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# Idaho Education Laws Annotated

## CONSTITUTION OF THE STATE OF IDAHO

### ARTICLE IV

#### EXECUTIVE DEPARTMENT

##### SECTION.

1. Executive officers listed — Term of office — Place of residence — Duties.
2. Election of officers.
3. Qualifications of officers.
6. Governor to appoint officers.
19. [Repealed.]

§ 1. **Executive officers listed — Term of office — Place of residence — Duties.** — The executive department shall consist of a governor, lieutenant governor, secretary of state, state controller, state treasurer, attorney general and superintendent of public instruction, each of whom shall hold his office for four years beginning on the first Monday in January next after his election, commencing with those elected in the year 1946, except as otherwise provided in this Constitution. The officers of the executive department shall, during their terms of office, reside within the state. Their official office shall be located in the county where the seat of government is located, there they shall keep public records, books and papers. They shall perform such duties as are prescribed by this Constitution and as may be prescribed by law, provided that the state controller shall not perform any post-audit functions.

**Compiler's notes.** As originally adopted, this section provided as follows:

“§ 1. **Executive officers listed — Term of office — Place of residence — Duties.** — The executive department shall consist of a governor, lieutenant governor, secretary of state, state auditor, state treasurer, attorney general, and superintendent of public instruction, each of whom shall hold his office for two years beginning on the first Monday in January next after his election, except as otherwise provided in this constitution. The officers of the executive department, excepting the lieutenant governor, shall, during their terms of office, reside at the seat of government, where they shall keep the public records, books and papers. They shall perform such duties as are prescribed by this constitution and as may be prescribed by law.”

The nineteenth session of the legislature, S.L. 1927, H.J.R. No. 8, p. 588, submitted to the people an amendment for this section changing the term of office of officers named therein from two to four years. Such amendment was ratified at the general election held November 6, 1928 (see S.L. 1929, p. 688), but was declared void for defective submission. *Lane v. Lukens*, 48 Idaho 517, 283 P. 532 (1929).

As amended by S.L. 1943, p. 380, S.J.R. No. 1 and ratified at the general election in November, 1944, this section provided as follows:

“§ 1. The executive department shall consist of a governor, lieutenant governor, secretary of state, [state auditor], state treasurer, attorney general and superintendent of public instruction,

each of whom shall hold his office for four years beginning on the first Monday in January next after his election, commencing with those elected in the year 1946, except as otherwise provided in this Constitution. The officers of the executive department, excepting the lieutenant governor, shall, during their terms of office, reside within the county where the seat of government is located, there they shall keep the public records, books and papers. They shall perform such duties as are prescribed by this Constitution and as may be prescribed by law. The governor shall not succeed himself in office, but he shall be eligible to hold such office after a lapse of one full term.”

It was amended as proposed by S.L. 1955, p. 672, S.J.R. No. 6, and ratified at the general election in November, 1956, to read as follows:

“§ 1. **Executive officers listed — Term of office — Place of residence — Duties.** — The executive department shall consist of a governor, lieutenant governor, secretary of state, state auditor, state treasurer, attorney general and superintendent of public instruction, each of whom shall hold his office for four years beginning on the first Monday in January next after his election, commencing with those elected in the year 1946, except as otherwise provided in this Constitution. The officers of the executive department, excepting the lieutenant governor, shall, during their terms of office, reside within the county where the seat of government is located, there they shall keep public records, books and papers. They shall perform such duties as are prescribed by this Constitution and as may be prescribed by law.”

An amendment to this section which was proposed by S.J.R. No. 5 (S.L. 1967, p. 1570) was defeated in the general election in 1968.

An amendment to this section which was proposed by H.J.R. No. 52 (S.L. 1972, p. 1249) was defeated at the general election in 1972.

This section was amended by S.L. 1994, p. 1493, S.J.R. No. 109, § 2 and by S.L. 1994, p. 1500, H.J.R. No. 24, § 1, both ratified at the general election November 8, 1994, to read as it now appears.

Prior to this amendment the section read as set out in the bound volume.

**Cross ref.** Attorney general, §§ 67-1401, 67-1402.

Auditor of state, §§ 67-1001 — 67-1022.

Governor and lieutenant governor, §§ 67-801 — 67-806.

Secretary of state, §§ 67-901 — 67-912.

State treasurer, §§ 67-1201 — 67-1221.

Superintendent of public instruction, §§ 67-1501 — 67-1508.

**Comp. provisions:** Mont. Art. 6, § 1.

Utah. Art. 7, § 1.

Wash. Art. 3, § 1.

Wyo. Art. 4, § 11.

**Sec. to sec. ref.** This section is referred to in § 67-5201.

**Cited in:** *Taylor v. State*, 62 Idaho 212, 109 P.2d 879 (1941); *State v. Whelan*, 103 Idaho 651, 651 P.2d 916 (1982).

#### ANALYSIS

Attorney general.

Construction.

Salaries as gross income under tax law.

State auditor.

State treasurer.

Submission of amendment.

#### Attorney General.

The attorney general is empowered to institute civil actions on behalf of the state for the protection of the state's rights and interests. This right is recognized by the common law. *Howard v. Cook*, 59 Idaho 391, 83 P.2d 208 (1938).

The office of attorney general is not constitutionally vested with any common-law powers and duties that are immune to legislative change. *Padgett v. Williams*, 82 Idaho 28, 348 P.2d 944 (1960).

**Construction.**

This section as amended in accordance with the proposal of 1943 is not so inconsistent with Const., Art. 4, § 2 as will prevent the two sections from having concurrent operation. *Keenan v. Price*, 68 Idaho 423, 195 P.2d 662 (1948).

**Salaries as Gross Income Under Tax Law.**

The salary of the secretary of state, who is a "constitutional officer," is not within legislative definition of "gross income" for the purpose of income taxes as contained in § 63-3001, and is not subject to income taxes. *Girard v. Defenbach*, 61 Idaho 702, 106 P.2d 1010 (1940).

Where the state income tax act is copied largely from the federal act but pretermits certain provisions found in the federal act for taxing government employees, the legislative intent is thus made to appear that there was no purpose to tax the salaries of state officers. *Girard v. Defenbach*, 61 Idaho 702, 106 P.2d 1010 (1940).

The Supreme Court can not renounce jurisdiction of a case involving whether or not a state officer is liable for state income tax because the justices thereof were indirectly and individually interested in the question. *Girard v. Defenbach*, 61 Idaho 702, 106 P.2d 1010 (1940).

**State Auditor.**

The fruit and vegetable advertising law construed to conform to the requirements of this section by changing the word "treasurer" to "auditor" thus correcting a patent clerical error in the drafting of the measure. *State ex rel. Graham v. Enking*, 59 Idaho 321, 82 P.2d 649 (1938).

The powers and duties of the territorial controller as superintendent of fiscal concerns and affairs of the territory were impliedly vested by this section in the state auditor and the legislature could not divest him thereof by creating the office of comptroller and giving him the powers and duties of the auditor. To permit the legislature to create an office and vest in the appointee the powers and duties conferred on a constitutional officer would be to permit the legislature to nullify the Constitution. *Wright v. Callahan*, 61 Idaho 167, 99 P.2d 961 (1940).

The fact that the words "state auditor" were inadvertently omitted in enrolling the proposed amendment of this section adopted by the legislature in 1943 did not defeat its constitutionality where said words appeared in the title of the resolution and in the body of the resolution as introduced and no amendment was ever adopted by the legislature striking out these words. *Keenan v. Price*, 68 Idaho 423, 195 P.2d 662 (1948).

Since the Territorial Controller was authorized to perform all the types of audits which were performed in the territory prior to statehood, the controller was charged with superintending the fiscal concerns of the territory, and the controller was expressly directed to perform certain post-audit functions, the Territorial Controller would have been authorized to perform a modern post-audit function under this section, should that function have been in use at the time. Therefore, since the State Auditor has implied constitutional powers and duties equivalent to those of the Territorial Controller, performing the post-audit function is a constitutional duty of the State Auditor. *Williams v. State Legislature*, 111 Idaho 156, 722 P.2d 465 (1986).

The legislature may not prohibit the State Auditor from performing his or her constitutional duty of performing the post-audit function through the use of a line-item appropriation. *Williams v. State Legislature*, 111 Idaho 156, 722 P.2d 465 (1986).

**State Treasurer.**

Under this section and laws of Idaho describing official duties of state treasurer, state assumes complete control, leaving district officials no control over assessments levied on account of interest, principal, and safety fund for district bonds or contracts with the United States, which funds pass completely to the state treasurer, though district officials retained control over money collected for operation and maintenance purposes. *Hurlebaus v. American Falls Reservoir Dist.*, 49 Idaho 158, 286 P. 598 (1930).

**Submission of Amendment.**

It was not necessary that the amendment proposed for this section in 1943 be broken down into separate questions, to wit, whether the term of office should be extended from two to four years, whether the officers mentioned in said proposed amendment

could, during their term of office, reside within the county where the seat of government is located and that "the governor shall not succeed himself in office, but he shall be eligible to hold such office after the lapse of one full term." *Keenan v. Price*, 68 Idaho 423, 195 P.2d 662 (1948).

**Opinions of Attorney General.** The transfer of the prison industries betterment fund from the aegis of the state auditor to the separate and exclusive control of the correctional industries commission is a constitutionally impermissible violation of this section. OAG 83-4.

**Collateral References.** Discussion of this article in constitutional convention. Constitutional Convention Proceedings, Vol. I, pp. 106, 411, 434; Vol. II, pp. 1414, 1543.

Discussion of this section in constitutional convention. Constitutional Convention Proceedings, Vol. I, p. 411; Vol. II, p. 1414.

16 Am. Jur. 2d, Constitutional Law, §§ 303 — 305.

38 Am. Jur. 2d, Governor, §§ 1, 2, 4.

16 C.J.S., Constitutional Laws, § 215.

81A C.J.S., States, § 130.

**§ 2. Election of officers.** — The officers named in section 1 of this article shall be elected by the qualified electors of the state at the time and places of voting for members of the legislature, and the persons, respectively, having the highest number of votes for the office voted for shall be elected; but if two (2) or more shall have an equal and the highest number of votes for any one (1) of said offices, the two (2) houses of the legislature at its next regular session, shall forthwith, by joint ballot, elect one (1) of such persons for said office. The returns of election for the officers named in section 1 shall be made in such manner as may be prescribed by law, and all contested elections of the same, other than provided for in this section, shall be determined as may be prescribed by law.

**Comp. provisions:** Wash. Art. 3, § 4.

**Election of State Executive Officers.**

The amendment of Art. 4, § 1 in accordance with the proposal of 1943 made no change in this section but only changed its application; although the executive officers are given four-year terms by the amendment of § 1, they will still be elected at those elections when members of the legislature are voted for, though not at every such election. *Keenan v. Price*, 68 Idaho 423, 195 P.2d 662 (1948).

**Collateral References.** Discussion of this section in constitutional convention. Constitutional Convention Proceedings, Vol. I, p. 416; Vol. II, p. 1414.

38 Am. Jur. 2d, Governor, § 2.

**§ 3. Qualifications of officers.** — No person shall be eligible to the office of governor or lieutenant governor unless he shall have attained the age of thirty years at the time of his election; nor to the office of secretary of state, state controller, or state treasurer, unless he shall have attained the age of twenty-five years; nor to the office of attorney general unless he shall have attained the age of thirty years, and have been admitted to practice in the Supreme Court of the state or territory of Idaho, and be in good standing at the time of his election. In addition to the qualifications above described each of the officers named shall be a citizen of the United States and shall have resided within the state or territory two years next preceding his election.

**Compiler's notes.** As originally adopted, this section provided as follows:

“§ 3. **Qualifications of officers.** — No person shall be eligible to the office of governor or lieutenant governor unless he shall have attained the age of thirty years at the time of his election; nor to the office of secretary of state, state auditor, superintendent of public instruction, or state treasurer, unless he shall have attained the age of twenty-five years; nor to the office of attorney general unless he shall have attained the age of thirty years, and have been admitted to practice in the Supreme Court of the state or territory of Idaho, and be in good standing at the time of his election. In addition to the qualifications above described each of the officers named shall be a citizen of the United States and shall have resided within the state or territory two years next preceding his election.”

It was amended, as proposed by S.L. 1947, p. 908, S.J.R. No. 6, and ratified at the general election in November 1948, to read as follows:

“§ 3. **Qualifications of officers.** —No person shall be eligible to the office of governor or lieutenant governor unless he shall have attained the age of thirty (30) years at the time of his election; nor to the office of secretary of state, state auditor, or state treasurer, unless he shall have attained the age of twenty-five (25) years; nor to the office of attorney general unless he shall have attained the age of thirty (30) years, and have been admitted to practice in the Supreme Court of the state or territory of Idaho, and be in good standing at the time of his election. In addition to the qualifications above described each of the officers named shall be a citizen of the United States and shall have resided within the state or territory two (2) years next preceding his election.”

This section was amended by S.L. 1994, p. 1493, S.J.R. No. 109, § 3 and ratified at the general election November 8, 1994, to read as it now appears.

Prior to this amendment the section read as set out in the bound volume.

**Comp. provisions:** Mont. Art. 6, § 3.

**Utah.** Art. 7, § 3.

**Wash.** Art. 3, § 25.

**Cited in:** Taylor v. State, 62 Idaho 212, 109 P.2d 879 (1941); Langmeyer v. State, 104 Idaho 53, 656 P.2d 114 (1982).

**Collateral References.** Discussion of this section in constitutional convention. Constitutional Convention Proceedings, Vol. I, p. 416; Vol. II, pp. 1414, 1907.

38 Am. Jur. 2d, Governor, § 2.

§ 6. **Governor to appoint officers.** — The governor shall nominate and, by and with the consent of the senate, appoint all officers whose offices are established by this constitution, or which may be created by law, and whose appointment or election is not otherwise provided for. If during the recess of the senate, a vacancy occurs in any state or district office, the governor shall appoint some fit person to discharge the duties thereof until the next meeting of the senate, when he shall nominate some person to fill such office. If the office of a justice of the supreme or district court, secretary of state, state auditor, state treasurer, attorney general, or superintendent of public instruction shall be vacated by death, resignation or otherwise, it shall be the duty of the governor to fill the same by appointment, as provided by law, and the appointee shall hold his office until his successor shall be selected and qualified in such manner as may be provided by law.

**Compiler's notes.** As originally adopted this section provided as follows:

“§ 6. **Governor to appoint officers.** — The governor shall nominate and, by and with the consent of the senate, appoint all officers whose offices are established by this constitution, or which may be created by law, and whose appointment or election is not otherwise provided for. If during the recess of the senate, a vacancy

occurs in any state or district office, the governor shall appoint some fit person to discharge the duties thereof until the next meeting of the senate, when he shall nominate some person to fill such office. If the office of a justice of the Supreme or district court, secretary of state, state auditor, state treasurer, attorney general, or superintendent of public instruction shall be vacated by death, resignation or otherwise, it shall be the duty of the governor to fill the same by appointment, and the appointee shall hold his office until his successor shall be elected and qualified in such manner as may be provided by law.”

It was amended as proposed by H.J.R. No. 4 (S.L. 1967, p. 1575) and ratified at the general election on November 5, 1968, to read as follows:

“§ 6. **Governor to appoint officers.** —The governor shall nominate and, by and with the consent of the senate, appoint all officers whose offices are established by this constitution, or which may be created by law, and whose appointment or election is not otherwise provided for. If during the recess of the senate, a vacancy occurs in any state or district office, the governor shall appoint some fit person to discharge the duties thereof until the next meeting of the senate, when he shall nominate some person to fill such office. If the office of a justice of the supreme or district court, secretary of state, state auditor, state treasurer, attorney general, or superintendent of public instruction shall be vacated by death, resignation or otherwise, it shall be the duty of the governor to fill the same by appointment, as provided by law, and the appointee shall hold his office until his successor shall be selected and qualified in such manner as may be provided by law.”

This section was amended by S.J.R. No. 109, § 4 (S.L. 1994, p. 1493) and ratified at the general election November 8, 1994, to read as it now appears.

Prior to this amendment the section read as set out in the bound volume.

**Cross ref.** Allocation of all executive and administrative offices among and within not more than twenty departments, Art. 4, § 20.

Children's trust account board, appointment, § 39-6001.

**Comp. provisions:** Cal. Art. 5, § 5.

**Mont.** Art. 6, § 8.

**Ore.** Art. 5, § 16.

**Utah.** Art. 7, §§ 9, 10.

**Wash.** Art. 3, § 13.

**Wyo.** Art. 4, § 7.

**Cited in:** Winter v. Davis, 65 Idaho 696, 152 P.2d 249 (1944).

#### ANALYSIS

Appointments in general.

Consent of senate.

Power of legislature.

Vacancies.

#### Appointments in General.

Legislature, when creating any office by legislative act, may prescribe method of filling office and designate the officer, board, or body that shall make the appointment; in case of failure on the part of legislature to do so, the governor is vested by the constitution with appointive power. Elliott v. McCrea, 23 Idaho 524, 130 P. 785 (1913).

The legislature is within its constitutional rights in designating any person other than the governor to fill an office or in limiting power of governor in making appointments. Ingard v. Barker, 27 Idaho 124, 147 P. 293 (1915).

Provisions of §§ 59-904, 59-914 do not apply to filling of vacancy in office of state treasurer, since filling of vacancy in that office is expressly provided for in this section. Moon v. Masters, 73 Idaho 146, 247 P.2d 158 (1952).

In original proceeding brought by plaintiff for a writ of mandate for warrant payable to plaintiff for alleged salary as district judge of the 9th judicial district, the court held that the vacancy in the office involved, that of an additional office of district judge in and for the 9th judicial district created by Acts 1957, ch. 15, was not filled by plaintiff in the manner provided for by law, and his claim for compensation was denied, he having served during the month of November, 1958, having been elected at the November general election to take office at the regular term commencing on the 5th day of January, 1959, such office previous to that date to be filled

only by the governor upon appointment. *Tway v. Williams*, 81 Idaho 1, 336 P.2d 115 (1959).

Where an office is of legislative creation the legislature can modify, control or abolish it; and within these powers is embraced the right to change the mode of appointment to office. *Smylie v. Williams*, 81 Idaho 335, 341 P.2d 451 (1959).

#### Consent of Senate.

This section, in providing for appointment of officers by the governor with consent of the senate, applies only to officers for whose appointment no other provision is made by law, and is not infringed by S.L. 1899, p. 345, providing for the appointment of board of medical examiners by the governor without consent of the senate. In *re Inman*, 8 Idaho 398, 69 P. 120 (1902).

The legislature had the authority to give the governor power to appoint toll-bridge commissioners without the consent of the senate. *Lyons v. Bottolfsen*, 61 Idaho 281, 101 P.2d 1 (1940).

#### Power of Legislature.

The legislature may, in the exercise of its plenary power, create an office or offices not established by the constitution and not prohibited by either the federal or state constitution. *Smylie v. Williams*, 81 Idaho 335, 341 P.2d 451 (1959).

#### Vacancies.

Where the first appointee of governor resigned his office before the next general election, and governor made another and further appointment to fill vacancy, such subsequent appointee takes office subject to same provisions as original appointee. *Joy v. Gifford*, 22 Idaho 301, 125 P. 181 (1912).

Under this section, whenever a vacancy occurs in the office of justice of the Supreme Court, it becomes duty of governor to fill same by appointment. It is an absolute grant of appointive power to governor and does not depend upon legislative action or legislative sanction. The power given the governor is not limited or controlled in any manner by the provisions of art. 5, § 19. The words "his office" and "his successor" clearly indicate that the appointee succeeds to all the rights in the office held by original incumbent and that he shall continue to hold and exercise them until the time arrives for election of his successor in the manner provided by law, for the next succeeding term of the office in question. *Budge v. Gifford*, 26 Idaho 521, 144 P. 333 (1914).

Person appointed by governor to fill vacancy of state treasurer as result of death of elected official holds office for balance of term of elected official. *Moon v. Masters*, 73 Idaho 146, 247 P.2d 158 (1952).

**Collateral References.** Discussion of this section in constitutional convention. *Constitutional Convention Proceedings*, Vol. I, p. 417; Vol. II, p. 1415.

38 Am. Jur. 2d, Governor, §§ 5-7.

81A C.J.S., States, §§ 84-87.

### § 19. Salaries and fees of officers. [Repealed.]

**Compiler's notes.** This section was amended as proposed by S.L. 1994, p. 1493, S.J.R. No. 109, § 5 and ratified at the general election November 8, 1994, to read as follows: "**Salaries and fees of officers.** The governor, secretary of state, state controller, state treasurer, attorney general, and superintendent of public instruction shall, monthly as due, during their continuance in office, receive for their services compensation, which, for the term next ensuing after the adoption of this constitution, is fixed as follows: Governor, three thousand dollars per annum; secretary of state, one thousand eight hundred dollars per annum; state controller, one thousand eight hundred dollars per annum; state treasurer, one thousand dollars per annum; attorney general, two thousand dollars per annum; and superintendent of public instruction, one thousand five hundred dollars per annum. The lieutenant governor shall receive the same per diem as may be provided by law for the speaker of the house of representatives, to be allowed only during the sessions of the legislature. The compensations enumerated shall be in full for all services by said officers respectively, rendered in any official capacity or employment whatever during their respective terms of office.

"No officer named in this section shall receive, for the performance of any official duty, any fee for his own use; but all fees fixed

by law for the performance by either of them, of any official duty, shall be collected in advance and deposited with the state treasurer quarterly to the credit of the state. The legislature may, by law, diminish or increase the compensation of any or all of the officers named in this section, but no such diminution or increase shall affect the salaries of the officers then in office during their term; provided, however, the legislature may provide for the payment of actual and necessary expenses to these officers while traveling in the performance of official duty."

The repeal of this section was proposed by S.L. 1997, p. 1301, S.J.R. No. 10, and such repeal was ratified at the general election November 3, 1999.

**Cross ref.** Salaries of heads of departments, § 67-2405.

Salaries of state officers and justices of Supreme Court, §§ 59-501, 59-502.

**Comp. provisions:** Cal. Art. 5, § 12.

**Sec. to sec. ref.** This section is referred to in § 67-809.

**Cited in:** *Stein v. Morrison*, 9 Idaho 426, 75 P. 246 (1904); *Woods v. Bragaw*, 13 Idaho 607, 92 P. 576 (1907).

#### ANALYSIS

"Enumerated" construed.

Estoppel to question constitutionality.

Fees of secretary of state.

Judicial officers.

Mandamus.

Salaries fixed by law.

#### "Enumerated" Construed.

In the constitutional provision fixing the salary of the governor and other state officers and providing that the compensation "enumerated" shall be in full for all services by said officers respectively, the word, "enumerated" does not apply exclusively to the compensations which are expressed in a specified number of dollars per annum, but applies to the per diem compensation of the lieutenant governor as president of the senate, the amount of which is fixed by reference to per diem compensation of the speaker of the house of representatives, since "enumerated" as used in this section expresses the same meaning as would have been conveyed had the words "designated" or "specifically mentioned" been used in its stead. *State ex rel. Wright v. Gossett*, 62 Idaho 521, 113 P.2d 415 (1941).

#### Estoppel to Question Constitutionality.

In the constitutional provision questioning the constitutionality of a statute where it has not been benefited in any way thereby. *State ex rel. Wright v. Gossett*, 62 Idaho 521, 113 P.2d 415 (1941).

#### Fees of Secretary of State.

It is part of the official duty of the secretary of state to prepare session laws and legislative journals for printer, and any fees which he receives for such services must be paid over into the state treasury. *State ex rel. Anderson v. Lewis*, 6 Idaho 51, 52 P. 163 (1898).

#### Judicial Officers.

Supreme Court justices were not disqualified to determine whether they were entitled to increased salaries before expiration of existing terms of office. *Higer v. Hansen*, 67 Idaho 45, 170 P.2d 411 (1946).

It was not intended, by either the constitution or the legislature, that there should be a restraint against the payment of increase of salaries of judicial officers immediately upon the effective date of the statute providing for same. *Higer v. Hansen*, 67 Idaho 45, 170 P.2d 411 (1946).

#### Mandamus.

Mandamus was the proper remedy where state officers refused to issue warrants for increase in salaries due judicial officers. *Higer v. Hansen*, 67 Idaho 45, 170 P.2d 411 (1946).

#### Salaries Fixed by Law.

A statute providing for compensation to the lieutenant-governor as president of the senate and speaker of the house to remain after the legislature adjourned and finished the business thereof is unconstitutional, since it was their duty to discharge all of their official duties for the compensation theretofore provided by law.

State ex rel. Wright v. Gossett, 62 Idaho 521, 113 P.2d 415 (1941).

**Opinions of Attorney General.** Elected officials of the executive branch of state government may not receive cash compensation for unused vacation leave at the end of their term of office. OAG 86-15.

**Collateral References.** Discussion of this section in constitutional convention. Constitutional Convention Proceedings, Vol. I, pp. 423, 451; Vol. II, pp. 1305, 1333, 1365, 1415.

## ARTICLE VIII

### PUBLIC INDEBTEDNESS AND SUBSIDIES

#### SECTION.

3. Limitations on county and municipal indebtedness.

**§ 3. Limitations on county and municipal indebtedness.** — No county, city, board of education, or school district, or other subdivision of the state, shall incur any indebtedness, or liability, in any manner, or for any purpose, exceeding in that year, the income and revenue provided for it for such year, without the assent of two thirds (2/3) of the qualified electors thereof voting at an election to be held for that purpose, nor unless, before or at the time of incurring such indebtedness, provisions shall be made for the collection of an annual tax sufficient to pay the interest on such indebtedness as it falls due, and also to constitute a sinking fund for the payment of the principal thereof, within thirty (30) years from the time of contracting the same. Any indebtedness or liability incurred contrary to this provision shall be void: Provided, that this section shall not be construed to apply to the ordinary and necessary expenses authorized by the general laws of the state and provided further that any city may own, purchase, construct, extend, or equip, within and without the corporate limits of such city, off street parking facilities, public recreation facilities, and air navigation facilities, and for the purpose of paying the cost thereof may, without regard to any limitation herein imposed, with the assent of two thirds (2/3) of the qualified electors voting at an election to be held for that purpose, issue revenue bonds therefor, the principal and interest of which to be paid solely from revenue derived from rates and charges for the use of, and the service rendered by, such facilities as may be prescribed by law, and provided further, that any city or other political subdivision of the state may own, purchase, construct, extend, or equip, within and without the corporate limits of such city or political subdivision, water systems, sewage collection systems, water treatment plants, sewage treatment plants, and may rehabilitate existing electrical generating facilities, and for the purpose of paying the cost thereof, may, without regard to any limitation herein imposed, with the assent of a majority of the qualified electors voting at an election to be held for that purpose, issue revenue bonds therefor, the principal and interest of which to be paid solely from revenue derived from rates and charges for the use of, and the service rendered by such systems, plants and facilities, as may be prescribed by law; and provided further that any port district, for the pur-

pose of carrying into effect all or any of the powers now or hereafter granted to port districts by the laws of this state, may contract indebtedness and issue revenue bonds evidencing such indebtedness, without the necessity of the voters of the port district authorizing the same, such revenue bonds to be payable solely from all or such part of the revenues of the port district derived from any source whatsoever excepting only those revenues derived from ad valorem taxes, as the port commission thereof may determine, and such revenue bonds not to be in any manner or to any extent a general obligation of the port district issuing the same, nor a charge upon the ad valorem tax revenue of such port district.

**Compiler's notes.** An amendment to this section which was proposed by S.J.R. No. 115 (S.L. 1978, p. 1029) was defeated at the general election on November 7, 1978.

As originally adopted, this section provided as follows:

“§ 3. No county, city, town, township, board of education, or school district, or other subdivision of the state, shall incur any indebtedness, or liability, in any manner, or for any purpose, exceeding in that year, the income and revenue provided for it for such year, without the assent of two-thirds of the qualified electors thereof voting at an election to be held for that purpose, nor unless, before or at the time of incurring such indebtedness, provision shall be made for the collection of an annual tax sufficient to pay the interest on such indebtedness as it falls due, and also to constitute a sinking fund for the payment of the principal thereof, within twenty years from the time of contracting the same. Any indebtedness or liability incurred contrary to this provision shall be void: provided, that this section shall not be construed to apply to the ordinary and necessary expenses authorized by the general laws of the state.”

As amended by S.L. 1949, p. 598, H.J.R. No. 9, and ratified at the general election in 1950, this section provided as follows:

“§ 3. No county, city, town, township, board of education, or school district, or other subdivision of the state, shall incur any indebtedness, or liability, in any manner, or for any purpose, exceeding in that year, the income and revenue provided for it for such year, without the assent of two-thirds of the qualified electors thereof voting at an election to be held for that purpose, nor unless, before or at the time of incurring such indebtedness, provisions shall be made for the collection of an annual tax sufficient to pay the interest on such indebtedness as it falls due, and also to constitute a sinking fund for the payment of the principal thereof, within twenty years from the time of contracting the same. Any indebtedness or liability incurred contrary to this provision shall be void: provided, that this section shall not be construed to apply to the ordinary and necessary expenses authorized by the general laws of the state and provided further that any city or village may own, purchase, construct, extend, equip, within and without the corporate limits of such city or village, water systems and sewage collection systems, and water treatment plants and sewage treatment plants, and off street parking facilities, and, for the purpose of paying the cost thereof may, without regard to any limitation herein imposed, with the assent of two-thirds of the qualified electors voting at an election to be held for that purpose, issue revenue bonds therefor, the principal and interest of which to be paid solely from revenue derived from rates and charges for the use of, and the service rendered by, such systems, plants, and facilities as may be prescribed by law.”

As amended by S.L. 1963, p. 1149, H.J.R. No. 5, and ratified at the general election in 1964, this section provided as follows:

“§ 3. Limitations on county and municipal indebtedness. — No county, city, town, township, board of education, or school district, or other subdivision of the state, shall incur any indebtedness, or liability, in any manner, or for any purpose, exceeding in that year, the income and revenue provided for it for such year, without the assent of two-thirds of the qualified electors thereof voting at an election to be held for that purpose, nor unless, before or at the time of incurring such indebtedness, provisions shall be made for the

collection of an annual tax sufficient to pay the interest on such indebtedness as it falls due, and also to constitute a sinking fund for the payment of the principal thereof, within thirty years from the time of contracting the same. Any indebtedness or liability incurred contrary to this provision shall be void: provided, that this section shall not be construed to apply to the ordinary and necessary expenses authorized by the general laws of the state and provided further that any city or village may own, purchase, construct, extend, equip, within and without the corporate limits of such city or village, water systems and sewage collection systems, and water treatment plants and sewage treatment plants, and off street parking facilities, and, for the purpose of paying the cost thereof may, without regard to any limitation herein imposed, with the assent of two-thirds of the qualified electors voting at an election to be held for that purpose, issue revenue bonds therefor, the principal and interest of which to be paid solely from revenue derived from rates and charges for the use of, and the service rendered by, such systems, plants, and facilities as may be prescribed by law; and provided further that any port district, for the purpose of carrying into effect all or any of the powers now or hereafter granted to port districts by the laws of this state, may contract indebtedness and issue revenue bonds evidencing such indebtedness, without the necessity of the voters of the port district authorizing the same, such revenue bonds to be payable solely from all or such part of the revenues of the port district derived from any source whatsoever excepting only those revenues derived from ad valorem taxes, as the port commission thereof may determine, and such revenue bonds not to be in any manner or to any extent a general obligation of the port district issuing the same, nor a charge upon the ad valorem tax revenue of such port district."

As amended by S.L. 2nd Ex. Sess. 1966, p. 66 and ratified at the general election in 1966, this section provided as follows:

"§ 3. Limitations on county and municipal indebtedness. — No county, city, town, township, board of education, or school district, or other subdivision of the state, shall incur any indebtedness, or liability, in any manner, or for any purpose, exceeding in that year, the income and revenue provided for it for such year, without the assent of two-thirds of the qualified electors thereof voting at an election to be held for that purpose, nor unless, before or at time of incurring such indebtedness, provisions shall be made for the collection of an annual tax sufficient to pay the interest on such indebtedness as it falls due, and also to constitute a sinking fund for the payment of the principal thereof, within thirty years from the time of contracting the same. Any indebtedness or liability incurred contrary to this provision shall be void: provided, that this section shall not be construed to apply to the ordinary and necessary expenses authorized by the general laws of the state and provided further that any city or village may own, purchase, construct, extend, equip, within and without the corporate limits of such city or village, water systems and sewage collection systems, and water treatment plants and sewage treatment plants, and off street parking facilities and public recreation facilities, and, for the purpose of paying the cost thereof may, without regard to any limitation herein imposed, with the assent of two-thirds of the qualified electors voting at an election to be held for that purpose, issue revenue bonds therefor, the principal and interest of which to be paid solely from revenue derived from rates and charges for the use of, and the service rendered by, such systems, plants, and facilities as may be prescribed by law; and provided further that any port district, for the purpose of carrying into effect all or any of the powers now or hereafter granted to port districts by the laws of this state, may contract indebtedness and issue revenue bonds evidencing such indebtedness, without the necessity of the voters of the port district authorizing the same, such revenue bonds to be payable solely from all or such part of the revenues of the port district derived from any source whatsoever excepting only those revenues derived from ad valorem taxes, as the port commission thereof may determine, and such revenue bonds not to be in any manner or to any extent a general obligation of the port district issuing the same nor a charge upon the ad valorem tax revenue of such port district."

As amended by S.L. 1967, p. 1577, H.J.R. No. 7, and ratified at the general election in 1968, this section provided as follows:

"§ 3. Limitations on county and municipal indebtedness. — No county, city, town, township, board of education, or school district, or other subdivision of the state, shall incur any indebtedness, or

liability, in any manner, or for any purpose, exceeding in that year, the income and revenue provided for it for such year, without the assent of two-thirds of the qualified electors thereof voting at an election to be held for that purpose, no [nor] unless, before or at the time of incurring such indebtedness, provisions shall be made for the collection of an annual tax sufficient to pay the interest on such indebtedness as it falls due, and also to constitute a sinking fund for the payment of the principal thereof, within thirty years from the time of contracting the same. Any indebtedness or liability incurred contrary to this provision shall be void: provided, that this section shall not be construed to apply to the ordinary and necessary expenses authorized by the general laws of the state and provided further that any city or village may own, purchase, construct, extend, equip, within and without the corporate limits of such city or village, water systems and sewage collection systems, and water treatment plants and sewage treatment plants, and off street parking facilities, public recreation facilities, and air navigation facilities, and, for the purpose of paying the cost thereof may, without regard to any limitation herein imposed, with the assent of two-thirds of the qualified electors voting at an election to be held for that purpose, issue revenue bonds therefor, the principal and interest of which to be paid solely from revenue derived from rates and charges for the use of, and the service rendered by, such systems, plants, and facilities as may be prescribed by law; and provided further that any port district, for the purpose of carrying into effect all or any of the powers now or hereafter granted to port districts by the laws of this state, may contract indebtedness and issue revenue bonds evidencing such indebtedness, without the necessity of the voters of the port district authorizing the same, such revenue bonds to be payable solely from all or such part of the revenue of the port district derived from any source whatsoever excepting only those revenues derived from ad valorem taxes, as the port commission thereof may determine, and such revenue bonds not to be in any manner or to any extent a general obligation of the port district issuing the same, nor a charge upon the ad valorem tax revenue of such port district."

As amended by S.L. 1972, p. 1251, H.J.R. No. 73 and ratified at the general election in 1972, this section provided as follows:

"§ 3. Limitations on county and municipal indebtedness. — No county, city, board of education, or school district, or other subdivision of the state, shall incur any indebtedness, or liability, in any manner, or for any purpose, exceeding in that year, the income and revenue provided for it for such year, without the assent of two-thirds of the qualified electors thereof voting at an election to be held for that purpose, nor unless, before or at the time of incurring such indebtedness, provisions shall be made for the collection of an annual tax sufficient to pay the interest on such indebtedness as it falls due, and also to constitute a sinking fund for the payment of the principal thereof, within thirty years from the time of contracting the same. Any indebtedness or liability incurred contrary to this provision shall be void: provided, that this section shall not be construed to apply to the ordinary and necessary expenses authorized by the general laws of the state and provided further that any city may own, purchase, construct, extend, or equip, within and without the corporate limits of such city, off street parking facilities, public recreation facilities, and air navigation facilities, and, for the purpose of paying the cost thereof may, without regard to any limitation herein imposed, with the assent of two-thirds of the qualified electors voting at an election to be held for that purpose, issue revenue bonds therefor, the principal and interest of which to be paid solely from revenue derived from rates and charges for the use of, and the service rendered by, such facilities as may be prescribed by law, and provided further, that any city or other political subdivision of the state may own, purchase, construct, extend, or equip, within and without the corporate limits of such city or political subdivision, water systems, sewage collection systems, water treatment plants, and sewage treatment plants, and for the purpose of paying the cost thereof, may, without regard to any limitation herein imposed, with the assent of a majority of the qualified electors voting at an election to be held for that purpose, issue revenue bonds therefor, the principal and interest of which to be paid solely from revenue derived from rates and charges for the use of, and the service rendered by such systems, plants and facilities, as may be prescribed by law; and provided further that any port district, for the purpose of carrying into effect all or any of the powers now or hereafter granted to port

districts by the laws of this state, may contract indebtedness and issue revenue bonds evidencing such indebtedness, without the necessity of the voters of the port district authorizing the same, such revenue bonds to be payable solely from all or such part of the revenues of the port district derived from any source whatsoever excepting only those revenues derived from ad valorem taxes, as the port commissioner thereof may determine, and such revenue bonds not to be in any manner or to any extent a general obligation of the port district issuing the same, nor a charge upon the ad valorem tax revenue of such port district."

It was amended as proposed by S.J.R. 109 (S.L. 1976, p. 1269) and ratified at the general election on November 2, 1976 to read as it now appears.

**Cited in:** in *Dexter Horton Trust & Sav. Bank v. Clearwater County*, 248 F. 401 (9th Cir. 1918); *Green v. State Bd. of Canvassers*, 5 Idaho 130, 47 P. 259, 95 Am. St. R. 169 (1896); *Andrews v. Board of County Comm'rs*, 7 Idaho 453, 63 P. 592 (1900); *Gilbert v. Canyon County*, 14 Idaho 437, 94 P. 1029 (1908); *Howard v. Independent Sch. Dist. No. 1*, 17 Idaho 537, 106 P. 692 (1910); *Atkinson v. Board of Comm'rs*, 18 Idaho 282, 108 P. 1046, 28 L.R.A. (n.s.) 412 (1910); *Independent Hwy. Dist. No. 2 v. Ada County*, 24 Idaho 416, 134 P. 542 (1913); *Jones v. Power County*, 27 Idaho 656, 150 P. 35 (1914); *Libby v. Pelham*, 30 Idaho 614, 166 P. 575 (1917); *Boise Dev. Co. v. Boise City*, 30 Idaho 675, 167 P. 1032 (1917); *Stark v. McLaughlin*, 45 Idaho 112, 261 P. 244 (1927); *Bannock County v. Citizens' Bank & Trust Co.* 53 Idaho 159, 22 P.2d 674 (1933); *Lyons v. Bottolfson*, 61 Idaho 281, 101 P.2d 1 (1940); *Reynolds Constr. Co. v. Twin Falls County*, 92 Idaho 61, 437 P.2d 14 (1968); *Idaho Water Resource Bd. v. Kramer*, 97 Idaho 535, 548 P.2d 35 (1976); *Kerner v. Johnson*, 99 Idaho 433, 583 P.2d 360 (1978); *McNichols v. Public Employee Retirement Sys.* 114 Idaho 247, 755 P.2d 1285 (1988); *Idaho Falls Redevelopment Agency v. Countryman*, 118 Idaho 43, 794 P.2d 632 (1990).

#### ANALYSIS

Bond elections.  
 Bond not required.  
 Competitive bidding.  
 Standing to bring suit.  
 Connection fees.  
 Construction.  
 Effect of violation.  
 Health facilities.  
 Housing authority law.  
 Indebtedness not prohibited.  
 Irrigation districts.  
 Limitation on power.  
 Necessity of expenditure.  
 Ordinary and necessary expenses.  
 Prohibited indebtedness.  
 Provision for sinking fund.  
 Provisions mandatory.  
 Redevelopment agencies.  
 Required and mandated expenditures.  
 School district annexation.  
 Special fund.  
 State university.  
 Voluntary indebtedness.  
 Water and sewer systems.  
 Water conservation board.

#### Bond Elections.

This provision of the Constitution which requires assent to two-thirds of the qualified electors in the incurrence of a municipal debt, and prescribes no property qualifications as to such electors, is not infringed by provision of municipal charter which requires assent of two-thirds of the qualified electors who are taxpayers to the incurrence of such debt. *Wiggin v. City of Lewiston*, 8 Idaho 527, 69 P. 286 (1902).

Municipal obligations, such as for construction of sewers, required to be paid out of special assessments levied against property particularly benefited, are not an indebtedness or liability within meaning of this section, and may be incurred, when statute so provides, without submission of the question to popular vote. *McGilvery v. City of Lewiston*, 13 Idaho 338, 90 P. 348 (1907); *Byrns v. City of Moscow*, 21 Idaho 398, 121 P. 1034 (1912); *Elliott v.*

*McCrea*, 23 Idaho 524, 130 P. 785 (1913).

Where streets are paved and assessments are made against abutting property according to the benefits, improvement district bonds may be issued by city upon the council passing proper ordinance authorizing the same without submitting question of issuing bonds to electors or taxpayers of either the improvement district or the city, but where cost and expenses are to be paid by city and bonds are to be issued for the purpose of raising revenue to pay the same, then such question must be submitted to electors and taxpayers of city and must be by them authorized by proper vote. *Byrns v. City of Moscow*, 21 Idaho 398, 121 P. 1034 (1912).

In elections under this section, where purposes for which money is to be raised constitute distinct proposals, they must be separately stated in order that voter may cast his vote in favor of one and against the other. *Allen v. Doumeq Hwy. Dist.* 33 Idaho 249, 192 P. 662 (1920).

Under this and similar statutory provision, board of county commissioners can not incur a valid indebtedness for purpose authorized by an election of the people, in excess of amount thereof authorized at such election; and no action lies against the county on a claim in excess of such amount. *Mittry v. Bonneville County*, 38 Idaho 306, 222 P. 292 (1923).

This section does not require plans or specifications as a prerequisite or a concomitant part of an action on a bond issue for municipal improvements or construction of municipal water works. *Durand v. Cline*, 63 Idaho 304, 119 P.2d 891 (1941).

An ordinance calling an election to vote on whether bonds shall be issued to improve and construct an addition to municipal water works system and to provide "more adequate water supply," was sufficient to justify the city council, after the bonds had been voted, in letting a contract for the drilling of a well, since the quoted words clearly contemplated water in addition to that already available from existing wells. *Durand v. Cline*, 63 Idaho 304, 119 P.2d 891 (1941).

Portion of plan for reorganization of school districts which provided that the debt of the two districts as formerly organized, be assumed by the new school district, which resulted in making taxpayers of one of the old school districts proportionately liable for the bonded indebtedness of the other old school district, was invalid where the voters were not limited to those persons possessing the qualifications of voting at a bond election and the plan was not carried by the required two thirds majority required to approve a bonded indebtedness. *In re Joint Class A Sch. Dist. No. 370*, 77 Idaho 453, 295 P.2d 249 (1956).

Two-thirds affirmative vote requirement of this section and I. C. § 50-1026 as applied to issuance by city of general obligation bonds to finance airport terminal and municipal swimming pool, was not offensive to Equal Protection Clause, Fourteenth Amendment, U.S. Constitution, as violative of principle of one man, one vote. *Bogert v. Kinzer*, 93 Idaho 515, 465 P.2d 639 (1970), appeal dismissed, 403 U.S. 914, 91 S. Ct. 2224, 29 L. Ed. 2d 691 (1971).

The requirement relating to the collection of an annual tax to pay interest on the debt and a sinking fund to pay the principal is simply sound fiscal policy and does not relate to the primary constitutional mandate of electorate approval of substantial and far-reaching municipal indebtedness; a financing plan which provides for amortization of the indebtedness by some means other than assessment of taxes might be held to satisfy that part of this section which calls for an assessment, but it cannot fulfill the requirement of voter approval. *Asson v. City of Burley*, 105 Idaho 432, 670 P.2d 839 (1983), cert. denied, 469 U.S. 870, 105 S. Ct. 219, 83 L. Ed. 2d 149 (1984).

It was clearly the intent of the framers of the constitutional amendments, and the electorate through their ratification, that approval of a municipality's qualified voters is necessary whether its indebtedness or liability is against the general fund of the city, and its tax revenues, or limited to a special fund of project-generated revenues. *Asson v. City of Burley*, 105 Idaho 432, 670 P.2d 839 (1983), cert. denied, 469 U.S. 870, 105 S. Ct. 219, 83 L. Ed. 2d 149 (1984).

This section requires a city to obtain only a simple "majority" voter approval where the indebtedness undertaken is only for the rehabilitation of existing facilities (a purpose more similar to the "ordinary and necessary expenses" exception), whereas if the indebtedness is for the construction of wholly new facilities (obviously a much more extensive undertaking), then the "two thirds (2/3)"

majority approval within the general application of the article would apply. *Asson v. City of Burley*, 105 Idaho 432, 670 P.2d 839 (1983), cert. denied, 469 U.S. 870, 105 S. Ct. 219, 83 L. Ed. 2d 149 (1984).

Fact that cities' payment obligations under nuclear power plant financing agreement would be satisfied out of utility revenues alone, and not out of tax assessment, did not exempt agreement from voter approval requirement of this section. *Asson v. City of Burley*, 105 Idaho 432, 670 P.2d 839 (1983), cert. denied, 469 U.S. 870, 105 S. Ct. 219, 83 L. Ed. 2d 149 (1984).

#### **Bond Not Required.**

District court's decision to dismiss several citizens' declaratory action under I.R.C.P. 12(b)(6) for failure to post a bond was erroneous because two counts of the complaint were merely challenging the validity of a lease-purchase agreement with a bank; they were not challenging the election procedures or the ultimate vote approving a levy and did not require posting a bond. *Johnson v. Boundary Sch. Dist. #101*, — Idaho —, 63 P.3d 457 (2003).

#### **Competitive Bidding.**

General contractors association failed to show that either this section or Art. 7, § 17 of the Idaho Constitution gave them a protected legal interest to engage in competitive bidding to supply highway district's need for gravel. *Idaho Branch, Inc. v. Nampa Hwy. Dist. No. 1*, 123 Idaho 237, 846 P.2d 239 (Ct. App. 1993).

#### **Standing to Bring Suit.**

General contractors association did have standing to bring an action for a declaratory judgment where the "challenged conduct" was the action taken by highway districts ownership and operation of a gravel crusher, allegedly in violation of this section and Art. 7, § 17 of the Idaho Constitution. *Idaho Branch, Inc. v. Nampa Hwy. Dist. No. 1*, 123 Idaho 237, 846 P.2d 239 (Ct. App. 1993).

#### **Connection Fees.**

A connection fee may be imposed under the police power or other statutory power and will be upheld by the courts if it is not unreasonable and not arbitrarily imposed. *Loomis v. City of Hailey*, 119 Idaho 434, 807 P.2d 1272 (1991).

#### **Construction.**

The word "liability," as used in this section, has its ordinary meaning, and signifies the state of being bound in law and justice to pay an indebtedness or discharge some obligation. *Boise Dev. Co. v. City of Boise*, 26 Idaho 347, 143 P. 531 (1914).

An obligation imposed by law is not within the inhibition of this section. *Independent Sch. Dist. No. 12 v. Manning*, 32 Idaho 512, 185 P. 723 (1919).

This section does not merely declare that contract entered into in violation of its provisions shall be void, but extends such invalidity to any indebtedness or liability incurred contrary to its provisions. *Deer Creek Hwy. Dist. v. Doumeq Hwy. Dist. 37 Idaho 601*, 218 P. 371 (1923).

This section should be construed in conjunction with art. 8, § 4 and art. 13, § 6. *Boise-Payette Lumber Co. v. Challis Independent Sch. Dist. No. 1*, 46 Idaho 403, 268 P. 26 (1928).

Use of word "purpose" is intended in broad and general sense as whether indebtedness should be incurred, but does not mean that vote should be had on each item of expenditure contemplated, but rather general "purpose" of borrowing money for general purpose contemplated. *King v. Independent Sch. Dist. No. 37*, 46 Idaho 800, 272 P. 507 (1928).

This section did not contemplate that general taxpayers should become liable for unpaid indebtedness of assessment district and they could not be made liable by a law converting the district debt into a general obligation without notice and a chance to be heard. *Oregon S.L.R.R. v. Berg*, 52 Idaho 499, 16 P.2d 373 (1932).

Provision in drainage district law attempting to make district bonds general obligations of the district, impairs the obligation of the contract of the bondholders and is void. *Straus v. Ketchen*, 54 Idaho 56, 28 P.2d 824 (1933).

A county bond election, duly called and regularly held to provide a main and two receiving hospitals, each being different structures in different cities of the county, was for only one "purpose," thus complying with this section. *Hubbard v. Board of Comm'rs*, 68 Idaho 141, 190 P.2d 685 (1948).

Village was entitled to combine its water system and sewage

system and issue water and sewer revenue bonds with a pledge of the net revenue of both as sole security even though water system presently existed and sewage system was nonexistent, since intention of legislature was to make it possible to establish and maintain any or all of such systems in any combination which would serve best interests of a municipality. *Schmidt v. Village of Kimberly*, 74 Idaho 48, 256 P.2d 515 (1953).

Twenty year limitation on payment of bonds contained in this constitutional provision prior to its amendment in 1950 does not apply to revenue bonds issued pursuant to amendment since there is no such limitation on revenue bonds in amendment. *Schmidt v. Village of Kimberly*, 74 Idaho 48, 256 P.2d 515 (1953).

#### **Effect of Violation.**

Contract void under this section cannot be enforced as either express or implied contract. *Gillette-Herzog Mfg. Co. v. Canyon County*, 85 F. 396 (C.C.D. Idaho 1898); *Deer Creek Hwy Dist. v. Doumeq Hwy. Dist. 37 Idaho 601*, 218 P. 371 (1923).

Contract by county commissioners with person not acting as assessor to cruise taxable timber lands at large expense and to make reports not having official or legal status is void under this section. *Dexter Horton Trust & Sav. Bank v. Clearwater County*, 235 F. 743 (D. Idaho 1916), aff'd, 248 F. 401 (9th Cir. 1918).

Warrants issued in violation of this provision are void. *County of Ada v. Bullen Bridge Co.* 5 Idaho 79, 47 P. 818, 36 L.R.A. 367 (1896).

Debt created in contravention of provisions of this section can not be changed into the form of a negotiable instrument and thus defeat the object of the constitution. *Dunbar v. Board of Comm'rs*, 5 Idaho 407, 49 P. 409 (1897).

Where extraordinary indebtedness is incurred by a county without complying with this section, act of the county in thereafter issuing bonds sufficient to cover such indebtedness and all other indebtedness of the county does not constitute a ratification of the unlawful indebtedness such as to render the same enforceable against county. *McNutt v. Lemhi County*, 12 Idaho 63, 84 P. 1054 (1906).

When a city enters into a contract by terms of which it becomes liable for a large expenditure of money, exceeding in that year the income and revenue provided for it for said year without fully complying with all the provisions of this section, such contract is void. *Boise Dev. Co. v. City of Boise*, 26 Idaho 347, 143 P. 531 (1914).

Estoppel can not be invoked in aid of contract which is expressly prohibited by constitutional and statutory provisions. *Deer Creek Hwy. Dist. v. Doumeq Hwy. Dist. 37 Idaho 601*, 218 P. 371 (1923).

Contracts made and indebtedness incurred in violation of this section being void, there can be no recovery against a city for money received from the sale of void bonds and applied to lawful purposes. Equity can not interpose to relieve anyone violating express constitutional prohibitions. *Village of Heyburn v. Security Sav. & Trust Co.* 55 Idaho 732, 49 P.2d 258 (1935).

#### **Health Facilities.**

Since the only funds obligated by the Health Facilities Act (§§ 39-1441 — 39-1460) to satisfy payments due on bonds and notes issued thereunder are the rates, rents and fee charges for the use of and for the services furnished by each facility, neither the state nor any other governmental unit nor any state created agency has been obligated to meet the obligations of the bonds and notes issued by the Health Facilities Authority and thus the Act does not violate the provisions of this article. *Board of County Comm'rs v. Idaho Health Facilities Auth.* 96 Idaho 498, 531 P.2d 588 (1974).

#### **Housing Authority Law.**

The Housing Authority Law contained in § 50-4401 et seq. (now § 50-1901 et seq.) is not in contravention of this provision as constituting the authority a "county," "city," "town," "township," "board of education," "school district" or other subdivision of the state. *Lloyd v. Twin Falls Hous. Auth.* 62 Idaho 592, 113 P.2d 1102 (1941).

#### **Indebtedness not Prohibited.**

Provisions of this section apply only where debt is contracted for an extraordinary expense in excess of the revenue provided for the year; it does not prohibit purchase of real estate for courthouse, where cost will not create an indebtedness in excess of the current revenue after deducting indebtedness incurred by the county up to

time of the purchase. *Ball v. Bannock County*, 5 Idaho 602, 51 P. 454 (1897).

Provisions of this section authorize the issuance of municipal bonds to take up outstanding indebtedness of city incurred for the current pay of officers and the ordinary expenses of city. *Butler v. Lewiston*, 11 Idaho 393, 83 P. 234 (1905).

Issuance of refunding bonds is not the creation of a new indebtedness within the meaning of this section, when it does not increase indebtedness or liability of municipality. *Veatch v. City of Moscow*, 18 Idaho 313, 109 P. 722, 21 Ann. Cas. 1332 (1910); *Sebern v. Cobb*, 41 Idaho 386, 238 P. 1023 (1925).

City may anticipate both income and revenue provided for it for such year, and incur debts or liabilities against city which can be met and discharged out of aggregate income and revenue for that year, but city has no right to anticipate, set aside, and hypothecate either the income or revenue of city, or any part thereof, for a special purpose, for a period of twenty years in advance. *Feil v. Coeur d'Alene*, 23 Idaho 32, 129 P. 643, 43 L.R.A. (n.s.) 1095 (1912).

Where city council of a municipality enacts an annual appropriation bill, and therein provides for public improvements, and levy is made for purpose of raising a general fund for the fiscal year, and such levy, together with the other revenues, such as fines, taxes, and licenses provided by law, will produce a sum sufficient to cover all sums which are provided for in the annual appropriation bill, including improvements, and such appropriation was intended by council to be for the purpose of making certain improvements in the paving of cross-sections of streets and other improvements, this court will not hold ordinance of intention and ordinance creating improvement district and making of assessments void. *McEwen v. City of Coeur d'Alene*, 23 Idaho 746, 132 P. 308 (1913).

Where uncertain and contingent claims for alleged damages to property of corporation against city are made a part of the consideration of a contract entered into between them, and said claims have never been liquidated, settled, or reduced to a definite fixed amount of indebtedness against said city before the date of the contract, by a judgment or decree of court, arbitration, compromise, or in any manner whatever, then if these sums are liquidated, settled and fixed as a definite amount of indebtedness against the city for the first time by the contract itself, this constitutes a new debt. *Boise Dev. Co. v. City of Boise*, 26 Idaho 347, 143 P. 531 (1914).

Where no negligence was pleaded or proved, except in that properties liable for assessment under special assessment warrants were not in all instances valuable enough to meet proportionate share of liability, there was no violation under this section. *Hughes v. Village of Wendell*, 47 Idaho 370, 275 P. 1116 (1929).

Drainage district bonds are limited obligations and not general obligations of the district issued in violation of this section as excess obligations. *Straus v. Ketchen*, 54 Idaho 56, 28 P.2d 824 (1933).

Refunding bonds issued by the board of directors of an irrigation district under authority of S.L. 1935, ch. 39 (§ 43-610), which authorized extension of the due date of such bonds for 40 years were not void under the provisions of this section. *Marsing v. Gem Irrigation Dist.* 56 Idaho 29, 48 P.2d 1099 (1935).

The issuance of refunding bonds is not the incurring of any indebtedness or liability exceeding the current year's revenue within the purview of this section. *Marsing v. Gem. Irrigation Dist.* 56 Idaho 29, 48 P.2d 1099 (1935).

A contract for the purchase of parking meters by a municipality, purchase-price of which is to be paid from income arising from operation of the meters, does not constitute a "debt" or "liability" against the municipality within the interdiction of this section. *Foster's Inc. v. Boise City*, 63 Idaho 201, 118 P.2d 721 (1941).

A village is entitled to acquire land without the village for the purpose of constructing a sewage disposal and treatment plant. *Schmidt v. Village of Kimberly*, 74 Idaho 48, 256 P.2d 515 (1953).

Contract of irrigation district to furnish "seepage and waste" waters to property owners outside district did not violate constitutional provision prohibiting a municipality from incurring an indebtedness or liability exceeding income and revenue of municipality, since irrigation district is not a municipality, and furthermore expense of drainage operations is within proviso excluding "ordinary and necessary expenses." *Jensen v. Boise-Kuna Irrigation Dist.* 75 Idaho 133, 269 P.2d 755 (1954).

Sections 33-2122 to 33-2141 authorizing the dormitory housing commission to issue bonds and other obligations without the approval of the voters are constitutional under this section. *Wood v.*

*Boise Junior College Dormitory Hous. Comm'n*, 81 Idaho 379, 342 P.2d 700 (1959).

#### **Irrigation Districts.**

This section does not apply to irrigation districts which derive funds from benefit assessments as such assessments are not taxes. *Barker v. Wagner*, 96 Idaho 214, 526 P.2d 174 (1974).

#### **Limitation on Power.**

Where a bond issue of \$300,000 was voted for the purpose of paying the costs and expenses of acquiring by purchase or construction a light and power plant and distributing system, a plan which called for the expenditure of \$337,580 was void. *Washington Water Power Co. v. City of Coeur d'Alene*, 9 F. Supp. 263 (D. Idaho 1934), *aff'd*, 25 F. Supp. 795 (D. Idaho 1938).

The words "indebtedness or liability" as employed in this section, are meant to cover all character of debts and obligations for which a city may become bound. *Washington Water Power Co. v. City of Coeur d'Alene*, 9 F. Supp. 263 (D. Idaho 1934).

This section is a limitation upon power of legislature in that it can not authorize a municipality to incur indebtedness in violation thereof. *Byrns v. City of Moscow*, 21 Idaho 398, 121 P. 1034 (1912).

This section not only prohibits incurring any indebtedness, but it also prohibits incurring any liability "in any manner or for any purpose," exceeding the yearly income and revenue. *Feil v. Coeur d'Alene*, 23 Idaho 32, 129 P. 643, 43 L.R.A. (n.s.) 1095 (1912); *Miller v. City of Buhl*, 48 Idaho 668, 284 P. 843, 72 A.L.R. 682 (1930).

Taxpayer of a school district may sue in equity to prevent issuance of school bonds in violation of this section, even though an election contest is involved, where there is no other available remedy to prevent such violation. *Ashley v. Richard*, 32 Idaho 551, 185 P. 1076 (1919).

Common school district may incur indebtedness during any year in amount which does not exceed its revenue and income for that year. *Boise City Nat'l Bank v. Independent Sch. Dist. No. 40*, 33 Idaho 26, 189 P. 47 (1920).

This section is the only limitation on the power of the legislature to organize cities and confer powers on them. In making local improvements cities must conform to the laws authorizing them. *Reynard v. City of Caldwell*, 53 Idaho 62, 21 P.2d 527 (1933).

#### **Necessity of Expenditure.**

Expenditures made in excess of the revenue of any current year must not only be for ordinary expenses, such as are usual to maintenance of the county government, conduct of necessary business, and protection of its property, but there must exist a necessity for making the expenditure during such year. *Dunbar v. Board of Comm'rs*, 5 Idaho 407, 49 P. 409 (1897).

Cost of construction of bridge is not ordinary and necessary expense, and effort to incur indebtedness by agreement between two townships is in contravention of this section. *Allen v. Doumecc Hwy. Dist.* 33 Idaho 249, 192 P. 662 (1920).

This section does not forbid contract by county commissioners, employing attorneys on contingent fee, to collect money already paid over as taxes but held on deposit in several insolvent banks. *Barnard v. Young*, 43 Idaho 382, 251 P. 1054 (1926).

A statute authorizing school trustees to enter into a contract to combine for educational purposes with another school district is not unconstitutional under this section. *Independent Sch. Dist. No. 6 v. Common Sch. Dist. No. 38*, 64 Idaho 303, 131 P.2d 786 (1942).

#### **Ordinary and Necessary Expenses.**

An expense is ordinary if it is in an ordinary class; if in the ordinary course of transaction of municipal business or the maintenance of municipal property it may and is likely to become necessary. *Dexter Horton Trust & Sav. Bank v. Clearwater County*, 235 F. 743 (D. Idaho 1916), *aff'd*, 248 F. 401 (9th Cir. 1918); *Thomas v. Glindeman*, 33 Idaho 394, 195 P. 92 (1921).

An expense is not necessarily extraordinary because necessity therefor does not arise frequently and at regular intervals. *Dexter Horton Trust & Sav. Bank v. Clearwater County*, 235 F. 743 (D. Idaho 1916), *aff'd*, 248 F. 401 (9th Cir. 1918).

If by law a specific duty is imposed and mode of performance is prescribed, so that no discretion is left with officer, the expense necessarily incurred in discharging duty is a necessary expense. *Dexter Horton Trust & Sav. Bank v. Clearwater County*, 235 F. 743 (D. Idaho 1916), *aff'd*, 248 F. 401 (9th Cir. 1918).

Ordinary and necessary expenses may properly include any expenditure rendered necessary by casualty or accident which has impaired or injured municipal property that is necessary for the protection of city against fires, or for the health and welfare of city. *Hickey v. City of Nampa*, 22 Idaho 41, 124 P. 280 (1912).

Indebtedness contracted by city for work on its streets is an ordinary and necessary expense authorized by general law, and is not within constitutional inhibitions. *Thomas v. Glindeman*, 33 Idaho 394, 195 P. 92 (1921).

Lease of equipment requiring payments in future years for services needed in those years creates a present indebtedness within the meaning of this section. *Williams v. City of Emmett*, 51 Idaho 500, 6 P.2d 475 (1931).

A statute authorizing the issuance of county emergency warrants to meet authorized ordinary and necessary county expenses is not invalid. *Lloyd Corp. v. Bannock County*, 53 Idaho 478, 25 P.2d 217 (1933).

Warrant redemption fund can not be used to pay "necessary and ordinary expenses" of county government and the statute making officials liable for allowing claims to be paid from proper fund, in excess of levy made for that fund, is valid and is not in conflict with this section. *Garrity v. Board of County Comm'rs*, 54 Idaho 342, 34 P.2d 949 (1934).

Salary of common school district teachers is an "ordinary and necessary expense" authorized by the general laws of the state and therefore exempt from the general provisions of this section. *Corum v. Common Sch. Dist.* 55 Idaho 725, 47 P.2d 889 (1935).

The cost of employing teachers by the trustees is "an ordinary and necessary expense" of the school district authorized by general laws of the state and is therefore exempt from the provisions of this section. *By Budge, J., dissenting. Copenhaver v. Common Sch. Dist.* 56 Idaho 182, 52 P.2d 129 (1935).

Contributions of the city to a police pension fund are necessary and ordinary expenses within the exception of this section. *Hanson v. City of Idaho Falls*, 92 Idaho 512, 446 P.2d 634 (1968).

Where county entered into contract with builder for construction of race track facilities with a lease back arrangement to the county, it was error for the trial court to find that such a contract was authorized under §§ 31-807, 31-822 and 31-1001 and that such rent under the lease constituted an ordinary and necessary expense and as such was exempted by art. 8, § 3 of the Constitution. *Swenson v. Buildings, Inc.* 93 Idaho 466, 463 P.2d 932 (1970).

The repair, maintenance and construction of airports are not inherently "ordinary and necessary expenses" falling within the proviso clause of this section. *City of Pocatello v. Peterson*, 93 Idaho 774, 473 P.2d 644 (1970).

Where the city had maintained an airport facility for the benefit of the traveling public for more than 20 years and found it inadequate to serve the public, the court correctly concluded that rentals on a new facility designed to fulfill the needs of the city and the traveling public were "ordinary and necessary" expenses within the proviso clause of this section. *City of Pocatello v. Peterson*, 93 Idaho 774, 473 P.2d 644 (1970).

Agreement between cities and power company by which company agreed to try to arrange financing, obtain permits and issue bonds for nuclear power plants while city agreed to pay costs, including debt service on bonds, regardless of whether company failed to secure financing or complete the projects, did not come within ordinary and necessary proviso of this section and consequently was void as to cities who acted ultra vires by obligating their residents without an election and without compliance with the Constitution. *Asson v. City of Burley*, 105 Idaho 432, 670 P.2d 839 (1983), cert. denied, 469 U.S. 870, 105 S. Ct. 219, 83 L. Ed. 2d 149 (1984).

A municipality may accumulate collected revenues from rates, charges or fees to fund the cost of replacement of system components in its public works projects which are ordinary and necessary. *Loomis v. City of Hailey*, 119 Idaho 434, 807 P.2d 1272 (1991).

Where the proceeds of the connection fee for water and sewer service are dedicated to the water and sewer systems, those funds are kept in a separate, segregated account and are not used for general fund purposes and, further, only users of those services are charged and those fees are not utilized for general fund or for future expansion of the water and sewer system because the funds collected from connection fees by the city are specifically allocated in accordance with the Idaho Revenue Bond Act, the fees are not

collected for general revenue raising purposes and are, therefore, not taxes; under these circumstances a municipality may collect fees, rates or charges pursuant to the power granted in the Idaho Revenue Bond Act to pay for maintenance, depreciation and replacement of system components. *Loomis v. City of Hailey*, 119 Idaho 434, 807 P.2d 1272 (1991).

Wages paid for a maintenance electrician to perform continuing work for a school district falls under the ordinary and necessary expenditures exception. Thus, the annual limitation on contracts of this section did not apply to a school district contract with a maintenance electrician for more than one year. *Ray v. Nampa Sch. Dist.* 120 Idaho 117, 814 P.2d 17 (1991).

#### **Prohibited Indebtedness.**

Building of a bridge and payment of scalp bounties are extraordinary expenses. *Gillette-Herzog Mfg. Co. v. Canyon County*, 85 F. 396 (C.C.D. Idaho 1898); *Dunbar v. Board of Comm'rs*, 5 Idaho 407, 49 P. 409 (1897).

Plan for financing proposed city light plant which resulted in incurring an indebtedness or liability above that limited was enjoined for violation of this section. *Washington Water Power Co. v. City of Coeur d'Alene*, 9 F. Supp. 263 (D. Idaho 1934).

Municipal indebtedness incurred during a given fiscal year can not be paid out of the income or revenue of a future year, unless such revenue is especially raised for payment of such indebtedness. *Theiss v. Hunter*, 4 Idaho 788, 45 P. 2 (1896).

Construction of a bridge involving expenditure equal to more than half of the revenue of a county for the year is an extraordinary expense. *County of Ada v. Bullen Bridge Co.* 5 Idaho 79, 47 P. 818, 36 L.R.A. 367 (1896).

Issuance of county warrants in excess of county's revenue for construction of a wagon road, is unauthorized except by a compliance with this section. *McNutt v. Lemhi County*, 12 Idaho 63, 84 P. 1054 (1906).

City can not evade provisions of the statutes, limiting bonded indebtedness of fifteen per cent of the real estate valuation for the preceding year, by voting bonds for partial payment on a contract, thus making no legal provisions for balance due upon said contract. *Woodward v. City of Grangeville*, 13 Idaho 652, 92 P. 840.

Assumption of liability of mutual insurance company by school district is contrary to provisions of this section. *School Dist. No. 8 v. Twin Falls County Mut. Fire Ins. Co.* 30 Idaho 400, 164 P. 1174 (1917).

Contract for construction of addition to schoolhouse and furniture to be paid by attempted levy of trustees is void under Constitution which forbids school districts from incurring indebtedness in excess of income provided. *Petrie v. Common Sch. Dist. No. 5*, 44 Idaho 92, 255 P. 318 (1927).

City can not pledge its revenues from any source whatever without creating an indebtedness subject to this constitutional restriction. *Williams v. City of Emmett*, 51 Idaho 500, 6 P.2d 475 (1931).

This section can not be circumvented by incurring an excessive indebtedness and making it payable on the instalment plan. Applied to purchase of street sprinkler. *Williams v. City of Emmett*, 51 Idaho 500, 6 P.2d 475 (1931).

An agreement under which a municipality was required to make payments for several years for the use of a street sprinkler is invalid as creating an excessive liability. *Williams v. City of Emmett*, 51 Idaho 500, 6 P.2d 475 (1931).

Statutes and ordinances providing for a municipality to acquire a public utility, without any provision for the collection of an annual tax for a sinking fund and retirement to pay therefor, is unconstitutional. *Straughan v. City of Coeur D'Alene*, 53 Idaho 494, 24 P.2d 321 (1933).

A corporation making a loan of money to a city to enable it to build a hospital on land owned by city (which loan was unconstitutional in that it exceeded the city's revenues for the year made, also that it was done without the assent of two-thirds of the electors) was not entitled to a lien upon such hospital as security for its loan under the principle of unjust enrichment where no offer to pay the city the reasonable value of the land was made. *General Hosp. v. City of Grangeville*, 69 Idaho 6, 201 P.2d 750 (1949).

Where a city planned to construct a hospital with money loaned to it for that purpose, thereby creating and contracting a debt in excess of the revenue provided by the city for the year in which it is attempted to contract the debt, without the assent of two-thirds of