of a municipal corporation, by which the right to make certain improvements or to create certain liabilities is made to depend upon a vote of the people interested, has frequently been upheld as valid.[1] So an act directing an election to be held by the qualified electors interested to determine, by ballot, whether a newly-erected township should be continued, is constitutional.[2] On the same principle

cox, 45 Mo. 458; Hobart *v.* Supervisors, 17 Cal. 23; People *v.* City of Butte, *supra;* Lafayette, &c. R. R. Co. *v.* Geiger, 34 Ind. 185. This case asserts a distinction between a bill submitted to the people of the whole State for adoption or rejection, and an act which leaves it to the inhabitants of a particular locality whether they will avail themselves of its provisions. It has been held in New Hampshire that it was competent for the legislature, under the Constitution of the State, to enact a penal law which shall have effect only in those towns which adopt it by vote. State *v.* Noyes, 10 Fost. (30 N. H.) 279 (1855). An amendment to a city charter was to take effect only when adopted "by a majority of the voters of the city." This was considered to manifest the intention to present the question of acceptance to the voters at a regular *city* election. The council ordered the vote to be taken at the *township* polls; the voters of the two organizations possessing different qualifications, but the township and city occupied precisely the same territory. Held, that the election was of no validity, and that the amendment had never been duly accepted. Foote *v.* Cincinnati, 11 Ohio, 408 (1842).

Local Option Laws. A useful article upon the Constitutionality of *Local Option Laws* will be found in 12 Am. Law Reg. (N. S.) March, 1873, p. 129. Affirming the principle that municipal or public corporations or the people thereof may by the legislature be invested with the power to regulate or prohibit the retail of intoxicating drinks, the Supreme Court of New Jersey decided the *Chatham Local Option Law*, which declared the retail of ardent spirits without license to be unlawful, and which provided that no license should be granted if a majority of the voters of a township voted "no license," to be constitutional. State *v.* Morris Common Pleas, 12 Am. Law Reg. (N. S.) 32; s. c. 36 N. J. L. 72; s. c. 13 Am. Rep. 422. See also Howe *v.* Plainfield (intoxicating liquors), 37 N. J. L. 146; Hudson County *v.* State (power of local body to fix rates of ferriage), 4 Zabr. (24 N. J. L.) 718. Validity of Local Option Laws denied, and the subject fully examined, in Wall, *In re*, 48 Cal. 279 (1874); s. c. 17 Am. Rep. 425; People *v.* Nally, 49 Cal. 478 (1875); Anderson *v.* Commonwealth, 14 Bush, 171; State *v.* Cook, 24 Minn. 247; Fell *v.* State (Liquor Law), 42 Md. 71 (1875); s. c. 20 Am. Rep. 83. See also in Pennsylvania the case which involved the question of the validity of the act of May, 1871, "to allow the voters of the 22d Ward of Philadelphia to vote on the question of granting licenses to sell intoxicating liquors." Locke's Appeal, 72 Pa. St. 491; s. c. 13 Am. Rep. 716; Gloversville *v.* Howell (intoxicating liquors), 70 N. Y. 287 (1877); State *v.* Wilcox, 42 Conn. 364 (1875); s. c. 19 Am. Rep. 536; Cooley, Const. Lim. 124, 125. *Post*, sec. 308.

[1] Clarke *v.* Rochester, 28 N. Y. 605; Patterson *v.* Society, &c., 4 Zabr. (24 N. J. L.) 385; Bank of Rome *v.* Rome, 18 N.Y. 38; Trustees *v.* Cherry, 8 Ohio St. 564; Burnes *v.* Atchison, 2 Kan. 454 (1864); Bank *v.* Brown, 26 N. Y. 467; Hammond *v.* Haines, 25 Md. 541; Railroad Co. *v.* Commissioners, 1 Ohio St. 77; Foote *v.* Cincinnati, 11 Ohio, 408 (1842); St. Louis *v.* Alexander, 23 Mo. 483; Blanding *v.* Burr, 13 Cal. 343. These cases are distinguishable from Barto *v.* Himrod, 4 Seld. (8 N. Y.) 483.

[2] Commonwealth *v.* Judges, &c., 8 Pa. St. 391; distinguished from Parker *v.* Commonwealth, 6 Pa. St. 507; Commonwealth *v.* Painter, 10 Pa. St. 214 (1849); Smith *v.* McCarthy, 56 Pa. St. 359. So the question may be submitted whether a portion of an adjoining county shall be annexed. People *v.* Nally, 49 Cal. 478 (1875). Where the authority to act depends upon the prior sanction of "*a majority of the qualified voters*" residing in the corporation, the presumption is that all who vote are legal voters; and the better view probably is, that those who do not vote acquiesce in the result, and that a majority of those actually voting is sufficient, though in point of fact it may not be a majority of all who would be entitled to vote. State *v.* Binder, 38 Mo. 450 (1866); State *v.* Mayor, &c. 37 Mo. 270. And of this opinion is the Supreme Court of the United States, in which, in an action on municipal bonds, the phrase, "a majority of the legal voters of the township," was held to mean a majority of the legal voters of the township voting at the election. St. Joseph Township *v.* Rogers, 16 Wall. 644 (1872); People *v.* Warfield, 20 Ill. 163; People *v.* Wiant, 48 Ill. 263; Railroad *v.* Davidson County, 1 Sneed (Tenn.), 692; Talbot *v.* Dent, 9 B. Mon. 526; Angell & Ames, Corp., 9 ed. secs. 499, 500. But compare State *v.* Winkelmeier, 35 Mo. 103, which construes such language to require a "majority of all the legal voters of the city, and not merely of all who might, at a particular time, choose to vote upon it." See Damon *v.* Granby, 2 Pick. 345, 355 (1824), and chapter on Corporate Meetings, *post*. *Infra*, secs. 47, note 277.

the legislature may provide that a statute shall cease to exist unless the municipal corporation to be affected by it shall, within a prescribed period, assent to it.[1] Permitting the voters of a municipality to decide upon questions of local interest or expediency, such as those mentioned in this section and in the notes, seems to the author to be conformable to those ideas of self-government and self-regulation by the people concerned, which lie at the basis not only of our municipalities but of our institutions. The only limit is that the legislature must not delegate its function as the law-making branch of the government.

Special Constitutional Provisions relating to Municipal Corporations.

§ 45 (24). **Creation by special Act and by general Laws.** — The Constitutions of many of the States contain provisions respecting the creation and powers of municipal corporations. In some of the Constitutions the legislature is in terms allowed to create corporations for municipal purposes by *special act*,[2] and in others it is in

[1] Corning *v.* Greene, 23 Barb. 33 (1856).

[2] *Post*, chap. iv. *New York* Constitution, 1846, art. viii. sec. 1; *Illinois* Constitution, 1847, art. x. sec. 1; see, also, new Constitution, 1870; *Michigan* Constitution, 1850, art. xv. sec. 1; *California* Constitution, 1849, art. iv. sec. 31; construed, Railroad Co. *v.* Plumas Co., 37 Cal. 354. The Constitution of California of 1879 ordains that "Corporations for municipal purposes shall not be created by special laws, but by general laws." Art. xi. sec. 6. *Minnesota* Constitution, 1857, art. x. sec. 2; Tierney *v.* Dodge, 9 Minn. 171; 12 Minn. 41; *Oregon* Constitution, 1857, art. xi. sec. 2; *Louisiana* Constitution, 1864, title vii. art. cxxi.; *Nevada* Constitution, 1864, art. viii. sec. 1; construed, Virginia City *v.* Mining Co., 2 Nev. 86. In *Missouri* it is provided that no municipal corporation shall be created by special act, except cities of at least 5,000 inhabitants, the special act to be approved by a vote of the inhabitants. Constitution 1865, art. viii. sec. 5. Under a constitutional provision in Pennsylvania, that "the General Assembly shall not pass any *local or special law* regulating the affairs of counties, cities, townships," &c., it was held that an act providing that in counties the population of which exceeds 100,000 and is less

terms forbidden to do this, and required to provide a *general law* for all corporations, public and private.[1] So far as municipal corporations and their rights are protected by constitutional provisions, express or implied, they are removed from legislative control, but no further, as we shall see in a subsequent chapter. But the provisions of the several Constitutions in reference to municipal institutions and local government are sufficient, it is believed, to establish that the legislative power over them and their existence is not transcendental and unlimited.[2] Although the Constitution of a State

than 150,000, the fees that belong to certain county officers shall be turned over to another, is unconstitutional, being an attempt to legislate directly for certain counties (there being only four falling within the limits mentioned in the act) selected from all others. This is local or special legislation within the meaning of the constitutional prohibition. McCarthy *v.* Commonwealth, 110 Pa. St. 243, following previous cases in the same State to the same effect. "Wherever the provisions of an act are compulsorily binding upon every city of the particular classification, the legislation is general and constitutional. Wherever the provisions are binding at the option of the local authorities, the legislation is special, local, and unconstitutional." Reading *v.* Savage, 120 Pa. St. 198 (1888).

[1] *Iowa* Constitution, 1857, art. iii. sec. 30; Von Phul *v.* Hammer, 29 Iowa, 222; *Florida* Constitution, 1865, art. iv. sec. 20; *Nebraska* Constitution, art. viii. secs. 1 and 2. By the new Constitution of *Illinois*, *special* legislation is forbidden "incorporating cities, towns, or villages, or changing or amending the charter of any town, city, or village." *Wisconsin* constitution amendment, 1871. Atty.-Genl. *v.* Railroad Co., 35 Wis. 425; Kimball *v.* Rosendale, 42 Wis. 407; Stevens Point & Co. *v.* Reilly, 44 Wis. 295; *Kansas* Constitution, art. xii. secs. 1 and 5; construed, Wyandotte City *v.* Wood, 5 Kan. 603; Atchison *v.* Bartholow, 4 Kan. 124. The Constitution of *Ohio* is as follows: "The General Assembly shall provide for the organization of cities and incorporated villages by *general laws*, and restrict their power of taxation, assessment, borrowing money, contracting debts, and loaning their credit, so as to prevent the abuse of such power." Constitution A. D. 1851, art. xiii. sec. 6. Under this section the legislature, by the Towns' and Cities' Act of May 3, 1852 (Swan & Critchf. Stats. 1497), undertook to provide for the government of all such places by a general statute. Thomas *v.* Ashland, 12 Ohio St. 124. An act applying to *all cities* of the first class containing less than 100,000 inhabitants is not in conflict with the provision of the Constitution which requires all laws of a general nature to have a uniform operation throughout the State. Welker *v.* Potter, 18 Ohio St. 85 (1868); see also Lafayette *v.* Jenners, 10 Ind. 70, 80, (1857). Construction of constitutional provision that there shall be "but one system of *town* and *county* government," which "shall be as nearly uniform as practicable." State *v.* Dousman, 28 Wis. 541 (1871); State *v.* Riordan, 24 Wis. 484 (1869).

In Morawetz on Corp. (2d ed.) secs. 9–13, the cases relating to constitutional limitations on the powers of the States in respect of the mode of creating corporations are referred to, and the judicial construction of special constitutional provisions on this subject stated.

[2] People *v.* Draper, 15 N. Y. 561, *Brown*, J., says: "When the present Constitution was formed, the entire territory of the State was separated, and appropriated by its civil divisions, its counties, cities, and towns. These civil divisions are coeval with the government. The State has never existed a moment without them. *All our thoughts and notions of civil government are inseparably associated with counties, cities, and towns.* They are permanent elements in the frame of government; they are institutions of the State, durable and indestructible by any power

may recognize the municipal corporation of an important city by fixing the number of certain officers, and providing for their election, &c., yet this does not make the charter of the city a constitutional charter conferring powers beyond the control of the legislature.[1]

§ 46 (24 *a*). **Prohibition of special Acts conferring Corporate Powers.** — The Constitution of Kansas as well as of Ohio, in the article entitled "Corporations," contains a provision that "the legislature shall pass no *special act* conferring *corporate powers*,"[2] and the Su-

less than that which gave being to the organic law. They are however, subject to control and regulation by the legislature. It may enlarge or circumscribe their territorial limits, increase or diminish their numbers, separate them into parts, and annex some of the parts to parts of others; but they must still assume the form and be known and governed only as counties, cities, or towns. The State at large is, and ever has been, an aggregate of these local bodies." To same effect in same case, 15 N. Y. 541, *per Denio*, C. J.; and see also opinion of *Allen*, J., in People *v.* Albertson, 55 N. Y. 50 (1873). See also People *v.* Morrell, 21 Wend. 563 (division of counties); *ante*, sec. 9 *et seq.* In People *v.* Hurlbut, decided by the Supreme Court of Michigan, in 1871, 24 Mich. 44; s. c. 9 Am. Rep. 103, this subject is largely and learnedly examined by Mr. Justice *Cooley*, who, conceding to the State full authority to shape and control municipal organizations at its will, nevertheless maintained that there were, in the Constitution of that State, both express and implied restrictions upon the legislative dominion over municipal institutions, and that local governments and the right of the people to them were secured by the Constitution, and did not exist by the favor and at the mere pleasure of the legislature. And in the same case the court decided, under a special provision of the Constitution of the State, elsewhere noticed, that the legislature could not appoint, for a city corporation, officers whose duties were purely local and strictly municipal. The discussions by all of the judges are unusually interesting. *Ante*, secs. 8 *a*–8 *d*, 11; *post*, chap. iv. In The State *v.* Denny and Evansville *v.* State (April, 1889), 21 North East. Rep. 252, 267, 274, noted *post*, sec. 58, the Supreme Court of Indiana holds that the Constitution of that State secures to the people of its incorporated municipalities the right to local self-government, and that this right is therefore incapable of legislative destruction. The opinions of *Elliott*, C. J., and of *Coffey*, *Berkshire*, and *Olds*, JJ., are replete with learning, and are of unusual interest. *Mitchell*, J., dissented on the ground that the legislative acts in question were not in conflict with the Constitution of the State as it now stands. See Constitution of California of 1879, art. xi., entitled "Cities, Counties, and Towns," for provisions which declare or presuppose the continued existence of these organizations.

[1] Baltimore *v.* Board of Police, 15 Md. 376. See also Patterson *v.* Society, &c. 4 Zabr. (24 N. J. L.) 385 (1854).

[2] Constitution of *Kansas*, art. xii. Secs. 1 and 2 of art. xiii. of the Constitution of *Ohio* are the same as sec. 1, art. xii. of the Constitution of *Kansas*. Sec. 6, art. xiii. of the *Ohio* Constitution is the same as sec. 5, art. xii. of the *Kansas* Constitution. There is a similar constitutional provision in *Nebraska*, and perhaps in other States. This provision construed (Clegg *v.* Richardson Co., 8 Neb. 178; Dundy *v.* Richardson Co., 8 Neb. 508), and held to invalidate certain bonds issued under a special law. s. p. School District *v.* Insurance Co., 103 U. S. 707. The Constitution of *California* declares that "all laws of a general nature shall have a uniform operation." Under this clause it is held that an act exempting particular cases from the operation of a general law is unconstitutional. Omnibus R. R. Co. *v.* Baldwin, 57 Cal. 160, where *a special act authorizing the construction of a street railway* was held void for attempting to

preme Courts of those States have decided that the provision applied to *municipal* as well as private corporations;[1] and that the effect was to compel the legislatures of those States to regulate the grant of powers to municipal corporations by *general* laws. Hence an act *specially* amending the charter of a city in respect to making local improvements or assessments,[2] or specially extending the limits of a particular city,[3] is unconstitutional; and so it seems is an act which authorizes a city by name to issue its scrip for a particular purpose, and to levy taxes to pay it in aid of a single enterprise, — the court inclining to hold such an enactment to be a *special act*, and one which undertook to confer *corporate powers*.[4]

exempt the railway company from the operation of the general law relating to street railways. *Ante*, sec. 45; *post*, sec. 49.

[1] Atchison *v.* Bartholow, 4 Kan. 124 (1866); Wyandotte City *v.* Wood, 5 Kan. 603 (1870); The State *v.* Cincinnati, 20 Ohio St. 18 (1870); following Atkinson *v.* Railroad Co., 15 Ohio St. 21 (1864). In New Jersey a similar provision is held to apply exclusively to private corporations. State *v.* Newark, 40 N. J. L. 550, 558 (1878).

[2] Atchison *v.* Bartholow, *supra*; Gilmore *v.* Norton, 10 Kan. 491 (1872); State *v.* Pugh, 43 Ohio St. 98 (an act to reorganize cities of the first grade of the second class, and to reduce their tax levy, held to be unconstitutional because it granted authority to such cities to appoint a board of control, thus conferring corporate powers by special act).

[3] Wyandotte *v.* Wood, *supra*; State *v.* Cincinnati, *supra*. In the case last cited, the Supreme Court of Ohio, under the constitutional provision quoted in the text, held that the legislature cannot by special act create a corporation, nor by special act confer additional powers on a corporation already existing; and that in these respects there was no difference between private and municipal corporations, since the Constitution equally embraced and equally applies to both classes; and, therefore, the act of April 16, 1870, "to prescribe the corporate limits of Cincinnati," being considered a special act, was adjudged void. See also Atkinson *v.* Railroad Co., *supra*. In this case, *Ranney*, J., thus expounds the Constitution: "These provisions of the Constitution are too explicit to admit of the least doubt that they were intended to disable the General Assembly from either creating corporations, or conferring upon them corporate powers, by *special* acts of legislation. It was intended to correct an existing evil, and to inaugurate the policy of placing all corporations of the same kind upon a perfect equality as to all future grants of power; of making such law applicable to all parts of the State, and thereby securing the vigilance and attention of its whole representation; and finally, of making all judicial construction of their powers, or the restrictions imposed upon them, equally applicable to all corporations of the same class. We must give such a construction to the Constitution as will preserve its leading objects intact." *Supra*, secs. 41, 45.

[4] Commercial National Bank *v.* City of Iola, 2 Dillon, C. C. R. 353 (1873). In this case the Circuit Judge, delivering the opinion of the court, and referring to the opinion of *Ranney*, J., quoted in the last note, observed: "One of the objects of the constitutional provision in Kansas, as well as in Ohio, was to cut up by the roots the mischief of special legislation, particularly in respect to corporations, both public and private. This object would be defeated if the special act relating to the city of Iola could stand. If under the doctrine of Butz *v.* Muscatine, 8 Wall. 575, this court is not absolutely bound, in this class of cases, to follow the interpretation of the State Constitution given by its highest court, yet it seems that it ought to follow it where it appears

It was decided that while the provision of the Constitution of *Kansas* that forbids the legislature to pass "any special act conferring corporate powers" includes *municipal corporations proper*, *it does not embrace quasi corporations*, such as school-districts, although the latter are declared by statute to be bodies corporate.[1] In California an act of the legislature which grants to individuals and their assigns certain powers and privileges, and then provides that the act shall not take effect unless such persons within a given time shall organize themselves under existing laws into a corporation, is a grant, not to the *individuals* as persons, but to the *corporation* when formed.[2]

to rest upon solid grounds, and was made in cases and in respect to questions where there was nothing to warp the judgment of its judges, and where the interpretation was settled or had been declared at the time the act in controversy was passed. In the latest case on this subject, decided by the Supreme Court of the United States, it is not denied that the Supreme Court of a State is the appointed expositor of its Constitution and laws, and that the Federal courts will adopt as rules for their own judgments the decisions of the highest courts of the State 'respecting local questions peculiar to itself, or respecting the construction of its own Constitution and laws.' It only denies the binding force of State adjudications which rest upon the general principles of law, and not upon the meaning of special constitutional or legislative provisions. Olcott *v.* Supervisors, 16 Wall. 678 (1872). I think the present case is one in which it is the duty of this court to follow the decisions of the State Supreme Court; and so far as my judgment rests upon the special provisions of the Constitution above referred to, I place it upon the State adjudications without an inquiry into their soundness." The bonds in this case were held invalid mainly on the ground that they were not issued for a public purpose. The judgment of the Circuit Court was affirmed. 20 Wall. 655 (1874). See also Savings Assoc. *v.* Topeka, 3 Dillon, 376 (1874); *post*, sec. 159; also chap. xiv. on Contracts.

Further as to the construction of the provision that "corporate powers" shall not be conferred by *special* act. School Dist. *v.* Ins. Co., 103 U. S. 707; State *v.* Cincinnati, 20 Ohio St. 18. Morawetz on Corp. (2d ed.) secs. 10–13, and cases cited.

Construction of constitutional prohibition against granting right "*to lay down railroad tracks in streets by local or private act*," see *post*, chap. xviii. on Streets.

[1] Beach *v.* Leahy, 11 Kan. 23 (1873). Under the constitutional provision in question the Supreme Court of Kansas, in the State *v.* Maloy, 20 Kan. 619 (1878), ruled the following points as stated by the judges: The act of the legislature entitled "An act authorizing cities therein named to become cities of the second class," approved February 29, 1872, is a special act, conferring corporate powers upon four particular municipal corporations, and is therefore unconstitutional and void, being in contravention of sec. 1 of art. xii. of the Constitution, which provides that "the legislature shall pass no special act conferring corporate powers." 2. The city of Council Grove was organized as a city of the second class, under said special act, and was never organized as a city of the second class under any other act, and has never had a population of two thousand inhabitants. And it was therefore held that said city is not legally a city of the second class.

[2] San Francisco *v.* S. V. W. W., 48 Cal. 493 (1874). Such an act is an attempt by the legislature in violation of the Constitution to confer powers and privileges upon a corporation by special act. *Ib.*; *post.* sec. 49. The Constitution of *Florida* provides that "the legislature shall establish a uniform system of county, township, and municipal government." An act authorizing *the dissolution of mu-*

§ 47 (25). **"Any Body Politic or Corporate" construed.** — A constitutional provision *that two thirds of the General Assembly* "shall be requisite to *every* bill creating, continuing, altering, or renewing *any body politic or corporate*," was held by a majority of the court of errors, reversing the majority view of the Supreme Court in the same case, to extend to *public* and *municipal*, as well as private corporations.[1] The constitutional provision, however, that "no bill shall contain more than one subject, which shall be clearly expressed in its title," is limited to State legislation and has no application to municipal ordinances.[2]

§ 48 (26). **"Where General Law can be made applicable."** — Under a Constitution which provides that "*in all cases where a general law can be made applicable, no special law shall be enacted*," the better view, and the one supported by the decided weight of authority, is that it is for the *legislature* to determine whether its purpose can or cannot be expediently effected by a general law; and a special act, as, for example, one providing for the location of the county seat of a specified county, will not be held invalid by the courts.[3]

nicipal corporations having a bonded indebtedness, the bonds being due, unpaid and unprovided for, upon the written application of one-half of the owners or holders of the bonds, and providing for their reincorporation, was held to be in violation of this provision and void. State *v.* Stark, 18 Fla. 255. See on this subject, however, chap. vii., *post*. But an act creating a *new class* of municipal corporations, imposing upon all the cities of the new class the same powers and duties, is lawful under the provision. Lake *v.* Florida, 18 Fla. 501. See *post*, chaps. vii. and viii.

[1] Purdy *v.* People, 4 Hill (N. Y.), 384 (1842); reversing 2 Hill, 31. What is an *alteration* within this provision. Corning *v.* Green, 23 Barb. 33; Smith *v.* Helmer, 7 Barb. 416; Morris *v.* People, 3 Denio, 381. Where a Constitution requires that acts of incorporation shall have "the assent of at least two-thirds of each house," the word "house" means the members present doing business,—these being a quorum,—and not a majority of all the members elected. Southworth *v.* Railroad Co., 2 Mich. 287.

[2] Humboldt *v.* McCoy, 23 Kan. 249; Green *v.* Indianapolis, 25 Ind. 490.

[3] State *v.* Johnson, 1 Kan. 178 (1862); *contra*, Pritz, *in re*, 9 Iowa, 30 (1859), where a special act amending the charter of a city was held invalid because all such laws were, by the Constitution of the State, required to be, and could be, made general. Von Phul *v.* Hammer, 29 Iowa, 222. It is for the legislature, and not the courts, to determine when a general law can be made applicable. Gentile *v.* State, 29 Ind. 409, overruling Thomas *v.* Board of Commissioners, 5 Ind. 4; Longworth's Executors *v.* Evansville, 32 Ind. 322; Cooley, Const. Lim. 129, note; State *v.* County Court, 50 Mo. 317 (1872); s. c. 11 Am. Rep. 415; Murdock *v.* Woodson, 2 Dillon, C. C. 188 (1873); Board of Commissioners *v.* Shields, 62 Mo. 247 (1876); Evans *v.* Job, 8 Nev. 322 (1873), where the decisions in that State and elsewhere are reviewed by *Hawley*, J. The word "town"—as used in constitutional inhibition of special laws regulating the internal affairs of towns and counties—is a generic term, including cities. State *v.* Parsons, 40 N. J. L. 1. But in the absence of any clear expression of a contrary intent, the term "municipal corporation" in any statute must be taken in the strict constitutional sense as not including towns. Eaton *v.* Manitowoc, 44 Wis. 489. *Ante*, sec. 20, and note.

§ 49. **"Municipal Purpose," what?** — The Constitutions of some of the States contain a provision that *corporations shall not be created by special acts except for municipal purposes.* What is a *municipal purpose* within this provision has been several times considered.[1] An act incorporating a board of commissioners for filling up certain slough ponds in the city of St. Louis was held to create a corporation for municipal purposes within the meaning of the Constitution.[2] An act creating a board of park commissioners was considered to constitute them a corporate authority, the object of their creation being municipal in its character.[3] So a corporation to carry on a public school and raise funds for its support.[4]

§ 50 (27). **Legislative Duty held to be discretionary.** — The Constitutions of several of the States contain, substantially, this provision, derived from the Constitution of New York: "*It shall be the duty of the legislature to provide for the organization of cities and incorporated villages, and to restrict their power of taxation, assessment, borrowing money, contracting debts,* and *loaning their credit,* so as to prevent abuses in assessments, and in contracting debts by such municipal corporations."[5] This obviously enjoins upon the legislature the duty of providing suitable and proper restrictions upon the enumerated powers; but in what these restrictions shall consist and how they shall be imposed are subjects left to the discretion or sense of duty of the legislative department, with the exercise of which the courts cannot interfere.[6] The Supreme Court

[1] State, *ex rel.* Choteau *v.* Leffingwell, 54 Mo. 458 (1873), where the subject is elaborately discussed, and the conclusion reached was that corporations for "municipal purposes" under the Constitution of *Missouri* must be connected with the municipal corporation itself, and be instituted for the purpose of carrying out some of the objects of the municipality. Under the Constitution of *California*, which provides that "corporations may be formed under general laws, but shall not be created by special act, except for municipal purposes," a corporation cannot exercise any powers except those conferred by general laws. The legislature cannot confer on such corporations any powers or grant them any privileges by special act. San Francisco *v.* S. V. W. W., 48 Cal. 493 (1874). A grant of an easement in a street made by the legislature to a corporation, is purely a grant of corporate power, and therefore cannot be made to a private corporation by special act. *Ib. ante*, sec. 46.

[2] St. Louis *v.* Shields, 62 Mo. 247 (1876).

[3] People *v.* Salomon, 51 Ill. 37.

[4] Horton *v.* Mobile School Comm'rs, 43 Ala. 598. See comment of *Wagner*, J., on this decision in St. Louis *v.* Shields, 62 Mo. 251 (1876).

[5] *New York* Constitution 1846, art. viii. sec. 9; *Wisconsin* Constitution 1848, art. xi. sec. 3; *Michigan* Constitution 1859, art. xii. sec. 13; *Oregon* Constitution 1857, art. xi. sec. 5; *Kansas* Constitution 1859, art. xii. sec. 5; see Paine *v.* Spratley, 5 Kan. 525; *Nevada* Constitution 1864, art. viii. sec. 8; *Nebraska* Constitution, art. viii. sec. 4; *California* Constitution 1849, sec. 37; *Ohio* Constitution 1851, art. xiii. sec. 6. *Post*, sec. 750, note. See also chapters relating to Contracts and Taxation, *post*.

[6] The failure of the legislature to per-