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SPECIAL AND LOCAL LEGISLATION

By Lyman H. Cloe* and Sumner Marcus†

With the exception of four New England states¹ the constitutions of all others contain restrictions upon local and special legislation. Uniformity in such provisions is lacking. They range in style and effect from those which appear to be no more than a declaration of policy² or procedural requirement³ to the inclusive type which not only places an absolute prohibition on such legislation in certain named instances, but in all other cases where a general law can be made applicable.⁴

An accurate classification of these provisions is not a simple matter. Few are identical in wording. Some, though patently at variance, appear to have received synonymous application. Roughly, six types of restrictions are to be found. Sometimes only one of these is used in a constitution, but generally various combinations are employed.

¹Conn., Mass., N. H., and Vt. Most of these states have statutes relating to the matter, but, of course, these are not binding on subsequent legislatures. Conn. Rev. Stat. (1930), sec. 5-7, 10-12. The United States Constitution has no provision in this regard.
²Me. Const., art. IV, § 13, “The Legislature shall from time to time, provide, as far as practicable, by general laws, for all matters usually appertaining to special or local legislation.”
³R. I. Const., art. IV, § 17, only requires that special corporation acts shall be passed by two sessions of the legislature with an election intervening.
⁴Minn. Const., art. IV, § 32, “In all cases where a general law can be made applicable no special law shall be enacted; and whether a general law could have been made applicable in any case is hereby declared to be a judicial question, and as such shall be judicially determined without regard to any legislative assertion on that subject. The legislature shall pass no local or special law—(concerning 15 enumerated subjects).”
The most popular prohibition, which is contained in thirty-eight of the constitutions, is similar in wording to that of Kentucky:

"The General Assembly shall not pass local or special acts concerning any of the following subjects, or for any of the following purposes, namely—"

The enumeration of subjects which then follows varies in number from five in Arkansas and Delaware to thirty-four in Montana. Among the forbidden subjects are ordinarily found those relating to granting divorces, changing names, moving the county seat, laying out or altering roads, and creating private or municipal corporations.

Next in popularity is the sweeping clause:

"—where a general law can be made applicable, no special law shall be enacted."

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5 Ala. Const, art. IV, § 104; Ariz., art. IV, § 11; Ark., art. V, § 24; Cal., art. IV, § 25; Colo., art. V, § 25; Del., art. II, §§ 18, 19; Fla., art. III, § 20; Ga., art. II, § 7, par. 18; Idaho, art. III, § 19; Ill., art. IV, § 22; Ind., art. IV, § 22; Iowa, art. II, § 30; Ky., § 59; La., art. IV, § 4; Minn., art. IV, § 33; Md., art. III, § 33; Miss., art. IV, § 90; Mo., art. IV, § 55; Mont., art. IV, § 26; Neb., art. III, § 18; Nev., art. IV, § 20; N. J., art. IV, § 7; N. M., art. IV, § 24; N. Y., art. III, § 13; N. C., art. II, §§ 10, 11; N. D., art. II, § 69; Okla., art. V, § 46; Ore., art. IV, § 23; Penn., art. III, § 7; S. C., art. III, § 34; S. D., art. III, § 23; Tex., art. II, § 56; Utah, art. IV, § 26; Va., art. IV, § 63; Wash., art. II, § 28; W. Va., art. VI, § 39; Wis., art. IV, § 31; Wyo., art. III, § 27.

6 Other common provisions are: jurisdiction and duties of a justice of the peace or constable, crimes and misdemeanors, practice in courts, change of venue, juries and township business, assessment and collection of taxes, conduct of elections, validating deeds and other instruments, refunding money paid the state, releasing obligations owing to the state, removing disabilities, legalizing acts of officers, restoring citizenship, regulating interest rates, creating offices, changing the law of descent, limiting actions, changing the salary of an officer, regulating trade, labor and industry, changing the rules of evidence, granting pensions, fencing land, and protecting fish and game.

Some states have a special article relating to business or municipal corporations which forbids special legislative charters: Ala., art. XII, § 239; Ariz., art. XIII, § 1; Iowa, art. VIII, § 1; Kan., art. XII, § 1, XIII, § 1; Me., art. IV, § 14; Md., art. III, § 48; Mich., art. VII, § 20, XII, § 1; Minn., art. VIII, § 3; Miss., art. IV, §§ 53, 50; Mo., art. XII, § 2; Nev., art. VIII, § 1; N. Y., art. XII, § 2; N. D., art. VI; Ohio, art. XIII, § 1, XIV, § 2; Okla., art. IX, § 38; S. D., art. IX, § 1, X, § 11; Tenn., art. XI, § 8; Utah, art. XI, § 5, XII, § 1; Wash., art. XI, § 10; W. Va., art. VI, § 47, XI, § 1; Wyo., art. X, § 1.

In some states charitable corporations are exempt from the special charter prohibition: Ark., art. XII, § 2; Del., art. IX, § 1 (which also exempts municipal and banking corporations); Fla., art. III, § 25; Ill., art. XI, § 1; Mont., art. XV, § 2; N. C., art. VIII, § 1; N. D., art. VII, § 13; S. D., art. XVIII, § 1.  

1 Ariz., art. IV, § 11; Ark., art. V, § 25; Calif., art. IV, § 25; Colo., art. V, § 25; Ill., art. IV, § 23; Ind., art. IV, § 23; Ky., § 59; Md., art.
This is commonly used as a catchall in addition to the prohibition as to certain specific subjects.\(^8\)

In other states is found the affirmative provision:

"—all laws shall be general, and of uniform operation throughout the State;—"\(^9\) or—

"All laws of a general nature, shall have a uniform operation throughout the state;—."\(^10\)

Whether these restrictions differ from each other or from the sweeping clause will be considered hereafter.

Less restrictive than the last two provisions noted are those which provide:

"No special, private, or local law—shall be enacted in any case which is provided for by general law,—"\(^11\) or—

"—and in no case shall a special act be passed—in which the courts have jurisdiction, and are competent to give the relief asked for."\(^12\)

Less restrictive yet is the inhibition that:

"The Legislature shall have no power to suspend any general law for the benefit of any particular individual."\(^13\)

Still other provisions are to be found which are not in derogation of the legislative power, but only indirectly restrict special and local enactments by requiring a different procedure. These will be considered hereafter.

Besides the above provisions other sections of a constitution, dealing with other subjects, and provisions in the Federal Constitution may be of bearing.
Firstly, there are the limitations imposed by the doctrine of separation of powers, which limit legislative action of certain matters by either general or special laws. Ordinarily executive and judicial functions are directed to particular situations and if not for the doctrine of separation of powers the legislature would act in most cases in regard to them by special laws. Thus the legislature cannot pass special laws on many subjects, such as convicting for crime, settling claims, and creating specific liens.

Secondly, there are the limitations imposed upon state legislatures by the 14th Amendment and similar "equal protection clauses" in state constitutions. It is not certain from the cases what are the relative effects of these provisions and of those specifically prohibiting special and local legislation. Both types of provisions are said to require that there be a reasonable classification of the objects of a law. The federal cases say that the 14th Amendment does not prohibit special legislation, but what they must mean in light of the fact that they do require reasonable classification is that the mere fact that legislation is for a class will not make it invalid.

There are many statutes which will fall under the provisions prohibiting special and local legislation which will be upheld under the 14th Amendment. This is due to the fact that the 14th Amendment requires only that there be equality of and not identity of treatment. That is, a person attacking a law under the 14th Amendment must show not only an unreasonable classification but also an injury resulting therefrom, while under a provision prohibiting special legislation he must show only that the law affecting him is based upon an unreasonable classification.

Finally, there are more specific provisions in state constitutions...
tions requiring uniformity in legislation regarding certain matters. These are the ones providing that taxes shall be levied by general and uniform laws, that a general, uniform judicial system shall be established, or that provisions shall be made by general laws for the holding of elections. All these provisions would prevent the passage of much special legislation even in the absence of specific requirements to that effect.

Origin of the Provisions

The specific restrictions on special legislation are of relatively modern origin. They are not to be found in the original state constitutions, nor was there a proposal to this effect in the Convention of 1787. It was not until after legislative bodies had been exercising their special law making powers for more than six centuries that they were subjected to serious restriction in this regard in the relatively short period between 1850 and 1900.

It is not possible precisely to state why this form of legislation suddenly became almost universally obnoxious. Certainly it was not due to a single motivating factor, but rather to many contributing causes. To adequately understand what transpired it would be necessary to review the economic, political, and social history of the nineteenth century. It is sufficient for our purpose to note the changes wrought upon legislation. The

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18 A typical example of this is to be found in the Penn. Const.; art. VI, § 26, in dealing with the judicial system provides that all laws relating to the court shall be "general and uniform"; art. VIII, § 7, in providing for the franchise requires that the holding of elections shall be "uniform" and, art. VIII, § 17, by "general" law provisions shall be made for the trying of election contests; art. IX, § 1, provides that taxes are to be levied and collected by "general" laws; art XVI, § 12, requires that the regulation of certain utilities is to be by "general laws of uniform character."

19 The Great Charter of 1215 is generally recognized as the first step in modern legislation, Lee, Historical Jurisprudence (1900) 479. Binney, Restrictions on Special and Local Legislation (1894) 7, credits the Indiana Constitution of 1851 as the first to impose such restrictions. However, this was preceded by at least two others: N. J. Const. (1844), art. IV, § 7, and North Carolina by amendment in 1835.

Not many of the constitutions now under consideration were adopted after 1900. The more recent ones are: Ala., 1901; Ariz., 1910; La., 1921; Mich., 1908; N. M., 1911; Okla., 1907; Va., 1902. Some of these states had constitutions between 1850 and 1900 which imposed restrictions on special legislation. In some other states additional amendments have been made in this regard since 1900.
work of the legislative session of 1800 was ordinarily encompassed in less than a hundred pages, but in the next half century their enactments were often to be measured by volumes rather than pages. The legislature of Illinois in 1869 passed five volumes of statutes.

This geometric increase did not maintain the proportions which had existed between special or local and general laws. In some states the latter became almost a rarity. Of the five volumes of Illinois laws noticed above the smallest alone contained general acts. Immediately prior to constitutional limitations, in Kentucky of two thousand enactments less than a hundred and seventy were general. By 1859 in Missouri 87% of the legislation was special or local. While these may be extremes, serious proportions had been reached in other states. The subject matters of these local and special laws correspond almost identically with those upon which special and local legislation is now specifically forbidden.

Regardless of the theoretical propriety of legislation in these various fields, it is obvious that adequately considered laws could not and cannot be enacted under the pressure of such a volume of business. Such a situation is fertile ground for log rolling and bribery. Not only is the legislative attention being diverted from matters of important public concern for frivolity, as making the cardinal the county bird of Montgomery

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20 Ky. Laws, 1889. Only 170 of the laws are listed as "general", but many of these, such as those relating to named courts or declaring certain streams to be navigable would be considered local or special laws under modern conceptions.

21 Supra note 6. In Indiana in 1850, prior to the present constitution, there were 98 acts granting or amending corporate charters, 55 providing for the construction of described roads, 47 giving relief to named individuals, 19 granting special powers to named municipalities or legalizing their actions, 17 changing the names of individuals, 10 creating towns or cities, 5 authorizing the erection of dams and 5 granting divorces. Of the Kentucky laws noted above 47% were private corporation acts, 26% related to municipal corporations, chartering them, changing boundaries, giving special powers, authorizing taxes, creating offices, etc., 14% were for the benefit of named individuals, 4% gave special powers to people of named localities, 4% were special school laws, and the balance covered such miscellaneous subjects as juries in certain counties, establishment of voting precincts, and the recording of instruments in certain counties.

22 Leser, Evils of Special and Local Legislation (1904), Maryland Bar Association Report; Reinsch, American Legislators and Legislative Methods (1913); Chittenden, Personal Reminiscences; Debates Mass. Const. Convention (1853) I:785, 854; II:259 ff.
county, but this piece-meal style unnecessarily created diversity. The laws of one locality might be as foreign to that of an adjoining one as another state. If the cows trespassed in the Mother of God Cemetery in Kenton County a statute was enacted which related only to that plot and there might be a different law as to every burial ground in the state. Such legislation was often discriminatory, granting favors to persons and localities. Particularly was this true in the case of corporate charters.

In this condition of affairs the states were faced with the

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23 Md. Laws 1929, c. 20, "Whereas, the school children of Montgomery County have decided in a voting contest that the cardinal is the most popular bird in the county; therefore, Section 1. Be it enacted by the General Assembly that the cardinal, commonly called red bird, be and is hereby adopted as the County Bird of Montgomery County."


24 Ky. Laws 1889, c. 1554. Today the Maryland Code contains two large volumes of "Public Local Laws." In addition to providing for municipal affairs there are a large number of laws applicable only in a named county or city relating to auctions, amusements, bridges, courts, officers, judicial procedure, jurors, elections, roads, wages, fences, witnesses, taxes, liens, schools, crimes, practice of professions, pensions, holidays, etc. In 1935 Maryland enacted approximately three times as many local as special laws. There is a great deal of similar legislation in Tennessee and Massachusetts.

25 As to the number of corporate charters being granted see supra note 21. The increase of this type of enactment is illustrated by Missouri, where from 1820 to 1831 there were only 13 incorporation acts, but by 1850 approximately 40% of all legislation was of this character. In Pennsylvania, immediately prior to the present constitution, the legislature passed 50 statutes relating to Pittsburg and 150 for Philadelphia. For a discussion of this situation see Ayars' Appeal, 122 Pa. 266 (1889).

There is hardly a state which prior to the prohibition of special corporation acts did not have its own scandal similar to that of the federal government in building a railroad to the Pacific.

The discriminations which may occur are illustrated by the following instances: In 1900 the Maryland Assembly exempted from taxation the bond issues of 15 named localities; W. Va. Acts 1925, c. 152, directed the Board of Dental Examiners to issue licenses to certain named persons; Tenn. Acts 1925, c. 822, authorized a named person to practice medicine; W. Va. Acts 1927, c. 150, relieving the sheriff of Ohio County of certain obligations; W. Va. Acts 1925, c. 125, providing a stenographer for the prosecutor in a certain county; W. Va. Acts 1925, c. 99, provided for the pensioning of named school teachers. In West Virginia in 1931 the salary of the prosecuting attorney in Cabell County, population 90,000, was $4,800; it was the same in Mingo County, population 38,000; but in Logan County, population 58,000, it was only $1,800.
alternative of making radical changes in the form of government or restricting the legislative power. The latter course was selected and the restrictions before noted were designed as remedies.

The primary purpose of these constitutional provisions was to secure uniformity in law, but it is to be noted that the legislative power was not always affected in the same manner and varied according to the subject upon which action was to be taken. Granting of divorces, changing names, and such matters have been turned over to the courts for administration under legislative rules. The granting of corporate charters and management of schools has been placed in the hands of executive and administrative officials. On the other hand such affairs as fixing the salary of major public officials and the jurisdiction of courts is still under the direct control of the legislature, but subject to the requirement of generality.

**General Rules of Constructions**

The first problem in the construction of all these provisions is whether they are directory or mandatory, that is, does the specific provision merely advise the legislature how to draft its laws, or does it confer upon the courts the power to veto a statute if it does not conform with the constitutional requirement?

All courts have held that the prohibition of special legislation on certain enumerated subjects would be enforced by the courts. There has been, however, a diversity of decision in regard to the mandatory nature of provisions requiring general laws wherever applicable. A few constitutions have expressly provided that the legislature or, as is more often the case, that the judiciary should determine whether or not in a given case a general law was applicable. Where there has been no ex-

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26 The following provisions expressly make the subject one for judicial determination: Kan. Const., art. II, § 7; Mich. Const., art. V, § 30; Minn. Const., art. IV, § 3; Mo. Const., art. IV, § 53. The provision in the Missouri Constitution is typical: "And whether a general law could have been made applicable in any case is hereby declared to be a judicial question and as such determined without respect to any legislative assertion on the subject."

That this type of provision will prevent a great deal of confusion is illustrated by the fact that the provisions were inserted in the Kansas and Minnesota Constitutions as amendments to a former provision which did not contain this express clause. Also Of. Anderson
press provision, although some courts have held that the question was one for judicial determination, most courts have held that the legislature had sole discretion to determine whether the general law was applicable notwithstanding that the purpose of the provision was doubtless to put a concrete check on the legislature, and notwithstanding that the opposite rule has been adopted in regard to other provisions. At least one court has refused to state which body had the ultimate right to determine whether or not a general law was applicable and several courts have seemed to hold that the legislature had sole discretion so long as they did not abuse it. In some of these cases the court

V. Cloud County, 77 Kan. 921, 85 Pac. 583 (1908), for a discussion which will show the value of the provision.

The following provisions expressly make the subject one for legislative determination: N. J. Const., art. IV, § 7; N. Y. Const., art. III, § 13; Va. Const., § 64.


Rosencranz v. Evansville, 194 Ind. 499, 143 N. E. 583 (1924); Richardson v. Board of Education of Kansas City, 73 Kan. 629, 84 Pac. 538 (1906); Western v. Ryan, 70 Neb. 211, 97 N. W. 347 (1903); Edmunds v. Herbrandson, 2 N. D. 270, 50 N. W. 970 (1891); Addington v. Canfield, 11 Okla. 204, 66 Pac. 355 (1901); Viland v. Board of Education, 37 S. D. 412, 158 N. W. 906 (1916).

The Kansas cases especially illustrate the inconsistency of the courts. From the beginning Kansas held that the provision requiring that laws of a general nature should have a uniform operation was mandatory upon the legislature but that the provision requiring that a general law be passed wherever applicable was only directory. State v. Hitchcock, 1 Kan. 173 (1862); Richardson v. Board of Education of Kansas City, 72 Kan. 629, 84 Pac. 538 (1906); see Rambo v. Larrabee, 67 Kan. 634, 73 Pac. 915 (1903). The inconsistency was removed by amendment in 1906, vide supra note 28.

The following may be found in State v. Carter, 30 Wyo. 22, 40; 215 Pac. 477, 483 (1923): "We need not determine as to what rule should be adopted in this State except to say that in any event unless it is clear that a general law could have been adopted the court will not interfere with the legislative determination to the contrary."

E. G. Fairfield v. Huntington, 23 Ariz. 523, 205 Pac. 814 (1922), holds that whether a general law is applicable or not is a question for the legislatures, but then confuses the issue by stating "unless it appears very clearly from the character of the appropriation that a general law would have been sufficient the court would not be justified in holding that a coordinate branch of the government abused its discretion in passing a special one." The Montana court phrases their rule in a slightly different manner: "We believe there are many subjects of legislation, which, from their inherent character are subject to regulation by general laws, and that the courts are as advantageously situated as any other department of government to say so; on the other hand, there are certain subjects which may or may not lend themselves to regulation by general laws depending upon extrinsic facts and circumstances which the Legislature is peculiarly fitted to ascertain and determine but which the courts have no available means to ascertain." State v. Schofield, 53 Mont. 602, 510, 165 Pac. 594, 596
was probably merely invoking the regular presumption of constitutionality of statutes.\(^3\)

Having decided that the constitutional provision under consideration does limit the powers of the legislature, the question then naturally arises whether it is meant to restrain only future legislatures or whether it will have the effect of wiping the statute books of all existing laws which do not meet the requirements set for legislation. The answer that the courts have almost universally given is that the constitutional provision will act only prospectively.\(^2\)

The above has now become, of course, an almost academic question in view of the fact that there have not been many recent constitutional provisions on the subject.\(^3\) However, there are still live questions raised by the fact that there are many laws on the statute books which but for the accident of their date of passage would be invalid today.

Firstly, may a special or local law be amended notwithstanding a constitutional prohibition against special or local laws? This problem will most likely arise where there is an attempt to amend the charter of a corporation granted at a

(1917). And in State v. Meyers, 65 Mont. 124, 210 Pac. 1064 (1922), a special law creating a joint school district is held invalid because there were no "extrinsic facts" which would make it impossible for the court to determine the question of whether a general law was applicable.

\(^2\) Cf. Hess v. Pegg, 7 Nev. 23 (1871); Coulter v. Board of County Commissioners of Routt County, 9 Colo. 258, 11 Pac. 199 (1886). But see In the Matter of the Estate of Stocknorth, 7 Nev. 223 (1872), where the court upheld a statute admitting an otherwise invalid will to probate.

\(^3\) Vallejo Ferry Co. v. Long, 161 Cal. 672, 120 Pac. 421 (1911); Huer v. Central, 14 Colo. 71, 23 Pac. 323 (1890); York v. State, 172 Ga. 483, 158 S. E. 53 (1931); Kansas v. Thompson, 2 Kan. 427 (1864); Smith v. Simmons, 129 Ky. 93, 110 S. W. 336 (1908) (and many cases cited therein); New Central Coal Co. v. George's Creek Coal and Iron Co., 37 Md. 537 (1872). Also see Gregory v. Cockrell, 179 Ark. 719, 18 S. W. (2d) 362 (1929); State v. Lincoln, 133 Minn. 178, 158 N. W. 50 (1916). But see Sisters of St. Elizabeth v. Collectors of Chatham, 51 N. J. L. 95, 16 Atl. 225 (1888); State v. Clark, 53 N. J. L. 332, 21 Atl. 302 (1881).

In Mississippi the wording of the Constitutional provision almost required the decision that the constitutional provision would operate retroactively. Chidsey v. Scranton, 70 Miss. 449, 12 So. 545 (1893).

Illinois does not have a uniform policy but rather interprets each constitutional provision separately. Cf. Covington v. City of East St. Louis, 78 Ill. 548 (1875), with Jefferson County v. Jones, 63 Ill. 531 (1872), and with Chance v. Marion, 64 Ill. 66 (1872).

\(^2\) For example, in the past ten years Arkansas has been the only state which has enacted a broad clause regarding special and local legislation. Ark. Const. Amendment § 17 (1926).
time when the Legislature could pass as many special laws creating corporations as it desired. It would seem that such an amendment should not be permitted inasmuch as to do so would violate the spirit as well as the letter of the constitutional prohibition. And so most cases have held.34

Secondly, there is the question of whether a law repealing a special or a local law violates a provision prohibiting special or local laws.35 Since the purpose of the constitutional provision was to secure uniformity, the courts have held that such repealing laws are valid.36

There has also arisen the problem of what legislative bodies are affected by these various provisions. The tendency of the courts has been to apply the constitutional restrictions to all delegated legislation37 even though the wording of the particular restriction would seem to apply only to the General Assembly.38

Finally, the constitutional inhibitions, as with other provisions, must be read in the light of the entire instrument. The conclusive prohibition of one section may be qualified by the grant of another. An illustration of this is to be found in Missouri where the sweeping and mandatory requirement of general laws where applicable39 has been construed as irrelevant to local laws fixing the terms of a court or the establishment of criminal courts in cities of 50,000, since another part of the constitution

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34 Gregory v. Cockrell, 179 Ark. 719, 18 S. W. (2d) 362 (1929); De Hay v. Commissioner of Berkeley County, 66 S. C. 229, 44 S. E. 790 (1903); S. E. Gaslight Co. of New Brunswick v. Borough of South River, 77 N. J. Eq. 487, 77 Atl. 473 (1910).

35 In Minnesota, the Constitution specifically prohibits “the amendment, extension, or modification of special laws.” Minn. Const., art. IV, § 33.

36 See State v. Sullivan, 62 Minn. 283, 64 N. W. 813 (1895); State v. Fiala, 47 Mo. 310 (1871); Atlantic Terra Cotta Co. v. Carson, 248 Pa. 417, 94 Atl. 72 (1918).

37 The following cases all held or assumed that the constitutional prohibition was applicable to municipal ordinances: Foster v. Board of Police Commissioners, 102 Cal. 483, 37 Pac. 763 (1894); Sioux City v. Simmons Warehouse Co., 151 Iowa 334, 129 N. W. 987 (1912); Board of Council of Harrodsburg v. Renfro, 22 Ky. L. R. 806, 58 S. W. 795 (1900); Ex parte Lerner, 281 Mo. 18, 218 S. W. 331 (1920); Holsman v. Thomas, 113 Ohio St. 397, 147 N. E. 750 (1925).

38 Board of Council of Harrodsburg v. Renfro, 22 Ky. L. R. 806, 58 S. W. 795 (1900).

39 Mo. Const., art. IV, § 53.
provided that a court "shall hold its terms at such times and places in each county as may be by law directed," and that "The General Assembly shall have no power to establish criminal courts except in counties having a population exceeding 50,000."  

**Definition of Terms**

The legislation prohibited is commonly described as "local or special," but elsewhere as "special, private, or local," "special," "private," "private or local," "private or special." Not only are there word differences between the states, but within a single constitution. In Wisconsin it is required that "private and local" laws embrace one subject to be expressed in the title; it prohibits "special or local" laws in certain enumerated cases; and provides that "general" laws shall not be effective until published.

The Georgia Constitution prohibits "special" laws on enumerated subjects and requires that notice be given of the passage of "local or special" laws. In at least eleven states the provision begins by forbidding "local or special" laws on certain subjects and then in the same, or an immediately following section, provides only that no "special" law shall be passed in any case where a general law is applicable.

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40 State v. Hughes, 104 Mo. 459, 16 S. W. 489 (1891).
41 Ex parte Renfrow, 112 Mo. 591, 20 S. W. 682 (1892).
42 Ariz., art. IV, § 11; Ark., art. V, § 24; Cal., art. IV, § 25; Colo., art. V, § 25; Del., art. II, § 19; Fla., art. III, § 20; Ga., art. III, § 7, par. 16; Idaho, art. III, § 19; Ill., art. IV, § 22; Ind., art. IV, § 22; Iowa, art. III, § 30; Ky., §§ 59, 60; La., art. IV, § 4; Me., art. IV, § 13; Md., art. III, § 35; Mich., art. V, § 30; Minn., art. IV, § 33; Miss., art. IV, § 57; Mo., art. IV, § 53; Mont., art. V, § 26; Neb., art. III, § 43; Nev., art. IV, § 20; N. M., art. IV, § 24; N. Y., art. XII, § 2; N. D., art. II, § 69; Okla., art. V, § 46; Ore., art. IV, § 23; Penn., art. III, §§ 7, 8; S. C., art. III, § 34; Tex., art. III, § 56; W. Va., art. VI, § 39; Wyo., art. III, § 27.
43 Ala., art. IV, §§ 104–106; Miss., art. IV, § 90; N. J., art. IV, § 7, par. 11; Va., art. IV, § 63.
44 Ga., art. I, § 4; Iowa, art. II, § 17; N. C., art. II, §§ 10, 11; Tenn., art. XI, § 46.
45 N. C., art. II, § 12, art. VIII, § 1.
46 N. Y., art. III, §§ 16, 18; Wis., art. IV, § 18.
47 S. D., art. III, § 23; Utah, art. IV, § 26; Wash., art. II, § 28; Wis., art. IV, § 31.
48 Wis. Const., art. IV, §§ 18, 19, art. VII, § 21.
50 Colo., art. V, § 25; Md., art. III, § 33; Mont. art. V, § 26; Neb., art. III, § 18; N. M., art. IV, § 24; N. D., art. I, §§ 69, 70; Okla., art. V, §§ 46, 59; S. C., art. III, § 34; Utah, art. IV, § 26; Wyo., art. III, § 27.
51 In the Texas Const., art. III, § 56, "local and special" are used in both instances.
It is not necessary to rhetorically state the questions raised by these variances; nor shall we be able to answer all of them, but shall only attempt to point out some situations where the problem of the similarity of these terms has been in issue and the solutions of the various courts.

Historically "special" and "general" were used synonymously with "public" and "private" in distinguishing those statutes which the court would not judicially notice from those which would be recognized without special pleading. Consequently, confusion resulted when the constitutional provisions with which we are now dealing adopted "special" and "general"—"local" is of relatively modern origin—to make distinctions other than those with which they had been formerly associated. In a number of the cases in which the court was faced with the problem of determining whether a statute was special, the court has attempted to differentiate between general and special according to the lines drawn between public and private acts.

51 The first distinction between terms appears to have been made in 1539. I Stat. Realm, xxxii, n. b.; R. v. Milton, 1 C. & K. 59 (1843). Jacobs, Law Dictionary, Statutes (Tolmns 2nd ed. 1809): "Some Statutes are General, and some are Special. And they are called General from the Genus and Special from the Species." Under this rule it was held that a law which related to all trades or the whole body of the spiritually was general, but a law was special which related to a particular trade or only to bishops. Holland's Case, 4 Coke 76 (1597); Kirk v. Nowell, 1 T. R. 124 (1766).

It was sometimes stated that the distinction between public or general and private or special acts was according to whether the people as a whole had an interest in it and thus it was held that a law which related only to the king or some well known subject matter was general, but a law relating only to a sheriff was special. R. v. Buggs, Skinner 429 (1694); Morris v. Hunt, 1 Chitt. 453 (1819); Dupays v. Shepherd, 12 Mod. 216 (1698); I B1. Com. *85f; Jacobs, Law Dictionary, Statutes (1729).

52 State v. Sayre, 142 Ala. 641, 39 So. 240 (1904). In 1797 Parliament first used the term "local" in reference to legislation in providing what laws should be printed, but this was held not to be conclusive as to the character of the law. Richards v. Easto, 15 M. & W. 244 (1846).

53 In People v. Newbury Plank Road Co., 86 N. Y. 1 (1881), an act which applied to all but two named counties in a state was held to be general because most of the people in the state would be interested in it. Subsequently an act which placed one of the excluded counties under its operation was held to be general also as its effect was simply to amend the original general law.

In Toledo, L. & B. Ry. Co. v. Nordyke, 27 Ind. 95 (1866), the court speaks of the necessity of pleading a law as being a test as to its general or special character. In Dundee Mortg. Co. v. Multnomah County School Dist., 19 Fed. 359 (1884), and People v. Central Pac. R. Co., 53 Cal. 395, 23 Pac. 303 (1890), the court attempted to employ the genus-species distinction in distinguishing general and special laws.
A general law need not be strictly universal, applying everywhere, to everybody, or to all things. Most laws apply to only part of the people or property, as husbands or wives, real estate or bonds. For a law to be general it is only required that the objects of its operation be reasonably classified. Detailed attention will be given hereafter as to what constitutes such a class. When there is not a reasonable classification, when the persons or things subject to the law are not reasonably different from those excluded, the statute is local or special.

In some cases the terms "local" and "special" are used synonymously, but in others their distinction has been a vital factor and the use of one in the constitution does not include the laws described by the other. When they are not used synonymously, a contrary idea is implied. Ala. Const., art. IV, § 110, "A general law within the meaning of this article is a law which applies to the whole state;—"

State v. Daniels, 87 Fla. 270, 99 So. 304 (1924); Van Riper v. Parsons, 40 N. J. L. 1, 29 Am. Rep. 210 (1878); Groves v. Grant County, 42 W. Va. 587, 26 S. E. 460 (1896); Sutherland, Statutory Construction (1907), sec. 203.


In some cases it has been frankly stated that the terms are synonymous. State v. Crandon, 105 Fla. 309, 141 So. 177 (1932); Eckerson v. City of Des Moines, 137 Iowa 452, 115 N. W. 177 (1908); Schubel v. Olcott, 60 Ore. 503, 120 Pac. 375 (1912); Smith v. Grayson County, 18 Tex. App. 153, 44 S. W. 921 (1897).

In others they would appear to have been applied synonymously by the court speaking of a law relating to a particular place as special, State v. Stewart, 74 Wis. 620, 43 N. W. 947 (1889); Chicago & N. W. Ry. Co. v. Forest County, 95 Wis. 80, 70 N. W. 77 (1897); or of a law relating to a named or arbitrary classified person or thing as being local, Territory v. School District, 10 Okla. 556, 64 Pac. 241 (1891); Clark v. Finley, 93 Tex. 171, 54 S. W. 343 (1899), which is the opposite from their correct use if the terms are properly distinguishable.

Md. Const., art. III, § 33, forbids "local and special" laws on certain enumerated subjects and only "special" laws where there is an existing "general" law. It has been held that the latter prohibition does not include general laws, State v. Baltimore County, 29 Md. 519 (1868); Prince George County v. Comrs., 51 Md. 460 (1879), and Maryland today has three large volumes of laws applying only in and to named municipalities.

In Alabama it was held that a statute repealing "general and special" laws did not include those which were "local". Gaston v. O'Neal, 145 Ala. 484, 41 So. 742 (1906). As to whether existing local and special laws are repealed by a repealing clause not specifically referring to such legislation or even a subsequent general law incon-
interchangeably the distinction is drawn according to whether the law applies to persons or things or to a locality, the former being special and the latter local.69 As has been well said, "Local laws are laws special as to place."70

The use of the term "private" in connection with "special" and "local" leads to confusion. "Private" and "public" are already established as opposites;61 the further use of "private" in contradistinction to "general" offers the tempting but erroneous assumption that "public" and "general" are synonymous. If "private" constitutes a further subdivision it would seem that "local" and "special" would include only those laws where there was an unreasonable classification and not those in which there was no attempt to classify, the objects being specified by name, which would be "private". This might be satisfactory in the case of special laws, but not in the case of local laws since the latter are considered public even though the statutory reference be to a named municipality.62

Consequently, while there are possible, but not universally recognized, distinctions between "special", "local", and "private", there is still an absence of formula for determining when they are to be interpreted as synonymous. A possible solution often lies in the context of the words as used in the constitution. If the prohibition is of "special" laws granting divorces


* People v. Wilcox, 237 Ill. 421, 86 N. E. 672 (1908); Mathews v. City of Chicago, 342 Ill. 120, 174 N. E. 35 (1930); State v. B. & O. R. Co., 113 Md. 179, 77 Atl. 433 (1910); Hotchkiss v. Marion, 12 Mont. 218, 29 Pac. 821 (1892); Ex parte Schatz, 307 Mo. 67, 269 S. W. 333 (1925); Gubner v. McClellan, 130 App. Div. 716, 115 N. Y. Supp. 755 (1909); State v. Johnson, 170 N. C. 685, 66 S. E. 788 (1915).

** Day v. Comrs., 191 N. C. 786, 133 S. E. 164 (1926); Grives v. Grant County, 42 W. Va. 537, 26 S. E. 460 (1896).

* Our modern conception of what is a public law is more inclusive, and the private more narrow, than when the line was drawn between the spirituality and the bishops. Today we treat as public all laws which affect every person in a certain locality or persons of a certain description; its only antithesis is private. Sasser v. Martin, 101 Ga. 447, 29 S. E. 278 (1897); Benedict v. City of New Orleans, 115 La. 645, 39 So. 792 (1906); Sutherland, Statutory Construction (1904) 25. By a private law we understand only those which apply to a named person or corporation and which at the most only have an incidental effect upon others, as where a person is authorized to sell a parcel of land. Sasser v. Martin, 101 Ga. 477, 29 So. 278 (1897); Gubner v. McClellan, 130 App. Div. 716, 115 N. Y. Supp. 755 (1909).

and municipal charters it would be evident that "special" here referred to legislation naming the thing affected—since divorce laws were enacted by naming the person—or selecting them according to locality—as the manner in special municipal laws. Similar illustration might be made of the use of "local" and "private", though generally it would appear that "private" is used out of an abundance of caution.

The failure to distinguish "public" and "general" is a grave danger. The fallacious reasoning which follows the synonymous use of "general" and "public" is illustrated by the situation where the constitution prohibits the laying out or opening of highways by special or local laws. Under this provision an act is attacked which provides for the construction of a particularly described highway. The court says: (a) The highway is built for the use of all the people of the state and it is therefore a public law; (b) a public law is a general law; (c) a general law is not local or special and therefore the act does not violate the constitution.

CONSTRUCTION OF SPECIFIC PROVISIONS

Having considered the broad rules of construction which are applicable to all the constitutional prohibitions, we now turn to an examination of the construction given specific provisions. The requirement that no local or special law be passed where a general law is applicable, is seldom used to invalidate a statute, even in those jurisdictions where it is provided or held to be

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6 Ala. Const., art. IV, § 110, appears to use "special" and "private" interchangeably.

6 Ex parte Burke, 59 Cal. 6, 43 Am. Rep. 231 (1881), speaks of "general" and "public" as being synonymous.

The failure of the framers of the Wisconsin Constitution to distinguish "public" and "general" has necessitated giving two meanings to "general". The requirement that "general" laws shall not be in force until published includes "local" laws, but "local" laws, as used in regard to requirement of a title of a bill, is held to be the antithesis of a "general" law. Yellow River Imp. Co. v. Arnold, 49 Wis. 214, 49 N. W. 971 (1879); Milwaukee County v. Isenring, 109 Wis. 9, 85 N. W. 131 (1899). 16 Allen v. Hirsch, 8 Ore. 412 (1880); Sears v. Steel, 55 Ore. 544, 107 Pac. 3 (1910); Salmon River-Grande Ronde Hwy. Dist. v. Scott, 145 Ore. 121, 27 P. (2d) 183 (1933). For similar cases see Waterman v. Hawkins, 75 Ark. 120, 86 S. W. 844 (1905); Thomas v. Board of School Directors, 136 La. 499, 67 So. 345 (1915); State v. Carson, 67 N. J. L. 173, 50 Atl. 780 (1901); Stephenson v. Wood, 119 Tex. App. 564, 34 S. W. (2d) 246 (1931); Thompson v. City of Milwaukee, 69 Wis. 492, 34 N. W. 402 (1897).
mandatory. Since the provision is ordinarily employed in addition to an inclusive prohibition of such statutes on certain named subjects, the courts commonly have the alternative of applying either section, and they have shown a distinct preference for the use of the specific prohibitions. In Minnesota no statutes have been held invalid under the sweeping provision, although the constitution was specifically amended to make the question, whether a general law was applicable, one for judicial determination.\textsuperscript{66} In the states where enactments have been held invalid because they were special and a general law was applicable, there is an absence of practical suggestion as to the considerations which guide the court in their determinations. Ordinarily, where the act is held invalid, the court points out the possibility of drafting a bill which would include other persons or things similarly situated, but where the act is upheld the court merely refers to the differences of the persons or things excluded, and says that they are sufficient. This procedure does not lend itself to reconciling the decisions.

In South Carolina it was held that providing for vehicle licenses in a named county\textsuperscript{67} or issuing bonds for the erection of municipal buildings\textsuperscript{68} were not situations where a general law could be made applicable, but contra as to felling trees in certain streams.\textsuperscript{69} In Missouri the court has said that the legislature could draft a statute which applies to the advertising of all schools and not simply barber colleges\textsuperscript{70} or an act which prevents unfair competition in places other than the sidewalk in front of the place of business of a competitor.\textsuperscript{71} In Ohio\textsuperscript{72}

\footnotesize{\textsuperscript{66} See discussion in the dissenting opinion of State v. Cloudy, 159 Minn. 200, 198 N. W. 457 (1924).
\textsuperscript{67} State v. Touchberry, 121 S. C. 5, 112 S. E. 345 (1922).
\textsuperscript{68} Sullivan v. City Council, 133 S. C. 156, 130 S. E. 872 (1925); Briggs v. Greenville County, 137 S. C. 238, 135 S. E. 153 (1926).
\textsuperscript{69} State v. Hammond, 66 S. C. 219, 44 S. E. 797 (1902).
\textsuperscript{70} Noler v. Whisman, 243 Mo. 571, 147 S. W. 985 (1912).
\textsuperscript{71} Ex parte Lerner, 281 Mo. 18, 213 S. W. 331 (1920). This case and the one \textit{ibid}. are examples of the extreme degree to which the courts have carried the constitutional provisions. In the barber school case the objection was not because of the exclusion of schools of dentistry or medicine; the true objection was not to the classification but to the restriction which prevented barber colleges from conducting business in the same manner as established shops. The same elements are pertinent in the unfair competition case. The real objection was that a business man was prevented from handing out bills in front of the establishment of his competitor, not that he was prevented from handing out bills in other places. Certainly there are distinctions between the manner in which barber schools and dental
the court has frequently reversed itself. It was originally held
that roads were a local matter, but later this was decided to
present a proper situation for laws operating throughout the
state. A similar change was made in regard to the collection
taxes. In the case of school legislation there have been two
reversals and the court has returned to its original view which
had been abandoned.

The provision that laws of a general nature shall have a uni-
form operation has not been given a uniform or satisfactory
interpretation. Some courts have construed it merely to pro-
hibit the granting of special privileges and immunities. Other
courts have given it no effect at all by leaving the question of
what was a law of a general nature to the legislature. Others
have never faced squarely the problem of construing the pro-
vision and have centered their attention upon some other pro-
vision in order to secure the results that the framers of the
constitution intended. Still others, although they have paid
schools compete with those established in such business that patently
the classification which was made in the law would not appear un-
reasonable.

The Ohio provision is that laws of a general nature shall have a
uniform operation, but it has been interpreted as substantially analo-
gous to the requirement of general laws where applicable.

State v. Comrs., 35 Ohio St. 458 (1880).

Mott v. Hubbard, 59 Ohio St. 199, 53 N. E. 47 (1898).

State v. Crites, 48 Ohio St. 142, 26 N. E. 1052 (1891). Contra:
State v. Lewis, 74 Ohio St. 403, 78 N. E. 523 (1906).

State v. Powers, 38 Ohio St. 54 (1882). Contra: State v. Shearer,
46 Ohio St. 275, 20 N. E. 335 (1889). Contra: State v. Spellmire,
67 Ohio St. 77, 65 N. E. 619 (1902).

Brook v. Hyde, 37 Cal. 366 (1869). This decision was governed
by the consideration that California had taken its provision from Iowa
whose provision reads as follows: "All laws of a general nature shall
have a uniform operation; the General Assembly shall not grant to
any citizen, or class of citizens, privileges or immunities, which upon
the same laws shall not equally belong to all citizens." Iowa Const.,
art. I, § 6. The decision probably led to the insertion in the Cali-
ifornia Constitution of 1879 of more specific clauses with regard to spe-
cial and local legislation. Iowa never seems to have had any litigation
under its provision which would demand a precise statement as to its
effect.

Of. People v. C. P. R. R. Co., 43 Cal. 398, 433 (1872): "The Con-
stitution has not undertaken to declare that all laws shall have a uni-
form operation—uniformity in that respect is made requisite only in
case the law itself be one of a general nature and if it do not purport
to be such an one, no objection as to its want of uniformity can be in-
terposed. The nature of a given statute must depend in a measure
upon the legislative purposes discernible in its enactment."

E. g. Georgia has the provision: "Laws of a general nature shall
have a uniform operation throughout the state and no special law shall
be enacted in any case for which provision has been made by exist-
attention to the provision, have failed completely to make a logical analysis of it and have shown that they did not understand that there might be a difference between "laws of a general nature" and "general laws" and between the nature of a law and its operation. Ohio alone has attempted to define "law of a general nature" and to apply its definition with some uniformity in the cases, but even here the result has not been satisfactory, due to the fact that the provision is so ambiguous. Any proper analysis of the provision would seem to give it the same effect as that of a provision requiring that general laws be passed whenever applicable.

Under the provision that no local or special law shall be

80 Ohio Const., art. I, § 4. The great majority of decisions merely address themselves to the problem of (a) whether the instant statute is a special one and if it is (b) whether provision has already been made for an existing general law. It would seem that at least in some of these cases there should also have been asked the question whether this was a law of a general nature and if so whether it had uniform operation. E. g. Clark v. Black, 136 Ga. 312, 72 S. E. 251 (1905); Board v. Board, 147 Ga. 776, 98 S. E. 684 (1919).

81 Thus, we find the following: "It would be absurd to say of any valid general law that it was not a law of a general nature though it might be correct to say of some general laws that the nature of their subject matter is local." Mathis v. Jones, 84 Ga. 804, 809 (1890). "In order for a law to be general in its nature, to have a uniform operation, it is not necessary that it shall operate upon every person and every locality in the state. A law may be general and have a local application or apply to a designated class if it operates equally upon all the subjects within the class for which it is adopted." Burks v. Walker, 25 Okla. 353, 109 Pac. 544 (1909). It is obvious that the courts are not only confusing "laws of a general nature" with "general laws" but since they do so they are really defining a law of a general nature as one having a uniform operation. The result of this is that the test of whether a law is one which the constitution requires shall have uniform operation is whether or not it has uniform operation. However, as noted above, there were other provisions in these State Constitutions which prevented the passage of special legislation.

82 The following will illustrate the vacillations of the Ohio courts: In Kelley v. State, 6 Ohio St. 209, 272 (1556), there is the statement to the effect that a law is one of a general nature if it "exists throughout the state in every county and in which all the citizens have a common interest." Compare this with "it by no means follows that all laws pertaining to a general subject matter and susceptible to uniform operation throughout the state are laws of a general nature." McGill v. State, 34 Ohio St. 228, 241 (1877). "If the subject does or may exist in and affect the people of every county in the state it is of a general nature. On the contrary, if the subject cannot exist in or affect the people of every county it is local or special. A subject matter of such general nature can be regulated and legislated upon by general laws having a uniform operation throughout the state, and a subject matter which cannot exist in or affect the people of every county cannot be regulated by general laws having a uniform operation throughout the state, because a law cannot operate where there
enacted where there is a general law upon the subject in existence it has been said that a special act is valid where the object cannot be attained by or does not conflict with the existing general law. It is evident that this interpretation will not constitute a serious pitfall for special statutes. It has been held that where there was a general law for the organization of a particular kind of a corporation which limited its existence to forty years, a special act might charter such an entity with unlimited life; that a law might permit a specified bonding company to be sole surety on official bonds though there was a general law requiring two sureties.

Litigation has seldom arisen under the provision which prohibits suspending a general law for the benefit of an individual or corporation. Ordinarily where the legislature desires to aid some person, a special act is passed giving them rights not common to others, rather than suspending the operation of a general law for their benefit. There are instances of general suspension of tax collecting and mortgage enforcement laws, but these have been held not violative of the prohibition because the act which suspends the general law is itself held to be general. The provision prohibiting the suspension of general laws is to be contrasted with the South Carolina provision that, though general laws shall be enacted where applicable, the legislature is expressly empowered to insert special provisions in general laws. Under this a general school law, which

can be no subject to be operated upon." Hixson v. Burson, 54 Ohio St. 470, 481, 43 N. E. 1000, 1002 (1896).

Finally, the very well reasoned opinion of State v. Spellmire states what seems to be the rule which most cases follow: “Every subject matter which can reasonably be covered and provided for by a general law can have no special or local legislation as to it or any of its parts.” State v. Spellmire, 67 Ohio St. 77, 82, 65 N. E. 619, 620 (1902). But cf. Cincinnati St. Ry. Co. v. Horstman, 72 Ohio St. 93, 73 N. E. 1075 (1905).


Brandon v. Askew, 172 Ala. 160, 54 So. 605 (1911); Riley v. State, 209 Ala. 505, 96 So. 599 (1923); Polytinsky v. Wilhits, 211 Ala. 99, 99 So. 843 (1924).

Singer v. Wyman Memorial Assn., 138 Md. 398, 114 Atl. 50 (1921).


For a statute held bad under this provision see State v. Mobile & R. Co., 86 Miss. 172, 88 So. 722 (1905).


Supra, note 13.
created a special school district, was upheld, but a law exempting three counties from the operation of a cotton seed act was declared invalid.

Although the prohibition of special and local acts upon specified subjects is universally mandatory, in some states the scope of the specified subjects has been so narrowly construed as to render the provision practically nugatory.

Occasionally an act inseparably covers two subjects, one forbidden and the other not. The joining of a good and bad provision does not validate the latter, but the rule appears to be that where the prohibited matter is only incidental to the unrestricted and primary subject the entire statute is valid. Thus, in New York local highway laws are forbidden, but not those concerning health and sanitation. The City of Rochester was specifically empowered to construct certain work for the prevention of pollution, and to accomplish this purpose it was empowered to change certain highways which might interfere with the program. It was held that the law was not invalid as a local highway act.

However logical this interpretation may appear, it presents possibilities for abuse in determining the primary and incidental subjects. In North Carolina it has been held that the prohibition of local laws authorizing the laying out of highways is not violated by an act providing a bond issue to construct a particular road as the primary subject was county finance and the building of the road only incidental.

As municipal matters are a favorite subject of legislation, it is not surprising to find that perhaps more fine distinctions have been drawn in the interpretation of prohibitions on this subject than on any other.

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*Walpole v. Wall, 153 S. C. 106, 149 S. E. 761 (1929).*
*Tisdale v. Scarborough, 69 S. C. 377, 33 S. E. 594 (1914).*
*For a discussion of some states where the courts appear to have completely nullified the constitution see Black and McQuain, *Special Legislation in West Virginia*, 39 W. Va. L. Q. 255 (1933).*
*A prohibition of a local law incorporating or amending a city
Many of the constitutions devote a separate article to this subject or specifically mention municipal corporations among the forbidden subjects of special and local legislation. Where the prohibition is only of "corporations" there is a question whether municipalities are included. To this Kansas answers in the affirmative and Mississippi in the negative. Tennessee accepts both of these answers in part and neither entirely, depending on whether the law relates to the municipality in its corporate or political capacity.

Municipal "business or affairs" is a common means of describing the prohibited subject of local legislation, but the question has arisen in a number of instances as to whether a particular matter came within such a description. In some courts it has been held too narrow to include corporate affairs, providing the government for a new county, changing the county seat, changing the boundaries, the payment of debts, the issuance of bonds and the establishment of courts. In Indiana it was suggested that an act releasing surety obligors of certain townships was not invalid as local municipal legislation charter has been held not to include laws abolishing the charter, Ensel v. Simpson, 166 Ala. 366, 52 So. 61 (1909), or simply giving the named city additional powers, Buist v. City Council, 77 S. C. 280, 57 S. E. 862 (1907). The prohibition of local acts incorporating school districts has been held not to be violated by acts which consolidate several districts, Walker v. Bennett, 125 S. C. 389, 118 S. E. 779 (1923), which divides a named county into school districts, Powell v. Hargrove, 136 S. C. 345, 134 S. E. 380 (1933), or enlarges the limits of a city to include a certain school district. Duffy v. Greensboro, 186 N. C. 470, 120 S. E. 53 (1923); Haley v. Winston-Salem, 196 N. C. 17, 144 S. E. 377 (1922).

See supra, note 6.

9 City of Wyandotte v. Wood, 5 Kan. 603 (1870).

97 Feemster v. City of Tupelo, 121 Miss. 733, 83 So. 804 (1920).

99 Redistricting Cases, 111 Tenn. 234, 50 S. W. 750 (1903); Wilson v. Wilson, 134 Tenn. 697, 185 S. W. 718 (1916); State v. Knox County, 154 Tenn. 483, 230 S. W. 405 (1925).

100 Scarbrough v. Wooten, 23 N. M. 616, 170 Pac. 743 (1918).


103 Miller v. Greenwalt, 64 N. J. L. 197, 44 Atl. 830 (1899); N. Y. v. Lawrence, 250 N. Y. 429, 165 N. E. 836 (1928).


tion as a township was only a subdivision of the state and therefore the regulation was really only of state business.\textsuperscript{106}

Matters relating to courts have been included within specific prohibitions. The "practice" of courts has been held in Illinois to include the pay of jurors.\textsuperscript{107} In Utah the restriction of special laws as to the "duties" of a justice of the peace is construed as referring only to his judicial and ministerial duties and not to those which are purely clerical.\textsuperscript{108} In North Carolina the "establishment" of courts does not include their abolition\textsuperscript{109} or change of jurisdiction.\textsuperscript{110}

Inhibition of local highway laws has been amply interpreted. The term "altering," as used in Wisconsin to describe the "laying out, opening, or altering of highways," means the change of the course of the highway and not a local law merely changing the grade.\textsuperscript{111} In North Carolina it would appear that a local law would be invalid under the provision "relating to ferries or bridges" only when the place of construction is precisely specified.\textsuperscript{112}

The interpretation of a few other provisions will be noticed briefly. A local registration law was held not to be within the "conducting" of elections,\textsuperscript{113} nor is the salary of a public officer within the description of "fees, percentages, or allowances."\textsuperscript{114}

A fine line may be drawn between laws which provide for additional recovery in the case of certain delinquent payments as to whether they are special laws providing a "penalty" or "regulating interest rates."\textsuperscript{115}

Restrictions in the form of procedural requirements, similar to that for a Private Bill in England, are contained in a number of the state constitutions.\textsuperscript{116} These are in the form of

\textsuperscript{106} Bolivar Twp. v. Hawkins, 207 Ind. 107, 191 N. E. 158 (1934); see also Salt Lake County v. Salt Lake City, 42 Utah 548, 134 Pac. 560 (1913).

\textsuperscript{107} People v. Bain, 358 Ill. 177, 193 N. E. 137 (1934); cf. Hunt v. Rosenbaum Grain Corp., 355 Ill. 504, 139 N. E. 907 (1923).

\textsuperscript{108} Queen v. Comrs., 191 N. C. 821, 138 S. E. 310 (1927).

\textsuperscript{109} Harrison v. Supervisors, 51 Wis. 645, 8 N. W. 731 (1881).

\textsuperscript{110} Day v. Comrs., 191 N. C. 780, 133 S. E. 164 (1926).

\textsuperscript{111} People v. Earl, 42 Colo. 238, 94 Pac. 294 (1908).

\textsuperscript{112} Blaine County v. Pyrah, 32 Idaho 111, 178 Pac. 702 (1919).

\textsuperscript{113} Seaboard Nat'l Bank v. Western, 176 Mo. 49, 75 S. W. 464 (1903).

\textsuperscript{114} The English Private Bill procedure in substance requires that such bills have definite sponsors and they are referred to a special committee where inquiry and hearings of judicial nature are con-
provisions calling for a two-thirds vote for a special law\textsuperscript{117} or a referendum in the locality affected.\textsuperscript{118} More popular still is the requirement that notice be given of the intent to introduce or of the pendency of a local or special bill.\textsuperscript{119}

This latter provision, the only one which has been the subject of litigation, while patently of mandatory character, has been rendered nugatory by virtue of the rule of evidence whereby the court will not inquire into the regularity of the legislative proceeding.\textsuperscript{120} An exception has been made, however, where extrinsic facts demonstrated the non-compliance, as where the statute in question was passed at a special session and there was insufficient time for the giving of notice between the call for the session and the date of the enactment.\textsuperscript{121}

\textsuperscript{117} Williams, Private Bill Legislation (1927); Clifford, Private Bill Legislation (1885).

Miss. Const., art. IV, § 89, requires that such bills be referred to a special committee who shall investigate and report as to the possibility of drafting a general statute. The Ga. Const., art. III, § 7, par. 15, had a similar provision which was dropped in 1885. In some states the legislative body by its own rules provides for a special procedure: Iowa Official Register, Joint Rules, No. 18. For comments on congressional private bill procedure see: Willoughby, Principles of Legislative Organization and Procedure (1934), 439 ff; 45 Cong. Rec., Feb. 14, 1913.

\textsuperscript{118} Del. Const., art. II, § 19, requires the passage of certain special or local laws by two-thirds vote; Idaho Const., art. III, § 19, requires two-thirds vote for a law changing the location of a county seat; N. Y. Const., art. XII, § 2 (amendment 1923) forbids special and local laws relating to cities except upon a declaration of an emergency by the governor and two-thirds vote of the legislature.

\textsuperscript{119} Mich. Const., art. IV, § 17, requires that special corporation acts be passed by two sessions of the legislature with an election intervening. In Ga. Const., art. I, § 4, it is made a prerequisite of a "general law affecting private rights" that the written consent of all persons affected be secured.

\textsuperscript{120} Ala., art. IV, § 106; Ark., art. V, § 26; Fla., art. III, § 21; Ga., art. III, § 7, par. 16; Mo., art. IV, § 7, par. 9; N. C., art. II, § 12; Penn., art. III, § 8; Tex., art. III, § 57. In some states there is only a statutory rule in this regard. Conn. Rev. Stat. (1930), §§ 6, 10–12; Del. Rev. Stat. (1915), § 362. In Massachusetts there is a legislative rule, Joint Rules, No. 7.

In the Constitutions of New York, art. III, § 16, and Wisconsin, art. IV, § 18, it is provided that local and special laws shall embrace but one subject to be expressed in the title. This is a common state provision, but ordinarily not restricted to special legislation.

\textsuperscript{121} Norvell v. State, 143 Ala. 561, 39 So. 357 (1905); St. L. & S. W. R. v. State, 97 Ark. 473, 134 S. W. 970 (1911); State v. Fearnside, 87 Fla. 349, 100 So. 256 (1924); Mathews v. Town of Blowing Rock, 207 N. C. 450, 177 S. E. 429 (1934).

\textsuperscript{122} Booe v. Road Imp. Dist., 141 Ark. 140, 213 S. W. 500 (1919); Williams v. Dormany, 99 Fla. 496, 126 So. 117 (1930).

The present Constitution of Louisiana, art. IV, § 6, requires that
WHAT IS A REASONABLE CLASSIFICATION?

Regardless of the form of the constitutional provision in issue, as the purpose of the prohibition was to secure uniformity, the problem is presented in each case whether the statute in question is general or special, that is, whether there has been a reasonable classification of its objects.

There is no serious conflict between the courts in the statement of the law whereby general acts are separated from local and special. A law is general when the persons or things upon which it operates are reasonably classified. It may operate only within a single place or apply to but few persons or things. Universality is immaterial so long as those affected are reasonably different from those excluded and for the purpose of the act there is a logical basis for treating them in a different manner. When the operation of the law is limited by the presence or absence of features which are inconsequential to the object of the statute—which creates an artificial class of those affected—it is special or local. No two things are exactly identical and the constitutional provisions are not to be avoided by basing the operation of a law upon unimportant distinctions. Thus, a statute was held special which prohibited the establishment of a cemetery within one mile of a city of the first class, the drainage from which emptied into a stream from which the water supply was obtained. The features named have no relation to the establishment of a cemetery within a mile of a city.

As the distinctions which are drawn must relate to the the act recite that the notice has been given, but if the statement is made, evidence to the contrary will not be received. State v. Mason, 43 La. Ann. 590, 9 So. 776 (1891). The Constitution of Alabama of 1875, to which the above cases relate, only required that notice be given, but the present Constitution of 1901 provided that the proof of the notice shall be spread upon the legislative journal.

The sufficiency of the notice given has been attacked in some instances and it has been held that the substance of the proposed statute shall be so stated that its purpose shall be apparent as well as the place where it shall operate. Polytinsky v. Johnson, 211 Ala. 99, 99 So. 339 (1924); Milner v. Hatton, 100 Fla. 210, 129 So. 583 (1930).


purpose of the statute, a classification for one purpose may be entirely irrelevant for another. There would be no doubt that requiring service in a state militia only of men would be reasonable, but the exclusion of women would be arbitrary in a law providing that one should have recourse for injury to property and the other not.

Patently these rules are not difficult. Their inadequacy becomes evident only when we turn to the individual case for an examination of the purpose of the law and the distinctions which are drawn and ask whether there are those outside its operation sufficiently similar to those included so that it is arbitrary to treat them in a different manner.

In making this decision it has been suggested that the legislature has broad discretion in establishing a class, that it is not necessary for the court to understand all of the distinctions. In some instances it has been said that inquiry will be made as to the "good faith" of the legislature or that the court will consider whether the classification creates greater uniformity or diversity in the existing law.

In practice these "principles" appear to be no more than bolstering statements; they are used when in accord with the court's conclusion and otherwise ignored. In many of the cases it does not appear that the court has granted any discretion to the legislature. In Indiana a law regulating the use of trade-marked bottles, syphons, cans, kegs, barrels, hogsheads,

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124 See Wyoming Street, 137 Pa. 494, 21 Atl. 74 (1890), where it was pointed out that while a law relating to the lighting of streets would be general though applying only to cities of the third class, a law relating to the same class of cities which provided a different procedure for the appointment of executors and guardians would be special.

People v. Monroe, 349 Ill. 270, 182 N. E. 439 (1932); Gunderson v. Williams, 175 Minn. 318, 221 N. W. 231 (1923); Hawkins v. Smith, 242 Mo. 688, 147 S. W. 1042 (1912).

126 In Indiana a statute gave the right to condemn land to chautauqua associations which had existed for a certain number of years. In holding the law special the court pointed to the fact that the bill was introduced by the representative from a county having such an association and that shortly after the passage the association in that county attempted to make use of it. Fountain Park Co. v. Hensler, 199 Ind. 95, 155 N. E. 465 (1927). See also Graef v. Schottman, 287 Pa. 342, 135 Atl. 308 (1926).

127 State v. Govern, 47 N. J. L. 368, 1 Atl. 335 (1885); Lohan v. Thompson, 88 N. J. L. 40, 95 Atl. 447 (1915); Reading v. Savage, 120 Pa. 198, 13 Atl. 919 (1888); Commonwealth v. Denworth, 145 Pa. 172, 22 Atl. 820 (1891).
and other enclosures made of glass, metal and wood was held to be special because it did not include rubber, earthenware, and pasteboard enclosures.\textsuperscript{128}

The "good faith" of the legislature is a nebulous thing. Certainly the courts do not mean that a law otherwise general is special because its enactment was the result of a desire to provide for a particular situation. There are cases where the court has "felt" that the legislature was attempting to take advantage of a technicality,\textsuperscript{129} but there is no universal rule that a thing which cannot be accomplished by one method may not be performed in another if the latter is valid.

The theory that the court will be partially governed according to whether the statute tends to the effecting of a more uniform or diverse condition in the existing law is seldom determinative. A law which gathers under its operation matters which have been the subject of diverse provisions would be in furtherance of the constitutional objective, but it does not follow that an existing class may not be further divided without violation of the prohibition. In some states special curative enactments are upheld on the ground that they do not affect the uniformity of existing law.\textsuperscript{130}

Ordinarily it is held that the primary requirement of a general law is that it shall be general in form; particularizing

\textsuperscript{128} State v. Wiggam, 187 Ind. 159, 118 N. E. 684 (1918). See also Driscoll v. Comrs., 161 Minn. 494, 201 N. W. 945 (1925); State v. Childs, 32 Ariz. 222, 237 Pac. 366 (1927).

\textsuperscript{129} In Pennsylvania an act which applied only to "counties—where there is a population of more than 60,000 inhabitants, and in which there shall be any incorporated city at the time of the passage of the Act with a population exceeding 8,000 inhabitants, situated at a distance from the county seat of more than 27 miles by the usually traveled road,—" was held invalid as a local law in Commonwealth v. Patton, 88 Pa. 105 (1878), where the court said that the classification could not be by means other than population. In the next session of the Legislature the classification was revised to include only 5th class cities in counties having more than 60,000, but as the court determined that the only city affected by this class was the same as the one under the 27 mile law, this class was also held unreasonable. Scowden's Appeal, 96 Pa. 422 (1880).

\textsuperscript{130} In a number of instances special laws which are curative, remedial, or temporary in character are held not to violate special legislation prohibitions. State v. Webb, 110 Ala. 214, 20 So. 462 (1896); Baird v. Monroe, 150 Cal. 660, 89 Pac. 352 (1907); Memphis & C. Ry. Co. v. Buller, 154 Miss. 536, 121 So. 826 (1929); Rutter v. Patterson, 73 N. J. L. 467, 64 Atl. 573 (1906); Baker v. Seattle, 2 Wash. 576, 27 Pac. 462 (1891); Elkins v. Harper, 82 W. Va. 377, 55 S. E. 1033 (1918).
by name renders the act special, but there are cases to the contrary and in such instances the court has attempted to determine whether the law could be made to operate elsewhere if it had been drafted in general terms. However, under either of these views it is agreed that general form alone is not sufficient, but the statute will be held special if arbitrary in its operation.

In deciding the reasonableness of the selection of persons or things it has been often suggested that the classification should be "open," that theoretically others should be able to enjoy the benefits of the law by attaining the prescribed qualifications. Ordinarily "closed" classes occur where the differentiation is according to past events, as an auto license act which distinguished between present owners and subsequent purchasers. Many municipal statutes have been held special which classified according to population at a prior time. However, it does not appear to be an infallible rule that classification by past events renders a class special. A statute applying to public officers was held general though exempting present incumbents.

The "open" class rule has been extended to situations where the time for the operation of the law was so restricted that in practical effect only those would be able to comply who then

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134 Feasel v. State, 6 Ohio N. P. (N. S.) 321 (1906). In State v. Hermann, 75 Mo. 340 (1882), an act was held special because only applicable to notaries who might be commissioned in the future; in State v. Turner, 210 Mo. 77, 107 S. W. 1064 (1908), an act was held special which distinguished existing dram shops.

135 Brown v. Mayor, 4 Ariz. 83, 33 Pac. 589 (1893); State v. Des Moines, 96 Iowa 521, 65 N. W. 818 (1896); Thomas v. City of St. Cloud, 90 Minn. 477, 97 N. W. 125 (1903); State v. Williams, 232 Mo. 56, 133 S. W. 1 (1910); State v. Scott, 70 Neb. 685, 100 N. W. 812 (1904).

136 Cricket v. State, 18 Ohio St. 9 (1863).
possessed the described qualifications. The remote possibility of others entering an "open" class has been considered in holding it special, but ordinarily statutes are held general although applying only to cities with a large population and there is small prospect of any other city reaching the high population requirement.

The courts have frowned upon classifications which employ more than one distinguishing feature. Each additional element rapidly narrows the present class and makes the possibility of others qualifying extremely remote; the effect is the same as though one object was specified. For example, laws have been held special which applied to cities of a certain class in counties of a certain population. However, recently a statute was held general which applied to counties of a population between 250,000 and 400,000 and having three or more cities of over 50,000.

Regardless of whether the court chooses to apply the principles above mentioned in determining the reasonableness of a classification, ultimately the problem is resolved into the question of what facts in each case are sufficiently important to justify the exclusions and inclusions. There is no slide rule which gives this answer. The solution does not lie in any legal concepts, but often in the personal views of the individual judge. In the following presentation the purpose is not to analyze the logic of the court in holding laws special or general, but rather to illustrate the more common permissible bases of exclusion.

Conflicts as to municipal home rule have resulted in a large number of cases dealing with the distinctions which may be used for the classification of political subdivisions.

137 City of Topeka v. Gillett, 32 Kan. 431 (1884); Roe v. City of Duluth, 153 Minn. 68, 189 N. W. 429 (1922); cf. Pittsburg's Petition, 138 Pa. 401, 21 Atl. 757 (1891).

138 In Davis v. Clark, 106 Pa. 377 (1884), the court thought that the remote possibility of other counties ever reaching a population of 200,000 made the act special.

140 Droge v. McInerney, 120 Ky. 796, 87 S. W. 1085 (1905); see also Mellett v. City of Hastings, 179 Minn. 355, 220 N. W. 346 (1930).

141 Groves v. Board of Comrs., — Ind. —, 199 N. E. 137 (1936).

142 The general rule is applicable here that the law is not special simply because only one city comes within the class described if it is otherwise reasonable. Darrow v. People, 8 Colo. 417, 3 Pac. 631 (1886); Anderson v. Board, 102 Fla. 895, 136 So. 334 (1931); People v. Rock Island, 271 Ill. 412, 111 N. E. 291 (1915); Klein v. City of Louisville,
Municipalities are ordinarily classified according to population. Where the maximum and minimum population requirements present too narrow a figure the class is held special, but it is impossible to name a required amount of variance. In Tennessee it has been held that for the purpose of legislation allowing dogs to run at large counties may be classified as those between 29,946 and 29,975. In Indiana it was held that a variation of 8,000 in the population of counties for the purpose of building a war memorial was too narrow. Usually population is determined according to the last preceding federal census, but the legislature may specify some other means which will give an accurate result, though whatever means is selected must be consistently used.

Geographic features of a municipality are often specified as

224 Ky. 624, 6 S. W. (2d) 1104 (1928); State v. Cincinnati, 52 Ohio St. 419, 40 N. E. 508 (1895); cf. Re Senate Bill No. 293, 21 Colo. 38, 39 Pac. 522 (1895); Pittsburg's Petition, 217 Pa. 227, 66 Atl. 348 (1907). Colo. Const., art. XX, provides only for the City of Denver.

24 In some cases the court has shown a distaste for the use of population differences in regard to school laws: State v. Watkins, 88 Fla. 392, 102 So. 347 (1924); People v. Chicago & N. W. R. Co., 340 Ill. 102, 172 N. E. 13 (1930); Cambell v. Indianapolis, 155 Ind. 136, 57 N. E. 920 (1900); Jensen v. Independent School Dist., 163 Minn. 412, 204 N. W. 49 (1925); cf. State v. Long, 21 Mont. 26, 52 Pac. 645 (1898).

24 Cases holding bad classifications where the population variance was less than a hundred: 18 Ala. App. 513, 93 So. 381 (1922); Stripling v. Thomas, 101 Fla. 1015, 132 So. 824 (1931); State v. Bargus, 53 Ohio St. 94, 41 N. E. 245 (1895).

24 Ponder v. State, 141 Tenn. 481, 212 S. W. 417 (1919). There are a number of similar cases in Tennessee where the state is exercising its police power: Thomas v. State, 136 Tenn. 47, 188 S. W. 617 (1916); Sullivan v. State, 136 Tenn. 194, 188 S. W. 1153 (1916).


24 Ex parte Renfrew, 112 Mo. 591, 20 S. W. 632 (1892).

24 Johnson v. Gunn, 148 Cal. 745, 84 Pac. 370 (1905). Minnesota has had an interesting experience as to the means of determining population. Art. 4, § 36, of the Constitution fixes the population classes into which cities may be divided. The state census of 1905 showed the city of Winona to have a population of 20,000, which made it the only second class city in the state. The federal census of 1910 showed Winona below 20,000 and the legislature then enacted that only the state census should be regarded in classifying cities. This was upheld in State v. County Board, 124 Minn. 126, 144 N. W. 756 (1913). No state census was taken in 1915, and the census of 1920 still showed Winona below 20,000. The legislature then [Minn. Laws (1921), c. 12] provided that in determining the population the last census, state or federal, should be used, but that for the purpose of classification 5% should be added. Thus, Winona with less than 20,000 was allowed to remain in the second class. It does not appear that the Act of 1921 has been contested.
a basis of distinction, and while these are often tantamount to a "closed" class, it has been held that for the purpose of sewage disposal cities may be distinguished according to their location on streams which constitute a natural outlet and that for the purpose of fire protection counties may be classed according to their acreage of timber. Still other municipal classifications have been made according to assessed valuation, the issuance of bonds, duties of officers, and the miles of roads.

General classification acts, that is, those which establish various grades into which all cities will fall, are ordinarily held valid though widely different powers are given each group. However, there is a limit to the number of classes which the court will allow to be permanently established. In several states the attempt has been made to avoid such a situation by providing in the constitution a maximum number of classes into which cities may be placed. While this has prevented

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149 In Commonwealth v. Patton, 88 Pa. 258 (1878), it was said that municipalities could not be classified by means other than population. For an example of an obviously special classification according to area see Millet v. City of Hastings, 179 Minn. 358, 229 N. W. 346 (1930).

150 Board v. Greenville, 86 Ohio St. 1, 98 N. E. 1019 (1912).

151 State v. Phillips, 176 Minn. 472, 223 N. W. 912 (1929). In State v. Wurderman, 264 Mo. 561, 163 S. W. 849 (1914), it was held that counties might be classified according to the size of cities which they adjoin.

152 Upholding such a basis: Bruber v. State, 196 Ind. 436, 148 N. E. 481 (1925); State v. Southern, 266 Mo. 275, 177 S. W. 640 (1915). Contra: Driscoll v. Board, 161 Minn. 494, 201 N. W. 945 (1925); Wagner v. Milwaukee County, 112 Wis. 601, 88 N. W. 577 (1902).

153 State v. Rogers, 93 Minn. 55, 100 N. W. 659 (1904).

154 State v. Henderson, 97 Minn. 369, 106 N. W. 349 (1906).

155 State v. Arnold, 136 Mo. 446, 38 S. W. 640 (1896). In State v. Schrapps, 97 Minn. 62, 106 N. W. 106 (1906), the court refused to uphold a classification according to whether a city maintains patrol limits.

156 But see Denman v. Broderick, 11 Cal. 96, 43 Pac. 516 (1896).

157 In Pennsylvania a classification of all cities into three groups was upheld, but an attempted redivision into 5 and 7 classes was held special, In re Grant Street, 121 Pa. 596, 16 Atl. 366 (1888); Ayars' Appeal, 122 Pa. 266, 16 Atl. 356 (1888).

158 In Ohio two classes were first established, but these were continually divided until there were eleven, the first eight of which contained only one city each. The last division was held to invalidate the entire classification, State v. Jones, 66 Ohio St. 453, 64 N. E. 424 (1902); State v. Beacon, 66 Ohio St. 491, 64 N. E. 427 (1902).

159 Ky. Const., § 156, Minn. Const., art. IV, § 36, and Penn. Const., art. III, § 34, fix the number of classes and the population for each. Mo. Const., art. IX, § 7, simply provides that there shall be four classes. Ariz. Const., art. 13, § 1, provides that cities may be classified according to population. Ark. Const., art. XII, § 3, merely provides that cities may be classified.
further division according to population,\textsuperscript{159} in effect additional classes have been made by resorting to other bases of distinction. Another result of constitutional classification has been that any law which applies to such a class is general regardless of the fact that there is no possible reason for excluding cities of other classes.\textsuperscript{160}

It has been argued that local option laws are special, as the fact that more people in one locality desire the law than those in another is not a reasonable distinction. In some cases this view has been adopted,\textsuperscript{161} but the majority of the states have held such laws general.\textsuperscript{162} In some states constitutional provision has been made for local option laws.\textsuperscript{163}

In states where the constitution contains broad prohibitions of special legislation all statutes which are not strictly universal in their application are subject to examination as to the reasonableness of the classification of objects affected. Laws which apply to laborers in certain industries,\textsuperscript{164} which allow m-

\textsuperscript{159} McCarty v. Commonwealth, 110 Pa. 243, 2 Atl. 423 (1885); Morrison v. Bachert, 112 Pa. 322, 5 Atl. 739 (1886). The constitutional provision does not prevent other and different classifications for purposes not municipal, Calland v. Springfield, 264 Mo. 296, 174 S. W. 396 (1914).

\textsuperscript{160} Copeland v. St. Joseph, 126 Mo. 417, 29 S. W. 231 (1894); Rymer v. Luzerne County, 142 Pa. 108, 21 Atl. 794 (1891); Hunter v. Tracy, 104 Minn. 378, 116 N. W. 922 (1908); cf. State v. Schrops, 97 Minn. 62, 106 N. W. 106 (1906).

The population or other features of a city are often used for other than municipal matters, though it has been said that such classes will be examined closely, Foley v. Hoboken, 61 N. J. L. 478, 38 Atl. 333 (1889). It has been held that a law relating to dogs in cities of a certain class is general, Fox v. Mohawk, 20 Misc. 461, 46 N. Y. Supp. 232 (1898). \textit{Contra:} Fagen v. Humane Society, 6 Ohio N. P. 357 (1898). In Pennsylvania it was held that an act relating to the incorporation and government of street railways in cities of the 2nd and 3rd class was special, Weinman v. Passenger Ry. Co., 118 Pa. 192, 12 Atl. 238 (1888), but a law providing for the kind of motive power which could be used by street railways in cities of the 1st class was general, Reeves v. Phil. Traction Co., 153 Pa. 153, 25 Atl. 516 (1898).

\textsuperscript{161} Frost v. Cherry, 132 Pa. 417, 15 Atl. 782 (1888); Lehigh Valley Coal Co.'s Appeal, 154 Pa. 44, 30 Atl. 210 (1894); see Keane v. Remy, 201 Ind. 286, 168 N. E. 10 (1929).

\textsuperscript{162} City of Oakland y. Thompson, 151 Cal. 572, 91 Pac. 337 (1907); People v. White, 333 Ill. 466, 166 N. E. 100 (1929); Johnson v. Macabee, 1 Okla. 204, 32 Pac. 336 (1893); Barnes v. Kirkville, 266 Mo. 270, 180 S. W. 545 (1915); Wendell v. Board, 75 N. J. L. 70, 66 Atl. 1075 (1907); Fouts v. Hood River, 46 Ore. 421, 81 Pac. 370 (1905).

\textsuperscript{163} Minn. Const., art. IV, § 36; Del. Const., art. XIII, § 1; Iowa Const., art. III, § 30; Ky. Const., § 60.

\textsuperscript{164} Workman's Compensation Acts, though not including domestic and agriculture employees are held general. Western Indemnity Co. v. Pillsbury, 170 Cal. 636, 150 Pac. 398 (1915); Greene v. Caldwell, 170
torists to be sued in the county where an accident occurred, which forbid certain businesses to operate on Sunday, which allow war veterans to peddle goods without a license, or give priority to certain claims are all examples of situations where laws have been attacked as special legislation.

Ky. 571, 156 S. W. 648 (1916). Commonly it is not required that exact distinction be made as to laborers excluded and included. Ex parte Miller, 162 Cal. 687, 124 Pac. 427 (1912); Ex parte Spencer, 149 Cal. 396, 86 Pac. 896 (1906); Wenham v. State, 65 Neb. 394, 91 N. W. 421 (1902).

The following laws have been held special: Forbidding only manufacturing and mining companies to pay their employees in tokens, State v. Loomis, 115 Mo. 307, 22 S. W. 350 (1893); limiting the hours of labor only in mining, manufacturing, and smelting industries, In re Eight Hour Bill, 21 Colo. 29, 39 Pac. 328 (1895); cf. State v. Le Baron, 24 Wyo. 519, 162 Pac. 265 (1917); giving a lien for wages only to corporate employees, Slocum v. Bear Valley Irg. Co., 122 Cal. 555, 65 Pac. 403 (1898); requiring only corporations to pay wages semi-monthly, State v. Mo. P. R. Co., 242 Mo. 339, 147 S. W. 118 (1912).

It has been held that a law which forbids only bakers to operate on Sunday is special, Ex parte Westfield, 55 Cal. 550, 36 Am. Rep. 47 (1889); same as to barbers, Armstrong v. State, 170 Ind. 188, 84 N. E. 3 (1908); Strawman v. Commonwealth, 137 Ky. 500, 125 S. W. 1094 (1910). Contra: as to baseball, Carr v. State, 175 Ind. 241, 83 N. E. 1071 (1911). In Galloway v. Wolfe, 117 Neb. 128, 223 N. W. 1 (1928), a Sunday dancing law was held special; in State v. Loomis, 75 Mont. 88, 242 Pac. 344 (1925), a Sunday dancing law was held general.


Laws providing for priority in the payment of claims held general, Re Cameron, 287 Pa. 560, 135 Atl. 95 (1926), but in some cases it has been held that a provision allowing recovery of attorney fees in some claims is special, Manowsky v. Stephon, 233 Ill. 409, 84 N. E. 365 (1908); Openshaw v. Halfin, 24 Utah 426, 68 Pac. 133 (1902). Contra: Engel v. Ehret, 21 Cal. App. 112, 130 Pac. 1197 (1913); Jacksonville, Etc., Ry. Co. v. Prior, 34 Fla. 271, 15 So. 760 (1894).

Generally it is held not to be an unreasonable classification to allow a higher interest rate to be charged by certain professional money lenders, Ex parte Alabama Brokerage Co., 208 Ala. 242, 44 So. 87 (1922); In re Stephon, 170 Cal. 48, 148 Pac. 196 (1915); Badger v. State, 154 Ga. 443, 114 S. E. 635 (1922); State v. Hill, 168 La. 761, 123 So. 317 (1929). Contra: Re Sohnske, 148 Cal. 262, 82 Pac. 956 (1906); Simpson v. Ky. Citizens B. & L Assn., 101 Ky. 496, 41 S. W. 570, 42 S. W. 834 (1897); Commonwealth v. Young, 248 Pa. 458, 94 Atl. 141 (1915).

The question as to special legislation has been raised where a
CONCLUSION

In view of the conditions which have existed in the absence of restrictions upon special and local legislation and in view of the decisions under these provisions it would appear that there are two courses open to the framer of a constitution today. Neither of these will present perfect solutions. The one will lead to the legislature, freed of its chains, probably resorting to its former objectionable practices. The other will continue the power of the courts which have shown themselves only too willing to usurp the functions of the legislatures and which have thereby caused much uncertainty in the law by the refusal to apply definite standards for the construction of these constitutional provisions.

It is probably true that if all restrictions as to special legislation were removed there would not be a complete reversion to the legislative practices of 1850. As has been seen, the 14th Amendment has prevented the passage of some special laws. The conception of what is a proper judicial function, under the doctrine of separation of powers, has been somewhat extended and today it is probable that legislative divorces and changes of name would be held improper exercises of legislative functions even in the absence of limitations as to special lawmaking powers. As to the objectionable features of special laws which would remain, there is the possibility that many of them could be eliminated by changes in the legislative procedure which would require more adequate consideration of such laws than was previously made and thus prevent the passage of an appreciable number of them. If this solution is practicable it would

new procedure was provided for certain actions, Bear Lake County v. Budge, 9 Idaho 703, 75 Pac. 614 (1904); a criminal statute passed to prevent embezzlement by officers of fraternal societies, People v. Read, 344 Ill. 397, 176 N. E. 284 (1931); where school children living a certain distance from the school to which they are assigned are allowed to select another, Cincinnati School Dist. v. Oakley Special Dist., 17 Ohio C. D. 824 (1905); allowing a railroad to give passes to ministers, State v. C. B. & Q. R. Co., 113 Neb. 248, 199 N. W. 534 (1924).

In Mississippi, such a procedure already exists. A provision in the constitution permits special and local legislation but only after it has been approved by a legislative committee composed of representatives from each part of the State who, if they do approve a law, must state why a general law would not have been applicable. A special law may be enacted if a ½ percentage of the legislature votes for it even though it has failed to secure the committee's approval, Miss. Const., art. IV, § 89. It is obvious that many abuses are still possible under this procedure, but there is no doubt that it will eliminate some special and local legislation.
remove from statutes the constitutional uncertainty which now exists. However, this solution will not positively prevent the return to former practices. A constitution may compel a legislature to observe the form, but not the spirit, of a provision.

The difficulties which have arisen from allowing the courts to be the ultimate arbitrators as to whether a law has made a reasonable classification can be circumvented to a great extent by the adoption of some form of procedure whereby the draftsman and others may know in advance of definite action whether or not a statute has satisfied the requirements set up by the courts. Such a procedure would be in the nature of advisory opinions or declaratory judgments which already exist in some states. This would remove the objectionable difficulties in the present situation as the draftsman could always redraft his bill to make it sufficiently general if given warning. However, the procedure of advisory opinions has been subject to much criticism and it is possible that the dangers which might result therefrom would outweigh any advantages to be gained from its use in this instance.171

Even without modification of the present legislative and judicial procedures, the present situation as to special legislation might be subjected to some improvements. Some aid may be secured by the insertion of provisions in the constitutions specifying whether the prohibitions are directory or mandatory, whether of prospective or retroactive effect, and whether applicable to delegated legislation. Provisions in regard to these matters could be stated succinctly and remove much of the uncertainty which results whenever a new constitutional prohibition is adopted. Although the use of the terms "special," "local," and "private" originally appear to have been unfortunate, it is probable that today they are sufficiently identified so that any change therein might result in more confusion. At least it is difficult to imagine a different selection of terms which would assure a uniform or satisfactory interpretation.172


172 The most recent proposal for a constitutional amendment includes some but not all of the suggested provisions. "The General Assembly shall provide by general laws for the organization and gov-
In any case, the decisions which have been rendered in each state must be carefully studied before specific suggestions can be made as to the improvement of any constitution.

In the organization of counties, cities, towns, and other municipal corporations, but shall pass no special or local laws relating thereto. Optional plans for the organization and government of counties, cities and towns may be provided by law, to be effective when submitted to the legal voters thereof and approved by a majority of those voting thereon.

"The General Assembly shall not pass any local, private, or special act or resolution relating to . . . (there follows 13 named objects). . .; nor shall the General Assembly enact any such local, private, or special act, by the partial repeal of a general law." Report of N. C. Const. Commrs., art. II, §§ 18, 19 (1932).