11 is the only way of being certain that an adverse decision will not result in personal liability.

It will be noted that the power granted by Article XI, Section 11 is limited to enactment of regulations which are not "in conflict" with "general laws". Determining what constitutes conflict with general laws is not always easy. The courts, however, have laid down certain basic rules for determining when the type of conflict exists which will invalidate a local regulatory ordinance. These situations may be described under the following general categories:

1. A local regulatory ordinance may not authorize acts which are prohibited by state law. It is fundamental that conflict within the meaning of Article XI, Section 11 exists when a local ordinance purports to authorize that which the state law prohibits. In such cases, the local ordinance is clearly invalid. For example, a city could not license bawdy houses when the state had prohibited them. (Farmer v. Behmer, 9 Cal.App. 773). Nor could a city validly (during prohibition) authorize a larger amount of intoxicating liquor by prescription than that allowed by state law. (In re Iverson, 199 Cal. 582).

2. A local regulatory ordinance may not prohibit that which the State Legislature has specifically authorized. A conflict between a city ordinance and a general law of the state exists when the State Legislature has specifically authorized certain acts or conduct and the ordinance prohibits such acts or conduct. Thus, it has been held that a city ordinance cannot prohibit civil service plumbers employed by the state from practicing plumbing in connection with state building projects without taking a city examination. (In re Means, 14 Cal.2d 254). Similarly, where the state establishes precise regulatory standards for milk, a city ordinance may not validly require higher standards. (In re Hoffman, 155 Cal. 114). Other examples are Ex parte Keeney, 84 Cal. 304 (city ordinance prohibiting interments authorized by the state); In re Maki, 56 Cal.App.2d 635 (city ordinance attempting to license physicians). These cases are to be distinguished from those where a city ordinance imposes requirements which are additional or supplementary to those imposed by state law. Cases illustrating this rule are In re Mathews, 191 Cal. 35 (Pasadena could prohibit as a nuisance the keeping of goats in city even though this is not among the nuisances named in Section 370 of the Penal Code or Sections 3479-3480 of the Civil Code); In re Bell, 19 Cal.2d 488 (ordinance prohibiting assault while picketing); Remmer v. Municipal Court, 90 Cal.App.2d 854 (ordinance prohibiting maintenance of gambling house); In re Borah, 92 Cal.App.2d 826 (ordinance prohibiting the use of profane language on the telephone); and People v. Papayanis, 101 Cal.App.2d 918 (ordinance prohibiting discharging of oil in harbor).

3. A local regulatory ordinance which duplicates a general law of the state is invalid. This is but another way of saying that the act which is prohibited cannot be made the basis for two separate criminal prosecutions. If the state law makes it a crime to drive on the left-hand side of the road, an ordinance prohibiting driving on the left hand side of the road would duplicate

the state law, subject violators to dual prosecutions for the same offense, and would consequently be invalid. (Humphrey v. U. S. Macaroni, 49 Cal. App. 395).

It should be noted, however, that this rule applies only where the acts prohibited by the local ordinance are exactly the same as those prohibited by state law. In these cases, the local interest does not suffer for the city police need only enforce the state law rather than the local ordinance and the same regulatory object is fully served.

4. A local ordinance may not be applied to agencies of the state. This is a comparatively new limitation on local police power resulting from the decision of the Supreme Court in Hall v. City of Taft, 47 Cal. 2d 177. The Taft case held that school districts, being agencies of the State for the local operation of the state school system, were not within the power granted to cities by Article XI, Section 11, and that, accordingly, city building regulations are not applicable to the construction of school buildings. In a later decision, Town of Atherton v. Superior Court, 159 Cal. App. 2d 417, the principle of the Taft case was extended to prohibit the application of city zoning ordinances to school facilities.

The Legislature acted in 1957 and 1959 to substantially modify the rule of the Taft and Atherton cases by adding Section 4260 to the Health and Safety Code, and Sections 53090 - 53095 to the Government Code.

It will be noted that Article XI, Section 11, by its terms applies to both counties and cities. Thus, local police power blankets the state. County regulatory ordinances are applicable only in the unincorporated area, and city ordinances within city limits. When a city annexes unincorporated territory, the county regulatory ordinances no longer apply and the territory becomes subject to the city ordinances; Ex parte Roach, 104 Cal. 272; Ex parte Pfirrman, 134 Cal. 143; City of South San Francisco v. Berry, 120 Cal. App. 2d 252.

B. Operation of Public Works. Article XI, Section 19, of the Constitution of California provides as follows:

> "Any municipal corporation may establish and operate public works for supplying its inhabitants with light, water, power, heat, transportation, telephone service or other means of communication. Such works may be acquired by original construction or by the purchase of existing works, including their franchises, or both . . . A municipal corporation may furnish such services to inhabitants outside its boundaries; . . . ."

Perhaps the best illustration of the authority granted by this constitutional amendment of 1911 is City of Mill Valley v. Saxton, 41 Cal. App. 2d 290. There, the city attempted to issue bonds for the acquisition of a bus system and met the argument that the Municipal Corporations Act had not granted this authority to sixth class cities. The appellate court very quickly brushed aside this contention and said that Section 19 is a direct grant of power to all cities of the State of California to acquire and operate the named public works. The Legislature lacks the authority to, in any way, diminish or withhold any segment of the power. Prior to 1911, California cities, unless specifically authorized by their charters, had very little authority to acquire or construct public utilities. The sole pre-1911 statutory authority for the acquisition of utilities was the general law predecessor of Section 38730 of the Government Code.

C. No State Tax for Local Purposes. Article XI, Section 12 of the California Constitution reads as follows:

> "Except as otherwise provided in this Constitution, the Legislature shall have no power to impose taxes upon counties, cities, towns or

other public or municipal corporations, or upon the inhabitants or property thereof, for county, city, town, or other municipal purposes, but may, by general laws, vest in the corporate authorities thereof the power to assess and collect taxes for such purposes. All property subject to taxation shall be assessed for taxation at its full cash value."

The purpose of this provision was to end forever the vicious practice which developed during the state's early history of the Legislature ordering specific local improvements and requiring the levy of a local tax to finance them. (Sinton v. Asbury, 41 Cal. 525). The theory of our present system, as expressed in Section 12, is that state taxes shall be expended only for "state purposes" and that counties and cities shall levy and collect local taxes for local purposes. Under this constitutional provision, state taxes which are expended by cities must be expended for a state purpose. (City of Los Angeles v. Riley, 6 Cal. 2d 621). Conversely, taxes which are levied and collected by cities must be expended for a municipal purpose. (Perez v. City of San Jose, 107 Cal. App. 2d 562). State legislation which mandatorily increases salaries, holidays, pensions, sick leaves or vacations of city employees automatically increases the cost of city government and is, therefore, actually a disguised and unconstitutional attempt by the state to levy a local tax. The Supreme Court has held one such seemingly mandatory state law to be merely permissive and therefore constitutional. (Shealor v. City of Lodi, 23 Cal. 2d 647).

D. Prohibition of Special Legislation. Another general, but extremely important, segment of constitutional home rule in California is the requirement in Article IV, Section 25 that the Legislature act by general laws. If it were not for this constitutional section, it might be possible, as was done in the early days, for a dissatisfied group of citizens in one city unable to persuade their city council of the merits of their position to go to Sacramento and obtain the desired legislation over the heads of the members of the city council by special legislation applicable to their city by name. While this prohibition has not been completely effective to prohibit legislation applicable to a single city (People v. Henshaw, 76 Cal. 436; Union Ice Co. v. Rose, 11 Cal. App. 357), the practices of the pre-1879 legislatures have not revived.

III. POWERS (CHARTERED vs. GENERAL LAW CITIES)

A. Regulatory and Corporate. Every power exercised by a city in California is either a regulatory power or a corporate power. One is the power to regulate the conduct of citizens; the other is the power to perform a particular type of service or activity. Both general law and chartered cities draw identical regulatory power from Article XI, Section 11, and the corporate power to establish and operate public works is granted equally to both types by Article XI, Section 19. In all other cases, however, there is a fundamental distinction between general law cities and chartered cities. The key is found in the phrase "municipal affairs".

B. "Municipal Affairs". Sections 6 and 8 of Article XI provide that chartered cities shall have power to make and enforce all laws in respect to "municipal affairs", subject only to charter limitations. Thus, if a matter is a "municipal affair", a chartered city has plenary power to act with respect to it except to the extent that its charter or the State and Federal Constitutions limit or restrict it. The courts, of course, are the final arbiters concerning whether a matter is or is not a municipal affair. The following matters have been held to be "municipal affairs": Popper v. Broderick, 123 Cal. 456 (the pay of municipal officers); Los Angeles G.&E. Corp. v. Los Angeles, 188 Cal. 307 (the sale and distribution of electrical energy manufactured by a city); Ainsworth v. Bryant, 34 Cal. 2d 465; West Coast Advertising Co. v. San Francisco, 14 Cal. 2d 516 (taxation); Socialist Party v. Uhl, 155 Cal. 776 (the election of municipal officers);

South Pasadena v. Pasadena Land Co., 152 Cal. 579 (supplying water); Byrne v. Drain, 127 Cal. 663 (improvement of city streets); Pasadena v. Charleville, 215 Cal. 384 (procedure for the letting of city contracts); Klench v. Board of Pension Fund Commrs., 79 Cal.App. 171, Murphy v. City of Piedmont, 17 Cal.App.2d 569 (pensions of city employees).

By dictum in the recent decision in Mallon v. City of Long Beach, 44 Cal.2d 199, the Supreme Court characterized the following as purely municipal affairs (at pages 211-212): City of Grass Valley v. Walkinshaw, 34 Cal.2d 595 (sewer); Jardine v. City of Pasadena, 199 Cal. 64 (isolation hospital); Stege v. City of Richmond, 194 Cal. 305 (city streets); City of Pasadena v. Paine, 126 Cal.App.2d 93, (city library); Alexander v. Mitchell, 119 Cal.App.2d 816 (off-street parking facilities); Perez v. City of San Jose, 107 Cal.App.2d 562 (city highways); Beard v. City & County of San Francisco, 79 Cal.App.2d 753 (public hospital); Armas v. City of Oakland, 135 Cal.App. 411 (fire protection).

In general law cities, an entirely different rule obtains. A general law city has no power to act unless it can point to a constitutional or statutory grant of authority. The bulk of the powers vested in general law cities will be found in their general law charter (Sections 34,000 et seq. of the Government Code). These powers run the gamut from Assessments to Zoning.

C. "Dillon's Rule". In construing grants of authority to general law cities, the California courts have adopted a rule which was laid down by the famous Judge Dillon in his textbook on the law of municipal corporations which has become the Bible of municipal lawyers. This rule is stated in Frisbee v. O'Connor, 119 Cal.App. 601, as follows:

> "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 accomplishment of the declared objects and purposes of the corporation--not simply convenient, but indispensable. Any fair, reasonable, substantial doubt concerning the existence of power is resolved by the courts against the corporation, and the power is denied."

This rule and this entire theory of corporate powers is in direct conflict with those decisions which have construed Article XI, Section 11 to authorize the performance of corporate functions. Thus, if on the theory of the case of Jardine v. City of Pasadena, 199 Cal. 64, Article XI, Section 11 is adequate to authorize a city to establish and maintain an isolation hospital, no grant of corporate authority to do so would be required. Yet Dillon's rule purports to make a grant of corporate authority a prerequisite to the performance of a municipal function. Thus, as suggested above, the safer rule, particularly in general law cities, is to assume that Article XI, Section 11 does not grant any authority other than the authority to enact regulatory ordinances and that the authority to provide municipal services must be granted by the State Legislature. As a result of this rule, the Legislature has been asked at each session for additional grants of corporate powers to general law cities to enable them to cope with emerging problems.

D. Examples - "Municipal Affairs" vs. General Law Authority

1. Taxation

a. Chartered Cities. As pointed out above, in chartered cities the important question is whether or not a particular subject is a "municipal affair". Generally, if a particular subject is one upon which the state has not legislated and one which has direct interest to the inhabitants of a city, the courts, who are the final arbiters, will hold the subject to be a "municipal affair". An example of a broad field which has been held to be a municipal affair is taxation. (West Coast Advertising Co. v. San Francisco, 14 Cal.2d 516). In this connection, probably the best example of the California "municipal affairs" concept and the operation of a charter limitation is the case of Ainsworth v. Bryant, 34 C 2d 465. In that case, the City of San Francisco had attempted to impose its "purchase and use tax" upon a retail liquor dealer. It was conceded at the outset that the general subject of taxation in a chartered city is a "municipal affair", but the plaintiff contended that the State Constitution had reserved to the state exclusive taxing jurisdiction over alcoholic beverages.

The San Francisco tax in this situation was unlike any comparable tax in the state for the reason that a section of the San Francisco charter prohibited the imposition of a license tax on retail businesses. As a result, the tax was levied exclusively on the "purchase and use" of personal property and was not a tax on the retailer or businessman. The charter limitation, therefore, did not restrict the city from levying the purchase and use tax although it would have restricted the city from levying the customary type of retail sales tax. The city had the basic authority to levy any type of tax since taxation is a municipal affair, but it was necessary to comply with all charter limitations on this plenary municipal power.

The Court's primary concern was whether or not the purchase and use tax was in conflict with the reservation of exclusive taxing power to the state in Article XX, Section 22. The conclusion was reached that since the state's exclusive jurisdiction was with respect to the taxation of the "business" of selling and dealing in alcoholic beverages and since the purchase by an individual of alcoholic beverages for consumption is not a business, the tax in question did not conflict with the State Constitution.

From the above it will be seen that chartered cities have taxing authority as broad as the entire field of taxation itself. In the absence of a limitation in the charter itself or a restriction in the state or federal constitutions, a California chartered city may levy and collect any type of tax.

b. General Law Cities. General law cities have only those corporate powers which are granted expressly by statute or which, under Dillon's rule, are necessary for, or incidental to, the exercise of the granted powers. The field of taxation is an excellent example of this theory of general law corporate powers.

(1) Property Tax. Sections 43,000 et seq. of the Government Code authorize general law cities to provide a system for the assessment, levy and collection of city property taxes. Pursuant to this authority, most general law cities have either established their own property tax procedural ordinance for the levy of taxes or have incorporated the provisions of the Revenue and Taxation Code, dealing with assessment and collection of taxes by county officers as a part of their city ordinance. In addition, an increasing number of California cities have transferred assessment and collection of city property taxes to the

county assessor and tax collector pursuant to Sections 51,500 et seq. of the Government Code. In Sections 43068 and 43069 of the Government Code are set forth the basic one dollar tax rate limit and an enumeration of all of the exceptions to this limit.

(2) Excise Taxes. The other general class of tax authorized for general law cities is the so-called business license tax. General law cities are authorized to levy this type of excise tax by Section 37101 of the Government Code. Since the standard type of retail sales tax is a tax on the privilege of selling tangible personal property at retail, the authority to license retail and other businesses for revenue carried with it the authority to levy a sales tax similar to that levied by the State of California. In 1951, Section 37101 was amended to expressly authorize the levy of a complementary use tax by general law cities which had already levied or which simultaneously levied a sales tax.

As a practical matter, nearly all California cities, both chartered and general law, levy a sales and use tax under the Bradley-Burns Local Sales and Use Tax Law (§§ 7200 et seq., Revenue and Taxation Code). Under the Uniform Act the State Board of Equalization collects and distributes to county and city governments a local sales and use tax of one cent.

2. Internal Organization

a. Chartered Cities. Another very important municipal affair is the determination of the form of organization which the city government shall take. One of the subjects which is usually covered rather completely by a city charter is organization. Chartered cities are free to use any form of organization, and make any desired allocation of duties, powers and functions between the elective and appointive officers of the city. California chartered cities most commonly use one of three basic forms:

(1) Mayor-Council, with the mayor being elected from among the members of the council;

(2) Strong Mayor-Council, with provision for a directly elected mayor having strong executive powers; and,

(3) Council-Manager, with all administrative authority being vested in the city manager and policy making powers reserved to the city council.

While the foregoing classifications are adequate to describe the general category into which all of California's chartered cities fit, there are many different minor variations in each of these forms as a result of local needs.

b. General Law Cities. Under the provisions of the Government Code, general law cities in California have either the council-manager or the mayor-council form of government with a mayor being elected from among the members of the city council, by its members, or directly by the voters. (Sections 34851, 36801, Gov. Code). A general law city may establish the council-manager form of government at the time of incorporation or subsequently by adopting an ordinance establishing the city manager form of government, by an ordinance submitted to the electors by the legislative body or as an initiative measure. (Section 34851). In addition to the city manager form of government, general law cities may establish a

council-administrative officer form of government pursuant to the authority granted under Section 36505 of the Government Code providing for the appointment by the city council of officers or employees deemed necessary. Under this alternative, the city council does not delegate any of its administrative authority to the administrative officer who merely acts as the agent of the council in performing the council's administrative functions. Thus, while chartered cities enjoy considerably more flexibility in the choice of alternative forms of organization, general law cities have substantially the same choices with the exception that there is no provision in the general law for the so-called "strong mayor" form of government.

E. The "Statewide Concern" Doctrine. The other side of the coin in chartered cities are those matters which are of "statewide concern". These are subject to the control of the State Legislature and outside the autonomous authority of a chartered city. With respect to a matter of "statewide concern", a chartered city must yield to conflicting state legislation. An example is annexation procedure. In order to annex territory outside of the city, a chartered city must proceed according to state law. (People v. City of Los Angeles, 220 Cal. 154). Annexation of territory outside its limits cannot be a "municipal affair" since the territory most directly interested is not, during such proceedings, municipal.

While it might seem that chartered cities with their autonomy in "municipal affairs" enjoy a substantial advantage over general law cities, analysis of the practical situation reveals the fallacy of this assumption. A very cooperative Legislature following the policy of home rule, as distinguished from the law of home rule, has granted general law cities every reasonable request for additional corporate authority. As a result, there are today very few powers possessed by charter cities which are not also available to general law cities. In addition, the courts appear to be recognizing fewer matters as "municipal affairs".

IV. LIMITATIONS AND RESTRICTIONS

When you lean back and think of these extremely vital and far-reaching powers granted to cities, you will inevitably experience a deep sense of awe and humility. The state has entrusted you and the other four, six, eight or fourteen councilmen with whom you serve all of these powers. They are, in fact, so far-reaching that it is but human to wonder why you do not see evidence of their abuse. One reason is that the grant has not been carte blanche. Great powers are accompanied by severe limitations. There are restrictions on who can exercise these powers, how they are exercised, and very severe penalties for those who deviate. Let us quickly review these limitations.

A. Eligibility for Office - "Who" Can Serve? The law requires that councilmen be electors (Section 36502, Gov. Code) which means they must be resident citizens, at least 21 years of age. (Article II, Section 1, Cal. Const.). Then the law requires that they be residents of the city for one year and be nominated and elected by those who will be affected by their exercise of these vast powers. (Section 36502, Gov. Code; Sections 9700 et seq., Elec. Code). After this rigorous selection process, council members are permitted to exercise these powers only when they act as a group. Not satisfied with this, the law authorizes the recall of those whose performance is considered deficient. (Sections 11100 et seq., Elec. Code). It also provides for substituting direct popular legislative action for council action by the initiative and referendum. (Article IV, Section 1, Cal. Const., Sections 1700 et seq., Elec. Code). Still more safety is added by laws calling for the removal of those

who may lose the basic qualifications of office, as by loss of sanity, commitment as an addict, conviction of crime or absence from the jurisdiction without permission for more than sixty days. (Sections 1770, 36513, Gov. Code). The fact that councilmen present and acting at a meeting are shown to have been improperly elected or ineligible to hold office does not, however, detract from the validity of their actions in enacting an ordinance if they are generally assumed, as a matter of fact, to be the city council members. (Town of Susanville v. Long, 144 Cal. 362).

B. Meeting Requirements. Not only is the law very selective as to who may wield these powers, but with respect to where and how. Action of a city council can be taken only at duly convened public council meetings, at a place designated by ordinance.

A duly convened meeting of the city council must be one which satisfies all of the legal requirements for calling together the city council to act on city business. These requirements in chartered cities will be found for the most part in the city charter. Because the requirements of the various city charters are all somewhat different, limitations of time and space require that our attention be limited to the specific requirements applicable to general law cities.

For a meeting of a city council of a general law city to be legally convened, it must be held at the place designated by ordinance and be open to the public. (Sections 36808, 54950 et. seq., Gov. Code). If the meeting is a regular meeting, it must be one which is held at least once a month at times fixed by ordinance or resolution. (Section 36805, Gov. Code). Ordinances may be given final passage only at a regular or an adjourned regular meeting. (Sections 36934, 36805, Gov. Code).

Basically, there are four different kinds of meetings which a general law city council can hold: regular, adjourned regular, special, and adjourned special. Regular meetings are what their name implies, the regularly scheduled meetings at which the normal business of the city is transacted by the city council. However, if for some reason the city council does not or cannot finish all of its business at a regular meeting and some of its business cannot wait until the next regular meeting, the law authorizes the holding of adjourned meetings, which are regular meetings for all purposes. (Sections 36805, 54955, Gov. Code). Thus, a regular meeting may be adjourned to a specified time and place in the motion for and order of adjournment, and when the meeting is convened at that time and place, the meeting is a regular meeting. If the order of adjournment fails to state the hour at which the adjourned meeting is to be held, it must be held at the hour specified in the ordinance or resolution for regular meetings. (Sections 36809, 54955, Gov. Code). Meetings may be adjourned by less than a quorum or by the city clerk if no member of the city council is present. In holding adjourned meetings, careful attention should be paid to the detailed procedural requirements of Section 54955.

When matters arise which demand council action prior to the next regular meeting, the city council can be called together for a special meeting. The Government Code spells out certain procedures for the calling of a special meeting and a deviation in the required formalities will result in an improperly convened meeting at which no valid action can be taken. (Baumgardner v. City of Hawthorne, 104 Cal. App. 2d 517). The older procedure set forth in the general law (Sections 36806 et seq., Gov. Code) for calling special meetings has now been supplemented and modified by the provisions of Chapter 1588, Statutes of 1953, the so-called "secret meeting law". In addition to establishing a salutary state policy that deliberations and meetings of governing bodies of all local agencies shall be

taken openly, the new act establishes specific procedural requirements for the calling of special meetings. To the extent that this new act conflicts with the procedure for calling of special meetings established by the older Government Code sections, the newer procedure must be followed. Thus, notice of special meetings must now be given 24 hours in advance of the meeting under Section 54956 of the Government Code rather than merely 3 hours in advance under Section 36806. However, 1955 amendments provide that written notice may be dispensed with as to any member who files, prior to the time the meeting begins, a written waiver of notice (which may be a telegram) or as to any member who is actually present at the time it convenes.

In addition, when a special meeting is called, notice thereof must now be given to each local newspaper of general circulation, and each local radio and television station which has requested such notices in writing. In conclusion, it seems quite safe to say that when a special meeting is to be held meticulous attention must be paid to the details of calling it as set forth in Section 36806 and 36807 of the Government Code, and also the details set forth in Section 54956 of the Government Code.

Finally, for the meeting to be duly convened and properly conducted, the mayor must preside, or if absent or unable to act, the mayor pro tempore acts until the mayor returns or is able to act (Section 36802, Gov. Code), and there must be a majority of the council present to constitute a quorum for the transaction of business. For the purpose of filling councilmanic vacancies two councilmen may constitute a quorum (Section 36810, Gov.Code; Nesbitt v. Bolz, 13 C. 2d 677).

C. Ordinance Enactment. Since the most important powers of a city are exercised by the city council by the enactment of ordinances, these forms of council action are hedged about with a number of legal requirements. For the most part these requirements are designed to insure a full, public and deliberate consideration of proposed legislation, followed by majority action of the city council and published notice of the final result. There are several aspects of this process which merit discussion. Primary attention must necessarily be given to general law cities since charter requirements will vary considerably with individual charters.

1. When Is an Ordinance Required? Because of the more complicated procedure for enacting ordinances, and the fact that they must be published, it is important to know when the law requires an ordinance, and when the less formal kinds of council action can be used. The use of a resolution, or minute action, when proper, saves two very important municipal resources -- time and money. Used improperly, they waste the same resources. There is no completely foolproof rule which will provide the right answer to this question every time. There are, however, three rules of law which will help in most cases. They are:

a. An ordinance must always be used to amend or repeal an ordinance. This can be called the rule of "equal dignity". An ordinance can only be changed by an enactment of equal dignity; that is, another ordinance. If the original ordinance had to be in ordinance form, it is only reasonable to amend or repeal it by using the same form and going through the same procedure. (Myers v. Calipatria, 140 Cal.App. 295; McQuillin, Municipal Corporations, 3d ed., Section 21.04).

b. Regulations of persons or property, which impose a penalty by fine, imprisonment or forfeiture for their violation, must always be in the form of an ordinance. This is an almost universal rule of law and practice. It is based on the fundamental assumption that before a citizen can be subjected to a law,

violation of which can make him a criminal or deprive him of his property, he must, at least in a legal sense, have some notice of its pendency or existence. This notice is furnished in the case of ordinances by both the second reading requirement and the post adoptive publication. (McQuillin, Municipal Corporations, 3d ed., Section 15.02). This rule is also implicit in the controlling provisions of the general law. (Sections 36900, 36901, Gov. Code).

c. Action of the City Council must always be in the form of an ordinance when the enabling charter or statutory authority under which the action is taken expressly requires an ordinance. The reason for this rule is apparent, and it can come into operation at any time when a city council acts under express charter or statutory authority. In the case of general law cities, except in the case of regulatory measures which are described under rule b (above) and must always be in ordinance form, every action will be under either express or implied statutory authority, unless the action is taken pursuant to an ordinance of the city itself. Accordingly, whenever action is taken by a city council of a general law city, other than the adoption of a regulatory measure, or action under a city ordinance, the statutory authority should be scrutinized carefully to determine whether an ordinance is required.

The possibility of a conflict between a charter provision requiring action to be taken by ordinance and a statutory requirement that action be taken in the form of a resolution is resolved by Section 50020 of the Government Code which provides that, in such event, action by ordinance shall be compliance with the statute for all purposes.

2. The Form and Parts of an Ordinance. While the organic law governing California general law cities makes very little direct provision concerning the form of ordinances, certain standards of form have become generally accepted throughout the state and nation. The law does not require that ordinances be couched in this traditional form or that they incorporate all of the accepted parts. Councilmen should, however, be acquainted with such forms in general, if only for the reason that an ordinance which did not use the traditional form and parts would be considered an oddity. In considering the parts of an ordinance and their accustomed form, we will start at the beginning, or head of an ordinance.

a. The Title and Subject. Unless required by Constitution, charter or statute, a title is not a requisite of a valid ordinance. The use of titles is, however, recognized as a desirable practice. The constitutional requirement found in Article IV, Section 24 of the California Constitution, that every act embrace but one subject which must be expressed in the title, has been held inapplicable to city ordinances (Ex Parte Haskell, 112 Cal. 412), and a title is not an indispensable part of an ordinance. (In re Johnson, 47 Cal.App. 465; Ex Parte Young, 154 Cal. 317). One exception to this rule that a title is not a legally required part of city ordinances will be found in the procedure established by Chapter 1466, Statutes of 1953 (Sections 50022.1 et seq., Gov. Code) for the adoption of codes by reference.

b. The Preamble. A preamble, while strictly an optional part of an ordinance, may be useful in explaining the reason for it and its legislative objects.

c. The Ordaining or Enacting Clause. While the general rule is that enacting clauses must appear only when required by charter or statute, here again the better drafting practice is to include such clauses. In general law cities, Section 36931 of the Government Code requires that the enacting clause

of ordinances shall be "The City Council of the City of . . . does ordain as follows:" In chartered cities, requirements for ordaining clauses will vary considerably, but the practice of using such clauses seems uniform and universal. In the case of initiative ordinances, the form of the enacting or ordaining clause will be "The people of the City of . . . do ordain as follows:".

d. The Body of the Ordinance. The body of the ordinance is the most important part, because it contains the command or law ordained by the city council.

e. The Clause of Taking Effect. Ordinances customarily contain a clause setting forth the date when the ordinance will become effective. While this clause is desirable, it is not essential to a valid ordinance. Ordinances will ordinarily take effect as soon as they are passed, unless an effective date is expressly provided in the ordinance itself, or other legal provision to the contrary (Gay v. Engebretson, 158 Cal.21), such as the expiration of a 30-day referendum period (Section 36937, Gov. Code; Klassen v. Burton, 110 Cal.App.2d 28), or an express statutory or charter provision that the enactment shall not be effective until published. (California Improvement Co. v. Reynolds, 123 Cal. 88). In general law cities, ordinances do not become effective until 30 days following adoption unless they come within one of the exceptions set forth in Section 36937 of the Government Code.

f. Signature and Attestation. Section 36932 of the Government Code requires that the mayor sign an ordinance of a general law city and that the city clerk attest it. While this type of signing after final passage is probably not required for the order to be valid and effective (Pacific Palisades Assn. v. Huntington Beach, 196 Cal. 211, 40 ALR 762), good drafting requires compliance with these requirements. In those cities where a charter provision makes signature of the mayor a condition in the nature of an approval of the ordinance after passage, failure to sign will invalidate the ordinance. (Pollok v. San Diego, 118 Cal. 593).

3. Enactment Procedure. With the city council duly convened in regular or adjourned meeting, presided over by the mayor at the right time and place, open to the public, and at least three members of the council present, the stage is legally set for the enactment of an ordinance. Normally, this process will take place in two stages; i.e., introduction and first reading followed by second reading and final passage. In the course of council action at these stages, amendment and alterations may be needed and questions on voting will arise.

a. Introduction and Reading. The first step is to have the ordinance in legible written or typewritten form. Most desirably, there should be sufficient copies for every member of the council to have a copy as well as the city clerk. The ordinance must then be "introduced". The law does not spell out what constitutes introduction, and so any reasonable practice will suffice. The most important matter in connection with introduction is that the minutes reflect the fact that the ordinance was "introduced".

In some cities a motion is made and voted on that the ordinance be introduced, and the ordinance is not recorded as introduced and is not considered as legally introduced unless approved by a majority vote of the councilmen present. This procedure is not legally required, but might be desirable as a practical matter to prevent the introduction of ordinances which have no chance of passage, thereby saving the time of the city council and the clerk, as well as costs of reproducing copies after introduction.

As a part of introduction, the ordinance should be read aloud, either by the councilman who is introducing it, or by the city clerk. The general law city's procedure quite clearly contemplates that ordinances shall be read aloud, but is not clear as to whether the reading is required both at the time of introduction and at the time of final passage, or only at the time of final passage. Accordingly, in order to avoid being half safe, there should be a "reading" of ordinances both at the time of introduction and at the time of final passage. Depending upon the circumstances, the city council may or may not wish to have an ordinance read in full either time, or both. Except in the case of urgency ordinances, further reading may be waived by regular motion adopted by unanimous vote of the councilmen present after the reading of the title alone. (Section 36934, Gov. Code).

b. Final Passage, Voting and Amendments. After an ordinance has been introduced and read for the first time, it cannot be finally read and passed until the expiration of at least five days, except in the case of an urgency ordinance, which can, in cases of great emergency, be finally passed at the same meeting at which it is introduced.

In the normal situation more than five days will elapse between the introduction and first reading of an ordinance, and the time when it comes up for second reading and passage. While it is legally possible for an ordinance to be introduced or amended at a properly convened special meeting, an ordinance can be finally adopted only at a regular or adjourned regular meeting. (Section 36934, Gov. Code). The purpose of this interval between introduction and final passage is to avoid hasty and ill-considered legislation.

For final passage it is absolutely necessary that there be a recorded roll call vote, and that three members of the city council vote "for passage". (Section 36936, Gov. Code). It should be noted that two votes for passage are not sufficient where one or more other members of the city council are present but abstain from voting, since the Government Code very clearly and expressly requires three councilmanic votes for passage. In other situations, two affirmative votes may be sufficient to carry a proposition on the theory that they constitute a majority of a quorum, not counting the abstaining members. (Martin v. Ballinger, 25 Cal.App.2d 435). This rule does not obtain in the case of final passage of an ordinance.

Quite frequently, it will be necessary or desirable to amend an ordinance after it has been introduced but prior to final passage. This may be necessary to correct drafting defects discovered in the ordinance after introduction, or to meet opposition to the ordinance as introduced. Amendments are authorized in general law cities, but require an additional five days before final action can be taken. However, and this is important, typographical or clerical corrections in an ordinance may be made at any time prior to final passage.

After final passage, and adjournment of the meeting at which passage takes place, the city council's part in the enactment process is concluded -- in a legal sense the city council loses "control" of that particular ordinance. Thus, if an hour following adjournment, it is suddenly discovered that a mistake has been made and the city council unanimously wishes to change its mind and rescind passage of an ordinance -- it cannot legally be done, and the ordinance can be prevented from going into effect only by the passage in the regular manner of another ordinance repealing it. (96 ALR 1294).

c. Publication or Posting. Final passage completes the part played by the city council, but other steps must still be taken before we have a completely adopted ordinance in the manner prescribed by law. The mayor must sign the ordinance, and the city clerk must attest it. (Section 36932, Gov. Code).

As the last official act, the city clerk must, within fifteen days after its passage, cause the ordinance to be published at least once in a newspaper of general circulation published and circulated in the city. If there is no such newspaper, the ordinance may be posted in at least three public places in the city. (Section 36933, Gov. Code). In those cities incorporated less than a year, ordinances may be either posted or published. The publication of an ordinance, other than an urgency ordinance, is a prerequisite to its taking effect. Although not a condition to the effectiveness of an urgency ordinance, a willful failure to publish could conceivably form the basis for removal proceedings under Sections 3060 et seq. of the Government Code as misconduct in office.

The single publication mentioned above is the general publication requirement applicable to most of the ordinances of the city; however, care must be exercised to be sure that the ordinance in question is not adopted under a special procedure prescribing publication for more than one time or within a different period. For example, an ordinance of intention adopted under the Change of Grade Act of 1909 (Section 8023, S. & H. Code), the Street Opening Act of 1903 (Section 4125.5, S. & H. Code) or the Vehicle Parking District Act of 1943 (Section 31543, S. & H. Code) must be published twice, and a failure to comply with publishing requirements under these acts might be held to constitute a jurisdictional (which is legalese for "expensive") defect.

D. Quasi-Judicial Actions. In the recent case of Saks & Co. v. Beverly Hills, 107 Cal. App. 2d 260, the District Court of Appeal held that when members of a city council act in a quasi-judicial capacity as in zoning matters, they are subject to disqualification on the ground of bias in much the same manner as judges. The vote of a biased councilman in a matter of this kind cannot be counted, so statements of opinion which might reflect prejudgment or bias on zoning matters prior to hearing should be avoided. This rule is, of course, applicable only in those cases where the city council is acting in a quasi-judicial capacity, and is not applicable where the council acts as a legislative body. Generally, all actions on ordinances are legislative. Such matters as hearings on variances, use permits, annexation protest hearings, civil service disciplinary hearings, and hearings on the issuance or revocation of regulatory licenses are usually quasi-judicial in character. The rule of the Saks case does not apply to invalidate recommendatory action taken by a planning commission if final action is validly taken by the council. (Sladovich v. County of Fresno, 158 Cal. App. 2d 231).

In many cases, the only result of legal error will be frustration of the council's purpose. When, in the enactment of an ordinance, the meeting is invalidly convened, is secret, or one of the procedural steps is omitted, the ordinance is invalid. The purpose of the council's action is defeated, but no personal sanctions are applied to the individual actions of the councilmen if they have acted in good faith and without intent to injure anyone.

V. PERSONAL LIABILITY - EXPENDITURES

A deviation from the law's requirements can, however, result in personal liability of the participating councilmen. Expenditures of city funds are the most frequent cause of this type of individual liability. In such cases the collective action of the council results in the individual liability of its members. The following are the bases which must be tagged before a municipal expenditure is home "safe":

A. Authority. First, there must always be legal authority to make the expenditure or perform the action for which the expenditure is required. One city attempted to set up a system of employee group insurance. The action was challenged and it was held that the city lacked the authority to do so. (Frisbee v. O'Conner, 119 Cal.App. 601). Personal liability could have resulted if the members of that city council had expended city funds for group insurance. A general law city's authority to expend or act is found in the Constitution, the general laws or as an incident to the exercise of its constitutional police power. In a chartered city, somewhat different tests apply, but in every city a question directed to the city's legal adviser will clear up the doubtful cases.

An important question of authority will arise when a proposed expenditure is for a service to be rendered outside of the city limits. As a general proposition a city can act outside of its boundaries only when expressly authorized by statute. (Mulville v. San Diego, 183 Cal. 734). However, when a city serves territory immediately adjacent to its limits for the purpose of protecting persons and property within its limits from fire (Raynor v. City of Arcata, 11 Cal.2d 113), indications are that the power will be implied. Again, there is rather broad authority under the Joint Exercise of Powers Act (Sections 6500, et seq., Gov. Code) for contracts between public agencies having powers in common whereby one serves the other. (City of Oakland v. Williams, 15 Cal.2d 542). With respect to public works of the kind included in Article XI, Section 19 of the Constitution, there is direct authority for service beyond city limits, provided that consent of any neighboring city served is granted by ordinance. (Durant v. Beverly Hills, 39 Cal.App.2d 133; City of Mill Valley v. Saxton, 41 Cal.App.2d 290).

B. Public, Municipal and State Purposes. All expenditures of locally levied tax moneys must be for a public and a municipal purpose. Generally, the line between a public purpose and a non-public purpose is the line between a public and a private purpose. If the expenditure is for something which will substantially benefit the general public rather than an identifiable group of individuals, it will generally be upheld as public. In addition to the public purpose requirement, there is the more specific municipal purpose requirement of Article XI, Section 12 of the California Constitution. The public which benefits from the expenditure must be that portion of public comprising the citizens of the municipality.

The corollary of the requirement that local tax revenues be expended for a "municipal purpose" is that state tax levies which are expended by cities or other local agencies must be expended for a "state purpose". Examples of the various situations in which expenditures have been held to be for a "public", a "municipal" or a "state" purpose are rather numerous in the appellate decisions of our state courts. Discussion of a few may be helpful.

1. "Public Purpose" - Examples. One of the most important principles in determining whether or not a particular expenditure is for a public purpose is that the courts will not assume to substitute their judgment for that of the local legislative body unless there is a showing that its judgment or discretion has been unquestionably abused. (City of Oakland v. Williams, 206 Cal. 315). Applying this principle to a variety of expenditures, we find that the appellate courts of this state have held to be a public purpose: (1) the payment of the necessary expenses of city officers and employees in attending an Annual Conference of the League of California Cities (City of Roseville v. Tulley, 55 Cal.App.2d 601); (2) the expenditure of city funds for advertising the advantages of the city through a contract with the Chamber of Commerce (Chamber of Commerce v. Stephens, 212 Cal. 607; (3) expenditures of public funds for

relief of assessment districts (County of San Diego v. Hammond, 6 Cal.2d 709). Further, while the principal distinction between a public purpose and a non-public purpose is that the former is of benefit to the general public while the latter is not, there are many expenditures of public funds which benefit the public generally and are for valid public purposes even though they may directly benefit specific individuals. Examples of these are: MacMillan v. Clarke, 184 Cal. 491 (free school text books); Veterans' Welfare Board v. Riley, 188 Cal. 607 (transportation, tuition and living expenses for education of veterans); Allied Architects Assn. v. Payne, 192 Cal. 431 (erection of memorial hall for war veterans); City of Oakland v. Garrison, 194 Cal. 298 (street improvements); Patrick v. Riley, 209 Cal. 350 (payments for destruction of diseased cattle); Sacramento & San Joaquin Drainage Dist. v. Riley, 199 Cal. 665 (flood control); City of San Francisco v. Collins, 216 Cal. 187 (bond issue for relief of indigent sick and poor); Housing Authority of Los Angeles v. Dockweiler 14 Cal.2d 437 (slum clearance); City of San Diego v. Hammond, 6 Cal.2d 709 (use of county funds to pay delinquent assessments on overburdened property); Goodall v. Brite, 11 Cal.App.2d 540 (free treatment in county hospital only for those unable to pay).

2. "Municipal Purpose"- Examples. The municipal purpose requirement imposed on top of the public purpose requirement by Article XI, Section 12 of the State Constitution is one which requires that there be municipal benefit from a municipal expenditure, in addition to the larger public benefit. In Adams v. Ziegler, 22 Cal.App.2d 135, it was held that the conduct of an otherwise authorized summer music and drama program under the general supervision of the playground commission of a city constituted a proper municipal purpose. In Bank v. Bell, 62 Cal.App. 320, the Court held that the maintenance of a public market by a city was a municipal purpose. However, in City of Redwood City v. Myers, 7 Cal.2d 283, it was held that the Municipal Investment Bond Act of 1915 was invalid for the reason that it authorized the imposition of a tax upon a city for which the city received no benefit and was, accordingly, in violation of Article XI, Section 12.

In the case which would best illustrate a violation of Article XI, Section 12, the Court seemed to base its decision upon the "municipal purpose" requirement, but did not mention the specific constitutional requirement. In that case, Chapman v. City of Fullerton, 90 Cal.App. 463, it was held that the proposal for the expenditure of the city for the extraterritorial purpose of helping to police other cities was invalid.

3. Mixed "Municipal" and "State Purposes". It will frequently happen that an expenditure will be for a particular matter upon which state moneys have likewise been expended. Since state tax moneys can only be expended for "state purposes" and municipal funds can only be expended for a "municipal purpose", it is but logical to wonder how an expenditure for one specified purpose can be both. The question has been resolved by holdings that highways (Perez v. San Jose, 107 Cal.App.2d 562) and state parks within cities (City of Sacramento v. Adams, 171 Cal. 458) can be of mixed benefit, and serve both a state and municipal purpose simultaneously.

4. "State Purpose" Expenditures. A substantial number of the expenditures made by city councils in California are of funds which are raised from state tax levies and which must, accordingly, be expended for a state purpose under Article XI, Section 12. Liquor license fees are the only exception, since they are not governed by Section 12, but by Article XX, Section 22, and may be validly expended for local purposes. (14 Ops.Cal.Atty.Gen. 149). With respect to gas

tax moneys, budgeted expenditures must be approved by the state and there is no room for error. The expenditure of motor vehicle license fees on the other hand, is not directly supervised by state government. The purposes for which these funds may be expended are set forth in Section 11005 of the Revenue and Taxation Code as ". . . for law enforcement, the regulation and control and fire protection of highway traffic, and for any other state purpose". The law enforcement and highway traffic purposes are rather definite, but the question frequently arises as to what constitutes a "state purpose". In a number of cases, the courts have indicated that certain items were not "municipal affairs" or were matters of "statewide concern" or a "state affair". On the basis of these decisions, it would seem that the following are valid "state purposes": City of Los Angeles v. Post War Etc. Bd., 26 Cal.2d 101 (Relief of unemployment is a state purpose); City of Los Angeles v. Riley, 6 Cal.2d 621 (Regulation, control and fire protection of highway traffic are state purposes); Bacon Service Corp. v. Huss, 199 Cal.21 (Maintenance of state and county highways is a state purpose); Ex parte Daniels, 183 Cal. 636 (Traffic law enforcement on city streets is a state affair); Boss v. Lewis, 33 Cal.App. 792 (Enforcement of state regulatory statutes by local officers is a state purpose); In re Shaw, 32 Cal.App.2d 84 (Enforcement of Penal Code in freeholder's charter city court is a state affair); City of Pasadena v. Chamberlain, 204 Cal. 653 (Joint acquisition and distribution of water for domestic uses is a state affair - possibly a state purpose); Pasadena Park Improvement Co. v. Lelande, 175 Cal. 511 (Flood control of non-navigable streams is "more than" a municipal affair); Peterson v. Board of Supervisors, 65 Cal.App. 670 (Reclamation of private lands "indicated" to be a "state purpose"); Gadd v. McGuire, 69 Cal.App. 347 (Sanitary and storm sewers outside of a city not a municipal affair - hence a state purpose); Pixley v. Saunders, 168 Cal. 152 (Sanitation may become a matter of more than municipal concern); Van de Water v. Pridham, 33 Cal.App. 252 (Drainage system is a state affair [inferentially]); Fragley v. Phelan, 126 Cal. 383 (Conduct of charter elections is a state affair - Uhl v. Collins, 217 Cal. 1); People v. Oakland, 123 Cal. 604 (Annexation proceedings is a state affair); Dept. of Water and Power v. Inyo Chem. Co., 16 Cal.2d 744 (Liability for, and payment of, tort claims is not a municipal affair); Esberg v. Badaracco, 202 Cal. 110 (The school system of the state is a matter of general concern. Const. Art. IX - "promotion of intellectual, scientific, moral and agricultural improvement" [any expenditure for such promotion should thus be for a state purpose]); and Andrews v. Superior Court, 29 Cal.2d 208 (Prosecution of state offenses is a state affair).

In addition, it should be pointed out that it is a very desirable practice to place "in lieu" tax revenues in a special fund to facilitate proper accounting for all expenditures therefrom.

5. Other Special Purpose Expenditures. Under certain circumstances, in addition to the constitutionally imposed requirements that expenditures be for a "municipal", "public" or "state purpose", the common law or a controlling state statute requires that funds be expended for enumerated purposes.

a. Vehicle Code Fines and Forfeitures. Section 770 of the Vehicle Code requires that the proportion of the total amount of fines and forfeitures which a city receives pursuant to Section 1463 of the Penal Code which is represented by fines and forfeitures resulting from Vehicle Code misdemeanors shall be deposited in a special fund to be known as the "Traffic Safety Fund". The section then provides that moneys in such fund shall be used exclusively for ". . . traffic signs, signals and other traffic control devices, the maintenance thereof, equipment and supplies for traffic law enforcement and traffic accident prevention, and for the maintenance, improvement or construction of public streets, bridges and culverts within such city, but such fund shall not be used to pay the compensation of traffic or other police officers. Said fund may be used to pay the compensation of school-crossing guards who are not regular full-time members of the Police Department of such city."

b. Street Engineering and Administration Allocations. Similarly, funds which cities receive from the state under the provisions of Section 2107.5 c the Streets and Highways Code (added by Stats. 1955, Chapter 1890) must be expended only for engineering costs and administrative expenses in connection with the city street system.

c. Aviation Gas Tax Refunds. Funds paid to airport-owning cities under Section 8357 of the Revenue and Taxation Code (unrefunded aviation gas tax moneys) may be expended only for airport and aviation capital outlay purposes.

6. Regulatory Charges. Another type of fund which is subject to restricted purpose expenditure is that resulting from the imposition of regulatory charges. Some of these are imposed under the city's constitutional police power, and others may be imposed under statutory authority.

a. Parking Meter Revenues. An example of the latter is the parkin meter charge which is used in a great many California cities (Section 22508, Veh. Code). Although this type of charge has not been the subject of extensive conside tion, in the appellate decisions of this state in the majority of jurisdictions in which the validity of parking has been challenged, they have been sustained as an exercise of the police power. (City of Phoenix v. Moore, 113 Pac. 2d 935; State v. McCarthy, 171 So. 314; Foster's Inc. v. Boise City, 118 Pac. 2d 721; City of Bloomington v. Wirrick, 45 N. E. 2d 852; Bowers v. City of Muskegon, 9 N. W. 2d 889). Three California decisions, while not directly holding parking meters to be valid as regulatory charges contain "indications" that such would be the rule. These cases are De Aryan v. San Diego, 75 Cal. App. 2d 292, 296; Downing v. Municip Court, 88 Cal. App. 2d 345, 351; and City of La Mesa v. Freeman, 137 A.C.A. 946. T validity of the use of parking meters by California cities was removed from the doubtful class by Section 22508 of the Vehicle Code.

If the placing of parking meters on public streets, and the use of a fee system for parking privileges, are supported as a regulatory measure, however, certain well-defined legal consequences follow. The fee to be charged must bear a reasonable relation to the service rendered and the cost of rendering it. De Arya v. City of San Diego, supra). Of course, so long as the primary purpose of the ordinance is to regulate and not to raise revenue, the mere fact that the receipts from fees exceed the cost of regulation is not objectionable. (City of Madera v. Black, 181 Cal. 306; In re Higgins, 50 Cal. App. 533; Glass v. City of Fresno, 17 Cal. App. 2d 555). The funds derived from such regulatory fees must be expended for some purpose substantially connected with the problem of traffic regulation and control. Thus, such funds may probably be expended for traffic enforcement, traffi engineering, traffic circulation, purchase of off-street parking facilities, signalization, street signs, traffic enforcement officers' salaries, as well as the purchase, installation, supervision, protection, inspection, maintenance and operation of the parking meters themselves.

b. Sewer Rental Charges. Another example of a user charge which is authorized by statute and the expenditure of which is limited by the authorizing statute is that resulting from the imposition of sewer rental charges which are authorized by Sections 5470 et seq. of the Health and Safety Code. Under the terms of Section 5471, the funds received can be expended only for ". . . the acquisition, construction, reconstruction, maintenance and operation of water systems and sanitation or sewerage facilities, to repay principal and interest on bonds issued for the construction or reconstruction of such water systems and sanitary or sewerage facilities and to repay federal or state loans or advances made to such entity for the construction or reconstruction of water systems and sanitary or sewerage facilities; provided, however, that such revenue shall not be used for the acquisition

or construction of new local street sewers or laterals as distinguished from main trunk, interceptor and outfall sewers."

C. Procedural Steps. In addition to having the authority and making an expenditure only for a public and municipal purpose, all procedural requirements imposed by your charter or by applicable statute must be followed. The requirements most commonly encountered are those applicable to the payment of claims and demands in general law cities, and those requiring that contracts for public projects be let by competitive bidding. Such procedural requirements will be found in most charters, as well as the general law.

1. Competitive Bidding - General Law Cities. The competitive bidding requirement which applies to all "public projects" and the annual contract for publication of official notices of general law cities will be found in Sections 37900 through 37907 of the Government Code. Section 37901 defines "public project" in the following manner:

> "§37901. As used in this chapter, "public project" means:
>
> (a) A project for the erection, improvement, and repair of public buildings and works.
>
> (b) Work in or about streams, bays, water fronts, embankments, or other work for protection against overflow.
>
> (c) Street or sewer work except maintenance or repair.
>
> (d) Furnishing supplies or materials for any such project, including maintenance or repair of streets or sewers."

Section 37902 then provides as follows:

> "§37902. When the expenditure required for a public project exceeds two thousand five hundred dollars ($2,500), it shall be contracted for and let to the lowest responsible bidder after notice."

The principal portion of Section 37901 which requires interpretation is subsection (a), since the other subsections are either quite specific or dependent upon the meaning given to (a). In Swanton v. Corby, 38 Cal. App. 2d 227, the court adopts the following general definition of "public works":

> "'Public Works' may be said to embrace all fixed works constructed for public use or protection, -- including bridges, waterworks, sewers, light and power plants, public buildings, wharves, breakwaters, jetties, seawalls, schoolhouses and street improvements."

It can thus be seen that the courts will give the term a very wide application.

a. Exceptions.

(1) Personal Property and Furnishings. In the Swanton case (supra) it was held that the bidding requirements were not applicable to the labor and materials required for the installation of a two-way short wave radio for use by the city police department.

(2) Garbage Collection Contracts. In another decision, the District Court of Appeal recently held that Sections 37901 and 37902 are not applicable to a contract whereby a general law city authorizes the collection and disposal of garbage within the city. (Davis v. City of Santa Ana, 108 Cal. App. 2d 669).

(3) Personal Service Contracts. Although there are no reported decisions on the question, it seems likely that Section 37901 will be held not to include contracts for personal services, such as engineering or legal services. In Kennedy v. Ross, 28 Cal. 2d 569, a charter requirement similar to Section 37901 was held inapplicable to contracts for professional engineering services. Insurance contracts would also seem quite clearly outside the scope of the requirement.

b. Splitting. The practice of splitting larger integral projects for the construction of public works in order to avoid the $2,500 or other fixed amount over which public contracts must be let by bidding is very dangerous. While there is no specific prohibition against this practice in the statutory law, the common law rule condemning the practice has been adopted by our courts in Gamewell Fire Alarm Co. v. City of Los Angeles, 45 Cal. App. 149.

2. Claims Procedure. The basic and mandatory outline of the procedure for payment of claims and demands in general law cities is set forth in Sections 37200 through 37208 of the Government Code. The most important requirement is that no claim or demand may validly be paid unless it has previously been "audited" (i.e., approved) by the city council. Exceptions to this are authorized for payroll warrants and warrants issued in payment of claims conforming to a budget ordinance. In both cases, however, such demands must be audited at the first meeting after payment.

Another exception will be properly authorized revolving funds. In the case of a revolving fund the payment or expenditure is audited when it is originally made to the fund and the subsequent individual expenditures therefrom are again audited when a new claim is made for purposes of reimbursing the fund.

A carefully drafted procedural ordinance for the payment of claims is the best protection against the liability which can result from a failure to observe the law's requirements.

D. Constitutional Debt Limit. Article XI, Section 18 of the California Constitution contains the following language:

> ". . .No county, city, town, township, board of education, or school district, shall incur any indebtedness or liability in any manner or for any purpose exceeding in any year the income and revenue provided for such year, without the assent of two-thirds of the qualified electors thereof, voting at an election to be held for that purpose. . ."

The purpose of this section is very simple. It was intended to prohibit all indebtedness whereby one of the enumerated local agencies became obligated to pay in future years for a consideration which it had already received. The intent was to prohibit accumulated indebtedness by requiring that each year's taxes and revenues should pay fully for everything received that year. If the revenues were not sufficient therefor, the creditor would be out of luck, having only himself to blame for not having made a more careful investigation. (Mahoney v. San Francisco, 201 Cal. 248; McFayden v. Calistoga, 74 Cal. App. 378). The one exception to this inflexible rule which was contemplated at the time the section was enacted is the approval by two-thirds of the electorate of a proposition authorizing the creation of an indebtedness, the issuance of bonds and the levy of an annual tax to defray payments of principal and interest thereon. This is the so-called "general obligation" bond method of financing.

Cities have for many years used this method of financing public works under the so-called Bond Act of 1901 (Sections 43600 et seq., Gov. Code.) However, a number of major "exceptions" to the prohibition against indebtedness have been approved by the courts. Each of these has developed into a method of financing. A brief discussion of these methods of financing capital improvements may be helpful to an understanding of this limitation on indebtedness.

1. Revenue Bonds. Bonds or other obligations which are payable solely from the revenues in a special fund or a particular public enterprise are held not to be a prohibited indebtedness. (Garrett v. Swanton, 216 Cal. 220; City of Oxnard v. Dale, 45 Cal 2d 729. Under the revenue bond method of financing, there is now statutory authority for California cities to acquire and operate systems for providing sewers, water, off-street parking, ferry systems, garbage disposal systems and airports. (Secs. 54300 et seq., Gov. Code).

Since the decision of the Supreme Court in Oxnard v. Dale (supra), it is now possible to finance extensions and improvements of existing revenue-producing enterprises through the issuance of revenue bonds. In addition to revenue bonds, this exception will permit the use of special fund contracts. The special fund contract is very much like a single revenue bond, but instead of the contract being in the form of a bond, it is in ordinary contract form with a single financier who agrees to provide the capital for the acquisition, improvement or extension of the revenue-producing enterprise and look only to the revenues of the enterprise for payment. These contracts have been specifically authorized for financing small craft harbors (Sections 5828, 5829.1, 5829.2, 6499.6 , Harbors and Navigation Code) and, subdivision drainage facilities (Section 11543.5, Business and Professions Code).

2. Special Assessment Bonds. Where an improvement is constructed under one of the special assessment acts, such as the Improvement Act of 1911 (Sections 5000 et seq., Streets & Highways Code) and the costs are assessed against the benefited property owners in the district (the district being only a portion of the city), the unpaid amounts are frequently represented by the issuance of bonds, payment of which is secured by a specific lien against a specific parcel of property and payable over a number of years by the property owner. In this situation, the courts have held that the indebtedness is not one of the "city", but merely of the particular parcel of property or the district and, consequently, Article XI, Section 18 is not violated. (Stege v. City of Richmond, 194 Cal. 305).

3. Lease Purchase. Still another exception exists, under which a long-term lease is held not to be an indebtedness for the total or aggregate of all of the annual lease payments, but only for the amount of each year's payments as they come due. The annual lease payments are usually well within the normal year's income and revenue and there consequently is no violation of the constitutional debt limit. When the lease is determined to be a valid lease and not a disguised conditional sales contract, the inclusion of a series of decreasing purchase options based on an agreed depreciation schedule and exercisable annually by the lessee city does not render the agreement invalid. (City of Los Angeles v. Offner, 19 Cal 2d 483). One later case has indicated that passage of title at the conclusion of the lease term without any option amount being paid is valid (Dean v. Kuchel, 35 Cal. 2d 444), but most municipal attorneys have indicated a reluctance to take this decision at its face value and insist on following the type of agreement approved in the Offner case. The latest decision approving a lease-purchase agreement was County of Los Angeles v. Byram, 36 Cal. 2d 694, in which funds of the County Retirement System were used to finance a needed courthouse. The State Building Construction Act of 1955 (Stats. 1955, Chapters 1686, 1687) would permit the use of State Employees' Retirement System funds for financing state buildings on a rather novel combination of lease purchase and special fund financing. In 27 Ops. Cal. Atty. Gen. (Adv. Ops.) 115, the Attorney General concludes that this Act is not a violation of the constitutional debt limit.

4. Minor Exceptions. In addition to the foregoing there are a number of exceptions to Article XI, Section 18 which are of less common use. Thus, a contract for services of a civil engineer over a five-year period has been held valid on the theory that each year's services will be paid from the revenues of that year. (San Francisco v. Boyd, 17 Cal.2d 606). Similarly, a contract providing for "progress payments" on a construction project has been held not to constitute a prohibited debt where each year's payments are only for the portion of the work completed for that year. (Smilie v. Fresno County, 112 Cal. 311). Subsequent cases have, however, developed a theory that where each year's consideration results in an "increasing compulsion" to complete the entire contract, there is an indebtedness for the total amount at the time the contract is executed. (Chester v. Carmichael, 187 Cal. 287; Mahoney v. San Francisco, 201 Cal. 248; In re City and County of San Francisco, 195 Cal. 426; Garrett v. Swanton, supra). These later cases might cast some doubt on the doctrine of the Smilie case.

Since Section 18 purports to be applicable only to those agencies which it names, the conclusion that others are not bound by it was both logical and inevitable. (Shelton v. City of Los Angeles, 206 Cal. 544; Department of Water and Power v. Vroman, 218 Cal. 206; Strain v. East Bay Municipal Utility Dist., 21 Cal.App.2d 2

At a rather early date, our courts held that Section 18 applied only to obligatio voluntarily incurred and not to obligations mandatorily imposed by law upon a city (Lewis v. Widber, 99 Cal. 412). On this basis, a judgment against a city may be collected from revenues of successive years pursuant to Sections 50170 et seq. of the Government Code. (Metropolitan Life Insurance Co. v. Deasy, 41 Cal.App. 667).

Finally, it should be made abundantly clear that the debt limit applies only in the event the funds of a particular year which could be applied to the obligation are exhausted. If funds exist at the end of a year and are carried over into future years, they may be validly expended at that time or reached by a judgment creditor. (Title Guarantee & Trust Co. v. Long Beach, 4 Cal.2d 56).

It will be seen from the foregoing that questions involving the debt limit are quite technical and highly important since moneys paid out in violation thereof are unlawfully expended and may provide a basis for individual liability of city councilmen approving payment. (Mines v. Del Valle, 201 Cal. 273). Consequently, it would appear advisable whenever a contract is proposed which contemplates payment of city moneys out over a period extending beyond the fiscal year in which the contract is executed to ask the city attorney whether or not there is a violation of Article XI, Section 18.

E. Compensation of Elective Officers. Another important constitutional prohibition is Article XI, Section 5. That section reads, in part, as follows:

> ". . . The compensation of any county, township or municipal officer shall not be increased after his election or during his term of office, nor shall the term of any such officer be extended beyond the period for which he was elected or appointed.
>
> "The Legislature by a two-thirds vote of the members of each house may suspend the provision hereof prohibiting the increase of compensation of any county, township or municipal officer after his election or during his term of office for any period during which the United States is engaged in war and for one year after the