

THE FINANCIAL, DEBT, AND TAXATION PROVISIONS OF THE MISSOURI CONSTITUTION

CHARLTON F. CHUTE† AND VICTOR D. BRANNON††

In many respects the provisions of the Missouri Constitution of 1875 relating to financial, debt, and taxation matters were among the most novel features of that document. Some of them were not only unique so far as the constitutional history of Missouri was concerned, but they were in the vanguard of a nationwide movement that was to affect the constitutions of many states in the years to come.

It is clear from contemporary documents that the framers of the Constitution of 1875 devised these provisions, and recommended them to the electorate for adoption, confident in the belief that a solution had been found to the pronounced trend of government expenditures to mount ever higher. In view, therefore, of the problems we face today in connection with taxation and governmental spending, it is fitting that we re-examine the motives and objectives of the framers of these provisions, analyze the more important devices they wrote into the constitution, and determine the extent to which they have been justified in view of our experience with them in the past 67 years. We should be merely a negative critic if we did not add some comments indicative of the best current thought of specialists in this field.

It has been generally agreed by those who have studied the Missouri Constitution of 1875 that it was, to quote a leading writer on the subject, "a conservative constitution containing stringent restrictions on public taxation, bonded indebtedness, and state and local expenditures."¹

In the earlier constitutions, those of 1820 and 1865, there were few provisions relating directly to public finance, and these were not deemed of sufficient importance by the framers to warrant a separate article. The appearance of so many financial provisions in the Constitution of 1875 attests the importance of this subject in the minds of the delegates to the convention.

† Director, Governmental Research Institute, St. Louis.

†† Member of the staff, Governmental Research Institute, St. Louis.

1. I Loeb and Shoemaker, *Journal Missouri Constitutional Convention of 1875* (1920) 71.

These provisions appear to have been caused by a considerable demand for a more conservative constitution because of the state legislature's abuse of the power of special legislation, and its policy of encouraging the creation of public debt to provide aid for the railroads. The Civil War brought both new taxes and higher tax rates.² "The members of the Constitutional Convention had personal experience with these conditions and their constituents were demanding relief and safeguards for the future. As a result the Constitution of 1875 was distinguished for possessing greater restrictions upon legislative power than any of its contemporaries in other states and today there are few state constitutions which can compare with the strictness of its provisions."³

That the members of the constitutional convention of 1875 consciously labored to meet this demand is well indicated from the emphasis placed on conservative public finance in the following summary paragraph which appears in their Address To Accompany The Constitution:

It will be seen that the end sought to be accomplished is to secure an efficient and economical administration of the several departments of the state government; and with this object in view, especial effort has been directed to secure the following results: restriction upon the powers of the legislative department; uniformity in the organization and jurisdiction of the Judicial Department; limitations upon the power of all officials in the creation of debts; reduction of taxes of the State and of all counties, townships, cities, towns, and school districts; the removal of opportunity for private use of public moneys and a rigid economy in the expenditure thereof and prevention of abuse of power and corruption in office.⁴

The more important fiscal provisions which are the subject of this article may be classified for convenience as follows: (1) Tax limit provisions, (2) The general property tax, (3) Debt limit provisions, (4) Powers and procedures of state finance officers, (5) Miscellaneous financial provisions.

2. Judson, *A Treatise upon the Law and Practice of Taxation in Missouri* (1900) 34.

3. 1 Loeb and Shoemaker, *op. cit. supra*, note 1, at 28.

4. 2 Loeb and Shoemaker, *Journal Missouri Constitutional Convention of 1875* (1920) 883.

1. TAX LIMIT PROVISIONS

Let us examine first the devices by which it was hoped the constitution would promote the "reduction of taxes of the state and of all counties, townships, cities, towns, and school districts."

Undoubtedly the most important device was that of setting a constitutional limit to the rate of the general property tax for each class of governmental unit. This was a new device for Missouri, for, as the framers pointed out, "At present there is no such Constitutional limit."⁵

Moreover, Missouri would appear to have been among the first in the matter of setting constitutional limits to general property tax rates, for it is reported that there were none prior to the Civil War. "During the seventies and eighties, however, they appear with increasing frequency, and by the end of the century eighteen states had such restrictions."⁶ It was recently reported that, at present, about 38 states have some sort of tax limit provisions. About 20 of these have tax limit provisions written into their constitutions.⁷

The particular type of tax limit employed in Missouri is the specific limit on the tax rate for each of the several layers of governmental units. In the case of the state government, the constitution clearly specifies that the tax limit provided is "exclusive of the tax necessary to pay the bonded debt of the State."⁸ The framers did not, however, express themselves so clearly as to whether the tax limits for local governments provided in article X, section 11 applied only to taxes for operating purposes, or whether they also covered taxes levied to service indebtedness incurred under section 12. This question troubled the courts for many years.⁹ In the case of *Lamar Water Company v. City of Lamar*,¹⁰ decided in 1895, the Missouri Supreme Court held that the limits in article X, section 11 apply only to local taxes for general operating purposes, and that additional taxes can be levied to pay debts incurred under section 12. This interpretation was reaffirmed in later cases decided by the court.¹¹

5. Id. at 881.

6. Newcomer, "The Growth of Tax Limitation Legislation," in Public Administration Service, *Property Tax Limitation Laws* (Rev. ed. 1936) 38.

7. Groves, *Financing Government* (1939) 461.

8. Mo. Const. (1875) art. X, §8.

9. Skinker, *Constitutional Limitations on Municipal Taxation in Missouri* (1921) 6 ST. LOUIS LAW REVIEW 61.

10. (1895) 128 Mo. 188, 26 S. W. 1025.

11. *Aurora Water Co. v. City of Aurora* (1895) 129 Mo. 540, 31 S. W.

First of all comes the limitation on the rate of the general property tax for the support of the state government itself. The constitution (article X, section 8) provides that this rate shall not exceed 20c on the \$100 valuation, and shall be reduced to 15c whenever the taxable property of the state exceeds 900 million dollars. It is evident from this that the framers took into consideration the two variables that determine the amount of a tax levy, *i. e.* the valuation and the tax rate. They lived in a growing commonwealth, and although the taxable valuation for state purposes was but \$596,529,955 in 1875, they looked forward in confidence to the day when the state's taxable valuation should exceed 900 million dollars. It did not seem wise to them to permit the state's tax rate limit to remain unchanged regardless of the increase in the tax base. It is not hard to understand their belief that the state's power to raise revenue should increase in something less than direct proportion to the increase in the taxable wealth. So it happened that when the state's assessed valuation exceeded 900 million dollars in 1892 and the 15c rate automatically went into effect, the levy amounted to \$387,759 less than it had the year before.¹² To this extent then, the hope of the framers to reduce state taxes¹³ had been fulfilled; the state tax rate limit was automatically reduced from 20c to 15c. During the seventeen year period, 1875 to 1892, however, the levy rose from \$1,185,316 to \$1,367,687.

What would the framers think if they could compare the state's taxes today with the ones they knew in 1875? The state auditor's report of that day shows that 98% of the state's revenue receipts came from the general property tax, the remainder consisting of fees, earnings, grants, and donations. For the biennium 1873-74 it is reported that state receipts from general property taxes amounted to \$5,752,529. When this is compared with the state's receipts of \$142,169,502 from taxes alone in the most recently completed biennium, 1939-40, it will be seen that there has been an increase of 2,371% over the state's tax receipts in 1873-74. This almost astronomical increase has come, not from

946; *Lamar Water Co. v. City of Lamar* (1897) 140 Mo. 145, 39 S. W. 768; *City of Stanberry v. Jordan* (1898) 145 Mo. 371, 46 S. W. 1093; *State ex rel. Miller v. M. K. & T. R. R.* (1901) 164 Mo. 208, 64 S. W. 187; *City of Lexington v. Lafayette County Bank* (1901) 165 Mo. 671, 65 S. W. 943.

12. *Report of the State Auditor of Missouri* (1891-92) 21.

13. 2 *Loeb and Shoemaker*, *op. cit. supra*, note 4, at 880.

any revision upward of the limit on the property tax rate for state purposes, but rather from the introduction of new taxes such as the state inheritance tax, the income tax, the retail sales tax, the gasoline tax, beer and liquor taxes, business license taxes, and taxes on non-business licenses, such as those issued for automobiles, drivers, and fishermen and hunters. The conclusion is inescapable that, despite the limit on the general property tax, the tax burden for state government on Missourians has increased more than 23 times since our state constitution was adopted.

Now let us examine the constitutional limitations on the general property tax rate for local governments. Here the framers recognized a fundamental truth in public finance, namely, that communities vary in their need for public services and also in their ability and willingness to pay for what they need. In other words, tax limits should have some flexibility so as to control a community without putting it in a plaster cast. It will be seen from the following discussion that the degree of flexibility provided by the constitution varies with the type of local government.

The device written into the constitution by the framers to adjust the county tax rate limit to the community's need proceeded on at least one assumption, namely, that need varied with a county's taxable wealth. This assumption is, of course, open to question.

Article X, section 11 of the constitution provides the following limits on the general property tax for county purposes:

In counties having an assessed valuation of 6 million dollars or less.....	50c on the \$100
In counties having between 6 and 10 million dollars	40 " " "
In counties having between 10 and 30 million dollars	50 " " "
In counties having an assessed valuation of 30 million dollars or more.....	35 " " "

The state auditor's report for 1873-74 gives the taxable wealth of the counties of Missouri for the year 1873, the last year for which complete data were available in 1875. Analysis of this data shows that 100 counties had an assessed valuation of less than 6 million dollars, 11 counties fell in the bracket 6 to 10

million, 2 counties fell in the bracket 10 to 30 million, and only St. Louis County, which then included the City of St. Louis, had more than 30 million dollars of assessed valuation.

The contrast with the situation today is striking. The Journal of the State Board of Equalization gives the 1939 assessment for 1940 taxes, and shows that only 20 Missouri counties now have an assessed valuation of less than 6 million dollars, 17 counties fall in the 6 to 10 million bracket, 67 counties fall in the 10 to 30 million bracket, and 11 counties now have an assessed valuation of over 30 million dollars. The assessed valuation of the state rose from \$640,381,402 in 1873 to \$3,825,630,975 in 1939.

It will be observed that while in general the limit on the tax rate is reduced as the county's assessed valuation increases, a departure from this logic is made for counties having an assessed valuation of between 10 and 30 million dollars. The reason for this is not fully clear at this time. The Journal of the 1875 convention shows that the convention's Committee on Revenue and Taxation recommended rates that progressively declined as the county's assessed valuation increased.¹⁴ These rates were, however, amended on the floor of the convention. The rate limit for counties having an assessed valuation of between 10 to 30 million dollars was seemingly raised to 50c by an amendment offered by Mr. Chrisman of Jackson County on July 15, 1875. The debates for this day of the convention's proceedings have not yet been published. It is interesting to note that Mr. Chrisman's amendment probably was motivated by the fact that the assessed valuation of Jackson County at that time caused it to fall within the bracket of 10 to 30 million dollars.

The attempt to introduce a measure of flexibility by varying the limit for the county rate, as the assessed valuation of the county rose, was doomed to failure. It was not sufficiently flexible to meet needs three and four decades later. The framers of 1875 could not foresee the coming of the automobile and the popularity it was to enjoy. In 1907 the legislature proposed an amendment to the constitution authorizing a county to levy, in addition to the county tax mentioned above, a special tax of not to exceed 25c on the \$100 valuation to be used for road and bridge purposes only. This amendment was ratified at the election of No-

14. *Id.* at 536.

ember 3, 1908, and the county tax limit for a county having less than 6 million dollars was thereby raised from 50c to 75c on the \$100.

The end was not yet in sight. Twelve years later the constitution was again amended to authorize the raising of the limit of the tax that could be levied by a county under certain conditions. This amendment provided that, in addition to the tax authorized for county purposes and that authorized for special road and bridge purposes, it should be the duty of the county court when authorized to do so by the majority of the qualified voters of a road district, to make a levy of not to exceed 50c on the \$100 valuation for the use of a road district. After the adoption of this amendment in 1920, therefore, the maximum tax limit that a county could levy for general purposes, for special road and bridge purposes, and on behalf of a road district, had risen to \$1.25 on the \$100 valuation. Thirteen years earlier this limit was only 50c on the \$100, it will be recalled.

In writing tax limits for city and town purposes, the framers again attempted to introduce flexibility by classifying the various municipalities and providing different tax limits for the cities and towns of each class. The basis of their classification in this case was not assessed valuation, which they had used for the purpose in connection with tax limits for county purposes, but instead was population. The reason for this shift in the basis of classification is not known. It is likely that some light will be shed on the question when the ninth and succeeding volumes of the Debates of the Missouri Constitutional Convention of 1875 are published.

Article X, section 11 of the constitution provides the following limits on the general property tax for city and town purposes:

In cities and towns having a population of 30,000 inhabitants or more.....	\$1.00 on the \$100
In cities and towns having between 10,000 and 30,000 inhabitants60 " " "
In cities and towns having between 1,000 and 10,000 inhabitants50 " " "
In cities and towns having a population of 1,000 or less25 " " "

With one important exception (St. Louis), these constitutional

limits on the tax rate for city and town purposes have not been changed by amendment. Following the adoption of the Constitution of 1875 came the separation of the City of St. Louis and St. Louis County. The city thereupon found it necessary to finance certain expenditures which are usually obligations of a county, such as the expenses of judges, jurors, the sheriff, the coroner, and others. Because no allowance had been made for a change in the tax limit applicable to the City of St. Louis, hardship soon developed. It resulted in an amendment to the constitution in 1902 which authorized the City of St. Louis to levy for municipal purposes, in addition to the rate permitted above, a rate that would be allowed for "county purposes" if St. Louis were part of a county. This had the effect of raising the limit on the St. Louis city tax rate from \$1.00 to \$1.35 on the \$100 of assessed valuation. Interestingly enough, the convention's Committee on Revenue and Taxation recommended a limit of 80c in the rate for cities having a population of over 30,000 persons.¹⁵

In the case of many cities, like that of the state, expenditures have increased despite the limit placed on the property tax. These additional expenditures have been financed by tax revenues from new sources, such as a municipal tax on the sale of gasoline and on the sale of cigarettes, by non-tax revenues, such as the fees charged for municipal auto drivers' licenses, by the earnings of municipal utilities, and the creation of floating debt to finance over-spending.¹⁶

We have seen that nominal flexibility in the limits of tax rates for county, and for city and town purposes, is provided by classifying these units of government according to assessed valuation in one case and population in the other, and then setting a limit to the tax rate for each class. In the case of school districts,

15. *Ibid.*

16. Occasionally sufficient non-tax revenues will produce the phenomenon euphemistically known as the "tax-free" town. The following item appears in the February, 1942, *Missouri Municipal Review*: "West Plains to Be Tax Free. James G. Harlin, 80-year-old mayor, who has held his post here for 30 years, sees no reason why West Plains' 4,026 citizens should have to pay any city taxes this year—and the two councilmen, Earle Armstrong and Carrick Davidson, agree with him. Mr. A. H. Day, the efficient city clerk and collector, reports that the city treasury now contains \$47,000. The city owns its own water and light plant, operates a stockyards, has paid all its bills, paved its streets. In fact, said Mayor Harlin, 'We see no reason why we can't get along without taxes for a good many years.'"

however, flexibility in the tax rate limit is provided by a new device. First, a constitutional tax limit is set. Then, it is provided that this limit may be exceeded upon condition that a certain type of referendum is favorable, but in no event can the rate exceed a second constitutional tax limit.

The Constitution of 1875 (article X, section 11) sets a tax rate limit of 60c on the \$100 for school purposes in districts composed of cities which have 100,000 inhabitants or more. In other districts the limit is to be 40c on the \$100. It is provided, however, that "on the condition that a majority of the voters who are taxpayers, voting at an election held to decide the question, vote for said increase" the rate can be increased to not to exceed one dollar on the \$100 "in districts formed of cities and towns," and in other districts to not to exceed 65c. The constitution also provides that the constitutional tax rate limits may be exceeded when the increase is for the purpose of erecting public buildings in counties, cities, or school districts, and when the rate of increase and the purpose for which it is intended shall have been approved by two-thirds of the qualified voters of the governmental unit voting at an election on the issue.

These provisions of the constitution relating to the tax rate limit for school purposes have remained unchanged since 1875. The hampering effect of this tax rate limit was circumvented in the University City School District and, it is said, in many other school districts, by the adroit use, or rather the failure to use, the proceeds of the school building tax. This tax, of course, first required the approval of a two-thirds majority of the electorate. Following approval of the levy, the Board of Education of the University City School District would then take care that much, if not all, of this levy remained unspent at the end of the fiscal year. The balance was then transferred to the general fund. This practice was suddenly ended in University City when the Circuit Court of St. Louis County, at the instance of four taxpayers, invalidated the building fund levy and enjoined the county clerk from extending it upon the tax books. The Missouri Supreme Court upheld the circuit court.¹⁷

To provide relief in this situation, representative citizens and the state legislators of St. Louis County united to have the legis-

17. *Russell v. Frank* (Mo. 1941) 154 S. W. (2d) 63.

lature propose a constitutional amendment which will be voted upon in November, 1942. Under the terms of this proposed amendment, school districts in St. Louis County could vote an additional general school tax of not to exceed one dollar on the \$100 if it is approved by a two-thirds majority of the voters of the school district.¹⁸

In summary, it may be said that when the framers of the Constitution of 1875 wrote specific tax rate limits into that document, their purpose undoubtedly was to prevent the increase of, if not actually to reduce, governmental expenditures. By controlling tax rate limits they were, by indirect means, trying to control public expenditures. This was a most natural thing to do in view of the fact that nearly all state and local revenues at that time came from the general property tax. The framers probably had the additional thought that a limited tax rate would prevent wasteful public expenditures, and therefore promote wisdom in public spending. When it is recalled that these Missourians were blazing a new trail in the age-old field of the control of public expenditures, it seems but proper to do them honor for the thoughtfulness of their pioneer efforts.

The experience of the last 67 years with constitutional tax rate limits in Missouri clearly shows their weaknesses. Tax rate limits have not prevented the rise of public expenditures. The limits have been circumvented in many ways: by the widespread use of new forms of taxation (income tax, sales tax), by the creation of new types of taxing units (road districts), by over-spending and the creation of floating debt, by the creation of non-tax revenues ("surplus" earnings of publicly owned enterprise), by keeping assessed valuations above what may be called the "normal" ratio of assessed value to true value, and by subterfuge (school building tax used for school operation purposes). When circumvention appeared less attractive than amending the constitution to raise the limit set therein on tax rates, the latter course has been followed.

The argument that tax rate limits eliminate inefficiency and waste in public expenditure generally fails because this device is too crudely mechanical to affect instances of inefficiency. Certainly when a governmental unit levies a tax rate below the limit,

18. Mo. Laws of 1941, 721-722.

or exists "tax-free," whatever waste there is in its public expenditures continues despite the presence of a limit to the tax rate in the constitution. These defects and shortcomings of limited tax rates as a device for controlling public expenditures have been observed in practice in many, many jurisdictions. For this reason most students of public finance today are opposed to a limited tax rate, and particularly to those written into a state constitution.¹⁹

If limits to the rate of the general property tax, set in constitution or statute, have not proved themselves desirable for many reasons, it is proper to ask what may be the best alternatives known at present. One of the leading students of public finance in this country, Mr. A. E. Buck, succinctly replies as follows:

The methods which state governments should inaugurate to assist local governments in rehabilitating their present finances and in following thereafter a sound fiscal policy are largely comprehended in financial planning and control. They include comprehensive budgeting, up-to-date accounting, departmental costing, careful auditing, systematic reporting, personnel control, and centralized purchasing. These methods have been applied, at least in part, to the local governments of several states, hence they may not be regarded as new and untried devices. They enable local authorities, experience has already shown, to exercise effective control over their finances, and they permit citizens to approach intelligently the problems of local taxation.²⁰

To these devices Professor Leland would add "centralized fiscal supervision and even control."²¹ He undoubtedly refers to fiscal supervision and control of local government by a state administrative agency.

2. THE GENERAL PROPERTY TAX

The constitution of Missouri contains certain provisions which, as interpreted by the state supreme court, require that all property, with specified exemptions, be taxed in proportion to its

19. Groves, *op. cit. supra*, note 7, at 460-473; Jensen, *Government Finance* (1937) 267-270; and see Dykstra, Buck, Lutz, Groves, Reynolds, Newcomer, Atkinson, Leland, and others in Public Administration Service, *Property Tax Limitation Laws* (Rev. ed. 1936).

20. Public Administration Service, *Property Tax Limitation Laws* (Rev. ed. 1936) 14.

21. *Id.* at 88.

value at a uniform rate of taxation. These provisions thus establish what is commonly called the "general property tax." They prevent a classification of property for purposes of taxation.

From 1804 to 1865, taxes in Missouri were imposed upon such specific subjects of taxation as were designated by the general assembly and at such rates as it determined.²² The Constitution of 1820 provided "that all property subject to taxation in this State shall be taxed in proportion to its value."²³ Under this provision, the general assembly was, however, still free to determine what property should be subject to taxation.

The Constitution of 1865 made a radical change in the tax system of Missouri. It contained not only the provision "that all property subject to taxation ought to be taxed in proportion to value,"²⁴ which was the same as that in the earlier constitution except that it substituted the word "ought" for "shall," but there was the further provision that "no property, real or personal, shall be exempt from taxation, except such as may be used exclusively for public schools and such as may belong to the United States, to counties, and to municipal corporations within this State."²⁵ This marked the introduction of the general property tax in Missouri.²⁶

Article X, section 4 of the present Constitution of 1875 contains the clause found in both of the earlier constitutions, that "all property subject to taxation shall be taxed in proportion to its value." In article X, section 6, it provides that government property and property of cemeteries shall be exempt from taxation, and that the general assembly "may" exempt "lots in incorporated cities or towns, or within one mile of the limits of any such city or town, to the extent of one acre, and lots one mile or more distant from such cities or towns, to the extent of five acres, with the buildings thereon * * *, when the same are used exclusively for religious worship, for schools, or for purposes charitable; also, such property * * * as may be used exclusively for agricultural or horticultural societies: *Provided*, That such

22. Judson, *op. cit. supra*, note 2, at 12-19.

23. Mo. Const. (1820) art. XIII, §19.

24. Mo. Const. (1865) art. I, §30. The state supreme court held that the substitution of the word "ought" for "shall" was not material. *Life Association of America v. Board of Assessors* (1872) 49 Mo. 512.

25. Mo. Const. (1865) art. XI, §16.

26. Note (1939),²⁴ WASHINGTON U. LAW QUARTERLY 242, 251.

exemptions shall be only by general law." Section 7 of article X prohibits other exemptions.

An entirely new provision is found in article X, section 3, which reads as follows: "Taxes may be levied and collected for public purposes only. They shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax, and all taxes shall be levied and collected by the general laws."

A state board of equalization, consisting of the governor, state auditor, state treasurer, secretary of state, and attorney general, is provided for in section 18 of article X. It is the duty of the board "to adjust and equalize the valuation of real and personal property among the several counties in the State."²⁷

Missouri wrote the general property tax into its constitution at a time when many other states were also repealing their differential taxation measures. "The abolition of these early classification laws was due to the fact that many of the classifications had become illogical and obsolete. The spread of the doctrine of 'equality' was also a factor leading to the adoption of uniform methods."²⁸ Although the abolition of the classified property tax was generally considered a reform when the constitutions of 1865 and 1875 were adopted, it was not long before citizens of the state became increasingly critical of the operation of the general property tax. In 1900, a leading student of taxation in Missouri wrote that "general property taxation * * * is ineffective and has resulted in inequalities and injustice. In respect to intangible personal property, money, bonds, notes secured by mortgages or otherwise, stock in non-resident companies * * *, the experience of Missouri is in line with other states. The tax is a confessed failure, admitted to be so by all. In fact, the failure is so complete that it may be said the tax is practically repudiated by the community."²⁹

Frequent reference is made in the messages of the governors during the latter part of the nineteenth century to the failure to reach intangible personal property. For example, in 1879 Governor Phelps called the attention of the general assembly to

27. From 1866 to 1875, the state board of equalization was composed of the members of the state senate and the lieutenant governor and was on a statutory basis. Mo. Laws of 1866, 126-127.

28. Leland, *The Classified Property Tax in the United States* (1928) 82.

29. Judson, *op. cit. supra*, note 2, at 245, 261, and 263.

the evasion of taxes by money lenders, and to the small amount of money returned for taxation, as compared with the amount of loans shown by the county records.³⁰ In 1900 the voters of Missouri adopted a constitutional amendment which provided that mortgages, deeds of trust, contracts or other obligations by which a debt is secured shall, for the purposes of taxation, be deemed an interest in the property affected, except as to railroad and other quasi-public corporations, and that the owner of the mortgaged property shall be taxed on his equity in the property, while the holder of the mortgage shall be taxed on the mortgage.³¹ The state supreme court invalidated this amendment on the grounds that its discrimination against railroad and other quasi-public corporations denied them the equal protection of the laws guaranteed under the Fourteenth Amendment of the United States Constitution.³² The amendment was repealed by another amendment adopted in 1902.³³

The general assembly undertook in 1917, when it enacted a state income tax law, to classify property for the purpose of taxation and to tax certain intangibles at a low rate. The Secured Debts Act of 1917³⁴ placed the following three types of property in one class for purposes of taxation: (1) bonds, notes, debentures, or obligations secured by collateral; (2) bonds, debentures, or obligations not payable within one year from date of issue and unsecured by collateral; and (3) bonds, notes, debentures, or obligations issued by any state or political subdivision. A recording tax, varying in amount in proportion to the face value of the instruments evidencing these obligations and the period of their maturity, was to be charged on them. They were exempt from further taxation. This act was invalidated by the Missouri Supreme Court in 1921. The court held in the case of *State ex rel. Tompkins v. Shipman*³⁵ that article X, section 4 of the constitution puts all property into a single class, and that this class includes "not only real and personal property, but the divers kinds of each. * * * When the constitution makes a single class, the lawmaking power has no constitutional right to change or

30. *Id.* at 70-71.

31. Mo. Laws of 1905, 315.

32. *Russell v. Croy* (1901) 164 Mo. 69, 63 S. W. 849.

33. Mo. Laws of 1905, 317.

34. Mo. Laws of 1917, 539; R. S. Mo. (1919) c. 119, art. 20.

35. (1921) 210 Mo. 65, 234 S. W. 60.

subdivide that class for the purpose of taxation, and this is what the act undertakes to do."³⁶

Following the court decision of 1921, it was clear that the general assembly could not classify property for purposes of taxation under sections 3 and 4 of article X. The constitutional convention of 1922-23 proposed that section 4 of article X be amended to read as follows: "All property subject to taxation shall be taxed in proportion to its value, or all kinds of property subject to taxation may be classified by the general assembly for the purpose of taxation. Each class may be taxed on such basis of valuation or in such form as the general assembly may provide. The rate of taxation on each class shall be uniform."³⁷ This proposed amendment was defeated at the special election of February 26, 1924, by a vote of 216,985 to 113,123.³⁸

The Missouri Supreme Court, in its decision holding unconstitutional the attempt of 1917 to classify property and to tax certain intangibles at a lower rate than other property, went beyond the legal questions involved and issued the following *obiter dictum*:

The whole act is but a bungling attempt to exempt these securities from the taxes that they should pay. But it is urged that with this insignificant tax this class of property will emerge from its hiding place, and the State will be benefited thereby. If the penal laws were strengthened, and then enforced, it would require but a few penitentiary sentences to bring to light all such property for the payment of taxes at the same rate as other property is required to pay. The act is wrong in principle, and is against good morals, and a fair sense of justice. All property should bear its proportionate part of the State's necessities.³⁹

Contrary to the opinion of the supreme court as expressed in the decision of 1921, most students of taxation have condemned the application of the general property tax to intangible personal property (money, bonds, notes, mortgages, bank deposits, and

36. For a discussion of the uniformity clause of the constitution see Note (1939) 24 WASHINGTON U. LAW QUARTERLY 242-256; Ely, Classification of Property for Purposes of Taxation (1922) 23 Law Ser. Mo. Bull. 37-44.

37. Amendment No. 13 in Amendments to the Constitution of Missouri Proposed by the Constitutional Convention of 1922-23 and the Address to the People.

38. Mo. Laws of 1926, 408.

39. State ex rel. Tompkins v. Shipman (1921) 290 Mo. 65, 234 S. W. 60.

corporate stock).⁴⁰ They have concluded that the general property tax as applied to intangibles is confiscatory in effect, that it is unenforceable, and that an attempt to enforce the tax would result in the falsification of the returns or the flight of intangibles from the tax jurisdiction. A leading student of the property tax in the United States, Professor Leland, declares that "the attempted assessment of intangibles under the general property tax has been a tale of continual failure, dating back almost to colonial times."⁴¹

In a bulletin of the National Association of Assessing Officers, it is stated that there are five major arguments against including intangible property within the scope of the general property tax. These arguments may be summarized as follows: (1) It is extremely difficult to find intangible property. (2) Interest and dividend yields on intangibles have been adjusted to the expectation that such property will not be placed on the tax rolls, and if the tax is imposed it takes a high proportion of the income. (3) Under the customary rule of tax situs at the residence of the owner, enforcement of the tax would tend to concentrate intangibles in low rate "tax colonies." (4) Owners of intangibles are generally thought to receive fewer direct benefits from local government than owners of real and tangible personal property. And (5) the taxation of intangibles involves double taxation, since intangible property has no value in and of itself, but merely represents a legal claim upon tangible wealth which also is taxed.⁴²

The unfair nature of the general property tax as applied to intangibles is apparent if one considers, for example, its application to a government bond yielding one and one-half or two per cent interest, or to money deposited in a bank account and earning one and one-half per cent interest in the case of a sav-

40. It should be noted that the Supreme Court of Missouri has held that corporate stock is not subject to taxation under the general property tax on the grounds that taxation of both the property and the stock of a domestic corporation would result in double taxation, and that stock of a foreign corporation does not represent property in this state. *State ex rel. Koeln v. Lesser* (1911) 237 Mo. 310, 141 S. W. 888; *State ex rel. Campbell v. Brinkop* (1911) 238 Mo. 298, 143 S. W. 444. See also *Neuhoff, Missouri Property Taxes and the Merchants' and Manufacturers' License* (1929) 14 *ST. LOUIS LAW REVIEW* 157-167.

41. Leland, *op. cit. supra*, note 28, at 27.

42. *Property Taxation of Intangibles*, Bulletin No. 21 of the National Association of Assessing Officers, May 15, 1938, p. 1.

ings account and no interest in the case of a checking account. The holder of such intangibles in the City of St. Louis, where the general property tax levy is \$2.74 per \$100 of assessed valuation, would not only receive no income but would actually have to pay for the privilege of owning the bond or maintaining the bank account.

The objection that the general property tax results in double taxation is well illustrated by the example of two identical and adjoining farms, each of which is worth \$10,000. One of the farms is clear of debt. The second farm is encumbered with an \$8,000 mortgage. The total assessment on the first farm is \$10,000. The total assessment on the second farm is \$18,000, for under the general property tax both the farm and the mortgage are assessed. Yet the value and the earning power of the two pieces of property are equal.⁴³

In practice most intangible property is not assessed, and consequently it escapes taxation under the general property tax. This is evident from the fact that the assessment of money, notes, and bonds for the entire state of Missouri was \$68,499,097 in 1891, but only \$68,230,619 in 1939; while the assessment of real estate increased from \$629,024,442 in 1891 to \$2,785,841,176 in 1939.⁴⁴ Thus there was a decrease in the assessment of intangible property but more than a three-fold increase in that of real estate during a period when the amount of intangible wealth in Missouri actually increased at a much greater rate than did the amount of real estate. The amount of intangible wealth now assessed in the state is clearly only a small percentage of the intangible wealth owned by its residents.

The difficulties encountered in attempting to apply the general property tax to intangibles have led three-fourths of the states to exempt intangibles from the property tax or to adopt a property classification that grants intangibles some form of tax preference. The National Association of Assessing Officers reported, in 1938, that only 12 states retain the general property tax. Three states, it reported, exempt all intangibles, and six other states exempt most intangibles, from any form of property tax without subjecting them to any form of substitute tax. It re-

43. Groves, *op. cit. supra*, note 7, at 64.

44. *Report of the State Auditor of Missouri (1891-92)* 316; *Journal of the State Board of Equalization of Missouri (1940)* 379.

ported that seven states rely exclusively or chiefly upon a flat-rate income tax to reach all or most intangibles. In some of these instances the tax has been restricted to income from intangibles, or such income has been subjected to heavier taxation than income from other sources. In 16 states intangibles are subjected to a low flat-rate on their capital value. Three states have adopted a policy similar to that of the previous group, but differing in that the preferential tax rate on intangibles varies with the tax rate on other property. One state levies a flat-rate, non-recurring tax on the capital value of intangibles.⁴⁵ In 1939, Michigan also abandoned the attempt to apply the general property tax to intangibles.

In 1932 the National Tax Association, composed of tax officials, scholars, lawyers, business men, and others interested in the solution of taxation problems, appointed a committee to revise the Model System of State and Local Taxation, proposed by a committee of the association in 1918. The committee reported that "nothing has occurred during the last fourteen years to modify the conclusion of the former committee, that all attempts to reach intangibles under the general property tax have proved failures." It recommended that intangibles be exempted from the property tax, but that they be subjected to a personal income tax. For a state unwilling to introduce a personal income tax, the committee recommended the replacement of the property tax by a flat-rate tax on intangibles. It stated that "it is well known that in some of our states the so-called 'flat-tax on tangibles' has improved materially the results achieved in the taxation of such property." The committee was convinced "that in states which are now limited by constitutional restrictions prescribing a uniform rule or method of taxation, no satisfactory adjustment of tax problems can be reached until such limitations are removed, or at least modified."⁴⁶

It is generally agreed among students of taxation that property classification with lower tax rates applied to intangibles

45. Property Taxation of Intangibles, Bulletin No. 21 of the National Association of Assessing Officers, May 15, 1938. In this bulletin each state is classified according to its dominant policy.

46. National Tax Association, *Second Report on a Plan of a Model System of State and Local Taxation* (1933) 30, 31, 68. See also *Model State Constitution* (4th ed. 1941) which omits any provisions restricting the power of the legislature to classify property for purposes of taxation.

than to other property results in an increased listing of intangibles. Professor Leland believes that "the increased listing of intangibles should be sufficient to prevent any loss in revenue to the state resulting from the rate reductions, if accompanied by reasonably efficient administration."⁴⁷ Professor Groves points out that classification is not, however, a substitute "for the outright exemption of property, the inclusion of which cannot be theoretically justified or for which no feasible means of successful administration has been developed."⁴⁸

In his report for 1939-40, State Auditor Forrest Smith calls to the attention of the general assembly the fact that money, notes, and bonds are not being reported to the assessor for purposes of taxation. He suggests that the general assembly "give proper consideration to proper legislation to include intangible property for the purposes of taxation with a tax rate much lower than the rate on real estate."⁴⁹

3. DEBT LIMIT PROVISIONS

The Missouri Constitution of 1820, as originally drafted, contained no provisions limiting the *amount* of public debt that might be created. An amendment was adopted in 1859, however, limiting the amount of state debt to 30 million dollars, except in case of war, but no such provision appeared in the Constitution of 1865.⁵⁰ The *purpose* of public debt had been limited by provisions in the Constitution of 1865 prohibiting the use of the state's credit for any person, association, or corporation, and prohibiting the legislature from authorizing any county, city, or town to loan its credit to any company, association, or corporation unless a two-thirds majority of the qualified voters gave their approval.⁵¹

By way of contrast, one of the most prominent features of the Constitution of 1875 was the restrictions placed on the amount of public debt that might be created. The reason for this was, of course, that it was felt that both state and local governments had gone to extremes in issuing bonds to aid the railroads, and this debt was most burdensome. Forty per cent of the expendi-

47. Leland, *op. cit. supra*, note 28, at 418.

48. Groves, *op. cit. supra*, note 7, at 100.

49. *Report of the State Auditor* (1939-40) 8.

50. Mo. Laws of 1858-59, 3.

51. Mo. Const. (1865) art. XI, §§13 and 14.

tures of the state government in 1873-74 represented sums needed to meet the interest on state debt.

Space does not permit an extensive treatment here of all the constitutional provisions with respect to public debt, and the manner in which the courts have interpreted these provisions. Therefore, only some of the more important will be discussed.

The principal restrictions upon the amount of the debt that may be created for state purposes are to be found in article IV, section 44 of the Constitution of 1875. This provides that the legislature shall have no power to contract a debt or liability except (1) in renewal of existing bonds when they cannot be paid at maturity, (2) in the case of an unforeseen emergency or casual deficiency of the revenue when the temporary liability incurred shall not exceed \$250,000 for any one year, with the recommendation of the governor, and to be repaid in not more than two years, and (3) in the case of any unforeseen emergency, or casual deficiency of the revenue when the temporary liability shall exceed \$250,000, and the matter is ratified by a two-thirds majority vote at an election held for that purpose.

If it was the intention of the framers that all future state debts of over \$250,000 must first be authorized by a two-thirds majority of the state electorate, Missouri's recent history would prove a great disappointment. Since 1875 state bonds totaling \$169,100,000 have been authorized by popular vote. Of this total only \$3,500,000 was submitted and approved under the constitutional provision requiring a two-thirds majority vote. The remaining \$165,000,000 was submitted and approved in the form of amendments to the constitution, which require only a simple majority for approval, and only \$15,000,000 of these bonds received as much as a two-thirds majority vote.

A reading of the Debates of the Missouri Constitutional Convention of 1875 on this point fails to indicate that the framers thought of the possibility of the circumvention of the two-thirds majority requirement by the expedient of authorizing a large bond issue in an amendment to the constitution.⁵² As evidence of the way the delegates were thinking, it may be said that some of them favored restricting the franchise on issues involving the taxing power to "taxpayers" or "taxpayers who are qualified

52. 7 *Debates of the Missouri Constitutional Convention of 1875*, 326-353, 368-377.

voters." In answer to this it was pointed out several times that the provision was amply conservative because of the inclusion of the requirement that a two-thirds majority was necessary for the approval of a proposed large bond issue.⁵³

The only bond issue in Missouri history that was submitted for, and received, the constitutional two-thirds majority was that authorizing \$3,500,000 to build the present state capitol to replace the one destroyed by fire.⁵⁴ The soldiers' bonus bond issue of \$15,000,000, approved August 2, 1921, actually received more than a two-thirds majority, although it was submitted as a constitutional amendment and needed only a simple majority for passage.⁵⁵

The general limitations on the debt that may be assumed by the political subdivisions of the state are to be found in article X, section 12 of the constitution. Here it is provided that no county, city, town, township, school district, or other political corporation of the state shall become indebted for any purpose to an amount exceeding in any year the income and revenue provided for that year without the consent of a two-thirds majority of the voters casting ballots on the proposition. The constitution requires that before or at the time of securing the consent of the voters, provision be made for the collection of an annual tax sufficient to pay interest on the debt and constitute a sinking fund to repay the principal within 20 years. The proposed and the existing debt must not exceed five per cent of the assessed valuation as determined by the assessment for state and county purposes, previous to the incurring of the new indebtedness. The very conservative nature of the last requirement has been relaxed, however, for certain corporations and certain types of debt, as follows:

1. Cities having a population of 75,000 or more may become indebted, with the approval of the two-thirds majority as defined, to an amount not exceeding 10% of the assessed value.
2. Counties, with the approval of the two-thirds majority as defined, may become indebted to an amount in excess of five per

53. *Ibid.* See comments of Alexander, Farris, Fyan, and Halliburton, 384, 337, 346-348.

54. Mo. Laws of 1911, 250-254, 416-417; *Official Manual of the State of Missouri* (1911-12) 832-833.

55. *Official Manual of the State of Missouri* (1921-22) 479.

cent for the erection of a courthouse or jail or for the grading, construction, paving, or maintaining of paved, graveled, macadamized or rock roads, and necessary bridges and culverts.

3. Cities having a population of 75,000 or more may issue public utilities bonds, for the purchase or construction of certain utilities, which are not to be included in the debt heretofore limited, but such debt is not to exceed in amount 20% of the assessed valuation of the city. Such bonds are not to be issued without the assent of four-sevenths of the voters voting on the question of issuing such bonds. The principal of the public utilities bonds is not to be a general obligation of the city payable from tax revenues.

4. The constitution was amended in 1920 in order that cities of not over 30,000 population might exceed the constitutional debt limits heretofore mentioned. This was to be permitted, with the assent of two-thirds of the voters, when bonds were to be issued to finance the purchase or construction of water works, ice plants, and electric or other light plants, but the debt for this purpose was not to exceed an additional 10% of the assessed valuation.

The provisions cited above should be sufficient to illustrate the type of constitutional debt limits that prevail in Missouri and the attempts that have been made to inject some flexibility to meet local needs into a device that compels quite rigid control even at best.

Limitations of space will not permit us to develop here the interpretations the courts have made of these debt limits. It must suffice to say that the courts have held that bonds of local benefit districts issued against special assessments are not "indebtedness," nor are the bonds issued under an act creating sewer districts in counties containing 75,000 inhabitants or more.⁵⁶

Perhaps enough has been said of this complicated situation to indicate the difficulties experienced in Missouri in attempting a wise regulation of the amount and character of public debt through arbitrary constitutional debt limits. The shortcomings of this device have been well stated as follows:

State efforts to control local borrowing by imposing fixed limits based on a percentage of assessed valuation have been a partial failure for several reasons. In some states the per-

56. *State ex rel. Gentry v. Curtis* (1928) 319 Mo. 316, 4 S. W. (2d) 467.

centage has been set too high. In the great majority a pyramiding of limits is possible because of overlapping governmental units. A really restrictive percentage tends to encourage evasion by the creation of special districts with separate and additional borrowing powers. In the several instances in which special assessment bonds are not included in the debt limit, even when they are contingent obligations of the municipality, the sky is the limit for public improvement borrowing. The existence of this loophole has had a particularly disastrous effect in Florida, North Carolina, Ohio and New Jersey. The customary practice of applying the borrowing ratio to a single year's assessed valuation, moreover, has been an unfavorable factor. Not only has it stimulated inflation by encouraging borrowing against rising and speculative valuations, but it has sometimes resulted in the connivance of unscrupulous officials, land speculators and bond dealers to produce fictitious valuations as a basis for excessive bond issues.⁵⁷

In view of this criticism it is fitting to ask what is considered to be a superior device for the wise control of public debt. Dr. Bird recommends: "First of all, the citizens of each community should be put in possession of certain basic information regarding the true size of the local indebtedness, direct and overlapping, the relation of this debt to taxpaying capacity, and the size of the indebtedness of other communities of comparable population and wealth."⁵⁸

Professor Groves believes that "By all odds the most constructive and promising innovation in state control is the North Carolina Local Government Commission, which has been in operation since 1931. The work of the Commission is divided into four parts: approval of applications for local bond and note issues, approval of refunding and readjusting operations, supervision of sinking funds, and auditing reports from municipalities."⁵⁹

4. POWERS AND PROCEDURES OF STATE FINANCE OFFICERS

The Constitution of 1820 made provision for two state finance officers. It provided for a state auditor to be appointed by the governor, "by and with the advice and consent of the senate,"

57. Frederick L. Bird in Studenski, *Taxation and Public Policy* (1936)

128. Dr. Bird is Director of Municipal Research for Dun & Bradstreet, Inc.

58. *Id.* at 123.

59. Groves, *op. cit. supra*, note 7, at 682. See also Ratchford, *The Work of the North Carolina Local Government Commission* (1936) 25 *National Municipal Rev.* 323.

and a state treasurer to be chosen by a joint vote of the two houses of the general assembly.⁶⁰ In 1851 an amendment was adopted introducing elective tenure in both of these offices.⁶¹ Under the Constitution of 1865, the state auditor and the state treasurer were continued as elective officers.⁶² The present Constitution of 1875 provides for a state auditor and a state treasurer to be elected for terms of four years, the latter being ineligible for reelection as his own successor.⁶³ Provision is also made for an ex officio state board of equalization whose duties are financial. The membership and duties of this board have been described above.⁶⁴ The governor, although not a "finance" officer, is given important duties relative to fiscal management.

The constitution does not enumerate the duties of the state auditor. Aside from the provision that he shall draw warrants for the disbursement of moneys in the state treasury, it merely provides that he "shall perform such duties as may be prescribed by law."⁶⁵ His duties, as prescribed by law, relate to accounting, auditing, collection of taxes, and supervision of local government.

As "general accountant" of the state government, it is the duty of the state auditor to keep all state accounting records and documents not required by law to be kept by any other person; to audit, adjust, and settle all claims against the state treasury, except such claims as are required by law to be audited and settled by other persons; to draw all warrants upon the state treasury, except in cases otherwise provided by law; to audit, settle, and adjust the accounts of collectors of the revenue and other persons holding money required by law to be paid into the state treasury; to prescribe a complete system of accounting and reporting for each state office and institution; and to prepare periodic fiscal reports for the general assembly, the governor, and the general public.⁶⁶

It is the duty of the state auditor "at least once every two years * * * to visit, examine, inspect and audit the accounts of the various institutions of the state * * *, all other institutions

60. Mo. Const. (1820) art. III, §31, art. IV, §12.

61. Mo. Laws of 1850-51, 47, 48.

62. Mo. Const. (1865) art. V, §16.

63. Mo. Const. (1875) art. V, §§1 and 2.

64. See note 27, *supra*.

65. Mo. Const. (1875) art. V, §1, art. X, §15.

66. R. S. Mo. (1939) §§13021, 13022, 13026, 13095.

supported in whole or in part by the state, and such other officers of the state as receive their appointment from any elective officer."⁶⁷ Such an audit is commonly termed a "post-audit," for it takes place after the completion of the financial transactions audited. It is distinguished from the "pre-audit," which is the examination of financial transactions prior to their completion and is thus essentially a part of the day-to-day accounting process.

The state auditor's office is one of the chief tax collecting agencies of the state. The state auditor is charged by law with the responsibility of administering the state sales tax. It is his duty to supervise the work of local officers in the assessment and collection of the state income tax and to audit taxpayers' accounts and returns. He also assesses and collects the gross receipts tax on express companies.⁶⁸ Finally, the state auditor has come to be the local government agent of the state. The statutes provide that he shall prescribe a complete accounting and reporting system in each of the 110 counties that do not have a county auditor or comptroller. It is also his duty to make periodic audits of the accounts in each of these same counties. He prescribes budget forms for the 109 counties with populations of 50,000 or less, aids these counties in the preparation of their budgets, and receives copies of them after they are finally adopted. Each of the 114 counties must file a copy of its annual financial statement with the state auditor. Bonds of a county, township, city, town, village, school district, or special road district are not valid and may not be negotiated until they are registered in the office of the state auditor, who must certify that the bonds are issued in compliance with the laws.⁶⁹

Although it is common in state governments for the office of state auditor to exercise the functions of both accounting and post-auditing, most students of financial administration have concluded that these functions should be completely separated. One of the leading writers on this subject, Mr. A. E. Buck, has analyzed the problem in the following terms:

There seems to be a lack of appreciation of the character and advantages of an independent audit in state govern-

67. R. S. Mo. (1939) §13094.

68. R. S. Mo. (1939) §§11294, 11343-11377, 11407-11456.

69. R. S. Mo. (1939) §§3306, 10910-10917, 13094, 13095, 13828.

ments. Such an audit is presumed to be a function of the state auditor (sometimes designated comptroller), who in most states is an elective official. But this official usually exercises financial control functions to the exclusion of post-auditing, that is, he keeps general accounts, supervises departmental accounting, and settles claims for and against the state government. Ordinarily his control functions so involve him in the fiscal operations of the government that any post-audit which he may attempt is practically useless, since it means a critical examination of his own decisions and accounting entries.

A complete separation of the functions of financial control and accounting from those of independent auditing (post-auditing) and review is necessary in order to obtain the most satisfactory results. The control and accounting functions are executive in character and therefore belong to an officer—a controller—directly responsible to the governor. Such functions are part and parcel of the system of budgeting and financial management by which the governor is enabled to control the state's business operations. To remove them from the governor by placing them under an independent officer is to hamstring his control over the state administration. On the other hand, the functions of post-audit and review belong to the legislature. They are implied in the powers of the legislature to appropriate money to the executive and the administrative departments to carry on the activities of the state government. They are the means of enforcing financial accountability upon the governor and his departmental heads. * * * Power and authority commensurate with full responsibility for all administrative operations may be accorded the governor as long as the legislature brings him to complete accountability for his acts.⁷⁰

Dr. W. F. Willoughby has analyzed the problem along similar lines, and he points out that the separation of the functions of accounting and post-audit "represents only the carrying into the system of public administration of the almost universal practice on the part of private corporations."⁷¹

In this connection it is interesting to note that the Model State Constitution provides that the legislature shall appoint an auditor to serve at its pleasure. It is the duty of such auditor to "con-

70. Buck, *The Reorganization of State Governments in the United States* (1938) 23-24.

71. The Offices of the Comptroller and Auditor (1932) 14 Public Management 83. See also Porter, *State Administration* (1938) 125-127.

duct post-audits of all transactions and of all accounts kept by or for all departments, offices and agencies of the state government, to certify to the accuracy of all financial statements issued by accounting officers of the state, and to report his findings and criticisms to the governor and to a special committee of the legislature quarterly, and to the legislature at the end of each fiscal year. He shall also make such additional reports to the legislature and the proper legislative committee, and conduct such investigation of the financial affairs of the state, or of any department, office or agency thereof, as either of such bodies may require."⁷²

As in the case of the state auditor, the constitution provides that the state treasurer "shall perform such duties as may be prescribed by law." It also indicates the nature of these duties by providing that the state treasurer shall deposit all moneys in the state treasury in such banks as he may select with the approval of the governor and attorney-general, and such moneys "shall be disbursed by said treasurer for the purposes of the state, according to the law, upon warrants drawn by the state auditor, and not otherwise."⁷³ In addition to these constitutional duties, the general assembly has charged the state treasurer with the collection of the state inheritance, corporation franchise, and private car taxes.⁷⁴

The prime function of a treasurer is the custody of funds. Professor Porter expresses the opinion of most students of financial administration, when he declares that "the work of collection * * * is not proper work for a treasurer. * * * Burdening treasurers with responsibility for enforcing collections has always been to effect a bad combination of functions."⁷⁵

At the present time, the 14 major taxes of the Missouri state government are assessed and collected by 10 state agencies, in addition to the five local government agencies that participate in the process. In no other state is tax collection so decentralized.⁷⁶ Tax authorities generally agree that the centralization of the tax collection function in one office results in increased collections

72. *Model State Constitution* (4th ed. 1941) §707.

73. Mo. Const. (1875) art. V, §1, art. X, §§15, 16.

74. R. S. Mo. (1939) §§580, 599, 600, 5115, 11287, 13047.

75. Porter, op. cit. supra, note 71, at 101, 102.

76. 4 Federation of Tax Administrators, *Tax Administrators News* (1940) No. 12, p. 97.

and lowered costs.⁷⁷ This conclusion follows from the many advantages of centralized tax collection. They may be summarized briefly as follows:

- 1) Increased opportunity to reduce costs by leveling off peak loads and securing the maximum year-around production from the permanent personnel and machine equipment available.
- 2) Reduction in unit costs by the application of more efficient methods to a larger volume of work.
- 3) A tendency to develop executives interested in one thing—improved administration of tax collection.
- 4) The development of adequately trained specialists under these executives.
- 5) Improvement of the entire state tax system because of the possibility of seeing the whole problem and bringing professional and expert ability to its solution.
- 6) Centralization of administrative responsibility for efficient tax collection administration.
- 7) Added convenience to the taxpayer because of a reduction in the number of state tax agencies with which he deals.
- 8) A tendency to decrease opportunities for tax evasion, by using information filed on one tax return for auditing another filed by the same taxpayer.

In his inaugural address of February 26, 1941, Governor Forrest C. Donnell recommended "that there be enacted legislation to create a Consolidated State Revenue Department," and pointed out that many advantages would accrue from such legislation. Former-Governor Lloyd C. Stark also urged the centralization of tax collection. In a message to the general assembly, on January 15, 1941, he suggested that "a central tax-collecting agency would certainly result in more efficient collection of tax monies and would bring about a marked reduction in the payrolls of various departments now engaged in this function." The general assembly has not yet acted on these recommendations.

The framers of the present constitution recognized the necessity for executive leadership in the field of state finance. They provided that the governor should present at the commencement of each regular session of the general assembly "estimates of the amount of money required to be raised by taxation for all pur-

77. Graves, *Administration of State Taxes as Viewed by an Administrator* (1936) 183 *Annals of the American Academy of Political and Social Sciences* 189-190; Howard, *Principles of Public Finance* (1940) 431-432; Groves, *op. cit. supra*, note 7, at 722.

poses." They also required all officers of the executive department to keep an account of all moneys and choses in action disbursed or otherwise disposed of by them, to make a semi-annual report thereof to the governor, and to make special reports at the latter's request. Finally, they provided that if "any bill presented to the Governor contains several items of appropriation of money, he may object to one or more items while approving other portions of the bill."⁷⁸

In 1932 the voters amended the constitution to express even more clearly their conviction that a business carrying on so many activities and spending so much money as the Missouri state government could be managed efficiently only by vesting responsibility for fiscal management in the chief executive. The amendment adopted in 1932 provides that the governor "shall, not later than fifteen days after the convening of the General Assembly in each biennial session, submit a budget showing estimated available revenues of the state for the ensuing biennium and recommending a complete plan of expenditures. All recommended expenditures and appropriations shall be itemized." The governor is also empowered to veto "portions of items" in appropriation bills, but he may not "reduce" any appropriation for free public school purposes.⁷⁹

Due to the fact that the state's fiscal biennium begins on January 1 and that the general assembly does not meet until the first Wednesday after this date, the governor's budget is not presented to the general assembly until after the fiscal period has begun, and several more months elapse before the budget is finally adopted. This means the state's business must be carried on during these months without a budget. Departmental operations have at times been seriously hampered.

The federal government, most states, and many units of local government have adopted a fiscal period beginning on July 1. The fiscal operations of the Missouri state government would be greatly facilitated by the adoption of such a fiscal period. To make this change, it would probably be necessary to amend the state constitution, because of the present provision that a payment of money from the state treasury must be made, or a war-

78. Mo. Const. (1875) art. V, §§10, 13, 22.

79. Mo. Const. (1875) art. V, §13; *Official Manual of the State of Missouri* (1933-34) 397.

rant issued therefor, within two years after the passage of the appropriation act authorizing the payment.⁸⁰ If the suggested fiscal period were adopted without changing this provision of the constitution, all appropriation bills would have to be passed on or after July 1.

At the same time, it would be well to amend the constitution to permit the governor to present his proposed budget to the general assembly at a later date, say March 15. The governor takes office on the second Monday of January, and this change would give him ample time to make his appointments and to acquaint himself with the financial needs of the state before he undertook to formulate his budget. It would also enable the general assembly to organize and take care of general legislation prior to March 15, after which it could concentrate its attention on the budget until it was adopted.

It would also be well to incorporate into the constitution a provision somewhat like the following provision of the Model State Constitution: "At the time of submitting the budget to the legislature, the governor shall introduce therein a general appropriation bill to authorize all the proposed expenditures set forth in the budget. At the same time he shall introduce in the legislature a bill or bills covering all recommendations in the budget for new or additional revenues or for borrowing by which the proposed expenditures are to be met."⁸¹

Such a procedure would give the general assembly something definite to work upon, and would make it treat the governor's budget as more than an administrative report. It would also enable the governor to present the expenditure plan in one bill, itemized to whatever degree he may think necessary for good administration and with such terms and conditions attached as may be required to control expenditures.

5. MISCELLANEOUS FINANCIAL PROVISIONS

Many provisions of the Constitution of 1875 reflect the unfavorable experiences of the framers with state and local subsidies to railroads during the period of 1851 to 1865. Most directly reflecting these experiences are those provisions prohibiting public aid to any corporation or individual.

80. Mo. Const. (1875) art. X, §19.

81. *Model State Constitution* (4th ed. 1941) §703.

The Constitution of 1865 had forbidden the state to extend its credit "in aid of any person, association or corporation," or to become a stockholder in any corporation or association, except to secure "loans heretofore extended to certain railroads by the State." The general assembly was also forbidden to authorize any county, city, or town to become a stockholder in, or to loan its credit to any company, association, or corporation, without the consent of two-thirds of the qualified voters of such county, city, or town.⁸²

Under the present constitution, the prohibitions against public grants to individuals and corporations are strengthened, but a proviso is added to permit public aid in case of public calamity. Article IV, section 46 provides that "The General Assembly shall have no power to make any grant, or to authorize the making of any grant of public money or thing of value to any individual, association of individuals, municipal or other corporation whatsoever: *Provided*, That this shall not be so construed as to prevent the grant of aid in a case of public calamity."

Article IV, section 47 forbids the general assembly to authorize any subdivision of the state to "lend its credit, or to grant public money or thing of value in aid of or to any individual, association or corporation, or to become a stockholder in such corporation, association or company."

Article IV, section 49 contains the clause found in the earlier constitution, forbidding the state to become a stockholder in any corporation or association.

Beginning in 1892 a series of amendments have been adopted authorizing public aid to particular groups of individuals. These amendments authorize the payment of public money for pensions to members of municipal fire or police departments and their widows or dependent children; retirement, disability, or death benefits to persons paid out of any public fund for educational services, or to their beneficiaries or estates; pensions to the deserving blind; and pensions or assistance to persons over 65 years of age, "who are incapacitated from earning a livelihood and are without means of support."⁸³

In view of the broad prohibition contained in article IV, sec-

82. Mo. Const. (1865) art. XI, §§13, 14.

83. Mo. Const. (1875) art. IV, §§47, 47a, 48a.

tion 46 of the constitution against public grants to any individual, the question has frequently been raised whether or not appropriations for poor relief are constitutional. It has been argued by some persons that such appropriations are constitutional during an economic depression as a "grant of aid in case of public calamity." On such grounds alone, they would not be constitutional after the economic depression is ended. This question has not been put directly to the state supreme court.

It has been held in most states that constitutional restrictions such as those found in article IV, section 46 of the Missouri constitution do not apply to appropriation statutes where (1) the grant is to pay a moral obligation of the state, (2) it is for a public purpose, or (3) it is to carry out a governmental function.⁸⁴ The Supreme Court of Missouri has applied the "public purpose" test to appropriations. For example, a St. Louis city ordinance authorizing the issuance of bonds to provide for poor relief was upheld as being for a public purpose.⁸⁵ In another case, a statute granting a telephone company the right to build lines along, under, and over state highways was upheld on the same grounds.⁸⁶

After considering article IV, section 46 in the light of its history and purpose and applying the legal tests commonly used to ascertain the scope of such sections, one writer concludes that the "section is found not to have been intended to prohibit direct poor relief. An appropriation for poor relief would be constitutional regardless of the existence of a public calamity; but if an economic depression and widespread unemployment be found to be a public calamity, poor relief can be brought within the proviso and sustained on that ground."⁸⁷

One other financial provision of the constitution should be mentioned here. Article XI, section 7 provides that there shall be set apart not less than "twenty-five per cent of the State revenue, exclusive of the interest and sinking fund, to be applied annually to the support of the public schools." Beginning in

84. Note, *Constitutionality of Appropriations for Poor Relief in Missouri* (1940) 25 WASHINGTON U. LAW QUARTERLY 267-268.

85. *Jennings v. City of St. Louis* (1933) 332 Mo. 173, 58 S. W. (2d) 979.

86. *State ex inf. McKittrick v. Southwestern Bell Tel. Co.* (1936) 338 Mo. 617, 92 S. W. (2d) 612.

87. Note, *Constitutionality of Appropriations for Poor Relief in Missouri* (1940) 25 WASHINGTON U. LAW QUARTERLY 267, 278.

1887, the general assembly has followed the practice of appropriating one-third of these receipts for this purpose. Aside from the question of whether state disbursements for public schools have been too large or too small, the practice of setting aside a fixed percentage of receipts for any particular purpose is open to serious criticism. It tends to induce the general assembly to set aside the same percentage each biennium without giving thorough consideration to the exact amount of money thus appropriated, to the needs of the particular department or service, or to the relative needs of other departments or services competing for public funds. Even if all of these factors are thoroughly considered by the general assembly, such a practice does not permit adequate budgetary control. For example, at the time of making an appropriation of one-third of the ordinary revenues for public schools, the general assembly may estimate that such receipts will total \$90,000,000, thus making an appropriation of \$30,000,000 for public schools. The receipts may actually amount to \$115,000,000. In this case, the public schools receive \$35,000,000 of state money, or \$5,000,000 more than the members of the general assembly thought that they were authorizing.

6. CONCLUSION

The financial, debt, and taxation provisions of the Constitution reflect the sincere desire of the framers to find an answer to the problems of increasing governmental expenditures, debts, and taxes. In 1875 the property tax was the only important source of state and local revenue, and the framers provided a specific limit to the rate that could be imposed by each class of governmental unit for general purposes. They sought to guarantee an equitable tax system by requiring that all property not exempted by the terms of the constitution be taxed in proportion to value and at the same rate. Detailed restrictions were placed on the amount of public debt that could be incurred. Grants of public money to individuals or corporations were forbidden, except in a case of public calamity. Certain state finance officers were provided for, but their duties were not clearly defined.

Analysis of these provisions has indicated that the objectives of the framers have been realized only in small measure. Increased demands for governmental services have led to the exploitation of new sources of revenue. Some of the restrictions

have been circumvented. In other cases limits imposed have been modified by constitutional amendment to make them less restrictive. Many further changes need to be adopted to make the financial, debt, and tax provisions of the constitution conform to present-day needs for governmental services, yet conserving the principles of economy in public expenditures and equity in taxation.

Experience has clearly indicated that wasteful expenditures and burdensome or inequitable taxes cannot be prevented by detailed, restrictive, constitutional provisions. There is no substitute for wise legislation and efficient administration. These can be achieved only by a citizenry that is constantly informed and alert.

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